

VOLUME I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable Roger E. Henderson, Circuit Court Judge

JOMAR ROBINSON;

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002126

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 9, 2009	1
SENTENCING HEARING DATED MARCH 12, 2009	404
ORDER OF DISMISSAL WITHOUT PREJUDICE	414
APPLICATION FOR POST-CONVICTION RELIEF	426
RETURN.....	425
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 18, 2018	431
EXHIBIT NO. P-1 (EMAIL).....	517
EXHIBIT NO. P-2 (STATEMENT OF JOMAR ROBINSON).....	519
EXHIBIT NO. P-3 (POLICE INCIDENT REPORT)	520
EXHIBIT NO. P-4 (FORENSICS REPORT).....	522
EXHIBIT NO. P-5 (EVIDENCE/INVENTORY SHEET).....	523
ORDER OF DISMISSAL	525
INDICTMENTS	540
SENTENCE SHEETS	550
<u>STATE V. ROBINSON</u> , 396 S.C. 577, 722 S.E.2d 820 (CT. APP. Filed February 15, 2012) ..	555
<u>STATE V. ROBINSON</u> , OPINION NO. 27463 FILED NOVEMBER 12, 2014.....	566

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2008-GS-46-3141
6 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142
7) 2008-GS-46-3143
8) 2008-GS-46-3144
9) 2008-GS-46-3145
10) FEBRUARY 9, 2009
11) YORK, SOUTH CAROLINA
12
13
14

15 (VOLUME I)

16 B E F O R E:

17 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
18
19
20

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

22 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
23 ATTORNEY FOR THE STATE

24 J. CHRISTOPHER MILLS, ESQUIRE
25 JAMES MORTON, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

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CIRCUIT COURT REPORTER

INDEX

(FEBRUARY 9, 2009)

WITNESSES PAGE

JURY VOIR DIRE -- PAGE 23

(PRETRIAL HEARING)

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 62

CROSS EXAMINATION BY MR. MILLS 72

REDIRECT EXAMINATION BY MR. SPRINGS 91

RECROSS EXAMINATION BY MR. MILLS 92

OFFICER BRIAN SCHETTLER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 93

CROSS EXAMINATION BY MR. MILLS 95

(JURY TRIAL)

JURY SWORN -- PAGE 126

OPENING STATEMENT BY MR. SPRINGS -- PAGE 135

OPENING STATEMENT BY MR. MILLS -- PAGE 139

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 142

CROSS EXAMINATION BY MR. MILLS 165

REDIRECT EXAMINATION BY MR. SPRINGS 190

INDEX

(FEBRUARY 10, 2009)

WITNESSES	PAGE
SERGEANT RAYFORD ERVIN, JR (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	202
CROSS EXAMINATION BY MR. MILLS	208
REDIRECT EXAMINATION BY MR. SPRINGS	215
OFFICER BRIAN SCHETTLER (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	216
CROSS EXAMINATION BY MR. MILLS	232
REDIRECT EXAMINATION BY MR. SPRINGS	244
BARBARA TRAYLOR (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	246
CROSS EXAMINATION BY MR. MILLS	249
DEE ANNE JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	253
CROSS EXAMINATION BY MR. MILLS	263
REDIRECT EXAMINATION BY MR. SPRINGS	265
COMMANDER MARVIN BROWN (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	269
VOIR DIRE EXAMINATION BY MR. MILLS	273
CONT'D DIRECT EXAMINATION BY MR. SPRINGS	281
CROSS EXAMINATION BY MR. MILLS	284
STATE RESTS -- PAGE 285	

INDEX

(FEBRUARY 10, 2009)

WITNESSES	PAGE
ODARIUS WILLIAMS (DW)	
DIRECT EXAMINATION BY MR. MORTON	286
CROSS EXAMINATION BY MR. SPRINGS	299
REDIRECT EXAMINATION BY MR. MORTON	313
DEFENSE RESTS -- PAGE 316	
CLOSING ARGUMENT BY MR. MILLS -- PAGE 326	
FINAL ARGUMENT BY MR. SPRINGS -- PAGE 337	
COURT'S JURY INSTRUCTIONS -- PAGE 346	
JURY VERDICT -- PAGE 379	

INDEX

(FEBRUARY 11, 2009)

WITNESSES

PAGE

SEALED SENTENCE RENDERED -- PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		146
4	S-2	PHOTOGRAPH		149
5	S-3	PHOTOGRAPH		149
6	S-4	PHOTOGRAPH (WITHDRAWN)	13	
7	S-5	PHOTOGRAPH		159
8	S-6	PHOTOGRAPH		159
9	S-7	PHOTOGRAPH (WITHDRAWN)	14	
10	S-8	MAP		162
11	S-9	GUN		228
12	S-10	DRUGS (REMARKED AS DEFT'S EX. # 1)		
13	S-11	DRUGS		261
14	S-12	PHOTOGRAPH		164
15	S-13	DRUG REPORT	258	
16	S-14	DRUG REPORT		259
17				
18	D-1	DRUGS		166
19				
20	CT-1	LETTER DATED 1/26/09	23	
21	CT-2	DEFENSE REQUESTED VOIR DIRE	200	
22	CT-3	PRIOR SENTENCING DOCUMENTS	389	
23				
24				
25				

1 (PROCEEDINGS, FEBRUARY 9, 2009)

2 MR. SPRINGS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. SPRINGS: Your Honor, I would propose that if
5 I'm able to lay the foundation that the defendant was given
6 notice that he be tried today, that we go ahead and pick his
7 jury. The court could make some innocuous comment, he's not
8 here for jury selection. And if he comes over the lunch
9 hour. That's all for the good. No harm, no foul, but we do
10 have those folks waiting downstairs.

11 THE COURT: All right. If you want to call the
12 case and provide whatever you need to provide the court
13 today that you have with regards to try him, you know, in
14 his absence.

15 MR. SPRINGS: Thank you, Your Honor.

16 Your Honor, the next matter for this Honorable
17 Court is the State of South Carolina versus Jomar Antavis
18 Robinson.

19 I'm holding a total of five indictments. First
20 charges him with possession of cocaine base with intent to
21 distribute. The number is 2008-GS-46-3142.

22 The second is possession of cocaine base with
23 intent to distribute within proximity of a public park on
24 2008-GS-46-3141.

25 Resisting arrest under B paragraph on

1 2008-GS-46-3143.

2 Carrying a pistol unlawfully on 2008-GS-46-3144.

3 And possession of marijuana on 2008-GS-46-3145.

4 Attorney Christopher Mills is here present in the
5 courtroom. He was appointed to represent Mr. Robinson on
6 this case.

7 The court will notice that Mr. Jim Morton is
8 sitting with Mr. Mills. The State has no problem whatsoever
9 with that.

10 The court will notice that the defendant, Jomar
11 Antavis Robinson, is not present.

12 I will begin with his bond papers. He bonded out
13 of our York County detention center on March the 21st, 2008.
14 And right above his signature he says -- it's written -- is
15 typed right above his signature "I understand and have been
16 informed that I have a right and obligation to be present at
17 trial. And should I fail to attend the court for the trial,
18 the State in my absence in my absence.

19 I'm also handing a copy of a letter I sent to him
20 by first class mail on January 26th, 2009, to Mr. Robinson,
21 copy to Attorney Christopher Mills, and a copy to B.K. Bail
22 Bonding Company saying "your case is being called for trial
23 the week of February 9th, 2009, in the Court of General
24 Sessions of York County at the Moss Justice Center. You
25 must come to the Court of General Sessions at nine o'clock

1 a.m., on Monday, February 9th, 2009, and remain in court
2 until your case is tried. If you fail to appear or appear
3 and then leave before your case is tried, the trial will go
4 forward in your absence."

5 I would ask that these two documents be made a
6 court's exhibit after the court has examined them, and I
7 would ask the court make a finding that Mr. Robinson was
8 given notice he would be tried in his absence.

9 I suspect the court in its conversations with
10 Attorney Mills has concluded that actual conversations with
11 the defendant have taken place this morning letting him know
12 that we are in this courtroom ready to try his case.

13 THE COURT: All right. The court will make and
14 allow these to be made exhibits in the case.

15 Let me ask Mr. Mills, recite what's happened so
16 far in this case. I'll be glad to hear from you about your
17 contacts with your client.

18 First off, my understanding is he was supposed to
19 be here this morning at 9:00 or 9:30?

20 MR. SPRINGS: Nine o'clock.

21 THE COURT: Nine o'clock.

22 And he isn't. Mr. Mills, my understanding is it
23 is now ten minutes to one -- five minutes -- almost five
24 minutes to one and he still has not appeared, is that
25 correct?

6

1 MR. MILLS: I have not been able to locate him,
2 Your Honor, that's correct.

3 THE COURT: And so he failed to appear, although
4 he was notified to be here. And he understood his case was
5 set for trial day, is that correct?

6 MR. MILLS: I would assume he did, yes, sir.

7 THE COURT: Not assume. You have been in
8 contact --

9 MR. MILLS: I told him to be here this morning.

10 THE COURT: You told him his case was going to be
11 disposed of today?

12 MR. MILLS: Yes, sir.

13 THE COURT: So he knew to be here and it had been
14 set for trial.

15 And, of course, we have qualified the jury, came
16 back upstairs and we have talked in chambers and discussed
17 the possibility of working something out in this case, as
18 far as a negotiated sentence is concerned on some kind of
19 plea bargain. An offer was made, which, Mr. Mills, you
20 indicated that you were going to relay to your client, Mr.
21 Robinson. And did you relay to him, the offer?

22 MR. MILLS: I did, Your Honor.

23 THE COURT: And what did he indicate to you?

24 MR. MILLS: He was on his way to the courthouse.

25 THE COURT: And that was, sir, about what time

1 would you say? It's been an hour, I think.

2 MR. MILLS: Not -- I think it was about ten after
3 twelve.

4 THE COURT: So it's been about fifty, fifty-five
5 minutes?

6 MR. MILLS: Yes, sir.

7 THE COURT: And he still has not shown up?

8 MR. MILLS: I did not see him downstairs.

9 THE COURT: And he -- of course, your information
10 is he lives in the City of York?

11 MR. MILLS: Yes, sir.

12 THE COURT: And the court will take judicial
13 notice of the fact. I also live in York, and anywhere in
14 York that you are, you can be here in no later than fifteen
15 minutes. And I gave you an opportunity, when he didn't show
16 up and we were getting ready to start the case, I gave you
17 fifteen additional minutes to get in touch with him, because
18 he was in York and could get here within fifteen minutes,
19 and were you able to get in touch with him?

20 MR. MILLS: No, sir.

21 THE COURT: You were not able to get in touch with
22 him and he has not shown up. And so -- I mean, really we're
23 left little choice now. The solicitor wants to proceed and
24 has asked for the jury, who have been waiting downstairs for
25 over an hour to proceed with this case, so we will proceed.

1 and I'll allow him to proceed.

2 Certainly the court finds that the defendant,
3 Jomar Antavis Robinson, had knowledge his case was going to
4 be disposed of today. He was supposed to be here at nine
5 o'clock this morning. It is, by the courtroom clock, right
6 at one o'clock and he still has not shown up, although he
7 has been told to come, and he said he was coming, and he
8 told his attorney he was on his way her. Of course, that
9 was, well, maybe forty-five minutes ago and he still has not
10 shown up, although he could have been here within fifteen
11 minutes. So it's clear to the court that Mr. Robinson has
12 no intention of coming here today to have the charges
13 disposed of. And the court -- that's the only assumption I
14 can make, and we'll proceed today in a trial in his absence.

15 MR. SPRINGS: Your Honor, while we talk about the
16 voir dire questions real quick, could we follow our South
17 Carolina traditions of having a bailiff step to the
18 staircase of the courthouse and call his name three times?

19 THE COURT: Well, thank you for correcting me.
20 That's the procedure I always follow and I failed to do ti.

21 So please come up here, please, ma'am.

22 Please, madam, place her under oath.

23 BAILIFF DORIS BROWN, having been first duly sworn,
24 testified as follows:

25 THE COURT: Please, ma'am, state your name for the

1 record.

2 BAILIFF DORIS BROWN: My name is Doris Brown.

3 THE COURT: Ms. Brown, would you please for the
4 court go outside the courtroom in the hallway and also go
5 downstairs on the lower level, the front of the courthouse,
6 and announce the name Jomar Antavis Robinson? Here, if you
7 want to take this with you so you can read it. If you will
8 say that out loud three times and see if you get any
9 response in either of those locations.

10 THE WITNESS: Okay.

11 (Off the record)

12 (Back on the record)

13 MR. SPRINGS: While she's doing that, Your Honor,
14 we have received the defense's requested voir dire. It
15 would be easier for me to just let the court know the ones I
16 am okay with. I'm okay with 1; okay with 3; okay with 8;
17 okay with 12; okay with 13; and okay with 15. The others I
18 don't think are appropriate.

19 (Photograph marked as State's Exhibit No. 1 for
20 identification)

21 (Photograph marked as State's Exhibit No. 2 for
22 identification)

23 (Photograph marked as State's Exhibit No. 3 for
24 identification)

25 (Photograph marked as State's Exhibit No. 4 for

1 identification)

2 (Photograph marked as State's Exhibit No. 5 for
3 identification)

4 (Photograph marked as State's Exhibit No. 6 for
5 identification).

6 (Photograph marked as State's Exhibit No. 7 for
7 identification).

8 (Map marked as State's Exhibit No. 8 for
9 identification)

10 THE COURT: Yes, ma'am.

11 BAILIFF DORIS BROWN: Your Honor, I called Jomar
12 Antavis Robinson's name three times outside the courtroom,
13 downstairs, standing outside in front of the courthouse and
14 no answer.

15 THE COURT: Thank you, ma'am.

16 MR. SPRINGS: Mr. Mills had a -- he's got a little
17 computer issue of his own and I have an IT guy that was
18 going to loan him to help with that and my IT guy is at
19 lunch.

20 THE COURT: I thought you may be talking about the
21 jury. Do we want to send the jury out for lunch, or do you
22 want to go ahead and draw the jury and then send them to
23 lunch? What do you want to do?

24 MR. SPRINGS: I would like to go ahead and pick
25 them and all of us go get some lunch.

1. THE COURT: Okay.

2 MR. SPRINGS: Because it does take every bit of
3 fifteen minutes for them to get scanned and get up here,
4 could we get them in here while we get the defense motion
5 for ten strikes?

6 THE COURT: Yes, sir. Is there anything other
7 than that particular motion we can take up?

8 Let me run through -- before we bring them up, let
9 me run through the voir dire and tell you what I'm planning
10 to do on the voir dire.

11 On the State's voir dire requests, I have no
12 problem with asking those questions, but I want to take the
13 responses down front. Anybody that needs to respond to
14 them, we will take them down front.

15 And as far as the defendant's requests, what I
16 plan to do on number 1, the way it read here, it says "any
17 member of the jury panel, a close friend or relative by
18 blood or marriage ever been a member of any organization or
19 society, such as Mother's Against Drunk Driving, Students
20 Against Drunk Driving, Citizens Against Violence Everywhere,
21 or any other group which advocates for tougher criminal
22 penalties or for victims of crimes."

23 I'm not going to ask them for the war on crime,
24 whatever that might be, and so I will ask them that.

25 Now, I'm not going to ask number 2.

1 Number 3 I will ask.

2 Number 4 I will ask, but it will be down front,
3 the responses.

4 Number 5 I will ask, but take the responses down
5 front.

6 Number 6 I will not ask.

7 Number 7 I will ask, but take the responses down
8 front.

9 Number 8 I will ask, but take the responses down
10 front.

11 Number 9 I will not ask.

12 Number 10 I will ask, but I will not ask them to
13 give the result of the trial. What I will do instead is, if
14 they stand up, I will ask them what court that they served
15 on the jury in. If there is anything about their
16 experiences in that regard that would interfere with their
17 ability to give the State and defendant a fair trial in this
18 case.

19 MR. MILLS: Yes, sir.

20 THE COURT: I'm not going to have them give the
21 results of that. I don't think it makes any difference what
22 the results are. That's a whole different factual situation
23 than this. That's just basically allowing you to stake them
24 out, but I will ask them is there anything about their
25 experiences that interferes with their ability to be fair in

1 this case.

2 MR. MILLS: Yes, sir.

3 THE COURT: All right. Now, number -- I will ask
4 number 11, but, again, I will take the responses down front.
5 I'm not going to embarrass anybody out here in the courtroom
6 with some of these questions. That's the reason I'm going
7 to allow them to respond down front.

8 Number 12 I do not plan to ask.

9 I'm going to ask them about the witnesses
10 individually. I go through them individually.

11 MR. MILLS: All right.

12 THE COURT: Number 13 I'm not going to ask.
13 Again, I'm going to ask them individually about these
14 officers. One at a time I will ask them.

15 MR. MILLS: Yes, sir.

16 THE COURT: Number 14 I do not plan to ask.

17 Number 15 I do not plan to ask, because I'm going
18 to ask them individually about the solicitors that are
19 involved in the solicitor's office. I always do that the
20 first thing.

21 MR. MILLS: I apologize. You said number 14 you
22 were not going to ask?

23 THE COURT: That's correct, I'm not going to ask
24 that. I'm not going to charge them on the law before I ever
25 get there. As a primary matter I instruct them on that in

1 an opening. I give them a preliminary charge before we ever
2 start the trial when the jury is selected, but I don't think
3 that I need to do that with a full jury panel.

4 MR. MILLS: Your Honor, along those lines, in
5 light of the recent developments, will you also be
6 instructing them about the defendant's presence or whether
7 they should not consider that?

8 THE COURT: I don't think I really need to do
9 that. I think that when I really do that is once we get a
10 jury selected before we start the trial.

11 MR. MILLS: Okay.

12 THE COURT: But I will do it either way you want
13 me to.

14 MR. MILLS: No, I just --

15 THE COURT: I have done it both ways, but I just
16 call attention to it if he's not here. If he happens to
17 show up before we actually get started with the trial, it
18 wouldn't be any big thing.

19 MR. MILLS: Right.

20 THE COURT: I'm going to ask them if they are
21 related by blood or marriage to them or have any other type
22 social, business --

23 MR. MILLS: Sure.

24 THE COURT: -- relationship to him. I'm going to
25 ask them that.

1 I will be glad to say you will note that the
2 defendant is not present, he's not required to be here, or
3 something to that effect.

4 MR. MILLS: I think we will just let it go at this
5 point. And then, you know --

6 THE COURT: Certainly once we start the trial, I
7 will -- when the jury that's actually selected, I will let
8 them know it's not going to be any prejudice because he's
9 not here. He doesn't have to be here. The State has to
10 prove his guilt. He doesn't have to prove anything. I will
11 get into that.

12 MR. MILLS: All right. If I could have just a
13 brief chance, I mean, as far as the if he doesn't have to be
14 here, you know, is not required for him to be here, same
15 difference I suppose.

16 THE COURT: I will tell them that he's not
17 required to be here, and tell them that even if he was here
18 and he was sitting there, he doesn't have to say anything or
19 do anything, because the State has the burden to prove his
20 guilt.

21 MR. MILLS: Your Honor, I would just ask -- I
22 understand the court's ruling and I'm not going to argue
23 against them, it's that I just ask that my requested voir
24 dire be placed in the record and that for those charges
25 which the court declined to charge that I requested them on

1 Mr. Robinson's behalf.

2 THE COURT: If you have got an extra copy of them,
3 make it a copy of yours, we will put it in.

4 MR. MILLS: Sure.

5 THE COURT: Because I have already marked mine up.

6 MR. MILLS: I just started marking mine up, so I
7 will go ahead and get another one printed out to give to the
8 court.

9 THE COURT: Thank you.

10 MR. SPRINGS: Is the clerk ready to call them up,
11 judge?

12 THE COURT: Yes, sir.

13 Let's go -- while the jury is coming up, they will
14 have to go through screening to get up here, so it will take
15 them a few minutes.

16 Let me hear you on your motion to get ten strikes.

17 MR. MILLS: Your Honor, that's the defendant's
18 motion. As memorandum suggests, I'm fully aware of the law
19 and what the statutory requirements are. In light of the
20 second most severe sanction the State can give in this
21 instance, life without parole, raises due process concerns
22 on behalf of my defendant and, therefore, I respectfully
23 request the court in it's discretion to allow me ten
24 peremptory strikes to the State's five.

25 THE COURT: All right. Thank you, sir.

1 Your motion is noted for the record and denied. .
2 This is a matter of statute. I don't think any peremptory
3 strikes have to be allowed. I don't know of any such -- it
4 could all be just on challenges. The defendant is entitled
5 to a fair trial. That's all he's entitled to and a fair
6 jury and he's not really entitled to any peremptory strikes,
7 except those that are given. You know, I have never thought
8 it was really fair for somebody who could, say, get armed
9 robbery charge and get up -- well, I think -- yeah, that
10 might be included. I'm not sure, but somebody charged could
11 get twenty-five years and he's entitled to five strikes, but
12 one where on a forgery, he can get a maximum of five years,
13 he gets ten, but I don't make the law. You see, the
14 legislature makes the law and this is what they passed. And
15 I don't know that you are entitled, a defendant or the
16 State, either one, is entitled to any peremptory strikes,
17 except those that are given, and they are not given, and so
18 the court can't give them. Okay?

19 MR. MILLS: And, again, just -- I'm sorry, I
20 didn't quite articulate. Not to disagree with the court's
21 ruling, I also want to make sure the record reflects I
22 challenge this on an equal protection ground, that
23 ultimately we have similarly situated defendants who would
24 be treated unequally that impacts the Constitutional Right,
25 which is a right to a fair trial, and I think that is my

1 record, Your Honor.

2 THE COURT: Of course, you know, every defendant
3 that's charged with this particular offense gets treated the
4 same way, counsel, so much for the equal protection
5 argument. Everybody gets treated the same, in the same
6 caveat.

7 MR. MILLS: Yes, sir.

8 THE COURT: Anything else we need before the jury
9 comes up?

10 MR. SPRINGS: Nothing from the State at this
11 point.

12 THE COURT: Is Ms. Taylor going to assist with
13 this case? Do I need to introduce her?

14 MR. SPRINGS: No, she's just a spectator.

15 THE COURT: Sir?

16 MR. SPRINGS: She's just a spectator.

17 (Off the record)

18 (Back on the record)

19 THE COURT: Back on the record for a second.
20 Strikes are five and five.

21 MR. SPRINGS: Yes.

22 THE COURT: And also we will draw one alternate.
23 The strikes for the alternate would be two for the defense
24 and one for the State.

25 MR. SPRINGS: Yes, sir.

1 We have got a good local private investigator
2 sitting at the defense table, William Graham. If he's going
3 to be closely involved, I would like the jury to hear his
4 name and see him.

5 MR. MILLS: Yes, Your Honor.

6 MR. SPRINGS: Do you have a witness list?

7 MR. MILLS: Yes, I'm sorry, it's handwritten. I
8 apologize.

9 THE COURT: Yeah, he's on there, Will Graham.

10 MR. SPRINGS: Could I glance at it? I didn't get
11 a copy of it.

12 MR. MILLS: I have got a box back in there.

13 THE COURT: Sure.

14 (Off the record)

15 (Back on the record)

16 (Letter, dated January 26, 2009, marked as Court's
17 Exhibit No. 1 for identification)

18 (Whereupon, the jury venire panel was brought into
19 the courtroom)

20 THE COURT: Ladies and gentlemen of the jury
21 panel, if you will give me your attention, please. I
22 apologize for the delay in getting you up from the jury
23 assembly room, but we had matters that were going on. We
24 have been working. We wanted to go ahead and try to get a
25 jury picked in this case before we break for lunch and so we

1 could free up those jurors who were not going to be
2 necessary for this case thereafter, so -- but, again, I
3 apologize for the delay in getting you up.

4 We are about to go into a trial in the matter of
5 the State of South Carolina versus Jomar, spelled J-O-M-A-R,
6 Antavis, A-N-T-A-V-I-S, Robinson, R-O-B-I-N-S-O-N.

7 The State charges Mr. Robinson with several
8 offenses. They charge him with possession with intent to
9 distribute crack cocaine.

10 They charge him with possession with intent to
11 distribute crack cocaine within proximity of a public park
12 or playground.

13 They charge him with resisting arrest.

14 They charge him with carrying a pistol unlawfully.

15 And they charge him with possession of marijuana.

16 To these charges the defendant has pled not guilty
17 and we are about to go into a trial on those charges.

18 Now, the State is represented in this case by
19 Assistant Solicitor E.B. Springs.

20 Mr. Springs, if you will stand up. Thank you.
21 You may be seated.

22 Is anyone on the jury panel related by blood or
23 marriage, friends with, or have any other type social,
24 business or professional relationship with Assistant
25 Solicitor E.B. Spring? If so, please stand.

1 (No response)

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

7 (No response)

8 THE COURT: The defendant in this case, Jomar
9 Antavis Robinson, is represented by Mr. Christopher Mills.

10 Mr. Mills, would you please stand so the jury
11 could see who you are? Thank you, sir.

12 Is anyone on the jury panel related by blood or
13 marriage, friends with, or have any other type social,
14 business or professional relationship with Jomar Antavis
15 Robinson? If so, please stand.

16 (No response)

17 THE COURT: Is anyone on the jury panel related by
18 blood or marriage, friends with, or have any other type
19 social, business or professional relationship with, that is
20 to say currently or formerly represented by, any other
21 relationship to, Mr. Christopher Mills? If so, please
22 stand.

23 (No response)

24 MR. MILLS: Your Honor, I would remind the court
25 also, Mr. Morton is going to be sitting in this trial.

1 THE COURT: Oh, he is going to be sitting in the
2 trial. I beg your pardon. All right.

3 Well, let me ask about Mr. Mills first. Is anyone
4 related by blood or marriage, friends with, or have any
5 other type social, business or professional relationship
6 with Christopher Mills? If so please stand.

7 (No response)

8 THE COURT: Thank you, Mr. Mills.

9 Now, is anyone on the jury panel related by blood
10 or marriage, friends with, or have any other type social,
11 business or professional relationship with, again, currently
12 or formerly represented by, or any other relationship to Mr.
13 Jim Morton with the law firm of Morton & Geddis? If so,
14 please stand.

15 Yes, sir, please give us your name and your juror
16 number for the record. Either one. Sir, you in the front
17 would be fine.

18 Sir?

19 THE COURT: Give us your name and number, please.

20 JUROR NUMBER 151: Roy Mills, juror number 151.

21 Mr. Morton represented my son.

22 THE COURT: All right. Sir, is there anything
23 about that representation that would -- that relationship
24 that would interfere in any way with your ability to give
25 both the State and the defendant a fair and impartial trial

1 in this case?

2 JUROR NUMBER 151: No, sir.

3 THE COURT: Thank you, sir. You may be seated.

4 Yes, sir.

5 JUROR NUMBER 96: James Gary Hood, 96.

6 THE COURT: Yes, sir.

7 JUROR NUMBER 96: Lifelong friend of Mr. Morton.

8 THE COURT: Sir, if he's involved in this case as
9 an attorney, would that fact interfere -- that relationship
10 interfere in any way with your ability to give both the
11 State and the defendant a fair and impartial trial in this
12 case?

13 JUROR NUMBER 96: No, sir.

14 THE COURT: Thank you, sir, you may be seated.

15 Yes, ma'am.

16 JUROR NUMBER 155: Barbara Moseley, 155. My son
17 was represented by Mr. Morton twelve or fifteen years ago.

18 THE COURT: All right. Ma'am, is there anything
19 about that relationship that would interfere in any way with
20 your ability to give both the State and the defendant a fair
21 and impartial trial in this case?

22 JUROR NUMBER 155: No, sir.

23 THE COURT: Thank you, ma'am. You may be seated.

24 Anyone else?

25 (No response)

1 THE COURT: Ladies and gentlemen of the jury
2 panel, I'm now going to go through a list of potential
3 witnesses in this case. All of these witnesses may not be
4 called, but they may be called. What I'm going to ask you
5 to do is when I call the witness' name, potential witness'
6 name, if you are related by blood or marriage, friends with,
7 or have any other type social, business or professional
8 relationship with any of these named potential witnesses,
9 when I call their names, I would ask that you please stand.

10 Laquaris Patton. First name is spelled
11 L-A-Q-U-A-R-I-S, Patton.

12 (No response)

13 THE COURT: Odarius Williams.

14 (No response)

15 THE COURT: Don Girnt, spelled G-I-R-N-T.

16 (No response)

17 THE COURT: Will Graham.

18 This is Mr. Graham down front here. Thank you,
19 sir.

20 (No response)

21 THE COURT: Lieutenant Mike Ligon. Down front.
22 Thank you, sir.

23 (No response)

24 THE COURT: Officer Brian Schettler. Down front.
25 Thank you, sir.

1 (No response)

2 THE COURT: Sergeant Rayford Ervin. He's down
3 front also.

4 (No response)

5 THE COURT: Thank you, sir.

6 Ms. Dee Anne Johnson.

7 (No response)

8 THE COURT: Ms. Barbara Traylor, who works with
9 the evidence department, I think, at the sheriff's
10 department.

11 (No response)

12 THE COURT: Lieutenant Pete Mitchum, with the
13 sheriff's department.

14 (No response)

15 THE COURT: Officer Marvin Brown.

16 (No response)

17 THE COURT: Ms. Cynthia Mitchum, who is a chemist
18 with the sheriff's department.

19 (No response)

20 THE COURT: Lieutenant Kelly Lovelace, with the
21 sheriff's department.

22 Yes, ma'am, please give us your name and number,
23 ma'am.

24 JUROR NUMBER 73: Number 73, Sandra Greenep. I
25 used to take care of Kelly's husband's grandmother.

1 THE COURT: Okay. Ma'am, is there anything about
2 that relationship that would interfere in any way with your
3 ability to give both the State and the defendant a fair and
4 impartial trial in this case?

5 JUROR NUMBER 73: No, sir.

6 THE COURT: Thank you, ma'am. You may be seated.

7 Anyone else?

8 (No response)

9 THE COURT: Has any member of the jury panel or a
10 close friend or relative by blood or marriage ever been a
11 member of any organization or society, such as Mothers
12 Against Drunk Driving, Students Against Drunk Driving,
13 Citizens Against Violence Everywhere, or any other group
14 which advocates for tough criminal penalties or for victims
15 of crimes? If so, please stand.

16 (No response)

17 THE COURT: Is any member of the jury panel
18 related by blood or marriage to any law enforcement officer,
19 state constable, or any other person having authority to
20 enforce the law of the United States, the state, county, or
21 city? If so, please stand.

22 Yes, ma'am, please give us your name and number,
23 ma'am.

24 JUROR NUMBER 55: Karen Downey, juror number 55.

25 THE COURT: Yes.

1 JUROR NUMBER 55: I worked for the State
2 Attorney's Office, the Nineteenth Judicial Circuit in
3 Florida.

4 My ex-husband is a police officer and my niece is
5 currently a police officer.

6 THE COURT: Where are they officers, ma'am?

7 JUROR NUMBER 55: In Florida.

8 THE COURT: Florida.

9 Ma'am, is there anything about your experiences or
10 relationships in that regard that would interfere in any way
11 with your ability to give both the State and the defendant a
12 fair and impartial trial in this case?

13 JUROR NUMBER 55: No, sir.

14 THE COURT: Thank you, ma'am. You may be seated.

15 Yes, ma'am.

16 JUROR NUMBER 79: Lori Hammond, juror number 79.

17 THE COURT: I'm sorry, seventy what?

18 JUROR NUMBER 79: 79.

19 THE COURT: Thank you, ma'am. Yes, ma'am.

20 JUROR NUMBER 79: I used to be a police officer.

21 THE COURT: Where, ma'am?

22 JUROR NUMBER 79: Rock Hill.

23 THE COURT: Ma'am, is there anything about your
24 experiences in that regard that would interfere in any way
25 with your ability to give both the State and the defendant a

1 fair and impartial trial in this case?

2 JUROR NUMBER 79: No.

3 THE COURT: Thank you, ma'am.

4 Yes, sir. Please give us your name and number,
5 sir.

6 JUROR NUMBER 188: Charles Ridenhour, 188. Prior
7 law enforcement, Horry County.

8 THE COURT: What county, sir?

9 JUROR NUMBER 188: Horry County.

10 THE COURT: Sir, is there anything about your
11 experiences in that regard that would interfere in any way
12 with your ability to give both the State and the defendant a
13 fair and impartial trial in this case?

14 JUROR NUMBER 188: No, sir.

15 THE COURT: Thank you, sir. You may be seated.
16 Anyone else?

17 JUROR NUMBER 149: Steven Mellon, 149. My
18 father-in-law is a state constable in South Carolina.

19 THE COURT: All right. Sir, is there anything
20 about that relationship that would interfere in any way with
21 your ability to give both the State and the defendant a fair
22 and impartial trial in this case?

23 JUROR NUMBER 149: No, sir.

24 THE COURT: Thank you, sir.

25 Anyone else?

1 Yes, sir, please stand and give us your name and
2 number.

3 JUROR NUMBER 130: Juror number 130, Fred Marcum.
4 Thirty years ago I was a police officer in Huntington, West
5 Virginia for five years.

6 THE COURT: Sir, is there anything about your
7 experiences in that regard that would interfere in any way
8 with your ability to give both the State and the defendant a
9 fair and impartial trial in this case?

10 JUROR NUMBER 130: Absolutely not, Your Honor.

11 THE COURT: Thank you, sir. You may be seated.

12 Anyone else?

13 (No response)

14 THE COURT: Is there any member of the jury panel
15 that has served on a jury at either the magistrate, city,
16 state, or federal level involving someone charged with a
17 criminal offense? If so, please stand.

18 Yes, sir, please give us your name and number.

19 JUROR NUMBER 110: Jeff Kirby, juror number 110.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 110: I was on a Rick Hill jury last
22 year --

23 THE COURT: All right.

24 JUROR NUMBER 110: -- in regards to a misdemeanor
25 assault and battery.

1 THE COURT: All right. Sir, is there anything
2 about your experiences in that regard that would interfere
3 in any way with your ability to give both the State and the
4 defendant a fair and impartial trial in this case?

5 JUROR NUMBER 110: No, sir.

6 THE COURT: Thank you, sir. You may be seated.

7 Yes, ma'am, if you would give us your name and
8 number?

9 JUROR NUMBER 122: Jeanette Lucy, number 122. I
10 have been on civil and criminal juries in York County.

11 THE COURT: All right. What courts, ma'am, do you
12 remember?

13 JUROR NUMBER 122: Here, and then one that was way
14 down in York.

15 THE COURT: Okay.

16 JUROR NUMBER 122: And municipal. No, I wasn't on
17 a jury. I was called for jury duty on municipal jury in
18 Rock Hill.

19 THE COURT: Ma'am, is there anything about your
20 experiences in that regard that would interfere in any way
21 with your ability to give both the State and the defendant a
22 fair and impartial trial in this case?

23 JUROR NUMBER 122: No, sir.

24 THE COURT: Thank you, ma'am. You may be seated.

25 Anyone else?

1 Yes, ma'am.

2 JUROR NUMBER 55: Karen Downey, number 55. I
3 served on a Grand Jury in Toledo, Ohio.

4 THE COURT: Ma'am, is there anything about your
5 experiences in that regard that would interfere in any way
6 with your ability to give both the State and the defendant a
7 fair and impartial trial in this case?

8 JUROR NUMBER 55: No, sir.

9 THE COURT: Thank you, ma'am.

10 Ladies and gentlemen of the jury panel, I'm going
11 to ask you a series of questions now. If you need to
12 respond to one, or more, of these questions, or if you think
13 one, or more, of them may apply to you, I'm going to ask you
14 to wait until I have gone through all of the questions. And
15 then if you need to respond to them, I'll take your
16 responses down front next to the court reporter. We can do
17 that with a little more privacy.

18 Again, please listen carefully to the questions.
19 If one, or more, of them apply to you, please come forward
20 at the appropriate time.

21 Has any member of the jury panel's family or close
22 personal acquaintances ever had problems with illegal drugs?
23 The first question.

24 Does any member of the jury panel feel that
25 because of religious, philosophical, or deeply personal

1 reasons you would find it difficult or impossible, after
2 hearing the facts, to judge the defendant guilty or not
3 guilty in this case?

4 Does any member of the jury panel have such strong
5 feelings about firearms that they could not be a fair and
6 impartial juror in this case?

7 Does any member of the jury panel have such strong
8 feelings about illegal drugs, that they could not be a fair
9 and impartial juror in this case?

10 Is there any member of the jury panel who has been
11 the victim of a crime?

12 Does any member of the jury panel have a relative
13 by blood or marriage who has been addicted to illegal
14 narcotic drugs?

15 Has any member of the jury panel been charged or
16 had a family member or a close friend charged in a criminal
17 case?

18 Ladies and gentlemen, if you need to respond to
19 one, or more of the questions that I asked, or one, or more,
20 of them apply to you, please come to the center aisle. We
21 will take your responses down front next to the court
22 reporter here.

23 (Whereupon, the following were bench conferences
24 in the presence of the jury venire panel, but out of the
25 hearing of the jury venire panel)

1 (Juror Number 65 approached the bench)

2 THE COURT: Here please, sir. Give us your name
3 and number for the record.

4 JUROR NUMBER 65: Steven Gentry, number 65.

5 THE COURT: Yes, sir.

6 JUROR NUMBER 65: I was arrested in 1980 for
7 selling on campus and it was expunged through arbitration.

8 THE COURT: Is there anything about your
9 experiences in that regard that would interfere in any way
10 with your ability to give both the State and the defendant a
11 fair and impartial trial in this case?

12 JUROR NUMBER 65: No, sir.

13 THE COURT: Thank you, sir. You may return to
14 your seat.

15 (Juror Number 65 returned to the jury venire
16 panel)

17 (Juror Number 95 approached the bench)

18 THE COURT: Give us your name and number for the
19 record.

20 JUROR NUMBER 95: Carolyn C. Holtzclaw, 95.

21 THE COURT: Yes, ma'am.

22 JUROR NUMBER 95: My husband was in jail when he
23 was eighteen for using drugs, I think selling drugs.

24 THE COURT: Okay. Let me ask you whether there is
25 anything about your experiences in that regard that would

1 interfere in any way with your ability to give both the
2 State and the defendant a fair and impartial trial in this
3 case?

4 JUROR NUMBER 95: No, sir. I didn't know him
5 until eight years ago, so I don't think so.

6 THE COURT: Thank you, ma'am.

7 (Juror Number 95 returned to the jury venire
8 panel)

9 (Juror Number 155 approached the bench)

10 THE COURT: Give us your name and number for the
11 record.

12 JUROR NUMBER 155: Barbara Moseley, 155.

13 THE COURT: Yes, ma'am.

14 JUROR NUMBER 155: I have a niece, my husband's
15 niece, who was big into drugs for a long time. She lives in
16 the Myrtle Beach area at one point. I had her son when he
17 was thirteen or fourteen and he was arrested for
18 distribution of marijuana, and I no longer have him. That
19 would have been in '93 or 4.

20 THE COURT: Let me -- all right. Was there any
21 more in your family?

22 JUROR NUMBER 155: No.

23 THE COURT: Let me ask you whether there is
24 anything about your experiences in that regard that would
25 interfere in any way with your ability to give both the

1 State and the defendant a fair and impartial trial in this
2 case?

3 THE WITNESS: I hope not. I mean, honestly I
4 think not.

5 THE COURT: Well, I mean, let me ask you one more
6 question.

7 JUROR NUMBER 155: Okay.

8 THE COURT: Now --

9 JUROR NUMBER 155: I would hope I could be fair.

10 THE COURT: Be as honest about it as you can.
11 Could you listen to the testimony and the evidence that
12 comes in during the course of the trial, the court's
13 instruction to you with regard to the law, and apply that
14 law to the evidence and reach a decision, which would be
15 fair and impartial to both the State and the defendant?

16 JUROR NUMBER 155: I can do that.

17 THE COURT: You can do that?

18 JUROR NUMBER 155: Yes.

19 THE COURT: Thank you, ma'am.

20 (Juror Number 155 returned to the Jury Venire
21 Panel)

22 THE COURT: Give us your name and number for the
23 record.

24 JUROR NUMBER 160: Kimberly Mason, number 160.

25 THE COURT: Yes, ma'am.

1 JUROR NUMBER 160: My ex-husband had a problem
2 with cocaine.

3 THE COURT: Let me ask you whether there is
4 anything about your experiences in that regard that would
5 interfere in any way with your ability to give both the
6 State and the defendant a fair and impartial trial in this
7 case?

8 JUROR NUMBER 160: No, sir.

9 THE COURT: Thank you, ma'am.

10 (Juror Number 160 returned to the jury venire
11 panel)

12 THE COURT: Give us your name and number, please,
13 sir.

14 JUROR NUMBER 105: Harpreet Kalsi, 105.

15 THE COURT: Yes, sir.

16 JUROR NUMBER 105: I served on a jury in Gaston
17 County back in the nineties.

18 THE COURT: Yes.

19 JUROR NUMBER 105: And I have a brother who lives
20 in India. I think he is heavily involved in intoxication
21 and all.

22 THE COURT: All right. Let me ask you if there is
23 anything about your experiences in either regard, as on the
24 jury or with your brother, that would interfere in any way
25 with your ability to give both the State and the defendant a

1 fair and impartial trial in this case?

2 JUROR NUMBER 105: With the jury I don't think so,
3 but my brother, I have strong feelings that he's involved in
4 my father's disappearance from the house in India in 2000.

5 THE COURT: Okay. Well, let me ask you about
6 this. Insofar as this case is concerned, is there anything
7 about your experiences in that regard that would interfere
8 with your ability to give both the State and the defendant a
9 fair trial in this case?

10 Let me ask you a different way. Could you listen
11 to the testimony and evidence in this case and the court's
12 instruction to you with regard to the law that applies to
13 this case and render a decision which would be fair and
14 impartial as to both the State and the defendant? Could you
15 do that?

16 JUROR NUMBER 105: I think I can do that.

17 THE COURT: I would have to have a more definitive
18 answer, either yes or no.

19 JUROR NUMBER 105: Yes, I can.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Thank you.

22 (Juror Number 105 returned to the jury venire
23 panel)

24 (Juror Number 88 approached the bench)

25 THE COURT: Come right here, please, ma'am.

1 JUROR NUMBER 88: Cynthia Hess juror 88.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 88: My stepson in the last ten years
4 was charged with marijuana possession in Charlotte and also
5 Ecstasy in Georgia he got in trouble and he spent time on
6 both the cases.

7 THE COURT: That's your stepson?

8 JUROR NUMBER 88: Yes.

9 THE COURT: Let me ask you whether there is
10 anything about your experience in that regard that would
11 interfere in any way with your ability to give both the
12 State and defendant a fair and impartial trial in this case?

13 JUROR NUMBER 88: No, sir.

14 THE COURT: Thank you, ma'am.

15 (Juror Number 88 returned to the jury venire
16 panel)

17 (Juror Number 50 approached the bench)

18 THE COURT: Give us your name and number.

19 JUROR NUMBER 50: Carol A Denis, number 50.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 50: My ex-husband, who I was married
22 to for fourteen years, has an alcohol and cocaine problem
23 and he was arrested for DWI. And my father is a retired
24 policeman who was in law enforcement for twenty years up New
25 York.

1 THE COURT: Let me ask you whether there is
2 anything about that relationship with your father or
3 anything about your experiences with regard to -- is it your
4 husband or ex-husband?

5 JUROR NUMBER 50: Ex-husband.

6 THE COURT: Is there anything about your
7 experiences in that regard that would interfere in way with
8 your ability to give both the State and the defendant a fair
9 and impartial trial in this case?

10 JUROR NUMBER 50: It would be kind of level each
11 other out between the policeman and alcohol. I think I'm
12 okay.

13 THE COURT: Do you think you could be fair to both
14 sides in this case?

15 JUROR NUMBER 50: Yes, definitely.

16 THE COURT: Thank you, ma'am.

17 JUROR NUMBER 50: Thank you.

18 (Juror Number 50 returned to the jury venire
19 panel)

20 (Juror Number 151 approached the bench)

21 THE COURT: Come right here, please, sir. Give us
22 your name and number, sir.

23 JUROR NUMBER 151: Roy Mills, 151.

24 THE COURT: Yes, sir.

25 JUROR NUMBER 151: I have a daughter-in-law that's

1 known to use drugs. I saw how it tore her family up. I got
2 no use for people with drugs.

3 THE COURT: Let me ask you whether this. In this
4 case could you listen to the testimony and evidence that
5 comes in in this case and the law as the court instructs it
6 to you and apply that law to the facts as you find them and
7 then render a decision which would be fair and impartial as
8 to both the State and the defendant in this case? Could you
9 do that?

10 JUROR NUMBER 151: Yes, sir, I think I could.

11 THE COURT: Now, I need a yes or no, instead of
12 think.

13 JUROR NUMBER 151: Yes, sir.

14 THE COURT: Thank you, sir. You may return to
15 your seat.

16 (Juror Number 151 returned to the jury venire
17 panel)

18 (Juror Number 73 approached the bench)

19 THE COURT: Give us your name and number for the
20 record.

21 JUROR NUMBER 73: Sandra Greenep, number 73.

22 THE COURT: Yes, ma'am.

23 JUROR NUMBER 73: I have a nephew that was just
24 currently arrested in December in California for drugs. I
25 don't know what kind. All I know is he's in jail.

1 THE COURT: Uh-huh. Let me ask you whether there
2 is anything about your experiences in that regard that would
3 interfere in any way with your ability to give both the
4 State and the defendant a fair and impartial trial in this
5 case?

6 JUROR NUMBER 73: No, sir.

7 THE COURT: Thank you, ma'am.

8 (Juror Number 73 returned to the jury venire
9 panel)

10 (Juror number 38 approached the bench)

11 THE COURT: Please give us your name and number.

12 JUROR NUMBER 38: Tawana Coleman, number 38.

13 THE COURT: Yes, ma'am.

14 JUROR NUMBER 38: I have a brother-in-law that was
15 addicted to drugs years back and has since been in rehab.

16 THE COURT: Anything else?

17 JUROR NUMBER 38: That's it.

18 THE COURT: Is there anything about your
19 experiences in that regard that would interfere in any way
20 with your ability to give both the State and the defendant a
21 fair and impartial trial in this case?

22 JUROR NUMBER 38: No, sir.

23 THE COURT: Thank you, ma'am.

24 (Juror Number 38 returned to the jury venire
25 panel)

1 (Juror Number 67 approached the bench)

2 THE COURT: Give us your name and number, please,
3 ma'am.

4 JUROR NUMBER 67: Keil Gilliam, juror number 67.

5 THE COURT: Yes, ma'am.

6 JUROR NUMBER 67: I have a cousin, Luwon Gilliam,
7 and I think he had a DUI charge and a drug charge.

8 THE COURT: Okay. Is there anything about your
9 experiences in that regard that would interfere in any way
10 with your ability to give both the State and the defendant a
11 fair and impartial trial in this case?

12 JUROR NUMBER 67: No, sir.

13 THE COURT: Thank you, ma'am.

14 (Juror Number 67 returned to the jury venire
15 panel)

16 (Juror Number 48 approached the bench)

17 THE COURT: Come up and give us your name and
18 number, please.

19 JUROR NUMBER 48: Randy Deas, number 48.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 48: I had a roommate that was
22 addicted to cocaine and three friends whose lives were
23 ruined by crack.

24 THE COURT: Let me ask you whether there is
25 anything about your experiences in that regard that would

1 interfere in any way with your ability to give both the
2 State and the defendant a fair and impartial trial in this
3 case, given the nature of the allegations in this case?

4 JUROR NUMBER 48: No, sir.

5 THE COURT: Thank you, sir. You may return to
6 your seat.

7 (Juror Number 48 returned to the jury venire
8 panel)

9 MR. MILLS: Your Honor, I have a motion to strike
10 for cause. Would you like them now for the record?

11 THE COURT: Mr. Springs?

12 MR. MILLS: Your Honor, juror number 51, although
13 I understand you asked him if he could be fair, his response
14 to the initial inquiry was he has no use for those kind of
15 people whatsoever.

16 THE COURT: He had no use for them, that's true.

17 MR. MILLS: Yes.

18 THE COURT: When I asked him that, he said he
19 could be fair and impartial and could give a fair trial, and
20 so --

21 MR. MILLS: I understand. I would just note if
22 for a strike for cause on the record.

23 THE COURT: All right.

24 MR. MILLS: And the other one was this gentleman
25 who was just here, Mr. Dease, who, despite his statement, he

1 said pretty close friends whose lives were ruined by crack.
2 I think it would be hard for him, despite his answer to the
3 court that he would be.

4 THE COURT: I guess that's why you have
5 peremptories, but he says he can be fair. On my
6 questioning, he said he could be fair and impartial. He
7 didn't hesitate on that in this case.

8 MR. MILLS: I understand. Thank you, Your Honor.

9 (Whereupon, the bench conferences were concluded)

10 THE COURT: Thank you for your patience. Ladies
11 and gentlemen, I just have a few more questions to ask you.

12 Has any member of the jury panel had any prior
13 knowledge about this case from any source before coming here
14 to court today?

15 I would tell you that the allegations are, with
16 regard to the date, would be March 20th, 2008, or that is
17 the allegation when it occurred at, and I believe alleged to
18 have occurred here in the City of York.

19 Anybody have any prior knowledge about this case
20 from any source before coming here to court today? If so,
21 please stand.

22 (No response)

23 THE COURT: Has any member of the jury panel
24 formed or expressed an opinion as to the guilt or innocence
25 of the defendant Jomar Antavis Robinson? If so, please

1 stand.

2 (No response)

3 THE COURT: Is any member of the jury panel
4 conscious of any interest, bias, or prejudice for or against
5 the defendant Jomar Antavis Robinson? If so, please stand.

6 (No response)

7 THE COURT: Can each member of the jury panel give
8 both the State and the defendant Jomar Antavis Robinson a
9 fair and impartial trial in this case? If not, please
10 stand.

11 (No response)

12 THE COURT: Does any member of the jury panel know
13 of any reason whatsoever why he or she should not serve as a
14 juror in this particular case? If so, please stand.

15 (No response)

16 THE COURT: Any additional questions requested of
17 the jury panel from the State?

18 MR. SPRINGS: Nothing from the State.

19 THE COURT: From the defense?

20 MR. MILLS: Nothing from the defense, Your Honor.

21 THE COURT: Madam Clerk, if you will please give
22 us a jury.

23 THE CLERK: If your name is called, please bring
24 your personal belongings that you have and come and stand by
25 the bailiff.

1 THE CLERK: Number 188, Charles Ridenhour.

2 What say you for the State?

3 MR. SPRINGS: Please present the juror?

4 THE CLERK: Defense?

5 MR. MILLS: Please excuse Mr. Ridenhour from this
6 trial.

7 THE CLERK: You are excused for this trial.

8 Number 90, Eric Hicks.

9 What say you for the State?

10 MR. SPRINGS: Please present the juror.

11 THE CLERK: Defense?

12 MR. MILLS: Please seat Mr. Hicks.

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

14 Number 136, Villa Manuel Matta.

15 What say you for the State?

16 MR. SPRINGS: We challenge the juror on his
17 ability to speak English for cause.

18 MR. MILLS: Your Honor, I believe the court
19 inquired about that and the court already determined that,
20 and it's improper of Mr. Springs to make that suggestion at
21 this stage.

22 THE COURT: Well, let me say that --

23 MR. SPRINGS: I'll strike the juror.

24 THE COURT: Pardon me?

25 MR. SPRINGS: I'll strike the juror.

1 THE COURT: All right.

2 MR. SPRINGS: Please excuse the juror in this
3 case.

4 THE CLERK: Number 65, Steven Gentry.

5 What say you for the State?

6 MR. SPRINGS: Please present the juror.

7 THE CLERK: Defense?

8 MR. MILLS: Please seat the juror.

9 THE CLERK: Have a seat in the jury box.
10 Number 23, Denise Bullard.

11 What say you for the State?

12 MR. SPRINGS: Please present the juror.

13 THE CLERK: Defense?

14 MR. MILLS: Please seat Ms. Bullard.

15 THE CLERK: Have a seat in the jury box.
16 Number 151, Roy Mills.

17 What say you for the State?

18 MR. SPRINGS: Please present the juror.

19 THE CLERK: Defense?

20 MR. MILLS: Please excuse Mr. Mills from this
21 jury.

22 THE CLERK: You are excused in this case.

23 Number 4, Robert Anderson.

24 What say you for the State?

25 MR. SPRINGS: Please excuse the juror.

1 THE CLERK: You are excused in this case.
2 Number 146, Jamie Mcswain.
3 What say you for the State?
4 MR. SPRINGS: That was 146?
5 THE CLERK: 146.
6 THE COURT: If you are not selected on the jury,
7 just go back and have your seat with the other jurors,
8 please.
9 MR. SPRINGS: Please present the juror.
10 THE CLERK: Defense?
11 MR. MILLS: Please seat the juror.
12 THE CLERK: Have a seat in the jury box.
13 Number 121, Shameka Love.
14 What say you for the State?
15 MR. SPRINGS: Please excuse the juror.
16 THE CLERK: You are excused in this case.
17 Number 158, Michael Mott.
18 What say you for the State?
19 MR. SPRINGS: Madam Clerk, what number was that,
20 please?
21 THE CLERK: 158.
22 MR. SPRINGS: Thank you, ma'am.
23 Please present the juror.
24 THE CLERK: Defense?
25 MR. MILLS: Please excuse the juror from this

1 case.

2 THE CLERK: You are excused in this case.

3 Number 122, Jeanette Lucey.

4 What say you for the State?

5 MR. SPRINGS: Please present the juror.

6 THE CLERK: Defense?

7 MR. MILLS: Please seat the juror.

8 THE CLERK: Have a seat in the jury box.

9 Number 238, Sandra Wilson.

10 What say you for the State?

11 MR. SPRINGS: Please present the juror.

12 THE CLERK: Defense?

13 MR. MILLS: Please seat Ms. Wilson.

14 THE CLERK: Take a seat in the jury box.

15 Number 3, Derrick Anderson.

16 What say you for the State?

17 MR. SPRINGS: Please present the juror.

18 THE CLERK: Defense?

19 MR. MILLS: Please seat Mr. Anderson.

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

21 Number 102, William A. Jackson, Jr..

22 What say you for the State?

23 MR. SPRINGS: Please present the juror.

24 THE CLERK: Defense?

25 MR. MILLS: Please seat Mr. Jackson.

1 THE CLERK: Have a seat in the jury box.
2 Number 73, Sandra Greenep.
3 What say you for the State?
4 MR. SPRINGS: Please present the juror.
5 THE CLERK: Defense?
6 MR. MILLS: Please seat Ms. Greenep.
7 THE CLERK: Have a seat in the jury box.
8 Number 120, Carla Littleton.
9 What say you for the State?
10 MR. SPRINGS: Please present the juror.
11 THE CLERK: Defense?
12 MR. MILLS: Please seat Ms. Littleton.
13 THE CLERK: Have a seat in the jury box.
14 Number 88, Cynthia Hess.
15 What say you for the State?
16 MR. SPRINGS: Please present the juror.
17 THE CLERK: Defense?
18 MR. MILLS: Please excuse Ms. Hess.
19 THE CLERK: You are excused from this case.
20 Number 79, Lori Hammond.
21 What say you for the State?
22 MR. SPRINGS: Please present the juror.
23 THE CLERK: Defense?
24 MR. MILLS: One moment, please.
25 Please excuse Ms. Hess.

1 THE CLERK: You are excused in this case.
2 That's five strikes for the defense, three strikes
3 for the State.
4 Number 38, Tawana Coleman.
5 What say you for the State?
6 MR. SPRINGS: Please present the juror.
7 THE CLERK: Defense?
8 MR. MILLS: Please seat Ms. Coleman.
9 THE CLERK: Have a seat in the jury box.
10 Number 105, Harpreet Kalsi.
11 What say you for the State?
12 MR. SPRINGS: Please excuse the juror.
13 THE CLERK: You are excused in this case.
14 Number 95, Carolyn Holtzclaw.
15 What say you for the State?
16 MR. SPRINGS: Please present the juror.
17 THE CLERK: Defense?
18 MR. MILLS: Please seat Ms. Holtzclaw.
19 THE CLERK: Have a seat in the jury box.
20 For the alternate, Number 82, George Harris.
21 MR. MILLS: Your Honor, one and one?
22 THE COURT: Two and one.
23 MR. MILLS: Thank you.
24 THE CLERK: What say you for the State?
25 MR. SPRINGS: What was the number again?

1 THE CLERK: 82.

2 MR. SPRINGS: Please present the juror.

3 THE CLERK: Defense?

4 MR. MILLS: Please excuse Mr. Harris.

5 THE CLERK: You are excused in this case.

6 Number 67, Kiel Gilliam.

7 What say you for the State?

8 MR. SPRINGS: Please present Ms. Gilliam.

9 THE CLERK: Defense?

10 MR. MILLS: Please seat Ms. Gilliam.

11 THE CLERK: Have seat in the jury box.

12 MR. SPRINGS: May we approach, Your Honor?

13 THE COURT: Yes.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 THE COURT: All right. We will draw one
17 additional alternate, so I will get -- if everybody on the
18 back row, if you will shift down one. Just shift down one.

19 We will draw one more alternate. Again, the
20 strikes are two and one for the second alternate.

21 THE CLERK: Number 160, Kimberly Nason.

22 What say you for the State?

23 MR. SPRINGS: Please present the juror.

24 THE CLERK: Defense?

25 MR. MILLS: Please seat Ms. Nason.

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

2 THE COURT: Any questions concerning the selection
3 process, from the State?

4 MR. SPRINGS: No, sir, nothing from the State.

5 THE COURT: From the defense?

6 MR. MILLS: No motions from the defense.

7 THE COURT: Ladies and gentlemen of the jury panel
8 who were not selected for this particular case -- are we
9 going to need them any more this afternoon, Madam Clerk?

10 THE CLERK: They are to call after seven.

11 THE COURT: I'm going to excuse you at this time
12 for the balance of the day and ask you if you would please
13 call into your voicemail number tonight any time after seven
14 o'clock.

15 I don't think I told you this when we were going
16 through qualifications downstairs, but you should not call
17 before seven, because the message may not be on there. You
18 can call anytime after seven, however. If you want to call
19 at eleven o'clock tonight, you can do that. Just call
20 anytime after seven and you will get instructions as to when
21 to either report back or call back.

22 Please enjoy your afternoon. Thank you for your
23 patience you are free to go.

24 (Whereupon, the jury venire panel left the
25 courtroom)

1 THE COURT: Ladies and gentlemen of the jury
2 panel, we are going to go ahead and recess for lunch. I
3 apologize for going to the late lunch, but we are doing
4 everything that we can to free up everybody, so I'm going to
5 excuse you to go to lunch at this time.

6 What I'm going to ask you to do is be back in the
7 jury room ready to go at --

8 Counsel, approach just a minute before I do that.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 THE COURT: Ladies and gentlemen of the jury
12 panel, we have some pretrial matters in this case that we
13 haven't gotten to yet, and so what I'm going to do, I'm
14 going to give you a little longer than normal for lunch so
15 we can do that. While we are doing the pretrial motions,
16 there is no need in your sitting in the jury room while we
17 are doing that, so I'm going to ask you -- we will take an
18 hour and a half, so I'm going to ask you to get lunch and be
19 back in the jury room ready to go at 3:45. That's a quarter
20 to four. 3:45. People get mixed up, so I say it two or
21 three times. 3:45, quarter to four.

22 What I would ask that you do before you go to
23 lunch, when you go back into the jury room, I want to ask
24 you to select from among the first twelve jurors chosen a
25 foreperson.

1 Let me explain the role of a foreperson. The
2 foreperson is asked to serve as spokesperson for the jury
3 back to the court. So if there is a matter that needs to
4 come to the attention of the court from the jury, the
5 foreperson is asked to write the message down on a tablet
6 that would be provided back in the jury room. Give that to
7 the bailiff and the bailiff will bring it to me and I'll
8 correspond appropriately.

9 We also ask that the foreperson serve as the
10 moderator, once we reach the deliberative stage of the
11 trial, to maintain some order in those deliberations to
12 allow everyone to participate.

13 And then, finally, once a unanimous verdict is
14 reached by the jury, to record that verdict on the verdict
15 forms which would be provided to you and explained to you at
16 the appropriate time, at the conclusion of the trial.

17 Of course, the primary role of the foreperson is
18 the same as every other juror, and that's to listen
19 carefully to the testimony and evidence and be in the
20 position to deliberate and help reach a verdict.

21 Now you know the responsibility of the foreperson.
22 I would ask that you go back to the jury room. Now, the
23 foreperson cannot come from the two alternates, so I would
24 ask that only the first twelve jurors vote and that you
25 select one from the first twelve jurors. And once you have

1 done that, if you will write that person's name and juror
2 number down and give it to the bailiff on your way out. The
3 bailiff will show you to the jury room and show you how to
4 get out and come in.

5 Now, the only thing I'm going to tell you -- I'll
6 give you an instruction before we get started this
7 afternoon, but the only thing I will instruct you now is
8 please do not discuss this case among yourselves or with
9 anyone else you might see on the lunch break. If you see
10 anyone else standing around and talking about the case, do
11 not listen to any such conversations and move away from
12 them.

13 If anyone should deliberately try to discuss the
14 case with you, please do not discuss it with them, but let
15 the bailiff know upon your return that someone tried to
16 discuss it and get some description of this person and I
17 will deal appropriately with that person. No one should try
18 to discuss the case with you. If they do, I certainly wish
19 to be made aware of it.

20 All right. Thank you. Please enjoy your lunch
21 and after you have selected a foreperson, get some lunch and
22 be back at 3:45. Thank you.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right, counsel, by my watch it's

1 about eleven after -- excuse me, twenty-one after two.
2 Let's be back at 3:15. 3:15, and we will take up the
3 pretrial.

4 MR. SPRINGS: Thank you, Your Honor.

5 MR. MILLS: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right, counsel, ready to proceed
9 in pretrial?

10 MR. MILLS: Yes, sir.

11 MR. SPRINGS: If the court is ready, I'll let the
12 defense articulate any motions they have for suppression.

13 THE COURT: Yes, sir.

14 MR. MILLS: Your Honor, we suppress the
15 statement -- the seizure of Mr. Robinson, and I guess we
16 will call Officer Ligon to the stand.

17 THE COURT: Yes, sir.

18 MR. MILLS: I am not prepared to argue until I
19 have his testimony.

20 THE COURT: Well, I understand, but I think the
21 State can put him up and let him present that, if you want.
22 I believe since you are making the motion, it's up to
23 them --

24 MR. SPRINGS: Yes.

25 THE COURT: -- to show that there were drugs.

1 MR. SPRINGS: We are ready to make that proffer.
2 We do call Lieutenant Mike Ligon.

3 LIEUTENANT MIKE LIGON, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. SPRINGS:

6 Q. Lieutenant, state your name, please.

7 A. James M. Ligon.

8 Q. And are you a narcotics officer with the York County
9 Drug Enforcement Unit?

10 A. Yes, sir, I am.

11 Q. And were you working as a narcotics officer the night
12 of March 20th, 2008?

13 A. Yes, sir, I was.

14 Q. Did you and Officer Schettler go over to the Hall
15 Street Apartments that night about 10:30?

16 A. Yes, sir, we did.

17 Q. And why? Explain why you went over to Hall Street
18 Apartments.

19 A. We had received numerous complaints that there were
20 drugs being sold there and also individuals there carrying
21 guns on the premises.

22 We actually had an officer located in that area
23 conducting surveillance on that particular area.

24 Q. Would that be Sergeant Ervin?

25 A. Yes, sir, it would.

1 Q. All right. Did he communicate to you that he had seen
2 some things?

3 A. Yes, sir, he did.

4 Q. What did he say he had seen?

5 A. He observed -- he observed what appeared to be him, in
6 his training experience in narcotics, to be drug
7 transactions taking place there in the parking lot.

8 Q. Okay. This is a preliminary matter, go ahead and tell
9 what he told you and explain why he went to Hall Street?
10 What did he say?

11 A. Basically officer -- Sergeant Ervin advised us that
12 there was an individual coming from the porch of [REDACTED]
13 [REDACTED] Apartments and going out and meeting with vehicles as
14 they pulled up there in the parking lot. There would be a
15 short time, that subject would go to the window. A short
16 time they would then walk back to the porch where they come
17 from and the vehicles would drive off.

18 Q. All right. And was this man by himself or was he with
19 a group?

20 A. There was a group standing there on the porch.

21 Q. About how many people were in the group, including the
22 man that went to the car?

23 A. There were five.

24 Q. Okay. And did Sergeant Rayford give you a description
25 of the man that was going to meet the cars?

1 A. Yes, sir, he did.

2 Q. What was the description?

3 A. Black male, baggy pants and a big black jacket.

4 Q. Okay. I'm showing you State's Exhibit 1 for
5 identification.

6 MR. MILLS: No problem.

7 BY MR. SPRINGS:

8 Q. And hold that up so Judge Alford can see it. Point out

9 [REDACTED]

10 A. [REDACTED] would be the one closest to the end here on this
11 porch.

12 Q. That's where the group was?

13 A. Yes, sir.

14 Q. All right. And so you and Officer Schettler went to
15 [REDACTED]?

16 A. Yes, sir, we did.

17 Q. Just the two of you?

18 A. Yes, sir.

19 Q. When you got to [REDACTED] when you arrived on the scene, did
20 you, in fact, see about five people up on the porch?

21 A. Yes, sir, we did.

22 Q. Now, the sergeant that told you the man going to the
23 cars was wearing a black jacket?

24 A. Yes, sir.

25 Q. How many people in the group of five were wearing black

1 jackets?

2 A. Two.

3 Q. Did you know which one of the two would be going to the
4 cars?

5 A. No, sir, we didn't.

6 Q. All right. Did you and Schettler approach the porch?

7 A. Yes, sir, we did.

8 Q. And talk us through slow motion, tell the story. As
9 you got up to the porch, what did you do, point by point?

10 A. As we approached the porch, myself and Officer
11 Schettler, as soon as coming up on the porch and
12 encountering these five individuals, there was a strong odor
13 of green marijuana. Not burnt marijuana, but actually green
14 marijuana.

15 As the two individuals that fit the description that
16 Sergeant Ervin had given, we asked them for identification,
17 at which time they produced identification.

18 During that --

19 Q. Let me stop you. The names on the two identifications
20 that's who -- these are all men, right?

21 A. Yes, sir.

22 Q. Group of five?

23 A. Yes, sir.

24 Q. What were the names on the two pieces of
25 identification?

1 A. One was Laquaris Patton and the other one was Jomar
2 Robinson.

3 Q. Okay. So they gave you their identification?

4 A. Yes, sir.

5 Q. As you were looking -- and you are holding the two
6 pieces of identification?

7 A. Yes, sir. I actually had them both in one hand. I had
8 my flashlight in my other hand.

9 Q. Okay. And is this up on the porch, or is it out in the
10 yard in front of the apartment?

11 A. Yes, they are actually -- they are actually standing on
12 the porch and we are right at the edge of the porch where
13 they are standing on the porch right there.

14 Q. Okay. Who was closest to Jomar Robinson between you
15 and Schettler? Who was closer to him?

16 A. I was.

17 Q. Who had the better view of Jomar Robinson?

18 A. I did.

19 Q. Now, as you were looking at the identification and you
20 are smelling green marijuana, unburnt marijuana, did you
21 notice anything unusual about Jomar Robinson?

22 A. Yes, sir, I did.

23 Q. What was that?

24 A. There was a pistol hanging out of his right pocket of
25 his jacket.

1 Q. All right. Did you get a clear view of some part of
2 the pistol?

3 A. Yes, sir, I did. The handle of it.

4 Q. Okay. Do you know what the handle of a pistol looks
5 like?

6 A. Yes, sir, I do.

7 Q. All right. Did you immediately act on that or not
8 immediately act on it?

9 A. I didn't immediately act on it.

10 Q. So then what's the next step, the next thing that
11 happened?

12 A. Once that -- once that took place, I advised both Mr.
13 Patton and Mr. Robinson that I could smell green marijuana.
14 Also seen the gun. I advised them that I was going to
15 search them.

16 Q. A Terry search?

17 A. Yes, sir, a Terry pat-down.

18 Q. Okay. When you told these men that you were going to
19 search them, what did Jomar Robinson do?

20 A. He began to back up towards the wall of the apartments.

21 Q. Was he backing away from you?

22 A. Yes, sir, he was backing away from me.

23 Q. So seeing him back away and after having seen the butt
24 of the pistol in his, what, a jacket, the black jacket
25 pocket?

1 A. Yes, sir.

2 Q. Did you have some concerns?

3 A. Yes, sir, I did.

4 Q. And as he starts to back away, what did you do?

5 A. I grabbed the pistol.

6 Q. Did he try to grab the pistol?

7 A. Yes, sir, he did.

8 MR. MILLS: Your Honor, I realize it's a
9 preliminary matter, but I really wish Mr. Springs wouldn't
10 suggest the answer to the witness.

11 THE COURT: I think he's just trying to speed it
12 up.

13 MR. SPRINGS: Yes, sir.

14 THE COURT: Let's ask a question instead of
15 leading him quite as much.

16 BY MR. SPRINGS:

17 Q. As you are grabbing at the pistol, what does Jomar
18 Robinson do?

19 A. He attempts to grab the pistol also.

20 Q. Whose hand got to the pistol butt first?

21 A. Mine did.

22 Q. And at that point what happened?

23 A. A fight ensued. We went off the porch. Mr. Robinson
24 began assaulting me while I maintained control of the weapon
25 that was in his pocket, at which time I then stripped the

1 jacket off of Mr. Robinson. And when it fell to the ground
2 with the gun in it, I advised Officer Schettler that the
3 jacket and the pistol were on the ground directly behind
4 him.

5 Q. Okay. Before the jacket came off, had you said
6 anything to Schettler before that?

7 A. Yes, sir, I advised him that Mr. Robinson had a gun. I
8 hollered gun several times.

9 Q. Okay. What did you see Schettler do whenever you
10 yelled? Did you notice? I notice that you were busy.

11 A. No, sir, I didn't -- I wasn't -- I wasn't exactly sure
12 at that time what had taken place, because I was dealing
13 with Mr. Robinson, but Officer Schettler had drawn his
14 service weapon and advised the other four individuals to get
15 on the ground and showed him their hands.

16 Q. Come on down, if you will.

17 (Witness off the witness stand)

18 BY MR. SPRINGS:

19 Q. Pretend I'm Jomar Robinson. Which jacket pocket was
20 the gun, the pistol?

21 A. Here.

22 Q. So you had your hand on the gun?

23 A. Yes, sir.

24 Q. And then how did you strip off the jacket?

25 A. Basically --

1 Q. Generally.

2 A. Well, initially while I was getting assaulted while
3 holding this hand, I had my hand on my service weapon, to
4 make sure if he did go for his weapon, that I would do what
5 I needed to do.

6 Q. Okay.

7 A. At which time basically I grabbed and I grabbed the
8 jacket and I jerked the jacket off. I pulled it of his
9 shoulder.

10 Q. I just got --

11 A. Okay.

12 Q. Go back up there.

13 (Witness back on the witness stand)

14 BY MR. SPRINGS:

15 Q. The jacket comes off?

16 A. Yes, sir.

17 Q. Does it fall on the ground?

18 A. Yes, sir, it does.

19 Q. As the jacket comes off and falls on the ground, where
20 is the pistol?

21 A. It's inside the jacket still.

22 Q. As the jacket comes off and falls on the ground, what
23 did Jomar Robinson do?

24 A. He took off. He began to run. He ran. He fled the
25 scene.

1 Q. What did you do?

2 A. I -- I ran after him.

3 Q. And did you catch him?

4 A. Yes, sir, I did.

5 Q. What happened when you caught him?

6 A. He then again assaulted me, and I was able to subdue
7 him and place into handcuffs.

8 Q. Okay. And did you bring him back to the area of

9 [REDACTED]?

10 A. Yes, sir, I did.

11 Q. Okay. Now, are you familiar with the provisions of the
12 South Carolina law on a concealed carry permit or a permit
13 to carry a concealed pistol?

14 A. Yes, sir.

15 Q. Under those laws, is one of the requirements --

16 Let me back up. As you approached the porch --

17 A. Yes, sir.

18 Q. -- right at the beginning, what kind of identification
19 did you have showing that you were a police officer?

20 A. We walked up -- and with us working in plainclothes,
21 our badge, we will take our badge and we will hang it around
22 our neck, such as this, to identify us as police officers,
23 and we also advise them se are police policers. We had our
24 flashlights on. We actually shine the flashlights on our
25 badge, identified ourselves.

1 Q. You said that you were police officers?

2 A. Yes, sir.

3 Q. Now, let's go back to a concealed carry permit.

4 As part of the laws of a concealed carry permit, as a
5 holder, a valid holder required, when approached by a police
6 officer, to tell them if he, in fact, is carrying a
7 concealed weapon?

8 A. Yes, sir, they are. They actually -- if they are a
9 valid concealed weapons permit holder, they actually have a
10 concealed weapons permit that is pretty much identical to a
11 South Carolina driver's license or South Carolina ID. They
12 are supposed to present that and also advise any officers
13 that approach them that they do have a weapon on their
14 person, advise them where it's at.

15 Q. Okay. And did Mr. Robinson tell you, as you approached
16 them and were talking to him and asking for ID, that he had
17 a concealed weapons permit?

18 A. No, sir, he did not.

19 Q. All right. Did you, in fact, find out later that he
20 did not?

21 A. Yes, sir, we did.

22 Q. All right. If you would answer any questions that the
23 defense attorney has for you.

24 CROSS EXAMINATION BY MR. MILLS:

25 Q. Officer Ligon, I believe that you -- is it Ligon?

1 A. Yes, sir.

2 Q. You prepared a summary, correct?

3 A. Yes, sir.

4 Q. Now, in the -- first of all, you tell me that you had
5 numerous complaints?

6 A. Yes, sir.

7 Q. Are those documented anywhere?

8 A. Yes, sir, they were.

9 Q. Where are they documented?

10 A. We have a -- we have in-tell sheets that come in and we
11 also have citizen complaints that come in through via the
12 telephone, and we also have arrest cases that have also been
13 made in that area, some that I have actually made myself in
14 that area for drug possessions and things of that nature.
15 Even some trafficking cases have been made there directly in
16 that parking lot at that very same spot.

17 Q. Okay. Let me just ask you this. You said that you had
18 a call that night?

19 A. Actually we had a complaint and we were sitting up
20 watching it, yes, sir.

21 Q. Who was the complaint from?

22 A. We have anonymous tips that come in.

23 Q. So do you not know the source of the complaint?

24 A. No, sir, I do not.

25 Q. So you do not know the believability or the veracity of

1 that individual, correct?

2 A. Not that particular one, no, sir.

3 Q. Okay. And you don't know what that person's ability to
4 see or observe or make that statement, do you?

5 A. No, sir.

6 Q. Okay. So you have no information on the believability
7 of that person. And you have no information whether that
8 individual was an opportunity to see that, is that correct?

9 A. No, sir, other than what Officer Ervin's observations
10 were that night, as far as the accounts that took place.

11 Q. You say Ervin was there under surveillance, is that
12 correct?

13 A. Yes, he was.

14 Q. How was he surveilling? What was he doing?

15 A. He was basically posted up in a position where he could
16 observe them there with binoculars --

17 Q. Okay.

18 A. -- and.

19 Q. Where was that?

20 A. In a wooded area there close by.

21 Q. Where in a wooded area close by?

22 A. Right across from the apartments.

23 Q. Well, I have been to those apartments and across the
24 street there is just some buildings.

25 A. There is some buildings --

- 1 Q. There is that church there. You know where I'm talking
2 about, right?
- 3 A. There is also a wooded area there.
- 4 Q. Are you talking about on the -- catty-corner across
5 from that church?
- 6 A. Yes, sir.
- 7 Q. So he was in there?
- 8 A. Yes, sir.
- 9 Q. Does he have a camera?
- 10 A. Sir?
- 11 Q. Does he have a camera?
- 12 A. No, sir, he has his binoculars and his radio.
- 13 Q. Just looking through binoculars from there?
- 14 A. Yes, sir.
- 15 Q. So he is hidden in the woods looking through
16 binoculars?
- 17 A. Yes, sir.
- 18 Q. And he's had radio contact with y'all?
- 19 A. Yes, sir, he does.
- 20 Q. What channel are you on?
- 21 A. A narc channel, which is --
- 22 Q. What?
- 23 A. A narc channel, which is a secured channel.
- 24 Q. Okay. So that means no one could hear it?
- 25 A. Correct.

1 Q. You did speak with each other?

2 A. Yes, sir.

3 Q. And how about dispatch? No one can hear it on the
4 road?

5 A. No, sir.

6 Q. All right. So it's just is coming -- kind of a way to
7 communicate with each other and let each other know what's
8 going on?

9 A. Yes, sir.

10 Q. Now, in your report you mentioned something about
11 somebody coming by and driving away and there be being a
12 stop?

13 A. Yes, sir.

14 Q. You didn't mention that in your direct testimony. Can
15 you tell me about that?

16 A. There was a vehicle that Officer Ervin had called out.
17 One of these individuals, either Mr. Patton or it was Mr.
18 Robinson, met with this vehicle. When this vehicle left, we
19 got it for a traffic offense. And also subsequent to a
20 search of the vehicle, located a stolen pistol inside that
21 vehicle.

22 Q. I think in your report you said, in fact, it was Mr.
23 Patton who went to that car?

24 A. Yes, sir.

25 Q. Is that right?

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

77

1 A. Yes, sir.

2 Q. So Mr. Robinson had nothing to do with that?

3 A. No, sir, not -- no, sir.

4 Q. Okay. And, in fact, there was never any -- you or Mr.
5 Robinson going to any car during that surveillance, just Mr.
6 Patton, is that correct?

7 A. As far as we could tell, yes, sir. Once we approached
8 the porch, there were two people dressed alike in the --

9 Q. I understand, but --

10 A. Yes, sir.

11 Q. I'm saying in the report it suggests that the person
12 you later identified as Patton was the person that Ervin saw
13 going back and forth?

14 A. Yes, sir.

15 Q. I think Mr. Patton has pled guilty to distribution of
16 crack cocaine, is that right?

17 A. That I do not know, sir.

18 Q. Well -- so did this -- did this stop at all have
19 anything to do with your approaching them, this stop of this
20 car?

21 A. Yes.

22 Q. Who stopped it?

23 A. Sir?

24 Q. Do you know who stopped that car?

25 A. I believe it was officers -- was it Welch and

1 Truesdale, I believe? I believe it was officers Welch and
2 Truesdale.

3 Q. Are they sheriff's deputies?

4 A. One works for Rock Hill City and one works with Tega
5 Caye police department, but they are assigned to the York
6 County Multi-Jurisdictional Drug Enforcement Unit.

7 Q. So that's the narc unit?

8 A. Yes, sir.

9 Q. So would they in patrol cars or were they in unmarked
10 cars?

11 A. Unmarked cars.

12 Q. And would they go to dispatch at all if they were
13 making a stop?

14 A. Yes, sir, they would. If they went -- if they stopped
15 that vehicle and were calling out licenses and things of
16 that nature, yes, sir, they would go through dispatch.

17 Q. And how far before your approach of them did that
18 occur?

19 A. Twenty minutes, maybe. Twenty-five minutes, thirty
20 minutes, approximately.

21 Q. You mean the stop occurred twenty-five minutes
22 beforehand?

23 A. Possibly. Somewhere about twenty minutes, roughly,
24 give or take.

25 Q. So you sat on that information for twenty-five minutes

1 before you went and approached these individuals?

2 A. Yes, sir.

3 Q. All right. Now, you were just describing that you
4 approached with your badge out --

5 A. Yes, sir.

6 Q. -- is that correct?

7 A. Yes, sir.

8 Q. And with the flashlight?

9 A. Yes, sir.

10 Q. And it's a small little place, it's -- I'm sorry?

11 THE COURT: It's right here.

12 MR. MILLS: Thank you, Your Honor.

13 BY MR. MILLS:

14 Q. It's a small little porch, right?

15 A. Yes, sir, it is.

16 Q. Okay. And just looking at what's been marked as
17 State's Exhibit 1 --

18 A. Yes.

19 Q. -- there is a bush right here, is that correct?

20 A. Yes, sir, it is.

21 Q. Okay. And did y'all pull in here like where this white
22 car is?

23 A. Yes, sir, we pulled -- we pulled right into this area
24 here. We just pulled right up here where the headlights
25 were actually on them and then we exited the vehicle and

1 stepped out to talk with them.

2 Q. So your headlights would have been flooding the area,
3 is that correct?

4 A. Yes, sir.

5 Q. So it's to your back? That light is coming from your
6 back side, is that correct?

7 A. Yes, sir.

8 Q. Otherwise then your badge, how are you dressed?

9 A. Plainclothes.

10 Q. Okay. Would it be dark clothes?

11 A. No, sir. Just blue jeans, jacket, things of that
12 nature.

13 Q. Okay. Now, I think you testified that prior to going
14 there you had seen activity that you believed was indicative
15 of drug transactions. Is that what -- or you didn't see it.
16 It was just told to you, is that correct?

17 A. Yes, sir.

18 Q. So you had no -- you didn't see it yourself?

19 A. No, sir, I didn't.

20 Q. You are just relying on what Officer Ervin told you?

21 A. Yes, sir, what Sergeant Ervin told me, yes.

22 Q. Would he call in license plates, or anything like that?
23 How would he know to tell somebody to follow somebody for a
24 traffic stop?

25 A. Basically he would give a description on the vehicle,

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

81

1 and we sat up in that area somewhat tight to where we can
2 have pretty much most avenues covered in that area. He will
3 give out the description of the vehicle and the officers
4 would then pick that vehicle up as it left the area. He
5 would be able to tell us if it took a left or a right turn
6 on Charlotte Avenue from Hall Street, or if it went up to
7 49, or what we call North Congress and make a left or right
8 from North Congress.

9 Q. So the purpose of that is to try and stop the vehicle,
10 correct?

11 A. Yes, sir, it is.

12 Q. Because you want to search for drugs, or whatever else
13 is there, correct?

14 A. If they make a traffic violation, yes, sir.

15 Q. I understand. That's doesn't -- your motivation is to
16 search for the drugs, but you are looking for an excuse if
17 they have a traffic violation, correct? If they violate the
18 law, or cross the line, or something --

19 A. Yes, sir, if they violate the law.

20 Q. You are allowed to --

21 A. Yes, sir.

22 Q. So it's not really a traffic stop, like a normal
23 traffic stop? You are going there with a specific purpose,
24 aren't you?

25 A. Yes, sir.

1 Q. And you are going to want to get in the search of the
2 car, correct?

3 A. Yes, sir.

4 Q. Now, was somebody arrested as a result of this stolen
5 gun that was stopped in this car?

6 A. Yes, sir.

7 Q. Who was it?

8 A. I have no idea. I could not tell you his name.

9 Q. Would that have been called into the sheriff's
10 department?

11 A. Yes, sir, it would have.

12 Q. And there would have been a record of it, correct?

13 A. Yes, sir.

14 Q. Now, so knowing this, the weapon was there, seen these
15 drugs transactions, when you approached them, you were going
16 to investigate a crime, were you not?

17 A. Yes, sir, we were.

18 Q. And by pulling out your badge, you are essentially
19 giving a show of authority to let them know that you are the
20 police and you want to -- you are going to detain them to
21 talk to them, correct?

22 A. No, sir, it's to -- basically for safety issues. If
23 we -- you know, if we don't identify yourselves as the
24 police and then somebody wants to come back and -- just say
25 an instance with Mr. Robinson.

1 Q. Uh-huh.

2 A. You know, you have two white male subjects entering an
3 area that's predominantly black.

4 Q. Yes, sir.

5 A. If they don't identify themselves as police officers,
6 you know, things could potentially get bad in those areas.

7 Q. So -- and I understand that, but you are going in
8 there -- this is not a consensual encounter. You are
9 actually going in there to seize them, to ask them
10 questions, correct?

11 A. No, sir, we go in -- we have a consensual encounter
12 with these individuals when we go to deal with them.

13 Are we investigating -- are we conducting the narcotics
14 investigation there --

15 Q. Yes, sir.

16 A. -- yes, sir.

17 Would we -- would we detain somebody
18 unconstitutionally, no, sir.

19 Q. I appreciate your anticipating that, but if you let
20 court make that determination, I would appreciate it as
21 well.

22 So you are going up there and the idea is you want to
23 talk to them. You know, of course, they don't have to give
24 you their license, any identification, do they?

25 A. No, sir.

1 Q. So at that point, from what you are telling me, if they
2 did not give you identification, they could turn around and
3 leave them? They were free to leave?

4 A. Yes, sir.

5 Q. And you would not step them whatsoever?

6 A. No, sir.

7 Q. Okay. So when you said "Mr. Robinson, see your ID,"
8 and he left, he was free to do that?

9 A. Yes, sir, he was, but he didn't. He stayed.

10 Q. I understand, but you are saying there is no seizure at
11 that point whatsoever?

12 A. No, sir, there was not.

13 Q. Okay. Even though you took his ID from him?

14 A. He consented -- he consensually gave the ID to me.

15 Q. You told him to give it to you, didn't you?

16 A. I asked him for his identification. I didn't say "give
17 me your ID." I asked him "may I see your ID?"

18 Q. Okay. Now, you said that you smelled green marijuana,
19 right?

20 A. Yes, sir.

21 Q. And in narcotics you have some drug dogs, don't you?

22 A. Yes, sir, we do. In fact, I worked one for six years.

23 Q. Oh, great. So you are familiar with all the
24 training --

25 A. Yes, sir.

1 Q. -- that they go through?

2 A. Yes, sir.

3 Q. And the records that are kept?

4 A. Yes, sir.

5 Q. And you understand -- what's the -- it's about 250
6 times better olfactories than humans, is that about right?

7 A. Or more so.

8 Q. Okay. And certainly they are trained to do -- they
9 don't know they are smelling pot. They just know they are
10 smelling some substance and getting rewarded, is that
11 correct?

12 A. Yes, sir.

13 Q. Now, humans don't have that type of olfactories, do
14 they?

15 A. No, sir.

16 Q. Now, is your testimony before this court that you
17 smelled green marijuana, unburnt green marijuana, as you got
18 out of your car and approached them?

19 A. As we actually got to them is when we could smell the
20 marijuana. When I was possibly within three foot, four
21 foot, of these individuals.

22 Q. Okay. And which individual was it coming from?

23 A. It appeared -- because Mr. Patton and Mr. Robinson had
24 then stepped away from the group, it appeared that it was
25 coming from one of the two, either Mr. Robinson or Mr.

1 Patton.

2 Q. So you could tell kind of where it was coming from
3 which individual there?

4 A. Yes, sir.

5 Q. This is March 20th, right?

6 A. Yes, sir.

7 Q. Spring time?

8 A. Yes, sir.

9 Q. Things are blooming?

10 A. Yes, sir.

11 Q. A lot of pollen in the air?

12 A. Yes, sir.

13 Q. All right.

14 A. I guess.

15 Q. But you are smelling -- well, this is the marijuana
16 over here, isn't it?

17 A. Yes, sir.

18 MR. MILLS: May I see it, please?

19 MR. SPRINGS: Sure.

20 BY MR. MILLS:

21 Q. This is what you are talking about, right?

22 A. Yes, sir.

23 Q. And you are smelling that from three feet here?

24 A. Yes, sir.

25 Q. In somebody's pocket?

1 A. Yes, sir.

2 Q. In a plastic bag?

3 A. Yes, sir.

4 Q. In a jacket?

5 A. Yes, sir.

6 Q. So at that point I think you stated you said you had
7 probable cause?

8 A. Yes, sir.

9 Q. Because your nose is as sensitive as a dog?

10 A. No, sir, it's not, but not only smelling the green
11 marijuana, but also observing the pistol that was hanging
12 out of Mr. Robinson's coat pocket.

13 Q. So at that point you were seizing them, correct?

14 A. Yes, sir, I had probable cause to arrest, based off the
15 pistol, him not showing concealed weapons permit.

16 Therefore, he was unlawfully carrying that pistol.

17 Q. I appreciate you going on, Mr. Ligon. I haven't even
18 asked the questions yet. I wish you would just respond to
19 what I ask you.

20 At that time you smelled the marijuana and you felt you
21 had probable cause to arrest?

22 A. Yes, sir.

23 Q. And your testimony is that you could tell which
24 individual it was coming from?

25 A. I could tell it was between either Mr. Robinson or Mr.

1 Patton.

2 Q. And because they were, what, one foot, two foot away
3 from the other people on the porch?

4 A. Yes, sir.

5 Q. And your nose is good enough to be able to distinguish
6 between five individuals within a five foot radius and you
7 could determine which individual was there, which individual
8 is holding that pot and smelling it, is that right?

9 A. Between those -- it was between those two individuals.
10 I could tell it wasn't the other three gentlemen. It was
11 between those two gentlemen, yes, sir.

12 Q. And then you also said you saw a gun?

13 A. Yes, sir.

14 Q. But instead of immediately securing the gun, you
15 decided that you are going to tell them that you are getting
16 ready to search?

17 A. Yes, sir.

18 Q. Is that consistent with your training, sir?

19 A. Yes, sir, it is. First of all, action is quicker than
20 reaction. If I would have said "hey, I see that gun in your
21 pocket," his action would have been quicker than my reaction
22 to what he was going to do. Therefore, when I advised them
23 that I was going to do a Terry frisk and he started to back
24 away, I knew at that point in time that his intentions could
25 possibly mean harm towards myself and Officer Schettler, at

1 which time I took action.

2 Q. But you could have just taken actions straight up
3 without saying anything to him, right, because you observed
4 this gun? He hadn't identified it was concealed weapon, and
5 at that point your biggest concern is officers safety, is it
6 not?

7 A. Yes, sir, but we also had three other gentleman --
8 well, four, including Mr. Patton there, who we couldn't see,
9 who we couldn't tell whether they had weapons or not, at
10 which time when I saw him back away, I knew that something
11 had to be done at that point.

12 Q. So you are still running the risk of these other people
13 having weapons, but they are not -- at this point you think
14 it's okay to take the action?

15 A. Yes, sir.

16 Q. And you said that y'all went through -- is that this
17 picture again. Did you just like go off to your left?

18 A. Yes, sir, we went off to the left.

19 Q. The bush?

20 A. Yes, sir, we went off to the left right here and the
21 fight ensued right in this area here, sir.

22 Q. Right in that bush?

23 A. Yes, sir. Right past the bush.

24 Q. All right. And I believe you were describing to the
25 court, or with Mr. Springs here, how you got this weapon?

1 A. Yes, sir.

2 Q. If I could get you to do a little reenactment for me
3 again here.

4 (Witness off the witness stand)

5 BY MR. MILLS:

6 Q. You are telling me that you grabbed the left pocket
7 with your left -- right pocket with your left hand, is that
8 correct?

9 A. Yes, sir.

10 Q. And then you said that you were securing your weapon?

11 A. I was sitting here while it --

12 Q. So you are securing your weapon and he's getting free
13 shots at you like this?

14 A. Yes, sir.

15 Q. And he's hitting you?

16 A. Yes, sir.

17 Q. And then you are telling me you are pulling off his
18 jacket, right?

19 A. I then grabbed.

20 Q. So he's hitting you as you are pulling that jacket off?

21 A. At this point -- at this point he decides it's time for
22 him to run. When he tries --

23 Q. So he turns to the left?

24 A. No, sir, he turns to the right.

25 Q. Okay. He runs?

1 A. You are looking at a bombers jacket, not a form fitting
2 jacket.

3 Q. Okay.

4 A. It's more -- have you ever seen a flight jacket?

5 Q. Sure, I have. Right. I appreciate it.

6 (Witness back on the witness stand)

7 MR. MILLS: One moment, please, Your Honor.

8 THE COURT: Yes, sir.

9 (Off the record)

10 (Back on the record)

11 MR. MILLS: That's all I have, Your Honor.

12 MR. SPRINGS: I have got to ask two questions, if
13 I may?

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Did you tell Jomar Robinson he was under arrest?

17 A. Yes, sir. After I hollered that he had a gun, I --
18 after I hollered three or four times he had a gun to Officer
19 Schettler to where Officer Schettler could do what he felt
20 was appropriate, I told him -- I told to him stop, you are
21 under arrest.

22 (Gun marked as State's Exhibit No. 9 for
23 identification)

24 BY MR. MILLS:

25 Q. This is State's Exhibit 9. Pull out what's in there

1 and tell the court if you recognize it.

2 A. I sure do. P-89 pistol, a 9-millimeter.

3 Q. Where have you seen it before?

4 A. It was in Mr. Robinson's jacket pocket.

5 Q. Okay. And it was loaded with these bullets?

6 A. Yes, sir. When we say loaded, it was a magazine inside
7 and one actually chambered in the weapon.

8 Q. Okay.

9 MR. SPRINGS: That's all. Thank you.

10 MR. MILLS: Just one followup question.

11 RECROSS EXAMINATION BY MR. MILLS:

12 Q. Now, you were telling me about the black bomber jacket?

13 A. Yes, sir, if you -- have you ever seen the flight
14 jackets?

15 Q. Sure.

16 A. A lot of kids wear them nowadays. They are black ones.
17 Even police officers wear them. They are quilted. They
18 have orange on the inside of them.

19 Q. And they have got two little side pockets?

20 A. And they have got two little side pockets that really
21 ain't much bigger than what you put your hands in.

22 Q. Put your hands in to keep them warm?

23 A. Yes, sir.

24 Q. And your testimony is that you drove up casually?

25 A. Yes, sir.

1 Q. Got out of the car just normal?

2 A. Yes, sir.

3 Q. Police and all that, and Mr. Robinson is just leaving
4 this gun hanging out of his pocket as you are walking up?

5 A. Yes, sir.

6 Q. Making no effort to leave, not walking away or
7 anything?

8 A. No, sir, he didn't.

9 Q. He made no effort at that point to --

10 So, as you got out and walked up, your testimony is
11 everybody could walk and you would have no basis to detain
12 them and they were free to go?

13 A. Yes.

14 Q. That's all. Thank you, lieutenant.

15 MR. SPRINGS: Come down.

16 Officer Schettler.

17 OFFICER BRIAN SCHETTLER, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. SPRINGS:

20 Q. Officer, tell the court your name.

21 A. Brian Edward Schettler.

22 Q. Were you with Lieutenant Ligon out at Hall Street
23 Apartments the night of March 20th, 2008?

24 A. Yes, I was.

25 Q. Okay. And did you see him, in fact, chase Jomar

1 Robinson away?

2 A. Yes, I did.

3 Q. What did Jomar Robinson drop on the ground there?

4 A. Officer Ligon advised me there was a coat with a gun in
5 it on the ground, at which point then I collected it.

6 Q. Okay. All right.

7 Did anybody get to that coat before you did?

8 A. No.

9 Q. And after Officer Ligon took Jomar Robinson, the
10 defendant, into custody, did you search inside the jacket?

11 A. Yes, I did.

12 Q. And did you -- just ask you, State's Exhibit No. 9,
13 have you ever seen that before?

14 A. Yes, I have.

15 Q. And where did you see that before?

16 A. It was the gun that I recovered out of the jacket.

17 Q. Okay.

18 (Drugs marked as State's Exhibit No. 10 for
19 identification)

20 (Drugs marked as State's Exhibit No. 11 for
21 identification)

22 BY MR. SPRINGS:

23 Q. I'm showing you State's Exhibit 10 and 11. Have you
24 ever seen those things in these bags before?

25 A. Yes, I do.

1 Q. Where did you see or find those at the first?

2 A. I located both of these items from the jacket.

3 Q. Okay. And what is the substance in that bag appear to
4 be?

5 A. That's marijuana.

6 Q. And the substance in that bag, what did it appear to
7 be?

8 A. Crack cocaine.

9 Q. Is that what appeared to be the night of March 20th,
10 2008?

11 A. Yes, sir.

12 Q. Okay.

13 MR. SPRINGS: Nothing further.

14 CROSS EXAMINATION BY MR. MILLS:

15 Q. Officer Schettler, so you are there, you have your
16 weapon, correct, with you?

17 A. That night?

18 Q. Yes, sir.

19 A. Yes, sir.

20 Q. I mean, obviously. And you are seeing your officer in
21 a life and death struggle for a gun, right?

22 A. Your words, but yes.

23 Q. You don't think it was life or death?

24 A. I've trained with Lieutenant Ligon quite a bit and I'm
25 sure he could handle the situation.

1 Q. You don't think fighting over a gun is a life and death
2 situation?

3 A. Have you ever been a police officer, sir?

4 Q. You don't get to ask me questions.

5 A. Okay. Because I know Officer Ligon and I worked with
6 him and I trust my life to him, I turn my back to him.

7 Q. So he's fighting with somebody and turned your back to
8 him and what do you do?

9 A. I go ahead and detain the other four subjects.

10 Q. How do you do that?

11 A. Draw my service weapon.

12 Q. Pardon me?

13 A. Draw my service weapon.

14 Q. Okay. So you have your weapon now on these four
15 individuals?

16 A. Correct.

17 Q. No question they are seized, right?

18 A. At that point, yes.

19 Q. Okay. And you are not saying a word to Officer Ligon?
20 You are not saying a word to Jomar Robinson, who is
21 supposedly in this fight with Officer Ligon?

22 A. What do I need to say to him? I'm worrying about the
23 other four individuals.

24 Q. "You stop or I'll shoot"?

25 A. Stop who or shoot who?

1 Q. Jomar Robinson.

2 A. Why would I shoot him?

3 Q. You would be lawfully entitled to do that, wouldn't
4 you?

5 A. Well, that's officer's decision. I was worried about
6 the four individuals in front of me.

7 Q. You didn't want them to get away, right?

8 A. At that point I didn't know whether or not they had
9 weapons or not. It was a safety issue.

10 Q. Yeah, you are worried about them, you got them under
11 control and you don't want them to get away, right?

12 A. Not -- it's not a question of whether I want them to
13 get away or not. It's a question of whether or not it was
14 officer's safety. I don't know whether or not they have
15 weapons. There is obviously a struggle ensuing over one
16 weapon. There could be multiple weapons there.

17 Q. Okay. So what did you have them do?

18 A. I had them prone down on the ground.

19 Q. How many?

20 A. Four.

21 Q. Okay. And what's going on with Officer Ligon at this
22 time?

23 A. Officer Ligon is handling business behind me.

24 Q. What kind of time frame are we talking about?

25 A. I have no idea.

1 Q. Five seconds?

2 A. I didn't have time to time it.

3 Q. Ten seconds?

4 A. I don't know.

5 Q. You have no idea? You don't know if it was one second,
6 or thirty seconds?

7 A. No, sir, I don't.

8 Q. Why not?

9 A. Because I'm worried about what's in front of me, not
10 worrying about what's behind me.

11 Q. As you are focusing on what's in front of you, what are
12 you seeing?

13 A. I'm seeing four people that I have prone down on the
14 ground.

15 Q. What do they do?

16 A. One guy gets up and goes to leave.

17 Q. What do you do?

18 A. Order him back to the ground.

19 Q. What does he do?

20 A. Flees.

21 Q. Okay. And so you just let him go?

22 A. Correct.

23 Q. What's happening with Officer Ligon now?

24 A. Officer Ligon is in a foot pursuit.

25 Q. So he's already left the scene?

1 A. Correct.

2 MR. MILLS: One moment, please.

3 (Off the record)

4 (Back on the record)

5 BY MR. MILLS:

6 Q. Thank you, Officer Schettler.

7 MR. SPRINGS: Nothing further and that is our
8 proffer.

9 MR. MILLS: Your Honor, I would move to suppress
10 the evidence seized on a number of grounds from Mr. --
11 allegedly seized from Mr. Robinson.

12 First of all, they are entering onto private
13 property and they do not have a search warrant. And to
14 enter onto property, whether it's the curtilage or the
15 actual property, you have to have a search warrant, unless
16 you fit into one of those exceptions.

17 Officer Ligon testified that it was a purely
18 consensual encounter, that he did not have any basis at that
19 point, that they were free to leave. And so there is,
20 therefore, no exception to the warrant requirement of him
21 coming onto property.

22 He also came on and took -- he showed his police
23 badge, took possession of the document. So he actually
24 seized the individuals at that moment. Again, without
25 exigent circumstances, he's not allowed for them to step

1 onto that private property and make that seizure. He's
2 saying that he is not observing any crime at that time. So
3 it's only after he has illegally placed himself into that
4 position does he claim that he saw a gun.

5 I would also point out the highly -- I would tell
6 the court it is an objective test that you have to have in
7 determining this. And the testimony by Officer Ligon is
8 simply incredible that he smelled green marijuana in a
9 plastic bag from a distance. Your Honor, the marijuana is
10 right there. You can open it. You can see if you can even
11 begin to smell it in a bag from three feet. I submit that
12 was not a basis -- his decision to seize the individuals on
13 that basis is not objectively reasonable and, therefore, it
14 was an unconstitutional seizure and any evidence that was
15 gained as a result of that would be the fruit of the
16 poisonous tree and subject to suppression.

17 THE COURT: Thank you, sir.

18 Mr. Springs, do you wish to be heard?

19 MR. SPRINGS: I won't beat this to death, Your
20 Honor, but basically we tendered a memorandum of law on this
21 to the court previously after a conference with the
22 defendant. The police aren't trespassing on someone's
23 private party when they had legal cause or good excuse to be
24 there. They we went up to [REDACTED], responding to the
25 claims of drug activity and after one of their officers saw

1 something that looked like it could be drug sales taking
2 place on the porch of that house. No one told them to
3 leave, get off my property. As a matter of fact, Jomar
4 Robinson didn't live there. It wasn't his property. The
5 police had every right to come up and strike up a
6 conversation with someone.

7 Identification as a police officer and request to
8 see a driver's license or ID is not a seizure. I'm quoting
9 there from State v. Foster. For their safety, the police, I
10 think the officers could have searched all of these people,
11 once they came up and started talking to them. Pursuant to
12 our court's realization that guns or drugs so often go
13 together, that the mere investigation of a drug crime can
14 justify patting somebody down for weapons. But, in fact,
15 Lieutenant Ligon saw a pistol sticking out of Jomar
16 Robinson's pocket. At that point he had probable cause to
17 arrest him for unlawful carrying of a pistol.

18 The marijuana odor is of no event one way or the
19 other. Nothing here turns on the odor of marijuana. In
20 fact, that's just something to give a heightened, a danger
21 and suspense to the officers as they are dealing with these
22 people.

23 So the officer would have had legal cause to pat
24 down Jomar Robinson and find the pistol that hadn't been
25 visible. But once it's visible, the officer had every right

1 to arrest him. And when he laid hands on him to get that
2 pistol, he had every right to go for his own
3 self-preservation and affect the arrest. At that point the
4 defendant is resisting the arrest. He was lawfully
5 arrested. His jacket was searched pursuant to that arrest
6 and the evidence was lawfully found.

7 MR. MILLS: Your Honor, the law is seeing a crime
8 be committed in your presence. In this instance it's under
9 surveillance. There is no hesitation and he's not -- you
10 know, they are having it both ways. We walk up and
11 consensual encounter. Therefore, we are not subject to the
12 Fourth Amendment, but also now we can because we see
13 something in plain view. Your Honor, it's a little
14 disingenuous that they are just going to pick and choose
15 when it's a seizure and when it's not.

16 I submit that if you do not have any evidence to
17 come up there and were not investigating it, and he
18 indicates they are out there for that purpose, so the mere
19 suggestion that this is kind of coming up there to have a
20 talk see, to -- you know, supposedly all this danger, they
21 are just kind of walk up there and just talk is just not
22 credible. It's not just objectively reasonable. So,
23 therefore, I think the only conclusion is that they did go
24 up there with intent to seize. They did through show of
25 authority, as well as taking possession of those documents,

1 seize those individuals at the time they did not have
2 reasonable suspicion. It's after that point that he says he
3 saw a gun and at that point he -- they had the encounter and
4 the struggle.

5 THE COURT: Let me ask you this. In looking at
6 State's Exhibit 1 and for purposes of this hearing, that
7 appears to be the public housing project, is that correct?

8 MR. SPRINGS: It is, yes, sir.

9 THE COURT: And so the parking lot we talking
10 about really is a public parking lot, is that correct? I
11 mean, it goes with the public housing, correct?

12 MR. SPRINGS: It does. It does. I pondered
13 whether going into the question of how private -- private
14 property --

15 THE COURT: Well, that's not the key issue, but
16 I'm just -- the point I'm trying to make is that that
17 appears to be a public housing project, right?

18 MR. SPRINGS: It is.

19 THE COURT: And, you know, certain people are
20 allowed to live there, obviously, and meet certain criteria,
21 and that sort of thing, as I understand it. But, in any
22 event, the parking lot has a number of people. There are
23 several apartments there, correct?

24 MR. SPRINGS: Yes, sir.

25 THE COURT: So there is -- the parking lot out

1 there really, there's people coming and going, but people
2 live there and that. And so it's not like a house that you
3 got right here and then you have got a little bit of yard,
4 that's your house and that's your yard. Here you have got
5 several apartments in one building, and there is more there,
6 but all of these people have access to this parking lot, is
7 that correct?

8 MR. SPRINGS: Yes, sir. Yes, sir.

9 THE COURT: Now, as I understand it, the facts I
10 have heard today, is, first of all, the police had
11 complaints that drug activity was taking place in this
12 particular -- right from this particular residence, from
13 that front porch, or from right in that area, say those
14 apartments. They had that complaint, a citizen complaint,
15 even though it's anonymous, they don't know who called in
16 the complaints.

17 MR. SPRINGS: My understanding is it was various
18 porches and in a parking lot and not specifically [REDACTED].

19 And let me ask officer? Is that it?

20 THE WITNESS: Yes.

21 MR. SPRINGS: Just that whole area, basically.

22 THE COURT: Okay.

23 MR. SPRINGS: Not specifically [REDACTED].

24 THE COURT: So they were surveilling the area and
25 had an officer out there in the woods across from where he

1 could see what was going on.

2 And as I understand it, there were -- he believed
3 that there were transactions going on, based on his
4 experience as a police officer, because people were coming
5 in in a short period of time, somebody coming out to the
6 car, and then they drive off a short time later. And that
7 was indicative to him that drug transactions were taking
8 place at that particular location. And he called that in to
9 other officers, who came in then to further investigate
10 that. So you start off with citizens complaints, but they
11 are unidentified persons. They are anonymous persons, tips.

12 So you start off with that. That's not enough to
13 create a reasonable suspicion that drug activity is going
14 on. But you also -- the police officer is aware they had
15 made a number of drug arrests in this same area, the drug
16 activity. This is a place where a lot of drug activity goes
17 on, as I understand the police officer's testimony. He's
18 made a number of arrest, including trafficking in these
19 drugs in the same area. So they have all that information.

20 And the courts have made it clear that the court,
21 trial courts, decide whether evidence comes in or not should
22 consider what the police know and their experience, not just
23 what an average person might know or consider. So with
24 police officers that has special knowledge and based on what
25 they know from the previous investigations and cases, that

1 the courts consider that as well and any special knowledge
2 that they might have about drug activity.

3 In this case then they went to -- and the
4 information was that there were somebody in a black jacket
5 is -- there were individuals on the porch at this particular
6 location. Somebody in a black jacket was the one going out
7 to the cars and what appeared to make the drug transaction.
8 And that -- so they went in to investigate further and they
9 pulled into the parking lot there, their headlights on the
10 persons on the porch, and walked up, as I understand it to
11 the porch. But there were two people wearing dark jackets
12 and they weren't sure which one was the person that Sergeant
13 Ervin indicated that was walking out to the car or not, or
14 really, I guess, was the same person or not. But, in any
15 event, somebody in a black jacket walking out there off that
16 porch. So they come out and approach the porch where the
17 individuals are, identify themselves as police officers and
18 ask for some identification.

19 Now, I believe in -- and this was reminding me of
20 a case that the solicitor's office handed up to me, but in
21 having read it, In the Matter of Barry Bassett, who was a
22 minor under the age of seventeen years. The court said that
23 a defendant did not have a reasonable expectation of privacy
24 in an open garage on his own property. And the police
25 officer who was investigating disturbance, which was

1 apparently emanating from the garage, had a right to
2 lawfully enter the garage to further investigate, based on
3 the complaint that he had. So the question is whether the
4 deputy at that time had lawfully entered the garage. And
5 once he was in there, he detected the odor of marijuana and
6 he confronted the defendant about it and seized the
7 contraband from appellant's pocket. So, you know, that to
8 me -- these officers, in that case they were investigating a
9 crime, in that case a loud noise, came into the garage.
10 Now, I think he could have told them to leave the garage,
11 they had no right there, or something like that, perhaps,
12 but, in any event, he didn't do that, so they came into the
13 garage.

14 In this case they came up on an outside area, not
15 even in an enclosed area like a garage. So they came up on
16 the outside area on the porch and approached them. And as
17 they did in that case, asked for identification. And so
18 that's all they were doing at that time was asking for
19 identification, and the defendants proffered the
20 identification. The officer testified then he smelled green
21 marijuana at that time, and which is marijuana that has not
22 been smoked, which I don't know about smelling marijuana. I
23 haven't been around it, honestly. One time here in court we
24 had a big bag of it and somehow it got opened and just about
25 had to close the courtroom down because the smell was so

1 strong. That's the truth, and we all had to just take a
2 break from it. I got a headache from it. I just -- and I
3 don't know what they could smell or couldn't smell with the
4 marijuana. He says he could smell it, based on experience,
5 and I assume that he's got more experience in smelling
6 marijuana than the court does. And so he says he could
7 smell the marijuana, which would indicate at that time a
8 crime was being committed. If someone was in illegal --
9 possession of illegal drugs, then that was an indication
10 that a crime was being committed there in his presence by
11 the person having it.

12 Now, so at that point you go from citizen's tip,
13 knowledge by the police officer, drug activity was going on
14 in that area, because they made arrests there and all of
15 that. You go from that. You go into the parking lot. You
16 have an officer who has given them information that somebody
17 in a dark jacket is coming from the porch out to the car and
18 doing what appears to be a drug transactions out at the car.
19 So you go from anonymous tip, to investigation, the opinion
20 of an officer drug activity is going on, based on his
21 experience and knowledge in dealing with these kind of
22 issues, drug activity is going on, which is increased a
23 reasonable -- it certainly gives them a reasonable suspicion
24 drug activity was taken on at that location. They go in and
25 they ask for identification at the same time they smell the

1 marijuana, which further adds to the reasonable suspicion,
2 to the point the officer felt like he had at that time
3 probable cause really to make an arrest, or at least to
4 search to determine the source of the marijuana. And so at
5 that point he believes -- it certainly increases the
6 reasonable suspicion and reasonable further into the drug
7 activity is going on and whether somebody has got drugs
8 there, marijuana. Then he sees a handgun hanging out of Mr.
9 Robinson's pocket. And so, now, he already has his driver's
10 license, his address on it, is that correct?

11 MR. SPRINGS: Yes.

12 THE COURT: Wasn't that particular address, or was
13 it?

14 OFFICER LIGON: Sir, Your Honor?

15 THE COURT: Was it that particular address?

16 OFFICER LIGON: No, sir, it was [REDACTED]

17 [REDACTED], York, sir, is actually --

18 THE COURT: A different street altogether?

19 OFFICER LIGON: Yes, Your Honor.

20 THE COURT: All right. And so that's what was on
21 there, and the person had a pistol hanging out of his
22 pocket.

23 Now, you know, again, the courts have held that
24 there is a recognizable connection between drugs and guns.
25 The police officer, once drugs come into play, they have a

1 right to search them for weapons to protect themselves.
2 There is a nexus between the two, which would allow them to
3 do that.

4 Now, you have got they smelled drugs, think a
5 crime has been committed in their presence. They see a gun
6 hanging out, a pistol hanging out of a person's pocket, and
7 certainly probable cause to believe that the person is
8 illegally in possession of a weapon, and so -- so then they
9 say we are going to search. And the court finds that at
10 that particular time, particular point, they had probable
11 cause for the search, based on the smell of the drugs, the
12 weapons, and everything else they had, particularly those.
13 In other words, their reasonable suspicion was increased
14 each time some other indication of the drug activity,
15 culminating in smelling the green marijuana and seeing the
16 gun hanging out of Mr. Robinson's pocket. And so -- and
17 then they had a right to search. When he resisted the
18 search, and officer testified he went for his gun -- backed
19 up, went for his gun. He went for the gun and a fight
20 ensued, etcetera. Ultimately drugs were seized. He pulled
21 the jacket off from him. Ultimately the drugs were seized
22 from the jacket, along with the gun and after an altercation
23 between the two of them.

24 And so the court denies your motion. I think they
25 had -- each step of the process created reasonable suspicion

1 or more reasonable suspicion, up and including the time that
2 they smelled the marijuana there and saw the gun hanging out
3 of his pocket, so the court would deny your motion to
4 suppress.

5 Now, I want to add to what I said insofar as
6 record is concerned.

7 Even in Terry, Terry v. Ohio, even in that case,
8 392 U.S. 1, 88 S.Ct. 1868, even in that case the court says
9 that the police had justifiable suspicion afforded a proper
10 constitutional basis for accosting Terry, restraining his
11 liberty of movement briefly, and addressing questions to him
12 and had no reason whatever to suppose Terry might be armed,
13 apart from the fact he suspected of planning a violent
14 crime. The officer asked Terry his name, in which Terry
15 mumbled something, whereupon McFadden, without asking Terry
16 to speak louder and without giving him any chance to explain
17 his presence or his actions, forcibly frisked him.

18 And so, you know, the police had more reason in
19 this case to frisk the defendants in this case, where they
20 say they smelled marijuana and also saw the gun, which was
21 in Terry they didn't even see a gun or anything. So they
22 simply asked some questions based on his response to it,
23 they decided to do a pat-down.

24 United States v. Arvizu, A-R-V-I-Z-U, Arvizu,
25 found at 122 S.Ct. 744, 534 U.S. 266, 151 Lawyers Edition 2d

1 740, the court said that because the balance between the
2 public interests and an individual's right to personal
3 security tilts in favor of the standard less than probable
4 cause in cases of an investigatory stop, falling short of
5 the traditional arrest. The Fourth Amendment is satisfied
6 when the officer's actions supported by reasonable suspicion
7 to believe that criminal activity may be afoot.

8 And so based on all of that information, taking
9 the totality of the circumstances, the officer's knowledge
10 about the area, what had been reasonably observed, that
11 there were anonymous tips, the police officers investigation
12 and observing the area, that, furthered by their coming that
13 drug activity, drug transactions were going on in the
14 parking lot, based on an officer's knowledge of what drug
15 transactions look like in those situations, indicative of a
16 drug transaction, they are going there simply to determine
17 the identification of people who were there, then that's
18 heightened by the fact that they smelled the green
19 marijuana, and heightened by the fact that they saw a weapon
20 hanging out of the defendant's pocket. So all of that,
21 taking the totality of the circumstances, they would have
22 reasonable suspicion to investigate further and to pat down
23 the defendant and the other individuals they were attempting
24 to pat down. And then the defendant's actions in response
25 to that, and certainly allowing the officers to act to

1 protect themselves and the other officer at the scene and to
2 act as he did in this case, in grabbing the weapon in the
3 efforts of keeping it from being pulled out. As he said,
4 the defendant attempted to pull the pistol out and he beat
5 him to it. He grabbed the jacket and wrestled with him
6 trying to hold onto the jacket and got the jacket off of
7 him. They continued to fight.

8 The court said in that case that although an
9 officer's reliance on a mere hunch is insufficient to
10 justify an investigatory stop, the likelihood of criminal
11 activity need not rise to the level required for probable
12 cause and it falls considerably short of satisfying a
13 preponderance of the evidence standard.

14 Again, in that case the specialized knowledge of
15 an officer's investigation in a drug activity is to be
16 considered by the court in making the determination of
17 whether there was reasonable suspicion to act as the officer
18 did in this case, in order to seize the evidence in this
19 case.

20 MR. SPRINGS: Thank you, Your Honor.

21 THE COURT: I'm trying to make sure my record is
22 complete.

23 I'm not going to get into a lot on the record
24 about expectation of privacy, except to say that the
25 defendant in this case did not have the same expectation of

1 privacy as he would have in his home, or -- you know,
2 sitting in his own home and that sort of thing.

3 And, again, looking at the totality of
4 circumstances and deciding that the police officer, or
5 police officers, the court finds there was reasonable
6 suspicion to investigate, and that was heightened into
7 probable cause, based on the fact of smelling marijuana and
8 believing that there was a crime under foot or had been
9 committed or was being committed in the their presence.
10 Further observation of the weapon hanging out -- the pistol
11 hanging out of his pocket, they had a right to frisk at that
12 point the defendant. And his subsequent actions in response
13 to that frisk brought about the arrest of what happened,
14 insofar as the facts of this case.

15 So, again, the court will deny the motion to
16 suppress.

17 Any other pretrial issues?

18 MR. MILLS: I just have a few things, Your Honor.
19 One is the prior reports. I understand from the suppression
20 hearing the information about prior drug activity and all
21 that, I think based on the anonymity and -- the anonymity of
22 the reports, it would be unfairly prejudicial to my client
23 for them to be able to testify about prior activities,
24 unless they are just saying my individual was involved in
25 it, which raises too much of a specter on unrelated matters

1 not connected with my client. I think both under 403, the
2 probative value outweighs the prejudice.

3 I understand the officer could testify that they
4 were out there and what they saw, but I think it is unfair
5 to suggest to a jury what's gone on in prior instances.

6 MR. SPRINGS: Your Honor, State v. Brown says that
7 we are entitled to explain to the jury why the officers were
8 out there about complaints of drug activity, that that's --
9 that there is nothing wrong with that.

10 MR. MILLS: Again, Your Honor, no one is saying --
11 you know, they are entitled to explain that they are out
12 there, but, again, I say the probative value outweighs -- I
13 mean the prejudicial effect outweighs the probative value.
14 It's essentially saying, hey, the drug dealing is bad. We
15 got lots of call. We are not going to tell who they were
16 from, we are not going to show you any warrants. We don't
17 know what these people basis are. Then we get the evidence
18 in, but essentially that's just adding in a prejudicial
19 thing based on not my client, without anybody specific.
20 They haven't given us any names of any arrests, the names of
21 anything else there. General allegation to it and brought
22 in no proof. I think that is just piling on, you know, in
23 an unfair way. They are going to be able to testify that we
24 were out there and observing and this is what we saw. And I
25 understand that, but to suggest that they could then say

1 based on the fact we have had all these prior reports,
2 without bringing those individuals who made the complaints,
3 without offering any other proof about those complaints, is
4 just confuses the jury and predisposes them to something
5 before they even hear any evidence, essentially saying, hey,
6 listen, we have had reports about other people coming out
7 here at other times, and we don't know even who gives those
8 reports, when those other times were, where they were, who
9 the individuals were, and now it's being offered against my
10 client. I think that's improper and I think that's unfair.

11 MR. SPRINGS: That's like the fellow that killed
12 his parents and then complained that he was an orphan. I
13 think that police are entitled to explain why they were out
14 there watching the place. Otherwise, they look like they
15 are going out there like Nazi storm troopers, let's go out
16 there and roust these guys out. I think they are entitled
17 to explain that they were out there for a particular
18 purpose. Not for the truth the matter, but to explain why
19 they were there and why they were devoting resources and
20 officer time to watching the place. And under the law we
21 are entitled to do it under State v. Brown.

22 MR. MILLS: That's not a requirement, Your Honor,
23 and I don't know what motions were made there and under what
24 facts. I still say that they can say we are out there doing
25 surveillance. They do not need to make the specter up.

1 MR. SPRINGS: That's fine. They won't say they
2 are coming out there as Nazi storm troopers. They are out
3 there surveilling and doing their job as narcotics officers
4 and they observed this activity. I don't see where that we
5 have to get into other times, other places, and general
6 insinuation as opposed to fact specific with this defendant
7 at this time.

8 THE COURT: Well, I think the police officers, I
9 think they can testify as to why they were out there.
10 Otherwise, it may very well look like somebody was being
11 picked on for some improper purpose. And so I think they
12 have a right to explain how they came to be out there and
13 why they were surveilling this area. And I believe that the
14 testimony is not going to be that they were out there
15 surveilling this particular apartment, as I understand it.
16 What they said is they were not -- the complaint was not
17 about this particular apartment, but in these apartments
18 generally was complaints they had from -- they had some
19 anonymous tips that drug activities and persons with guns
20 were in that area. And that -- so then they had somebody
21 out there, hidden surveillance in the area watching it. And
22 then based on what that person saw, I think they are
23 entitled to go into that. As to how they got out there, why
24 they were watching the place, and what raised their
25 interests in it gave them reasonable suspicion to believe

1 that something was going on there. I think they have a
2 right to do that as part of their case.

3 Now, I would be more concerned about would be any
4 talk about any drug arrests made at that particular spot or
5 anything like that. So I would -- I think the officer had
6 said that he had made some arrests in that area, but I think
7 that the most that they should be able to say is that this
8 was -- this general area was an area where they had made
9 other arrests, or something like that, or to say that it's
10 a -- to their knowledge it's an area of high crime drug
11 activity.

12 MR. SPRINGS: Yes, Your Honor.

13 THE COURT: But I don't think that -- not tying it
14 down specifically to this particular apartment necessarily,
15 this particular apartment building, but generally in this
16 area that there have had been other cases made for illegal
17 drug activity in the general area. And I think that's
18 permitted to show why they believe that it might be
19 something going on. That would be the -- but nothing else
20 as to this particular apartment.

21 MR. MILLS: Your Honor, if I understood, and not
22 to disagree with the court's ruling, you said I believe by
23 that. I think the only purpose they can offer it for is to
24 explain their location. Not that there was any validity to
25 it, but just why they got out there. Not that there was

1 prior drug dealing there, not that there was activity, but
2 they had a report of that, that's why they went out there.

3 THE COURT: Right.

4 MR. MILLS: And I think beyond that you start to
5 really start stepping over the line.

6 MR. SPRINGS: Well, that's all they can say. They
7 are going to say they had numerous citizens complaints of
8 drug activity and people with guns in the parking lot and on
9 the porches, plural. That's all they are going to say.

10 THE COURT: Well, if he is not going any further
11 than that, I will allow that. I think you are entitled to
12 get into that to show why they were out there and had a
13 reasonable suspicion and reason to be out there, which, of
14 course, became heightened by what was seen.

15 Yes, sir.

16 MR. MILLS: Mr. Springs just added guns. He's
17 going to be able to talk about that too?

18 THE COURT: Well, that was what the officer
19 testified, that anonymous tips were that there were drugs
20 being sold from porches in that area by men with guns.

21 MR. MILLS: All right.

22 Your Honor, I'm now constrained by appellate
23 rules. I understand the motions in limine. I have to renew
24 my objection actually during a trial. I'm kind of loathed
25 to do that in front of the jury out loud in front of Mr.

1 Springs, so I don't know if there is a way I can just
2 perhaps ask for the court's attention.

3 THE COURT: Well, you must just -- what you might
4 do is just -- we get to that particular point you want to
5 object, just say "Your Honor, could you note my prior
6 objection?" And I'll say "it's preserved for the record.
7 You are noted and overruled."

8 MR. MILLS: I just don't want to start making a
9 scene in front of the jury.

10 THE COURT: I understand. You can do it that way,
11 though.

12 MR. MILLS: Thank you.

13 THE COURT: "Your Honor, will you please note it
14 for the record my prior objection?" You won't have to get
15 into --

16 MR. MILLS: And give my prior position on that.

17 THE COURT: Thank you. Okay. So all they are
18 going into is they had citizens complaints. Okay.

19 MR. MILLS: And the last thing, the only other
20 thing I would have, Your Honor, is just I have not tried a
21 case with Mr. Springs yet, but I would just -- in my
22 experience with many solicitors, they often offer their
23 personal opinion about what they believe or what's needed
24 for the community, and I think those are improper comments.
25 You can't essentially appeal to the jury's sense of

1 protecting the community or how long you have been in, you
2 know, doing these things, and this is the worst that you
3 have ever seen, or something of that nature. I would just
4 ask that Mr. Springs, and I do with any solicitor, not go
5 into his personal beliefs. They all sincerely hold those,
6 it's not appropriate in court.

7 MR. SPRINGS: Well, I never refer to my personal
8 belief, but as far as what's good for the community, we can
9 take that up prior to closing argument, because I'm going to
10 have all sorts of things to say about that.

11 MR. MILLS: Well, Your Honor, it's not that jury's
12 job to guard the community. It's that jury's job to decide
13 the facts of this case.

14 THE COURT: Well, I don't disagree with you. I
15 think that that is the jury's responsibility, and their role
16 in this case is to determine the truth of the facts in the
17 case and apply the law to this particular case. I would
18 agree to that.

19 I think the solicitor is given some latitude, but
20 he certainly can't argue they should convict this defendant
21 just solely to get drugs off the street or what's best for
22 the community, something to that effect. I think he's
23 allowed some latitude in arguing that, you know, we don't
24 want to have a lawless community, or something like that.
25 I'm not going to put words in his mouth, but I think that --

1 I think he's allowed some leeway there, but can't get too
2 personal or personal request of the jury with regard to his
3 beliefs and that sort of thing.

4 MR. MILLS: Thank you, Your Honor.

5 THE COURT: We can take it up again when we get to
6 it. We don't want to get into some argument that would
7 indicate a person should be convicted just because they were
8 charged to keep drugs out of the area.

9 MR. MILLS: The final request, and I know we have
10 gone through the suppression hearing, but I would ask the
11 State's witnesses be sequestered, except for the lead
12 investigating officer.

13 THE COURT: Okay. All right. I'll grant that
14 motion. There were three officers basically involved in
15 this, so I think that's a reasonable request.

16 Of course, we will follow the same rules for the
17 defendant's witnesses. So let me say to you that what
18 sequestration means is that not only will each witness be
19 sequestered outside the courtroom until after they have
20 testified, but they also will not discuss their testimony or
21 what questions were asked of them during their testimony.
22 In other words, they can't go out and discuss their
23 testimony in any discuss with somebody who has not yet
24 testified. They can't be in the courtroom until after they
25 testified. That's the same way for the State, the same way

1 for the defense witnesses.

2 I have no idea who a lot of witnesses are, so I'm
3 going to have to depend on you to police that. And so if a
4 witness comes in and starts sitting through and listening to
5 the testimony, you may lose that witness, if you don't get
6 that witness out of the courtroom. So that would be your
7 responsibility, and the State's responsibility to make sure
8 your witnesses are not in here before they testify.

9 MR. MILLS: Yes, sir.

10 MR. SPRINGS: Yes, sir.

11 THE COURT: Anything else?

12 MR. SPRINGS: I just have one thing. Actually two
13 things.

14 Under the law, State v. Mizell, I make a motion
15 that the defense at no time tell the jury what the potential
16 punishment is here and don't elicit it from any witness.
17 It's prejudicial to the State and it's absolutely irrelevant
18 to the guilt or innocence of what the possible sentence is.

19 THE COURT: Well, I would agree with that. I
20 don't think that you can argue the actual sentence, but you
21 certainly can argue that it's a serious crime. And the
22 defendant could be deprived. I don't have a problem with
23 that, but to give an exact sentence, I don't think that you
24 are allowed to do that.

25 MR. MILLS: Right. My understanding of the court,

1 I guess, apparently the solicitor's officer notified the
2 local station that it was coming up and it was going to be a
3 life without parole case and that was on the TV recently.

4 THE COURT: Well, you know, the jurors indicated
5 they didn't know anything about this case, hadn't heard
6 anything about it before they came to court,.

7 MR. MILLS: I understand.

8 THE COURT: So. So I presume they didn't hear
9 anything about it.

10 Nevertheless, all right. You know what your
11 parameters are.

12 Anything else?

13 MR. SPRINGS: Yes. I don't want to speak up, Your
14 Honor. I'm sweating bullets. My key witness, Officer
15 Ligon, has to go out of town in the morning, so I'm very
16 anxious to get one witness in today. I hoping we can go a
17 little late.

18 THE COURT: I have no problem with that. I plan
19 to go a little bit late anyway. It was so late get started
20 with this thing, and so we will get his testimony in.

21 Anything else?

22 MR. SPRINGS: Nothing from the State.

23 THE COURT: Anything else?

24 MR. MILLS: Nothing, Your Honor.

25 THE COURT: All right. Now, the jury has selected

1 Juror Number 90, Eric W. Hicks, as the foreperson. They
2 sent me a note out he's the foreperson, and so we will put
3 him, please, ma'am, in the foreperson's chair. And the
4 alternates, they will have their seat.

5 I'll give them a brief instruction. We haven't
6 sworn them yet deliberately in case something came up during
7 the break, so we will swear them first thing. I'll give
8 them a little preliminary instruction and then get into
9 opening statements.

10 I didn't ask you. Do you need a short break?

11 MR. SPRINGS: I'm ready.

12 MR. MILLS: I would like a glass of water.

13 THE COURT: Okay. We will go forward.

14 All right, bring the jury in.

15 We are bringing the jury in. I don't want
16 everybody moving around while the jury is coming in.

17 MR. MILLS: Your Honor, we just had a discussion.
18 We identified Mr. Graham as a potential witness, our chief
19 investigator, so I assume the same rule apply for him
20 staying as Officer Ligon.

21 MR. SPRINGS: Yes.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: Good afternoon, ladies and gentlemen
25 of the jury panel. I apologize for the delay. As usually

1 it took longer than we thought to get through these pretrial
2 matters. I hope you enjoyed your lunch day.

3 I understand that the jury has selected juror
4 number 90, Eric W. Hicks as the foreperson.

5 That's you Mr. Hicks, is that correct?

6 JUROR NUMBER 90: Yes.

7 THE COURT: All right. Mr. Hicks, we ask that the
8 foreperson and the two alternates keep the same seats
9 throughout the trial. It really doesn't matter where
10 everyone else sits. The seats are interchangeable, but we
11 like to keep those persons in the same seats so we know
12 where at throughout the trial.

13 Now, I'm going to ask the clerk if she will at
14 this time to swear the jury panel.

15 THE CLERK: Ladies and gentlemen of the jury, if
16 you will please stand and raise your right hand.

17 You shall well and truly try in a true deliverance
18 make between the State of South Carolina and the defendant
19 at the bar whom you shall have in charge and a true verdict
20 give, according to the evidence and law, so help you God.
21 Please acknowledge by saying I will.

22 JURY PANEL: (Collectively I will)

23 THE CLERK: Let the record show all affirmed.

24 THE COURT: Thank you. Please be seated.

25 Ladies and gentlemen of the jury panel, I'm going

1 to give you a brief instruction with regard to the format of
2 the trial and what to expect as we go through the trial. I
3 expect most of you have not served on a jury in General
4 Sessions Court before. Hopefully this information will make
5 you feel a little more comfortable with these unfamiliar
6 surroundings.

7 The first thing that will happen after I have
8 completed this instruction to you is that an attorney for
9 the State, who is an assistant solicitor, will make an
10 opening statement to you. And then an attorney for the
11 defendant will have the same opportunity to address you in
12 opening statement.

13 Now, these opening statements by the attorneys are
14 not evidence, but you should pay close attention because
15 they are, in essence, going to identify to you what they
16 perceive or say the issues in the case are.

17 After they have made their opening statements to
18 you, then the State will proceed by presenting the testimony
19 and evidence they want you to consider.

20 Now, the reason the State goes first is that the
21 State has the burden of proof in this case. There is no
22 burden of proof upon the defendant to prove his innocence.
23 The burden of proof is upon the State of South Carolina to
24 prove the charges against the defendant by evidence that
25 satisfies you, the jury, beyond a reasonable doubt before

1 you can return a verdict of guilty.

2 If the State fails to meet that burden of proof,
3 then your verdict must be not guilty.

4 In that regard, ladies and gentlemen of the jury
5 panel, you will note that the defendant is not present here
6 in the courtroom. The defendant is not required to be
7 present for the trial. And so even if he were here, sitting
8 here in the courtroom, he could sit there mute through the
9 trial. And the reason for that is the State has the burden
10 of proving the defendant guilty beyond a reasonable doubt.
11 The defendant does not have to prove he is innocent. He is
12 presumed innocent, and that presumption stays with him
13 throughout the trial and can only be removed if and when the
14 State has proved the guilt of the defendant of these charges
15 beyond a reasonable doubt.

16 I charge you and instruct you that the fact that
17 the defendant is not present in the courtroom here for the
18 trial is not a factor to be considered by you in any way,
19 because he's not required to be here. Again, the burden is
20 upon the State to prove the defendant guilty of these
21 charges beyond a reasonable doubt.

22 After the assistant solicitor has presented to you
23 the evidence they want you to consider on behalf of the
24 State, then the same opportunity will be afforded to the
25 defense. The defendant may, but is not required, to present

1 any testimony or evidence, because the State, again, has the
2 burden of proving the defendant guilty beyond a reasonable
3 doubt.

4 Again, the defendant does not have to prove he is
5 innocent. He is presumed innocent and that presumption
6 stays with him throughout the trial and may only be removed
7 if the State meets its burden of proving the guilt of
8 defendant beyond a reasonable doubt.

9 Now, what is evidence in the case? Evidence is
10 the sworn testimony you will hear from the witness stand to
11 my right, exhibits admitted into the record for your
12 consideration by me, the presiding judge, and any
13 stipulation of counsel.

14 Now, exhibits may take many forms, such as
15 documents, pictures, videotape, maps, diagrams, and so
16 forth.

17 Stipulations are agreements of fact by the
18 attorneys. If the attorneys enter into a stipulation or
19 agreement of fact, that will be made known to you and you
20 can consider that with all of the other testimony and
21 evidence. Give it such weight as you deem appropriate once
22 you begin your deliberations.

23 Sworn testimony, exhibits, and stipulations are
24 the only evidence you may consider in your deliberation of
25 the innocence or guilt of the defendant. You may not

1 consider anything that you heard from any other source about
2 this case in making your decision, because that is not
3 evidence.

4 After you have heard all the evidence, then the
5 attorneys for the State and the defendant will once again
6 appear before you and make what we call closing arguments.
7 We call them arguments because the attorneys are allowed at
8 that time to argue their positions and will attempt to
9 persuade you as to their view or position with regard to the
10 facts.

11 When you have heard final arguments from counsel,
12 I will then charge you, which simply means to instruct you,
13 as to the law that applies to the issues in this case. You
14 will then retire to the jury room to deliberate and reach
15 your verdict.

16 That's how a case is tried in General Sessions
17 Court, whether it be this case or any other case. Some
18 cases take a half a day or a day, some cases take weeks, but
19 the same format applies in every case.

20 As the trial judge, I have three functions to
21 perform during the trial. I am the presiding officer, and,
22 therefore, see that the trial is run in an orderly manner.
23 I decide, based on rules of civil and criminal procedure,
24 whether testimony and exhibits are admissible into evidence
25 for your consideration. And at the conclusion of the trial

1 I instruct you as to the law you must apply to the facts in
2 this case in reaching your verdict.

3 Now, you, ladies and gentlemen, are also judges in
4 this case. You are the judges of the facts. In other
5 words, you determine the truth of the facts in this case.

6 Under our Constitution I am not permitted as the
7 judge of the law to have an opinion about the facts, so I do
8 not get into whether I believe a witness or not. That is
9 not my function. I'm not even permitted to express an
10 opinion, if I had one, as to the facts in this case. So
11 you, the jury, determine what is the truth of the facts.

12 Now, I do not permit jurors to take notes during
13 the trial, because it's my experience that while writing
14 notes, you may miss something very important for you to hear
15 and you may have failed to observe a witness from
16 testifying. It is important that you pay careful attention
17 to all testimony and introduction of evidence, since you
18 must judge the credibility or believability of the witnesses,
19 and the weight to give all evidence introduced in this case
20 in determining the truth of the facts.

21 Now, during the trial the attorneys may object to
22 the admissibility of certain testimony or other evidence. I
23 will either sustain the objection, which means I agree and
24 the testimony or evidence may have not be made part of the
25 record for your consideration; or I will overrule the

1 objection, which means as the judge of the law I have
2 determined that it is admissible as part of the record for
3 your consideration. The mere fact that I have admitted it
4 does not mean that you must believe it or disbelieve it. I
5 have simply determined that it is admissible under our
6 rules, and it is up to you then to believe it or disbelieve
7 it and to assign such weight to it as you determine to be
8 appropriate.

9 At the conclusion of the trial when we send you to
10 the jury room, every exhibit that is admitted into evidence
11 will be sent to the jury room for you to examine further and
12 to consider.

13 I will remind you that one of the most important
14 aspects of your duty as a jury lies essentially in the oath
15 that you have just taken, to well and truly try this case
16 and to determine the truth of the facts in this case. That
17 oath, once again, in a very essential way says that you are
18 the sole judges of the facts in this case.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 whatever your verdict in this case, it must be your
21 unanimous verdict. All twelve jurors must agree on the
22 verdict which the foreperson is authorized to write for the
23 jury.

24 Mr. Foreman, ladies and gentlemen, you are not to
25 discuss this case at any time during the trial until I tell

1 you, and that will not occur until you have received all of
2 the evidence and I have instructed you upon the law that
3 applies. You should not discuss the case among yourselves
4 and you should not discuss it with your family, friends, or
5 anyone else you might see on a recess from court. You might
6 say "well, what's wrong with our discussing the case as we
7 go along," or "if somebody finds out I'm on a jury and they
8 want to know something about the case I'm on, what's wrong
9 with discussing it?" The problem with discussing the case
10 among yourselves or with anyone else is that once you start
11 discussing the case, you start forming opinions. You
12 wouldn't be fair to both sides of this case if you didn't
13 wait until you have heard all the testimony and evidence and
14 I have instructed you upon the law that applies before you
15 start forming opinions. Until then you should keep an open
16 mind, wait until you have all the information that you need
17 before you start forming opinions.

18 Now, if there should be any media coverage of this
19 trial, I do not know of any and there may not be any, but if
20 there should be media coverage of this trial, please do not
21 read, listen to, or watch any media account of this trial
22 until after the trial is over. There is no way we can
23 guarantee the accuracy of any account of this trial, and you
24 must make your decision solely on the sworn testimony and
25 evidence that you hear during the trial and not from any

1 other source or information.

2 I'm concerned about your comfort, your ability to
3 see and hear the testimony and evidence so you can properly
4 do your job. I try to take a break about every hour and a
5 half. If you need a break before the time a break is taken,
6 please raise your right hand and let me know and I will take
7 a break as quickly after that as I can.

8 If you cannot hear or see something that you need
9 to hear or see, I'll try to anticipate that, but some of you
10 are much further away from the witness stand or where the
11 attorneys might be standing than I. So if you cannot hear
12 or see something that you need to hear or see as we go
13 through the trial, please do not hesitate. Raise your right
14 hand and let me know and I'll make sure that you are able to
15 hear and see, so you can properly do your job.

16 Now, if you wish to communicate with the court,
17 other than needing a break or the inability to see or hear,
18 please write the message down on the tablet provided for you
19 in the jury room. Give that to the bailiff and the bailiff
20 will bring it to me and I will either correspond in like
21 manner or I will bring you back out in the courtroom, as the
22 case may be. That's how we should communicate, you now
23 having been sworn as jurors in this case.

24 Now, I would tell you also that if you have
25 something to drink back in the jury room that you want to

1 bring back into the jury box, you are welcome to do that.
2 Counsel and myself will be sipping on water as we go through
3 the trial. If you have got coffee, water, Coca Cola,
4 whatever back there you want to bring in the jury box to sip
5 on as we go through the trial, you are welcome to do that.

6 Now, thank you for your kind attention, ladies and
7 gentlemen. We are to that part of the trial where counsel
8 will make their opening statements to you. I ask that you
9 listen attentively now as counsel address you in opening
10 statement.

11 Counsel, ready to proceed.

12 MR. SPRINGS: Thank you, Judge Alford.

13 If it pleases the court.

14 Mr. Foreman, ladies and gentlemen of the jury,
15 this trial is important to everyone. At the conclusion of
16 the trial, after you have heard all the evidence from this
17 witness stand, seen and heard all the evidence back in your
18 deliberation room, you will have no problem finding Jomar
19 Antavis Robinson guilty of the charge.

20 The charges are possession of cocaine base.
21 That's another name for crack cocaine - you have heard of
22 that - intending to distribute it. That means sell it,
23 trade for something or give away. Possession of cocaine
24 base, crack cocaine, intending to distribute it. And
25 intending to do that where you are standing, intending to do

1 that, meaning to do that.

2 The second charge is you are in proximity of a
3 public park. The legislature didn't want you to be near
4 public parks and schools. Drug dealing.

5 The third charge is resisting arrest.

6 The fourth charge is unlawful carrying of a
7 pistol. Out running around and have a pistol and not have a
8 permit to carry or conceal it.

9 And last charge is simple possession of some
10 marijuana. Those are the charges.

11 Now, let me tell you how all those charges came
12 about.

13 This charge was made by the narcotics units. It's
14 a drug case. The narcotics unit had received complaints,
15 numerous citizens complaints, from the folks over at Hall
16 Street Apartments - that's over here in York - that people
17 are out in the parking lot and up on the porches drug
18 dealing and carrying guns. Citizens wanted some help.

19 The narcotics unit the night of March 20th, last
20 year, 2008, set up surveillance around the parking lot of
21 this apartment complex and started watching it. One officer
22 sees a group of five fellows up on the porch and for a
23 period of about thirty minutes he sees about five cars come
24 in and stop and a guy in a black jacket would go from the
25 porch over to the car and meet up with the folks for a short

1 period of time and come back to the porch. And, or course,
2 you know, with a narcotics officers suspected he was seeing.
3 He suspected he was seeing curbside drug sales. So he
4 watches this go on and after about the fifth car that
5 officer decided to radio in and get some of his fellow
6 officers to stop that car and check it out. Someone in that
7 car ends up being arrested. And the officer who was
8 watching it saw that activity, passed on his information to
9 two other officers, including Lieutenant Ligon.

10 And Lieutenant Ligon and another officer named
11 Schettler, they get in their unmarked police car and they go
12 over to the Hall Street Apartments. They see the group of
13 five up on the porch and they drive up and get out and go up
14 to the fellows. And as they get up to these fellows and say
15 "hello, we're the police," they smell marijuana.

16 Officer Ligon is looking for the guy in the black
17 jacket. There are two guys in black jackets. He doesn't
18 know which guy it is, so he asked them both for some ID.
19 "Fellows, can I see some ID?" Those two men give him
20 identification. One man says, on his identification,
21 Laquaris Patton. And the other man is the defendant in this
22 case, Jomar Robinson. And as Ligon gets the ID and he's up
23 on the porch at 10:30 at night, on March 20th, he looks over
24 at Jomar Robinson and there is a pistol sticking out of his
25 right pocket. He sees the butt of a pistol sticking out,

1 which gives him some concern. He says "fellows, who has the
2 marijuana?" The fellows in the black jackets, the two black
3 jacket, Mr. Patton, and Mr. Robinson, who is the defendant
4 here, said "we don't know what you are talking about." And
5 at that point Lieutenant Ligon says "I'm going to have to
6 search you," because he's watching the butt of that pistol
7 in Jomar Robinson's jacket. And when says "I'm going to
8 have to search you," Jomar Robinson, the defendant here,
9 starts to back up. And that's when the Lieutenant Ligon
10 says oh, no, he's not going to back up with that gun. And
11 Ligon springs for the gun, goes for the gun and gets his
12 hand on the butt of the pistol. And as he's springing,
13 Jomar Robinson is going for the butt of the pistol and the
14 officer gets his hand there first. He's a little quicker on
15 the draw. He gets his hand on the butt of the pistol.
16 Jomar Robinson gets his hand on the top of officer's and
17 they go into a struggle.

18 The second officer standing there, Ligon yells out
19 "gun, gun," and the other officer takes out his gun and four
20 other men there. The other officer takes out his gun, says
21 "get down. Get down on the ground." Those guys get down.
22 Ligon is struggling with Jomar Robinson. He's got his hand
23 on the gun. They are struggling over the gun and Ligon
24 finally takes his jacket and peels his jacket off. He gets
25 it off of him with the gun. The jacket hits the ground and

1 Jomar Robinson takes off running and Ligon chases after him.
2 He yells back to Schettler "the jacket has the gun. The
3 jacket on the ground." He chases Jomar Robinson and catches
4 up to him and they fight some more. As Officer Ligon gets
5 the better of him and gets some handcuffs on him and brings
6 him back to the apartment there where they were, number [REDACTED]
7 Schettler has picked up the jacket and in it is a
8 9-millimeter automatic, the pistol, the gun, and some crack
9 cocaine and some marijuana. That's the case. That's the
10 case.

11 And after you have heard all the evidence in this
12 case, you won't have any problem being the judges of the
13 facts, because that's what you judge, behavior, facts, did
14 this man do this. You will take the rules this judge gives
15 you. And just like a good umpire, he takes the rules from
16 the Baseball Commission, you will apply it to the facts as
17 you saw it and judge his behavior. And, as I said, at the
18 conclusion of the case, after you have heard all the
19 evidence, you will find way beyond any reasonable doubt that
20 this man, Jomar Robinson, did these things. Thank you.

21 THE COURT: Counselor.

22 MR. MILLS: Judge Alford.

23 THE COURT: Yes, sir.

24 MR. MILLS: That didn't happen. What Mr. Springs
25 says Mr. Ligon says did not happen. That did not happen.

1 He's going to ask you -- and he's given a nice story about
2 what this man is going to say happened, and he will bring in
3 some other people who will say what they saw, but you are
4 going to have to make a determination of what can I rely on.
5 What kind of objective unmovable facts will the government
6 bring forward to prove their case? What will the government
7 show you that locks this down and let's them know they are
8 telling the truth?

9 Your job as jurors in this case is not to favor
10 the defendant and not to favor the law enforcement. Your
11 job is to listen to what these individuals say and use
12 common sense. Listen to the sequence events as the State
13 tells you. Listen to the stories they tell you and apply
14 common sense. Is that really the way it happened? Will
15 they come forward and produce unmovable facts, things that
16 you could rely on, independent of what somebody is telling
17 you, because I think in all our experience we know people
18 can say certain things. People come from various
19 perspectives. They have certain rose-colored glasses in
20 which they see everything, but you are not supposed to have
21 rose-colored glasses. You are supposed to see clearly at
22 the truth.

23 You know, when we pick up a paper and we read that
24 someone has been arrested, our natural instinct is to say
25 "wow, they got the guy." It's understandable. That's what

1 we do when we pick up the paper. The police come on TV and
2 they tell you that they have made an arrest and they have
3 got the guy. And we like to rely on that and it makes us
4 feel secure, but in some instances something will happen and
5 say, "well, that doesn't make sense. I'm not sure. I know
6 that person and that doesn't sound like them." And you ask
7 yourself "well, I want to see the proof. I want to see what
8 they have, because I'm just not sure." Well, that's the
9 oath that you have taken, that you want to see the proof.
10 You don't want to take what they say and go to the end with
11 no problem to convict. It's not a matter of this is what I
12 tell you this is what you do. This is a matter of taking
13 your time, looking at all the evidence - what's here and
14 what's not here - and making a determination.

15 I cannot impress upon you enough how sacred that
16 oath that you have taken. Jomar Robinson's liberty is at
17 stake. This is not a game that's played between a couple
18 lawyers with a judge refereeing a baseball game. This is as
19 solemn a duty as you are going to have, and I ask you each,
20 again, to just listen carefully to what you hear and judge
21 it against your own common sense and the unmovable facts
22 that either brought to you or not brought to you by the
23 State of South Carolina. Thank you.

24 THE COURT: The State would call its first
25 witness.

1 MR. SPRINGS: We call Lieutenant Ligon.

2 LIEUTENANT MIKE LIGON, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. SPRINGS:

5 Q. Officer, let me remind you to speak up nice and loud so
6 everyone can hear you.

7 Tell us your name, sir.

8 A. James M. Ligon.

9 Q. And what do you do for a living?

10 A. I'm a supervisor of the west side of the York County
11 Multi-Jurisdictional Drug Enforcement Unit.

12 Q. You are a narcotics police officer?

13 A. Yes, sir, I am.

14 Q. How long have you been a police officer?

15 A. Approximately thirteen years.

16 Q. Okay. And, lieutenant, were you involved in a
17 narcotics investigation on the night of March 20th of last
18 year that resulted in the arrest of a man named Jomar
19 Robinson?

20 A. Yes, sir, I was.

21 Q. And about what time that night did this case come to a
22 head?

23 A. Approximately 10:30.

24 Q. Okay. And take us back to the beginning. Why -- what
25 area -- what place did this happen? What was the name of

1 the place?

2 A. Hall Street Apartments.

3 Q. Is that in York?

4 A. Yes, sir, it is.

5 Q. Are all Hall Street Apartments in York County?

6 A. Yes, sir, they are.

7 Q. All right. Were there a number of you, narcotics
8 officers, out in the area of Hall Street Apartments that
9 night?

10 A. Yes, sir.

11 Q. What took you narcotics officers out there that night
12 in the first place? Why were you interested in Hall Street
13 Apartments?

14 A. Citizen complaints in reference to drugs being sold
15 there and individuals also in that area carrying weapons
16 upon their person.

17 Q. Okay. Were you trying to help the folks that lived out
18 there?

19 A. Yes, we were.

20 Q. And did one of your officers set up --

21 MR. MILLS: Objection, Your Honor. He's
22 indicating that he's helping the people out there, and we
23 have anonymous complaints, so I don't know specifically
24 where he's talking about at this point.

25 THE COURT: Noted. Overruled.

1 Proceed.

2 BY MR. SPRINGS:

3 Q. Did you have one of your officers conducting
4 surveillance?

5 A. Yes, sir, we did.

6 Q. That's a fancy word. What does surveillance mean in
7 plain English?

8 A. Surveillance is basically an individual getting in a
9 location which is advantageous to the area that we are
10 conducting observations, surveillance, watching, using
11 binoculars, things of that nature, to be able to watch that
12 area and watch individuals in that area and what their
13 activities are.

14 Q. Would surveillance be done from a hiding place?

15 A. Yes, sir, it would be.

16 Q. And did you have a primary surveillance officer?

17 A. Yes, sir, we did.

18 Q. And did you have other officers around the area?

19 A. Yes, sir, we did.

20 Q. Your primary surveillance officer, did he communicate
21 to you some things that he saw that had aroused his
22 suspicion?

23 A. Yes, sir, he did.

24 Q. And did you go over to Hall Street Apartments, go into
25 the parking lot yourself acting upon his suspicions and what

1 he had seen?

2 A. Yes, sir, we did.

3 Q. Now, did you have another officer with you?

4 A. Yes, sir, I did.

5 Q. And whereabouts? Which apartment did you want to go
6 talk to folks?

7 A. The location that was described to us, as far as an
8 individual in a black jacket and blue jeans coming out and
9 meeting with vehicles, the individual that was coming out
10 that was described to us was actually in the area and off
11 the porch of [REDACTED] Apartments.

12 Q. [REDACTED]?

13 A. Yes, sir.

14 Q. I'm showing you what's been marked as State's Exhibit
15 No. 1 for identification. Do you recognize what's shown
16 there?

17 A. Yes, sir, I do.

18 Q. And what is that?

19 A. That would be the Hall Street Apartments.

20 Q. Okay. Is it a true and accurate picture of what it
21 looks like in the daytime?

22 A. Yes, sir, it is.

23 Q. This case took place at night, I believe?

24 A. Yes, sir, it did.

25 MR. SPRINGS: Your Honor, we do offer into

1 evidence State Exhibit No. 1.

2 MR. MILLS: May I see it?

3 No objection.

4 THE COURT: Admitted without objection.

5 BY MR. SPRINGS:

6 Q. Officer, come on down, please.

7 (Witness off the witness stand)

8 BY MR. SPRINGS:

9 Q. And you say that they were going over to [REDACTED] [REDACTED]?

10 A. Yes, sir, I did.

11 Q. Point out to the jury where [REDACTED] [REDACTED] is located.

12 A. This area right here is [REDACTED] [REDACTED], this porch here.

13 Q. All right. And as you and -- what was the other
14 officer's name that was with you?

15 A. Officer Schettler.

16 Q. As you two got over there, approximately -- how many
17 people were out there in that area?

18 A. There were five people. There were five people
19 standing on this porch here.

20 Q. Men, women, or mixed, or what?

21 A. Men.

22 Q. Okay. And you said that you were looking for somebody
23 in a black jacket?

24 A. Yes, sir.

25 Q. And as you rolled up, did you see somebody in a black

1 jacket?

2 A. Yes, sir. Actually we saw two individuals wearing --
3 dressed almost identical.

4 Q. You were interested in someone in a black jacket, I
5 believe you said?

6 A. Yes.

7 Q. Did you know of the two which one that you really
8 wanted to focus on?

9 A. No, sir, I didn't.

10 Q. So you focused on who?

11 A. Both.

12 Q. All right. Why don't you stay right there. I'm going
13 to ask you some more questions in a minute.

14 Did you and Schettler get out of your car?

15 A. Yes, sir, we did.

16 Q. And did you have something identifying you as a police
17 officer?

18 A. Yes, sir, we did. Normally we wear plainclothes, which
19 would be like blue jeans, jackets, things of that nature,
20 almost dressed as yourselves there sitting in the jury box,
21 but we keep our guns in plain view, and we also take our
22 badges and we place them around our neck, as such, and wear
23 them to identify us as police officers. Not only do we also
24 identify ourselves, but normally when we get out on a
25 vehicle stop or we get out with a group of people on the

1 porch, we actually take our flashlight that we have. We had
2 a flashlight. Like this evening when it took place, we will
3 actually shine the light to where they can see the badge, so
4 they do know that we, in fact, are police. We are police
5 officers, other than just telling them we are police
6 officers.

7 Q. Did you tell these five men that you were police
8 officers?

9 A. Yes, sir, we did.

10 Q. And you had your badges out?

11 A. Yes, sir, we did.

12 Q. That's you and Schettler?

13 A. Yes, sir.

14 Q. All right. You can go ahead and retake your seat.

15 (Witness back on the witness stand)

16 BY MR. SPRINGS:

17 Q. I'm showing you what's been marked for identification
18 State's Exhibit 2 and 3. Do you recognize what's shown in
19 those pictures?

20 A. Yes, sir, I do.

21 Q. And what are shown in 2 and 3?

22 A. One is actually showing the entrance into Hall Street
23 Apartments, and the other one is basically an overview of
24 the area once again, just maybe a little bit larger pan-out
25 from the area where the incident occurred.

1 Q. All right. True and accurate pictures of Hall Street
2 Apartments in the daytime?

3 A. Yes, sir, it is.

4 Q. All right.

5 MR. SPRINGS: We would offer State's Exhibit 2 and
6 3 into evidence at this time, Your Honor.

7 MR. MILLS: No objection, Your Honor.

8 THE COURT: Admitted without objection.

9 BY MR. SPRINGS:

10 Q. Tell me about the lighting. As you and Schettler
11 approached the five men on the porch, what was the lighting
12 like?

13 A. The lighting, there is a street light there for the
14 parking lot, but we also had lights from the headlight of my
15 vehicle as we pulled in into the parking place, and we also
16 had our flashlights to illuminate the area and illuminate
17 the individuals that we were dealing with.

18 Q. Okay. Now, the five men, were they on the porch
19 itself?

20 A. Yes, sir, they were.

21 Q. Did you and Schettler approach it?

22 A. Yes, sir, we did.

23 Q. I think you said you identified yourself as a police
24 officer?

25 A. Yes, sir.

1 Q. And as you got up to the porch -- you are saying there
2 were five men. The two men in black jackets, where were
3 they?

4 Well, come on down again. Let's point out on the porch
5 where the two men in black jackets were and where the other
6 three fellows were, if you would, please.

7 (Witness off the witness stand)

8 A. The two in the black jackets were actually here, and
9 the other three were just kind of lined up around this area
10 here, kind of almost like in a horseshoe, where these two
11 were here.

12 BY MR. SPRINGS:

13 Q. And when you first walked up, where did you stand and
14 where did Schettler stand?

15 A. When we first walked up, I actually stood here on the
16 porch more towards the individual who was later identified
17 as Mr. Robinson on this side, and right in this area here
18 would have been where Mr. Patton was, and that's where
19 Officer Schettler was.

20 Q. Okay. Come on back and take a seat.

21 (Witness back on the witness stand)

22 BY MR. SPRINGS:

23 Q. As you get up to the two men in black jackets, did
24 anything catch your attention?

25 A. Yes, sir, you could smell a strong odor of what we call

1 green marijuana. It was green marijuana. You could smell
2 it.

3 Q. What's green marijuana?

4 A. It's marijuana that hadn't been smoked. It has a very
5 strong odor to it.

6 Q. What did you say? What's the first thing you said to
7 the two men in black jackets?

8 A. I actually asked them for their identification, which
9 they presented and handed to me, at which time as I was
10 looking at their identification, I advised them that I could
11 smell the odor, a strong odor, of green marijuana coming
12 from about the area where they were standing.

13 Q. All right. Slow down now. You talk too fast.

14 Did you grow up in the south?

15 A. Yes, sir, I did.

16 Q. Slow down.

17 Okay. They handed you identification, both of them?

18 A. Yes, sir.

19 Q. Tell us the names on the identification.

20 A. One was Laquaris Patton and the other was Jomar
21 Robinson.

22 Q. Okay. And they handed the ID to you?

23 A. Yes, sir, they did.

24 Q. So you are holding both ID's?

25 A. Yes, sir. In my right hand, yes, sir.

1 Q. And as you are looking at the identification, are you
2 watching Jomar Robinson and Laquaris Patton?

3 A. Yes, sir, I am.

4 Q. Anything about them that got your attention and gave
5 you any concern?

6 A. Yes, sir.

7 Q. What was that?

8 A. Mr. Robinson had the butt of a pistol hanging out of
9 his right jacket pocket.

10 Q. Now, if Mr. Robinson had had a valid South Carolina
11 concealed carry permit, would he have been required under
12 the law to have said something to you by that point, when
13 you were up there with him?

14 A. Yes, sir, he would have had to actually produced it at
15 the time that he produced his South Carolina identification,
16 produced it along with it, and also advised myself and
17 Officer Schettler that he had a concealed weapons permit and
18 advised us where on his person that weapon was.

19 Q. Did he do that?

20 A. No, sir, he didn't.

21 Q. You saw the butt of a pistol. Did you immediately act
22 on it, or just watch it and hold off at the time?

23 A. I took it in the known. I kept -- I just -- I just
24 kept my eyes on it pretty much the whole time while I was
25 speaking with him.

1 Q. Now, they hand you identification and you see the butt
2 of the pistol sticking out of his jacket pocket. Then what
3 did you say to these two men?

4 A. I advised them that we were going to conduct a Terry
5 frisk or a pat-down search of their person at that time.

6 Q. Okay. And when you say that, what did Mr. Robinson do?

7 A. Mr. Robinson then began to back away from me, like he
8 was going to back up into -- basically back up against the
9 wall of the building.

10 Q. Did that give you any concern?

11 A. Yes, sir, it did.

12 Q. Did that scare you?

13 A. Yes, sir, it did.

14 Q. As he starts to back up after you said that you were
15 going to pat him down or frisk him or search him, what did
16 you do?

17 A. I grabbed the weapon.

18 Q. Did you grab it slow and easy --

19 A. No, sir.

20 Q. -- or did you go at it quick?

21 A. I went at it very quick.

22 Q. Did you get your hand on it?

23 A. Yes, sir, I did.

24 Q. And as you are -- as you are lunging for the pistol,
25 what's Jomar Robinson doing?

1 A. He's also attempting to grab the pistol.

2 Q. Well, whose hand got to the gun first?

3 A. Mine did.

4 Q. And as your hand goes on the gun, where is his hand
5 going?

6 A. On top of mine.

7 Q. And then what happened?

8 A. A fight ensued. We began to fight.

9 Q. You kept your hand on the gun?

10 A. Yes, sir, I did.

11 Q. As you are fighting Mr. Robinson and you have got your
12 hand on the gun, what finally kind of brought that to a
13 head?

14 A. Well, I initially -- once I grabbed the gun, I actually
15 grabbed for my service weapon also, because in fear he did
16 have his hand on top of mine. If he was able to gain
17 control of that weapon, then a potential shooting would
18 occur at that time. I finally just got tired of basically
19 being hit by Mr. Robinson. When he finally did take his
20 hand off the gun, then he began to hit me, at which point I
21 took my hand off my weapon and I grabbed his jacket and I
22 ripped his jacket off of him.

23 Q. What kind of -- what was the jacket made of, what kind
24 of material?

25 A. Like nylon. It's one of those -- if you are familiar,

1 and some of the kids wear them these days, they're like the
2 black bomber jackets. They are orange on the inside and
3 they kind of short. Some kids wear them real oversized, but
4 they are made out of a nylon material, real kind of slick
5 feeling also, not only to the touch, but on the inside and
6 outside as well.

7 Q. Like a flight jacket?

8 A. Yes, sir.

9 Q. The pockets in those flight jackets, are they deep
10 pocket or just kind of a hand-warming pocket?

11 A. Kind of a hand-warming pocket.

12 Q. Did you get the jacket off?

13 A. Yes, sir, I did.

14 Q. And did you hold onto the jacket or did it go all the
15 way to the ground?

16 A. No, sir. When I initially went for the weapon, I
17 advised Officer Schettler that there was a gun, and I
18 repeated it several times, I'm sure, in the course of that
19 fight. It all went so fast.

20 Q. What are you yelling? Are you yelling or are you --

21 A. No, I'm yelling, yes, sir.

22 Q. What are you yelling to Schettler?

23 A. I'm yelling "gun. Gun." And I -- and I -- and I
24 yelled it probably several times at that point in time, but
25 I did have control of it.

1 Q. Okay.

2 A. We were fighting. I advised the subject he was under
3 arrest, you know.

4 Q. Now, don't use all that police talk. Who did you tell
5 was under arrest?

6 A. Mr. Robinson.

7 Q. Mr. Robinson?

8 A. Yes, sir.

9 Q. All right. Let's go back to the jacket. You peel the
10 jacket off?

11 A. Yes, sir.

12 Q. As the jacket comes off, did you hold onto it, or did
13 it go to the ground?

14 A. It went to the ground.

15 Q. And the jacket comes off of him, what does Jomar
16 Robinson do?

17 A. He flees the scene.

18 Q. All right. What did you do?

19 A. I ran after him.

20 Q. And where was the jacket as you ran after him?

21 A. It was on the ground directly behind Officer Schettler.

22 Q. All right. So you chased Mr. Robinson?

23 A. Yes, sir, I did.

24 MR. SPRINGS: Can we get the lights, Madam Clerk?

25 BY MR. SPRINGS:

LIEUTENANT MIKE LIGON - DIRECT BY MR. SPRINGS

157

1 Q. Come on down here, Lieutenant. Let's look at an aerial
2 photograph.

3 (Witness off the witness stand)

4 MR. MILLS: May I move over here?

5 THE COURT: Yes, sir.

6 MR. MILLS: Thank you.

7 BY MR. SPRINGS:

8 Q. Now, this is a pointer. Point out Hall Street
9 Apartments where --

10 A. This area here.

11 Q. -- this took place.

12 A. This area here would be the Hall Street Apartments.
13 This area here.

14 Q. Okay. And the particular apartment where the five men
15 were on the porch and you got into the struggle with Jomar
16 Robinson, where was that?

17 A. It would be right here.

18 Q. You said he ran and you chased him. Which way did he
19 run?

20 A. He actually ran here and ran out across the front of
21 the building. Came back in, jumped the fence here at a
22 church. This is a church. He jumped the fence. Jumped the
23 fence and we came back out here to the ditch area and I was
24 able to apprehend him here at the ditch.

25 Q. You caught up with him?

1 A. Yes, sir.

2 Q. Once you caught up with him, did he submit to being
3 placed under arrest and that was the end of it?

4 A. No, sir.

5 Q. Well, what happened when you caught up to him?

6 A. He fought again and he scratched me across the right
7 side of my face. Also had -- I don't know if the actual
8 black eye took place during the scuffle for the gun or when
9 we started fighting in the ditch.

10 Q. I understand.

11 (Witness on the witness stand)

12 BY MR. SPRINGS:

13 Q. Did you eventually get him under control?

14 A. Yes, sir, I did.

15 Q. Did you have to shoot him?

16 A. No, sir, I didn't.

17 Q. Did you have to spray him with pepper spray?

18 A. No, sir.

19 Q. Did you have to hit him with a blackjack?

20 A. No, sir.

21 Q. You just wrestled him?

22 A. Yes, sir.

23 Q. Okay. Did you handcuff him?

24 A. Yes, sir, I did.

25 Q. And you said he was beating on you. Were you seriously

LIEUTENANT MIKE LIGON - DIRECT BY MR. SPRINGS

159

1 injured?

2 A. No, sir, not seriously, but I did have cuts to the
3 right side of my face and some bruising just up underneath
4 my left eye.

5 Q. I'm showing you what's been marked for State's Exhibit
6 No. 5 and 6 for identification. Do you recognize those
7 pictures?

8 A. Yes, sir, I do.

9 Q. And who is that?

10 A. That would be me.

11 Q. And when were those taken?

12 A. Right after Mr. Robinson was arrested and we got back
13 to the office at the Moss Justice Center. Probably within
14 twenty to thirty minutes of the incident.

15 Q. Okay. Are they true and accurate pictures of your
16 face?

17 A. Yes, sir, they are.

18 Q. After the scuffle?

19 A. Yes, sir.

20 MR. SPRINGS: Your Honor, we do offer State's
21 Exhibit 5 and 6 into evidence.

22 MR. MILLS: Without objection, Your Honor.

23 THE COURT: Admitted without objection.

24 BY MR. SPRINGS:

25 Q. And I asked you if you were seriously injured. Was Mr.

1 Robinson seriously injured after this that?

2 A. No, sir, he wasn't.

3 Q. I'm showing you State's Exhibit 6, which doesn't want
4 to focus on.

5 Come on down and point out the scratches on your face,
6 if you would, please, sir.

7 (Witness off the witness stand)

8 BY MR. SPRINGS:

9 Q. Okay.

10 A. Here and here.

11 Q. All right. While you are there, let me show you
12 State's Exhibit 5. Point out any scratches that --

13 A. There and there.

14 Q. Okay. Go ahead and retake your seat, please.

15 (Witness back on the witness stand)

16 BY MR. SPRINGS:

17 Q. Did you bring Mr. Robinson back to [REDACTED] to
18 that area in the front there where you had first met him?

19 A. Yes, sir, I did.

20 Q. Now, the other guy in the black jacket, I think you
21 said his name was Patton?

22 A. Yes, sir.

23 Q. Did he get arrested that night?

24 A. Yes, sir, he did.

25 Q. Is his case concluded?

1 A. Yes, sir, it is.

2 Q. And the other three fellows, were they arrested?

3 A. No, sir.

4 Q. Were they let go?

5 A. Yes, sir, I believe they were.

6 Q. Very good.

7 Now, from the place where you came upon Jomar Robinson
8 there in front of [REDACTED], is there a public park
9 and/or playground within a half mile of that place?

10 A. Yes, sir, there is.

11 Q. What would be the name of that public park or
12 playground?

13 A. York Recreation Complex.

14 Q. And that's a public park?

15 A. Yes, sir, it is.

16 Q. And what sort of facilities, entertainment and
17 recreational facilities, do they have there?

18 A. It's a softball park, and they also have different
19 things there for the kids to play on. They had a walking
20 track also.

21 Q. Okay. What is the distance from where you came upon
22 Jomar Robinson and saw the pistol sticking out of his
23 pocket, from that place to the edge of the park, what's that
24 distance?

25 A. .3 miles, or three-tenths of a mile.

1 Q. Okay. I'm showing you what's been marked State's
2 Exhibit 8. Describe what that shows.

3 A. This is basically a road map of the inter-city limits
4 of York city.

5 Q. Does it depict the areas that we have been talking
6 about here today, Hall Street and the York Recreational
7 Complex?

8 A. Yes, sir, it does.

9 Q. Is it an accurate road map? Are you familiar with that
10 area?

11 A. Yes, sir.

12 MR. SPRINGS: Your Honor, we do offer State's
13 Exhibit 8 into evidence.

14 MR. MILLS: Without objection, Your Honor.

15 THE COURT: Admitted without objection.

16 BY MR. SPRINGS:

17 Q. Let me get you to come down one more time.

18 (Witness off the witness stand)

19 BY MR. SPRINGS:

20 Q. All right. Would you find Hall Street and where the
21 Hall Street Apartments are?

22 A. Hall Street Apartments are here.

23 Q. Okay.

24 A. The end of the property for Hall Street Apartments
25 stops roughly right in here, just before the corner of

1 Charlotte Street and where the church is that sits here on
2 the corner.

3 You would follow Hall Street across Charlotte, across
4 McClain Street, across Ross Cannon Street, and then Hall
5 Street actually turns into Second Street, and then you have
6 the park there. The property line to the park is there just
7 at the end of Second Street.

8 Q. That dark area there next to --

9 A. Yes.

10 Q. Right next to you, that's the park?

11 A. Yes, sir, it is.

12 Q. Give me the measurement again. You said --

13 A. Three-tenths of a mile. .3 miles.

14 Q. Less than a half mile?

15 A. Yes, less than a half mile.

16 Q. Very good. Very good.

17 Go ahead and retake your seat.

18 (Witness back on the witness stand)

19 MR. SPRINGS: May we approach, Your Honor?

20 THE COURT: Yes, sir.

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 MR. SPRINGS: Beg the court's indulgence, Your
24 Honor.

25 (Off the record)

1 (Back on the record)

2 (Photograph marked as State's Exhibit No. 12 for
3 identification)

4 BY MR. SPRINGS:

5 Q. Lieutenant, I'm showing you what's been marked State's
6 Exhibit 12. Do you recognize who is in that picture?

7 A. Yes, sir, I do.

8 Q. Who is that in that picture?

9 A. That's Jomar Robinson.

10 Q. Is that the man that had the pistol sticking out of his
11 pocket and fought you and you chased and so forth?

12 A. Yes, sir, it is.

13 Q. Is that a true and accurate picture of what he looked
14 like?

15 A. Yes, sir, it is.

16 Q. Did you get a pretty good look at him that night?

17 A. Yes, sir.

18 MR. SPRINGS: Your Honor, we do have offer into
19 evidence State's Exhibit 12.)

20 THE COURT: Show it to counsel, please.

21 MR. MILLS: No objection.

22 THE COURT: Admitted without objection.

23 BY MR. SPRINGS:

24 Q. Thank you, lieutenant.

25 If you would, answer any questions that the defense

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

165

1 attorney has for you.

2 CROSS EXAMINATION BY MR. MILLS:

3 Q. Officer Ligon?

4 A. Yes, sir.

5 Q. You smelled green marijuana?

6 A. Yes, sir.

7 MR. MILLS: Your Honor, I would like to be able to
8 open this up, please.

9 MR. SPRINGS: May we approach?

10 THE COURT: You may.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 MR. SPRINGS: Are you going to go ahead and offer
14 that in?

15 MR. MILLS: Your Honor, we will offer this into
16 evidence. This is what the State claims came off of Jomar
17 Robinson.

18 MR. SPRINGS: This is in evidence as a defense
19 exhibit.

20 THE COURT: Let the record reflect that -- and
21 this is -- I understand that this is alleged to be marijuana
22 that was seized. And --

23 Well, now, wait a minute. What do you want to
24 mark? Do you want to mark the whole bag, or just that
25 little bag? What?

1 MR. MILLS: Whichever.

2 MR. SPRINGS: The whole bag, please, defense
3 exhibit whatever.

4 THE COURT: And this -- for the record, this is
5 alleged to be marijuana, and the defense is moving to admit
6 this into evidence without establishing any kind of chain of
7 custody, etcetera, and they are moving to admit it into
8 evidence, and the court is granting their motion to admit
9 it. The State is not opposed.

10 MR. SPRINGS: No objection.

11 (Drugs marked and admitted into evidence as
12 Defendant's Exhibit No. 1)

13 BY MR. MILLS:

14 Q. Now, I believe when you claimed that you got this pot
15 out of a jacket --

16 A. Marijuana.

17 Q. -- it's in a little baggy that was tied up tight,
18 right?

19 A. Yes, sir.

20 Q. Okay. And that's that same --

21 A. Actually I didn't recover the marijuana. Officer
22 Schettler did.

23 Q. Okay. This little baggy, right? In this little thing
24 right? Is that true?

25 A. Yes, sir.

1 Q. All right. And so -- and this is a plastic baggy,
2 right, it's in right now, correct?

3 A. Yes, sir.

4 Q. All right. And it was in his pocket, right? In Jomar
5 Robinson's pocket you claim, right?

6 A. I don't claim --

7 MR. SPRINGS: The term claim, that's
8 argumentative. That's the testimony.

9 BY MR. MILLS:

10 Q. Well, what you say?

11 A. I don't claim. My -- once again, sir, I did not locate
12 the marijuana in Mr. Robinson's jacket. I located a pistol.

13 Q. Sure. Can you smell --

14 A. I can smell the strong odor of marijuana.

15 Q. Can you smell it now?

16 A. No, sir.

17 Q. Really?

18 A. No, sir.

19 Q. How about now?

20 A. No, sir. What you have to do is you have to actually
21 probably let that odor sit in your pocket the way Mr.
22 Robinson did, which probably sat in his pocket, or even Mr.
23 Patton's packet for --

24 MR. MILLS: Your Honor, I'm not even asking a
25 question of this witness. He's just going off.

1 THE COURT: He's answering. He's answering your
2 question, sir.

3 MR. MILLS: I asked him if he could smell it.

4 THE COURT: Yes, sir, and he said he could not
5 smell it like it was, but he --

6 MR. MILLS: Then he's talking about what Mr.
7 Jomar --

8 BY MR. MILLS:

9 Q. Okay, let me ask you that. How long you know it's been
10 in Jomar's pocket?

11 A. I don't know.

12 Q. So it's just a guess you are making right now, isn't
13 it?

14 A. Yes, sir.

15 Q. So you have no basis to make that statement, other than
16 just trying to convince them about something that you had no
17 idea about?

18 A. Actually I do, sir.

19 Q. How do you know how long it's been in there?

20 A. Actually when you train a drug dog -- we can go back.
21 This would be the same principle as training a dog, sir.
22 When you place out marijuana, or cocaine, or
23 methamphetamine, or any scent article thereof, you give that
24 article itself a grace period in order to -- for that scent
25 to get in the air, for that scent to soak in or absorb into

1 a rag, or anything of that nature.

2 Subsequently -- or essentially that's the same thing
3 that people who carry marijuana or drugs around in their
4 pocket. If they have them in there for some period of time,
5 it's going to be just like that scented article or marijuana
6 that you put out for a dog. It's going to sit there. It's
7 going to gain a scent. And eventually that scent is going
8 to -- it's going to be a very strong aroma.

9 Not only to further that, you have marijuana that's
10 probably been sitting in evidence for well over -- for
11 almost a year now. And as time goes on, not only does the
12 marijuana itself start to break down and deteriorate, but
13 that smell also lessens too.

14 Q. Even when it's in a sealed bag?

15 A. Yes, sir.

16 Q. In a sealed evidence bag?

17 A. Yes, sir.

18 Q. Now, you talked about the dogs and all that training
19 and all that they have. And if I smoked a joint and I got
20 out and I put my hand on my car, the dog could pick it up on
21 the handle, couldn't he?

22 A. Yes, sir, he could.

23 Q. If the smell got on my hands, right?

24 A. Yes, sir, he could.

25 Q. And you could -- now, a dog has like well over 250

1 times the olfactories, the smell capacity of a human, right?

2 A. Yes, sir, he does.

3 Q. And they are trained, right?

4 A. Yes, sir.

5 Q. And for a very specific purpose?

6 A. Yes, sir.

7 Q. You are not trained like that, are you?

8 A. Actually I'm trained as far as in drug identification
9 and also smells of drugs, yes, sir. I -- essentially I can
10 be trained. Not to where I go up and sniff a box and
11 scratch it, but, yes, sir, I'm trained.

12 Q. But there is no records showing the veracity as to how
13 many times you successfully hit on drugs, is there?

14 A. I guess that could go back to the arrests that I have
15 made, as far as smelling the strong odor of marijuana in
16 vehicles.

17 Q. There is no record, is there, sir?

18 A. No, sir.

19 Q. Is there any document anywhere that could show your
20 veracity and your ability to smell a bag of pot in
21 somebody's jacket from three feet away, when it's in a
22 plastic bag tied up?

23 A. Yes, sir, you asked me if there was any record. I
24 referred to that record being me stopping vehicles and
25 smelling a strong odor of marijuana coming from the cars and

1 also searching those vehicles and locating marijuana in that
2 car. So I guess -- I guess in your sense of saying record
3 or tests, I guess that could -- that could --

4 Q. I'm talking about training, the kind of things when you
5 get a dog certified. You are not certified to sniff out
6 marijuana, are you?

7 A. No, sir, I'm not.

8 Q. I didn't think so.

9 A. Okay.

10 Q. You talked about a report. In fact, you wrote out a
11 report in this case, didn't you? A summary?

12 A. A summary, yes, sir.

13 Q. You did.

14 And in that summary you are trained to write out the
15 important facts about a case, right?

16 A. Yes, sir.

17 Q. And you want to put the most significant facts in
18 there? You don't want to leave anything important out, do
19 you?

20 A. No, sir, you try not to.

21 Q. And you write it out, you read it over --

22 A. Yes.

23 Q. -- and then you type it up, is that correct, sir?

24 A. Actually I type it as I'm --

25 Q. Okay.

1 A. Yes, sir.

2 Q. You edit it as you go?

3 A. Yes, sir.

4 Q. Now, originally you wrote in your report that you heard
5 that information that one individual was going out to a car,
6 correct?

7 A. Yes, sir.

8 Q. And that individual that y'all identified was Laquaris
9 Patton, wasn't it?

10 A. Yes, sir.

11 Q. Okay. So this black jacket -- you didn't say anything
12 about black jacket anywhere in here, did you?

13 A. No, sir.

14 Q. Anywhere in your incident report, you didn't say
15 anything about a black jacket?

16 A. No, sir. No, sir, I don't recall. No, sir.

17 Q. Your report said you saw one individual going out to
18 the cars that was later identified as Laquaris Patton,
19 correct?

20 A. Yes.

21 Q. So there is no information about Jomar Robinson going
22 out to any car?

23 A. No, sir, there is not.

24 Q. Okay. Now, Mr. Springs indicated, I believe it was in
25 Exhibit 1 --

1 Could I ask you to come down, Officer Ligon?

2 A. Yes, sir.

3 Q. Thank you.

4 (Witness off the witness stand)

5 BY MR. MILLS:

6 Q. Now, I think you indicated that you were over -- you
7 came up and you confronted these individuals right here, is
8 that correct?

9 A. Yes, sir.

10 Q. And you talked about running. And you ran through
11 here. Is that where he took off through?

12 A. No, sir. He didn't run until after I had grabbed the
13 weapon and the fight ensued and we wound out here in the
14 yard.

15 Right in here is where I actually ripped the jacket
16 from him and he took off from me.

17 Q. So through that post, is that it?

18 A. Yes, sir, through the post here. The fight ensued and
19 then the jacket gets ripped off here.

20 Q. You can't really quite see it to well.

21 A. Bush.

22 Q. There is a big old bush there? Is that what it is?

23 A. No, actually it's not that big of a bush.

24 Q. It's a rose bush, isn't it?

25 A. I couldn't tell you.

1 Q. You couldn't?

2 A. No, sir, I couldn't tell you whether it was a bush or
3 not.

4 (Witness back on the witness stand)

5 A. I mean a rose bush, that is, sir.

6 BY MR. MILLS:

7 Q. Not a big old spinally rose bush? You don't know that?

8 A. No, sir, I don't.

9 Q. Okay. Do you dispute that?

10 A. No, sir. I wouldn't dispute it, no, sir.

11 Q. Now, you said somebody was observing cars going in and
12 out through binoculars in the woods, right?

13 A. Yes, sir.

14 Q. So they had a clear vision about what was going on and
15 could see?

16 A. Yes, sir, the location therefrom to probably the
17 doorway there, would may be thirty-five yards.

18 Q. And you had -- and this was a planned operation, wasn't
19 it?

20 A. Yes, sir.

21 Q. You got a lot of people out there?

22 A. Yes, sir.

23 Q. You had time to get the equipment that you needed to
24 get together?

25 A. Yes, sir.

1 Q. Set up proper surveillance, right?

2 A. Yes, sir.

3 Q. And included in that you could have gotten a camera and
4 you could have videoed what you were watching, correct?

5 A. Yes and no, based on -- depending on the area and how
6 close the officer was in that area. Getting any back light
7 or anything like that off of a camcorder could pose a
8 potential threat or a harm to that officer in that area, in
9 that particular area.

10 Q. Some back light? What, it might reflect off the lens
11 or something?

12 A. No, sir. Like camcorders, you know how they got the
13 little eyepiece and they got the screen that flips up and
14 stuff, yes, sir.

15 Q. You can put a little towel over that?

16 A. You probably could.

17 Q. And then we could look at whatever you are saying you
18 saw. The jury could see it too, right?

19 A. Yes, sir, they could.

20 Q. But we can't. We just have to base it on what somebody
21 says they said, right?

22 A. Yes, sir.

23 Q. Now, I would like to talk a little bit about this
24 confrontation with Mr. Robinson that you described.

25 I'm sorry, if you could come down for me, please. I

1 would like to just see if I can understand.

2 (Witness off the witness stand)

3 BY MR. MILLS:

4 Q. You indicated that the -- well, take that back. I
5 jumped ahead of myself. I'm sorry.

6 (Witness back on the witness stand)

7 BY MR. MILLS:

8 Q. The way I heard you describe it, you and Officer
9 Schettler pulled up, correct?

10 A. Yes, sir.

11 Q. And did you come in there racing pulled up, or just
12 come in just like a normal --

13 A. Very normal, very low key, what you would consider low
14 key, just like as if we were parking to go inside of an
15 apartment.

16 Q. Just like you or any other resident coming in and out
17 of that parking lot, correct?

18 A. Yes, sir.

19 Q. What were you driving?

20 A. At that time I was driving a gray Chevy Trailblazer.

21 Q. Okay. And that would have darked-out windows
22 everywhere, right?

23 A. Yes, sir, it would.

24 Q. And so as you were walking -- coming in with this, just
25 casually get out of the car, is that right?

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

177

1 A. Yes, sir.

2 Q. No big urgency, correct?

3 A. No, sir.

4 Q. And you are identifying yourself as police officers.

5 You have got your badge up front, correct?

6 A. Yes, sir.

7 Q. And you have got this light shining in the area and all
8 that kind of stuff, right?

9 A. Yes, sir.

10 Q. Okay. So they could clearly see you coming?

11 A. Yes, sir.

12 Q. And they could clearly tell you you were police?

13 A. Yes, sir.

14 Q. All right. And if they wanted to leave at that point,
15 they could just leave?

16 A. Yes, sir.

17 Q. Now, you indicated that you had this smell of this
18 green marijuana that wasn't burning, but you were smelling
19 so strongly and that you wanted to search him, correct? You
20 wanted to search Mr. Robinson?

21 A. Yes, sir, I advised I was going to do a pat-down,
22 because that was -- I smelled the green odor of marijuana.
23 After receiving their identification from them, I could
24 still smell the green odor of marijuana, but I also noted
25 the weapon in Mr. Robinson's jacket. That was more

1 concerning to me at that point in time than the marijuana.

2 Q. Okay. Well, I know there were five other people --
3 there were four people out there, right?

4 A. Yes.

5 Q. I believe when we talked previously, you told me that
6 you could tell that that odor of marijuana was emanating
7 from either Mr. Patton or Mr. Robinson, but not the other
8 three?

9 A. Yes, sir. They were standing off to the side, Mr.
10 Patton, Mr. Robinson. If you pulled the picture back up,
11 they were more towards the door of [REDACTED], and pretty much the
12 other three somewhat I guess -- I guess if you want to say
13 they separated themselves from those two.

14 Q. Okay. Well, that's the porch size, right?

15 A. Yes, sir.

16 Q. Everybody is still on that porch, right?

17 A. Yes, sir, you can see there is two people sitting in
18 chairs there as it is and some kind of little car or
19 something on the porch there.

20 Q. But everybody is still on the porch right there?

21 A. Yes, sir. Yes, sir.

22 Q. You can distinguish, because your sense of smell is
23 good enough that you can distinguish where it's coming from
24 amongst those five people?

25 A. Yes, sir.

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

179

1 Q. Now, you walked up there. They had an opportunity to
2 see you, but, of course, Mr. Robinson is still letting this
3 gun just hang out open, right?

4 A. Yes, sir.

5 Q. He is not doing anything to conceal it, just letting it
6 hang out there. The police are coming up and it's not a
7 problem. And you indicated that when you attempted to
8 search him, he stepped back, and at that point he felt you
9 needed to go and secure that gun?

10 A. Yes, sir.

11 Q. Is that right?

12 A. Yes, sir.

13 Q. Up to that point you didn't feel the need to go ahead
14 and secure that gun to protect you and your officer?

15 A. First of all, like we spoke about earlier, action is
16 quicker than reaction. If I would have made it known, or
17 even at that time with that circumstance that I knew that
18 gun was there or hinted to that in anyway, shape or form, it
19 could have -- Mr. Robinson could have went for it right then
20 and there, when I wasn't actually in a position.

21 As I talked to Mr. Robinson, I slowly positioned myself
22 in a way to where I could get that gun, basically, because
23 at the time we was initially talking and I initially seen
24 the gun, I wasn't in an advantageous position to deal with
25 that and my action to that weapon might have not been as

1 quick as his reaction, but generally action is quicker than
2 reaction.

3 Q. Okay: So like when you are up close to him and he is
4 handing you his ID, you are not in the position to grab that
5 gun in his right hand -- I mean, right there when you are
6 taking that position, you are right there? While he's
7 distracted with the things, you couldn't get it quickly at
8 that point?

9 A. May I come down?

10 Q. Sure, please.

11 (Witness off the witness stand)

12 A. When I positioned myself with Mr. Robinson, I asked him
13 for his ID. We are about this far apart. This is the
14 normal -- this is the normal distance between me and you.
15 That way if he does something, if he comes at me, I have
16 somewhat time to react.

17 BY MR. MILLS:

18 Q. And you have seen the gun at this point?

19 A. No, sir, not at this point.

20 Q. Okay.

21 A. I get the -- I get the ID from him. I have got my
22 light and I'm looking at it. I'm scanning. I kind of step
23 over to the left. At that time I seen the gun in Mr.
24 Robinson's right pocket and then I start talking to him. As
25 I'm talking to him, I'm slowly easing towards Mr. Robinson,

1 which at this time --

2 Q. Were you looking at him like you are doing me now?

3 A. No, sir, I'm watching the gun.

4 Q. So you are talking to him, but you were looking at the
5 gun?

6 A. Yes, sir, he thinks I'm looking at the ID, but I'm
7 watching the gun.

8 Q. But he thinks you -- he can't see your eyes looking at
9 the gun from where he is?

10 A. I don't know. I wasn't looking at his eyes. I
11 couldn't tell you.

12 Q. Well, I just thought you just told me "he thought I was
13 looking at the ID"?

14 A. I said I'm sure -- I'm sure he -- I can only assume
15 that he thought I was looking at the ID.

16 Q. Okay.

17 A. I apologize.

18 Q. Okay.

19 A. So I'm sitting here, I'm watching the gun, I'm looking
20 at the ID, I'm watching the gun, looking at the ID, at which
21 time I said, well -- I took the ID, I stuck the ID in my
22 back pocket. I said "gentlemen," I said "I'm going to do a
23 Terry frisk. I'm going to pat y'all down for your weapons,"
24 at which time he went to back up. When he started to back
25 up, that's when I was close enough to grab the gun.

1 Q. So you told him that you were going to search him so
2 you wouldn't tip him off?

3 A. No, sir. I was already close enough to where I could
4 grab the gun at that point in time.

5 Q. Okay.

6 A. If I would have been back here and said "well, I'm
7 going to pat y'all down for weapons," and if he would have
8 went to take that step back, that would have meant he would
9 have been that much further from me to try and reach out and
10 grab that gun, versus me being here to reach out and grab
11 the gun.

12 Q. Oh, I understand, but I thought what you were just
13 saying here in front of the jury a moment ago were right
14 here, you have taken the ID, you were watching the gun --

15 A. Yes, sir.

16 Q. -- and then you had the opportunity right there at that
17 point to get on him.

18 So why are you telling him you are going to search him
19 and alert him to the fact that you are now going for the
20 gun, instead of just going for the gun?

21 A. I don't know.. I can't tell you.

22 Q. All right.

23 (Witness back on the witness stand)

24 BY MR. MILLS:

25 Q. Well -- sorry, I got you down too soon.

1 (Witness off the witness stand)

2 BY MR. MILLS:

3 Q. You said, regardless, though, you grabbed the gun,
4 correct?

5 A. Yes, sir.

6 Q. And it was in his right pocket?

7 A. Yes, sir.

8 Q. And you grabbed it with your right hand, is that
9 correct?

10 A. My left hand.

11 Q. Left hand, excuse me, I apologize.

12 He got his hand on top of yours?

13 A. Yes, sir.

14 Q. And then you said that you were concerned about your
15 weapon, you didn't want him to have a chance to grab that?

16 A. Yes, sir.

17 Q. So essentially you were in a tough position at this
18 point?

19 A. Oh, yes, sir.

20 Q. Okay. Because you have got a hand on his gun and you
21 are trying to protect your gun and he's free to just go
22 after you?

23 A. Yes, sir, he was.

24 Q. And that's what he does, right?

25 A. Yes, sir, he does.

1 Q. He starts whaling on you?

2 A. Yes, sir.

3 Q. He starts hitting you pretty bad?

4 A. He hit me in the chest. He's hitting me -- I mean, he
5 was just -- he was -- he was trying to get away at that
6 point, I believe.

7 Q. Okay. Now, was he fighting with you and hitting you,
8 like you said on direct, or was he trying to get away at
9 that time?

10 A. No, he was fighting me, but then when I grabbed his
11 jacket, at that point in time he was trying to get away.
12 When he took his hand -- when he took his hand off -- and it
13 happened all so quick. I mean, we can -- I guess we can sit
14 here and scuffle in this courtroom and you tell me --

15 Q. I prefer not to.

16 A. -- exactly once you -- once you -- once you realize
17 what's going on and taking place. I mean, it's a split
18 second, a split second reaction, and I couldn't -- I
19 couldn't begin to tell you --

20 Q. Sure, but you have got him there --

21 A. I got him here.

22 Q. -- and you are saying --

23 A. He starts --

24 Q. He's like --

25 A. When he takes that hand off that gun --

1 Q. And he's attacking you?

2 A. -- and he grabs, I grab him.

3 Q. Okay.

4 A. -- and we go. And at that point he realizes I think
5 it's time for him to go.

6 Q. Okay.

7 A. He comes out of the jacket. I rip his jacket off.

8 Q. He comes out of the jacket?

9 A. Yes.

10 Q. Okay.

11 A. But that's kind of -- like I said --

12 Q. It's not a form-fitting jacket?

13 A. It's not a form-fitting sports coat.

14 Q. Let's do this.

15 It's not quite a bomber jacket, but is this kind of
16 what we are talking about is these side pockets?

17 A. Yes.

18 Q. And this kind of thing?

19 A. Slick, yes, sir.

20 Q. And this kind --

21 Now, your headlights were on him, right?

22 A. Uh-huh.

23 Q. Okay. And you told me as you walked up it was a black
24 jacket?

25 A. Yes, sir.

- 1 Q. Is there any doubt in your mind about that?
- 2 A. No, sir, there's not any doubt in my mind about that.
- 3 Q. You are sure?
- 4 A. Yes, sir.
- 5 Q. Black jacket?
- 6 A. Yes, sir.
- 7 Q. No question?
- 8 A. No question.
- 9 Q. All right. And so he's got a pistol hanging -- just
- 10 hanging out?
- 11 A. Yes, sir.
- 12 Q. All right. And you go for that?
- 13 A. Right.
- 14 Q. And you got this one. He's hitting on you?
- 15 A. Right.
- 16 Q. And you grab it and you go. And he's hitting on you?
- 17 A. Right.
- 18 Q. Fair enough.
- 19 Please take your seat.
- 20 (Witness back on the witness stand)
- 21 BY MR. MILLS:
- 22 Q. What happened to your flashlight?
- 23 A. I dropped it.
- 24 Q. Oh, okay. When did you decide to drop it?
- 25 A. Sir?

1 Q. When did you decide to drop it?

2 A. When I --

3 Q. I haven't heard that.

4 A. When I went for the gun.

5 Q. Okay. Now, I think you told me that he went out --

6 I see that you have got a small scratch here. Is that
7 just something permanent that you have?

8 A. No, sir, that's rosacea. I have medicine I have to
9 take.

10 Q. But that's not from Mr. Robinson?

11 A. No, sir, it isn't.

12 Q. The only two scratches we are talking about are right
13 here, right?

14 A. Yes, sir.

15 Q. A little abrasion that goes through here?

16 A. Sir?

17 Q. Right through here, right?

18 A. Yes, sir.

19 Q. And you are telling us -- also when you ran him down,
20 you had a big struggle with him and you fought with him
21 then, too, right?

22 A. Yes, sir, I did.

23 Q. And you have got no bruising on your face, he's got no
24 bruising on his face, and you have got one scratch where he
25 ran by the rose bush, right?

1 A. No, sir.

2 Q. You have more than one scratch?

3 A. I have the scratches on my face, but I don't believe
4 they were ensued by no rose bush. We never got up in a rose
5 bush fighting.

6 Q. Right, but you chased him, as you just testified to
7 this jury, inside that post next to that big bush, which --

8 A. There was no chase. We went off the porch. We went
9 off. And when we went off --

10 Q. Fell off the porch to that little spot?

11 A. No, sir, we didn't fall off the porch. When we
12 struggled, we went off the porch.

13 Q. Okay.

14 A. Just pretty much how me and you cut across the room
15 there.

16 Q. A little distance?

17 A. It's pretty much -- that little dance we did, that's
18 pretty much the little dance that me and him did off the
19 porch, and basically he was in between me and -- if you say
20 that's a rose bush, he was in between me and that bush, so I
21 don't possibly see how I would have been cut by it.

22 Q. You can't possibly see how you got cut, scraped on the
23 right side of your face by bush branches as you go there and
24 struggling with him?

25 A. If that's the case, it would have been on the left

LIEUTENANT MIKE LIGON - CROSS BY MR. MILLS

189

1 side, correct, sir?

2 Q. No.

3 Correct me if I'm wrong, this is where you are. That's
4 the way you are going.

5 A. This is --

6 Q. You are facing this way.

7 A. That's the wall. There is the bush behind you, right?

8 Q. Here is the wall.

9 A. And then we fight and we go off the porch.

10 Q. No, you just said you went through that post. Now you
11 are telling me a different direction.

12 A. The post and the wall is this way, sir. The wall is
13 here. The post is here.

14 Q. Right. The bush is here.

15 A. And we are here.

16 Q. How do you go through there?

17 A. The bush is here behind you --

18 Q. Uh-huh.

19 A. -- to your right. So if we go off the porch and we
20 wind up here --

21 Q. Uh-huh.

22 A. -- how would I hit the rose bush on the right?

23 Q. Well, they heard it the first time that you said it.
24 They can decide.

25 Now, I think Officer Schettler will talk --

1 The jacket was left there and y'all came back there and
2 you had no further searching of the jacket? You had nothing
3 to do with it at that point?

4 A. No, sir, I didn't.

5 Q. One moment, please, Officer Ligon.

6 A. Yes.

7 (Off the record)

8 (Back on the record)

9 MR. MILLS: Thank you, Officer Ligon.

10 MR. SPRINGS: Just one question.

11 THE COURT: One minute, sir.

12 REDIRECT EXAMINATION BY MR. SPRINGS:

13 Q. The defense attorney was asking you about the odor of
14 the marijuana and it being around the defendant Jomar
15 Robinson and Mr. Patton, but you didn't know which one had
16 it?

17 A. No, sir, I didn't.

18 Q. Now, as you go to chase Jomar Robinson, are you aware
19 of whether or not the four men that remained with Schettler,
20 if Patton stayed with him the whole time, or got away for
21 awhile?

22 A. Not until after --

23 MR. MILLS: Objection.

24 A. -- everything had taken place.

25 THE COURT: Wait a minute.

1 MR. MILLS: Objection, unless he's basing it on
2 his present sense impression at the time as opposed to
3 something that he learned subsequently.

4 THE COURT: Well, I think he can only testify as
5 to what he knows or observed. I don't think that he can
6 testify to what somebody else said.

7 MR. SPRINGS: We will take that up with Officer
8 Schettler in the morning.

9 BY MR. SPRINGS:

10 Q. Thank you.

11 MR. SPRINGS: Nothing further.

12 THE COURT: Nothing further?

13 MR. MILLS: No.

14 THE COURT: Thank you, sir. You may stand down.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, it's, by the courtroom clock, a couple minutes
18 after six. We are going to go ahead and recess for the
19 evening. We ran a little longer than normal, but we wanted
20 to finish with this particular witness. I think he had
21 somewhere else to be in the morning and we tried to finished
22 with him. We are going to go ahead and recess for the
23 evening.

24 I want to remind you on the overnight recess not
25 to discuss the case among yourselves or with anyone else,

1 including family or friends. If there should be any media
2 coverage of the trial -- and I'm going to include in that
3 the Internet. I keep, you know, having to remind myself,
4 I'm not much of an Internet person, but I have to remind
5 myself that a lot of people are, so please don't go on the
6 Internet to try to get any information about this case on
7 there as well.

8 Please have a pleasant night tonight. I'm going
9 to ask you to be back in the jury room ready to go in the
10 morning at 9:30. At 9:30. So please have a pleasant night
11 tonight and be back in the jury room at 9:30. Thank you.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Is there any matter we need to take up
15 out of the presence of the jury from either side?

16 MR. SPRINGS: I just wonder if our juror in the
17 red sweatshirt knows how to get hooked up with the sheriff's
18 department. I guess he will figure it out.

19 THE COURT: We told him downstairs, but hopefully
20 he will know to call in. We told him he to call in in
21 advance. We gave him the number to call, so hopefully he
22 will.

23 All right. Anything further?

24 MR. MILLS: Not from defense, Your Honor.

25 THE COURT: Okay. Then we will recess for the

1 evening and try to get started at 9:30. I'll be here before
2 that if something comes up that you need to talk to me. We
3 will try to get started with the trial at 9:30. Thank you.

4 MR. SPRINGS: Your Honor, may I prepare a bench
5 warrant for Jomar Robinson?

6 THE COURT: You may, yes, sir.

7 (Whereupon, proceedings were adjourned to February
8 10, 2009)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS
3

4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2008-GS-46-3141
6 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142
7 DEFENDANT.) 2008-GS-46-3143
8) 2008-GS-46-3144
9) 2008-GS-46-3145
10) FEBRUARY 10, 2009
11) YORK, SOUTH CAROLINA
12

13 (VOLUME II)
14

15 B E F O R E:

16 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
17

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

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20 ATTORNEY FOR THE STATE
21

22 J. CHRISTOPHER MILLS, ESQUIRE
23 JAMES MORTON, ESQUIRE
24 ATTORNEYS FOR THE DEFENDANT
25

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

(FEBRUARY 9, 2009)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 23

(PRETRIAL HEARING)

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 62

CROSS EXAMINATION BY MR. MILLS 72

REDIRECT EXAMINATION BY MR. SPRINGS 91

RECROSS EXAMINATION BY MR. MILLS 92

OFFICER BRIAN SCHETTLER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 93

CROSS EXAMINATION BY MR. MILLS 95

(JURY TRIAL)

JURY SWORN -- PAGE 126

OPENING STATEMENT BY MR. SPRINGS -- PAGE 135

OPENING STATEMENT BY MR. MILLS -- PAGE 139

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 142

CROSS EXAMINATION BY MR. MILLS 165

REDIRECT EXAMINATION BY MR. SPRINGS 190

INDEX

(FEBRUARY 10, 2009)

WITNESSES	PAGE
SERGEANT RAYFORD ERVIN, JR (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	202
CROSS EXAMINATION BY MR. MILLS	208
REDIRECT EXAMINATION BY MR. SPRINGS	215
OFFICER BRIAN SCHETTLER (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	216
CROSS EXAMINATION BY MR. MILLS	232
REDIRECT EXAMINATION BY MR. SPRINGS	244
BARBARA TRAYLOR (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	246
CROSS EXAMINATION BY MR. MILLS	249
DEE ANNE JOHNSON (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	253
CROSS EXAMINATION BY MR. MILLS	263
REDIRECT EXAMINATION BY MR. SPRINGS	265
COMMANDER MARVIN BROWN (SW)	
DIRECT EXAMINATION BY MR. SPRINGS	269
VOIR DIRE EXAMINATION BY MR. MILLS	273
CONT'D DIRECT EXAMINATION BY MR. SPRINGS	281
CROSS EXAMINATION BY MR. MILLS	284
STATE RESTS -- PAGE 285	

INDEX

(FEBRUARY 10, 2009)

WITNESSES

PAGE

ODARIUS WILLIAMS (DW)

DIRECT EXAMINATION BY MR. MORTON

286

CROSS EXAMINATION BY MR. SPRINGS

299

REDIRECT EXAMINATION BY MR. MORTON

313

DEFENSE RESTS -- PAGE 316

CLOSING ARGUMENT BY MR. MILLS -- PAGE 326

FINAL ARGUMENT BY MR. SPRINGS -- PAGE 337

COURT'S JURY INSTRUCTIONS -- PAGE 346

JURY VERDICT -- PAGE 379

INDEX

(FEBRUARY 11, 2009)

WITNESSES

PAGE

SEALED SENTENCE RENDERED -- PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		146
4	S-2	PHOTOGRAPH		149
5	S-3	PHOTOGRAPH		149
6	S-4	PHOTOGRAPH (WITHDRAWN)	13	
7	S-5	PHOTOGRAPH		159
8	S-6	PHOTOGRAPH		159
9	S-7	PHOTOGRAPH (WITHDRAWN)	14	
10	S-8	MAP		162
11	S-9	GUN		228
12	S-10	DRUGS (REMARKED AS DEFT'S EX. # 1)		
13	S-11	DRUGS		261
14	S-12	PHOTOGRAPH		164
15	S-13	DRUG REPORT	258	
16	S-14	DRUG REPORT		259
17				
18	D-1	DRUGS		166
19				
20	CT-1	LETTER DATED 1/26/09	23	
21	CT-2	DEFENSE REQUESTED VOIR DIRE	200	
22	CT-3	PRIOR SENTENCING DOCUMENTS	389	
23				
24				
25				

1 (PROCEEDINGS, FEBRUARY 20, 2009)

2 (Defense Requested Voir Dire Examination marked as
3 Court's Exhibit No. 2 for identification)

4 MR. SPRINGS: Your Honor, I would ask if there has
5 been any word from our defendant?

6 MR. MILLS: Not to me.

7 Did y'all find him?

8 MR. SPRINGS: No, they have not.

9 Your Honor, if I may, one quick -- I want to put
10 something on the record. Yesterday during the course of the
11 trial and in front of the jury Mr. Mills wanted to put some
12 marijuana, which has been marked as State's Exhibit 10 for
13 identification for the pretrial hearing, he wanted to go
14 ahead and open the bag and take the marijuana out of the
15 evidence bag and we had a conference at the bench in
16 private, at which -- and I don't want to put words in Mr.
17 Mills mouth, but he essentially said he thought it was good
18 trial strategy, essentially. I think he was -- he wanted to
19 pull out the marijuana because he thought it would reflect
20 on Lieutenant Ligon's veracity. But, anyway, we had a
21 conference at the bench, in which he insinuated it was part
22 of the trial strategy. He thought it was a wise move and he
23 went ahead and offered it into evidence. It's marked, got a
24 sticker on one side now that's says Defendant's Exhibit 1.
25 He did open the bag and did do some things with Lieutenant.

1 Ligon on it. On the other side of the bag is the original
2 State's Exhibit sticker. I would ask that our court
3 reporter at this time remove the State's Exhibit sticker so
4 the jury isn't confused about that.

5 THE MILLS: That's right.

6 (Whereupon State's Exhibit sticker No. 10 was
7 removed from the bag marked as Defendant's Exhibit No. 1)

8 THE COURT: Anything else, gentlemen, before we
9 get started?

10 MR. MILLS: Nothing from the defense, Your Honor.

11 MR. SPRINGS: Nothing from the State.

12 THE COURT: All right. Please bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Good morning, Mr. Foreman, ladies and
16 gentlemen of the jury. I hope had you a pleasant night last
17 night. We are ready to resume with the trial at this time.

18 Counsel, ready to proceed.

19 MR. SPRINGS: Thank you, Judge Alford.

20 We call Sergeant Rayford Ervin.

21 Step over to the Holy Bible, sergeant, and be
22 sworn.

23 SERGEANT RAYFORD ERVIN, JR., having been first
24 duly sworn, testified as follows:

25

1 DIRECT EXAMINATION BY MR. SPRINGS:

2 Q. Sergeant, give us your name, sir.

3 A. Rayford Louis Ervin, Jr..

4 Q. And are you a police officer?

5 A. Yes, sir.

6 Q. Are you one of the older police officers?

7 A. Yes, sir.

8 Q. You have been doing this a while?

9 A. Yes, sir.

10 Q. What assignment do you have? What type of police work
11 do you do?

12 A. I'm employed by the York Police Department, but I'm
13 currently assigned to the York County Drug Enforcement Unit.

14 Q. The narcotics unit?

15 A. Yes, sir.

16 Q. How long have you been working narcotics?

17 A. Ten years in May.

18 Q. Were you involved in an investigation, a narcotics
19 investigation, that resulted in the arrest of Jomar Robinson
20 the night of March 20th, 2008?

21 A. Yes, sir.

22 Q. And that night were you doing some surveillance over at
23 the Hall Street Apartments area?

24 A. Yes, I was.

25 Q. Hall Street Apartments, why that night were you doing

1 surveillance over there? What caused you to be out there in
2 the first place doing surveillance?

3 A. We had received numerous complaints about individuals
4 in the parking lot and on the porches of the apartment
5 complex selling drugs and carrying weapons.

6 Q. What kind of weapons?

7 A. Pistols.

8 Q. Now, March 20th was a Thursday, a Thursday. In your
9 experience, your ten years of experience in narcotics, what
10 are the busiest two days of the week for drug activity?

11 MR. MILLS: Your Honor, I'm going to object,
12 unless -- this is some kind of expert testimony, and I would
13 also object to leading, giving him the date and the day of
14 the week, as opposed to asking him questions directly.

15 THE COURT: All right. Please avoid leading,
16 counsel. You may rephrase.

17 BY MR. SPRINGS:

18 Q. Sergeant, in ten years of experience in narcotics, have
19 you developed an understanding or an observation, a common
20 sense observation, that two particular days of the week
21 every week seem to have more drug dealing activity going on?

22 A. Yes, sir.

23 Q. What days of the week are they?

24 A. It's usually Thursdays and Fridays.

25 Q. So you were doing surveillance. Were you hidden?

1 A. Yes, sir.

2 Q. And were you using anything to help your sight to see
3 the Hall Street area?

4 A. Yes, sir, I was using a pair of binoculars.

5 Q. All right. And about what time period were you out
6 hidden with your binoculars watching the Hall Street
7 Apartments?

8 A. I'm going to say around ten p.m..

9 Q. All right. And did something get your attention,
10 arouse your suspicion, something that you were seeing over
11 there?

12 A. Yes, there was vehicles pulling up. They would exit
13 the vehicle. Some of the individuals were, would walk
14 towards the apartments and an individual would come out and
15 either meet them out in the parking lot or meet them at
16 their vehicles, stay probably a short brief time, maybe a
17 minute or two, and then get in their vehicles and leave, and
18 that individual would walk back from where he was standing.

19 Q. And the individual going to meet the folks that drove
20 in in cars, was he for demand?

21 A. The best I could tell yes, sir.

22 Q. That individual that went to meet the people in the
23 car, was he by himself or was he part of a group?

24 A. There was some other individuals standing on a porch.
25 And once he would meet with the individuals, he would go

1 back to the porch.

2 Q. And how many cars did you come -- did the cars leave?

3 A. Yes, sir.

4 Q. So these cars would come in, the man would meet with
5 them for a very brief period of time and then they would
6 leave?

7 A. Yes, sir.

8 Q. And in your ten years of experience in narcotics, have
9 you seen that activity like that before?

10 A. Yes, sir.

11 MR. MILLS: Your Honor, asked and answered;
12 bolstering the witness; repeating his testimony as if it's a
13 question. I would ask him just --

14 THE COURT: Overruled. You may proceed, sir.

15 BY MR. SPRINGS:

16 Q. In your ten years of experience in narcotics, had you
17 with your own eyes seen activity like that?

18 A. Yes, sir.

19 Q. And in your ten years of experience in narcotics, what
20 did you, in your experience, see that kind of activity
21 relate to?

22 A. In my experience, that type of activity is consistent
23 with drug sales or narcotic sales.

24 Q. All right. Now, over what period of time -- how many
25 cars did you say came in?

1 A. Approximately five.

2 Q. Over what period of time did the five cars come in?

3 A. I would say probably within a fifteen, twenty minute
4 time span.

5 Q. Let me show you what's been marked as State's Exhibit
6 3.

7 (Witness off the witness stand)

8 MR. SPRINGS: Could you dim the lights, Madam
9 Clerk?

10 BY MR. SPRINGS:

11 Q. Do you recognize that scene in State's Exhibit 3?

12 A. Yes, sir.

13 Q. Do you see the place where the man was with the group?

14 A. Yes, sir.

15 Q. Point out where he was with that group.

16 A. He was in this area right in here.

17 Q. Okay. And he was in a group of how many folks?

18 A. Approximately maybe five people.

19 Q. Okay. And as the cars came in, did they stop at
20 different places, or the same place?

21 A. The majority of the vehicles stopped right here. Maybe
22 one or so come on down, but the one that was stopped here
23 would get out their vehicles, walk down through. The
24 individual would walk off and meet with them in this area
25 right here and then leave.

1 Q. Okay. And you said that it appeared to be the same man
2 that walked out from the group each time?

3 A. Yes, sir.

4 Q. What was he wearing, do you recall?

5 A. It was a dark jacket and blue jeans.

6 Q. Go ahead and retake your seat, sir.

7 (Witness back on the witness stand)

8 BY MR. SPRINGS:

9 Q. Did you have a radio, a walkie-talkie?

10 A. Yes, sir.

11 Q. And when you -- were other narcotics officers out there
12 that night in the area?

13 A. Yes, sir.

14 Q. Were you telling them about what you were seeing?

15 A. Yes, sir.

16 Q. Did you tell Lieutenant Ligon and Officer Schettler
17 what you were seeing?

18 A. Yes, sir.

19 Q. Now, did you instruct some of your fellow officers to
20 stop any of those cars?

21 A. Yes, sir, I did.

22 Q. Which one?

23 A. The last car that come there was a red either Ford
24 Explorer or Expedition. He got out of the vehicle and met
25 with the individual then got back in there and I instructed

1 them what I had seen and they stopped him a short time later
2 down the road.

3 Q. Okay. Do you know if anyone in that car got arrested
4 that night?

5 A. Yes, sir.

6 Q. Do you know what they got arrested for?

7 A. They got arrested for unlawful carrying of a pistol and
8 a possession of stolen pistol.

9 Q. And when he got arrested, did you go to the police
10 station?

11 A. Yes, sir.

12 Q. Did you tell Lieutenant Ligon and Officer Schettler the
13 description of the man going to the vehicles?

14 A. Yes, sir.

15 Q. And how did you describe him?

16 A. It was an individual wearing a black coat and blue
17 jeans.

18 Q. Thank you, sergeant. If you would answer any questions
19 the defense attorney has for you.

20 CROSS EXAMINATION BY MR. MILLS:

21 Q. You were asked if you were doing surveillance regarding
22 the arrest of Jomar Robinson and you said that you were, is
23 that correct?

24 A. Sir?

25 Q. That you were doing surveillance that night, were

1 involved in the arrest of Jomar Robinson, is that correct?

2 A. Yes, sir, I wasn't involved -- well, I was involved
3 with the arrest of Jomar Robinson, but I got there after
4 Officer Ligon and Schettler had been there awhile.

5 Q. Okay. So was everybody already back on the scene at
6 that point? Was Mr. Robinson back there?

7 A. I don't think he was, sir, not when I pulled up.

8 Q. How about Mr. Patton, do you remember him?

9 A. Yes, sir.

10 Q. All right. And I believe you told Officer Ligon and
11 Schettler that there was one individual who was wearing a
12 black coat, a flight jacket you described, going to the
13 cars, correct?

14 A. Correct.

15 Q. And you told them that that was later identified as Mr.
16 Patton, correct?

17 A. I didn't know who was going to the cars, sir.

18 Q. All right. Well, in the report that Officer Ligon --
19 have you read the summary that Officer Ligon did of this
20 incident?

21 A. Briefly.

22 Q. And if he said "Officer Ervin observed one of the
23 subjects who was later identified as Laquaris Patton meeting
24 with vehicles as they came into a parking lot," would you
25 dispute that?

1 A. I have no idea if it was Laquaris or whether it was
2 Jomar. I mean, it was dark. I was going by a street light.

3 Q. Okay. I'm just asking you if you disagreed with the
4 statement that he wrote in the official summary that it was
5 Laquaris Patton?

6 A. Laquaris Patton was arrested, yes, sir.

7 Q. For drugs, right?

8 A. Yes, sir.

9 Q. And you found those on him, right?

10 A. Yes, sir.

11 Q. You found those on his jacket, right?

12 A. Yes, sir.

13 Q. And that was a black jacket, wasn't it?

14 A. Yes, sir.

15 Q. And had orange inside, didn't it?

16 A. I believe it did.

17 Q. Thank you.

18 MR. SPRINGS: Nothing further?

19 MR. MILLS: No, I'm not finished. I'm sorry.

20 BY MR. MILLS:

21 Q. Now, apparently Thursday and Fridays are big nights,
22 right?

23 A. Yes, sir.

24 Q. Have you got any statistics to show that?

25 A. No, sir.

1 Q. All right. How about Saturday night, is that kind of
2 slow?

3 A. Saturday nights can be a hit and miss thing. We work
4 one Saturday a month and usually what we call out hunting
5 and pecking and we are looking for something to get into.

6 Q. You just hope you run across something?

7 A. Yes, sir.

8 Q. Now, did you take notes about these cars that you
9 observed coming in and out?

10 A. No, sir.

11 Q. Is there any record of it anywhere that the jury could
12 see to confirm -- that ties of cars that were coming in and
13 out of there?

14 A. No, sir.

15 Q. Now, this is a little apartment complex and there is a
16 lot of traffic in people hanging out on the porches, aren't
17 there?

18 A. Yes, sir.

19 Q. And all those people aren't dealing drugs, are they?

20 A. Not all of them.

21 Q. And people live there, correct?

22 A. Yes, sir.

23 Q. And people hang out on the porch and just visit pretty
24 regularly, don't they?

25 A. Yes, sir.

1 Q. And so just the mere fact that somebody is out there is
2 not indicative that they are dealing anything, is it?

3 A. Repeat the question.

4 Q. Just because somebody is out there visiting with people
5 on the porch is not, in your mind, in your ten years
6 experience in law enforcement, evidence that they are
7 dealing drugs, just because they happen to be at the scene?

8 A. Not necessarily, no, sir.

9 Q. All right. How soon after this red Explorer -- were
10 you actually at the scene of that red Explorer?

11 A. Yes, sir, I was.

12 Q. Now, that person just pulled out, correct?

13 A. Yes, sir.

14 Q. And you all thought -- and you saw the hand to hand
15 transaction with Mr. Patton and that car?

16 A. I seen the hand to hand with an individual wearing a
17 black coat and blue jeans. I don't know if it was Mr.
18 Patton.

19 Q. Okay, I understand.

20 A. They done -- the individual that got out of the car had
21 his back to me. They were standing just like this right
22 here, and I was back like this right here.

23 Q. Okay.

24 A. Once that was done, he got in the car and left and I
25 called out the car and two officers stopped him down the --

1 stopped the individual down the road.

2 Q. Okay. And they stopped him, not because of what you
3 saw, but because of some minor traffic offense, right?

4 A. Yes, sir.

5 Q. And that's kind of the way y'all operate? You follow
6 the car and you wait until they fail to put on the turn
7 signal or some other technical violation and that gives you
8 the basis to stop them, correct?

9 A. Yes, sir.

10 Q. And then you want to try to get in and try to start
11 searching around to see what you can find, correct?

12 A. Well, we ask for consent. I mean, they can either say
13 "yes, sir, you can search the car," or "no, sir, you
14 cannot." If they deny consent, you tell them that they have
15 a nice day.

16 Q. All right. Unless you feel like you have another basis
17 to do it. So did these people consent?

18 A. Are you talking about the one that left there?

19 Q. Yes, sir.

20 A. Yes, sir.

21 Q. And how much time elapsed from the time that car went
22 until Ligon and Schettler showed up at the scene?

23 A. Talking about at the scene of the car stop?

24 Q. Did they come out to the car stop too?

25 A. Not to my knowledge, no, sir.

1 Q. Until when they returned to the Hall Street, where were
2 they during this time?

3 A. To the best of my knowledge, they were still in the
4 area.

5 Q. Okay.

6 A. Hall Street.

7 Q. At some spot were they just kind of setting up a
8 perimeter, is that it?

9 A. Yes, sir.

10 Q. Now, you had a clear view where you were?

11 A. Yes, sir.

12 Q. And you could see things distinctly?

13 A. Pretty much, yes, sir.

14 Q. So you could look at license plates, if you wanted to
15 get them down, correct?

16 A. Yes, sir.

17 Q. And you could get descriptions of individuals, if you
18 wanted to, correct?

19 A. That's correct.

20 Q. All right. But you didn't take any notes on that?

21 A. No, sir.

22 Q. And this stuff doesn't go over dispatch or anything,
23 right?

24 A. No, sir.

25 Q. This is just walkie -- you have a secured channel

1 that --

2 A. Yes, we have got a secured channel that we work off of.

3 Q. And is that -- can you get copies of that anywhere? I
4 mean, is that recorded anywhere?

5 A. I don't think it is, no, sir.

6 Q. Now, the car they stopped, after you saw this
7 hand-to-hand transaction, didn't have any drugs in, did it?

8 A. No, sir.

9 MR. MILLS: One moment, please.

10 (Off the record)

11 (Back on the record)

12 BY MR. MILLS:

13 Q. Thank you, officer.

14 MR. SPRINGS: Just one question.

15 REDIRECT EXAMINATION BY MR. SPRINGS:

16 Q. Sergeant, do you have any way of knowing if the folks
17 in that car that were stopped ditched any drugs they had
18 before the car got stopped?

19 A. No, sir, I got there after fact. The car was already
20 stopped.

21 Q. All right. Thank you.

22 MR. SPRINGS: Nothing further.

23 THE COURT: Anything else, counsel?

24 MR. MILLS: No, I'm sorry.

25 THE COURT: Thank you, sir. You may stand down.

1 MR. SPRINGS: Your Honor, may the sergeant be
2 excused?

3 MR. MILLS: Yeah, no objection.

4 THE COURT: Thank you for coming. You may be
5 excused, sir.

6 MR. SPRINGS: Sergeant, would you ask Officer
7 Schettler to come in, please.

8 Officer Schettler, step over to the Holy Bible and
9 the clerk will swear you.

10 OFFICER BRIAN SCHETTLER, having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. SPRINGS:

13 Q. Officer, I'm going to ask you to speak up nice and
14 loud. This machine has a fan on it and it makes a little
15 noise and I want everyone to be able to hear you.

16 A. Yes, sir.

17 Q. What is your name, sir?

18 A. Brian Edward Schettler.

19 Q. Are you a police officer?

20 A. Yes, I am.

21 Q. How long have you been a police officer?

22 A. I have been with the York County sheriff's office for
23 five years.

24 Q. What did you do before that?

25 A. I was in the United States Coast Guard.

1 Q. All right. Did you work narcotics?

2 A. Yes, I'm currently assigned to the York County
3 Multi-Jurisdictional Drug Enforcement Unit.

4 Q. Were you involved in a narcotics investigation the
5 night of March 20th, 2008, that resulted in the arrest of
6 Jomar Robinson?

7 A. Yes, I was.

8 Q. And around 10:30 that night what officer were you with?

9 A. I was with Lieutenant Ligon.

10 Q. And did you and Lieutenant Ligon go somewhere on
11 this -- as part of this investigation?

12 A. Yes, we did. We went to Hall Street Apartments.

13 Q. All right. Do you remember a particular apartment
14 number?

15 A. I believe it was [REDACTED].

16 Q. Very good.

17 And were you riding in the same car?

18 A. Yes, Lieutenant Ligon was driving the vehicle. I was a
19 passenger in the vehicle.

20 Q. When you got to Hall Street Apartments, did you drive
21 up to the front of Apartment [REDACTED]?

22 A. Yes, sir, we did.

23 Q. And how were you dressed, sir?

24 A. I was dressed in plainclothes. I clearly had my badge
25 displayed around my neck.

1 Q. Okay. And did you officers identify yourself to the
2 folks at [REDACTED]?

3 A. Yes, we did. As we approached the patio or the porch
4 we identified ourselves as law enforcement officers.

5 Q. All right. And did you see some people out on that
6 porch?

7 A. Yes, I did. There was approximately five people out on
8 the porch.

9 Q. All right. And did you officers go right up to the
10 porch?

11 A. Yes, we did. We walked straight to the porch.

12 Q. All right. And what was the lighting like out there,
13 sir?

14 A. There was a few street lights. I would say it's mildly
15 lit.

16 Q. All right. Before you and Ligon went over there, had
17 you gotten some information from Sergeant Ervin about some
18 things that he had seen?

19 A. Yes, we had been doing surveillance on that area most
20 of the evening. Sergeant Ervin advised that there had been
21 what appeared in his training and expertise that there was
22 drug transactions taking place from that porch.

23 Q. All right. Do you have a description of someone?

24 A. Yes, it was a black male wearing a black jacket.

25 Q. All right. So were you interested in talking to such a

1 person?

2 A. Oh, yes, very much so.

3 Q. All right. When you and Ligon got up to the porch, did
4 you see someone meeting that description?

5 A. Yes. Actually when we came up to the porch, there was
6 two individuals that were dressed alike.

7 Q. Black jackets?

8 A. Correct.

9 Q. Did you have any idea which one Ervin had seen?

10 A. I personally didn't know. I treated them both as being
11 the ones that we were looking at.

12 Q. Were the two fellows in black jackets asked to provide
13 something to the lieutenant?

14 A. Yes, Lieutenant Ligon asked both of them for their
15 identification or driver's license. Both of them willingly
16 presented it to them.

17 Q. Okay. Could you smell anything when you were up on
18 that porch?

19 A. Yes, there was an odor of green marijuana.

20 Q. Okay. Could you tell where it was coming from?

21 A. Not particularly. Mr. Thrower -- or excuse me, Mr.
22 Patton and Mr. Robinson were off to my left. There was
23 three other individuals off to my right. It seemed like the
24 marijuana was originating off to my left.

25 MR. SPRINGS: Could you dim lights, Madam Clerk?

1 BY MR. SPRINGS:

2 Q. Come on down, if you would, Officer Schettler.

3 (Witness off the witness stand)

4 BY MR. SPRINGS:

5 Q. This is State's Exhibit No. 3 that's displayed up on
6 the board. Do you recognize that scene?

7 A. Yes, I do.

8 Q. Does that show [REDACTED], Hall Street?

9 A. Yes, it does.

10 Q. Point out where the fellows were when you first drove
11 up, the five men. Was it all men, by the way?

12 A. Yes, it was.

13 Q. All right.

14 A. This was the apartment here. The two individuals were
15 over here and the three were over here.

16 Q. All right. The two men in black jackets?

17 A. Yes, Mr. Patton and Mr. Robinson were over on this
18 direction.

19 Q. All right. And when you went up there and started
20 talking to these folks, do you remember where Ligon was
21 standing?

22 A. Yes, Lieutenant Ligon was right here. I was right
23 here.

24 Q. Okay. And did these fellows, the two men in black
25 jackets, provide some identification to the lieutenant?

1 A. Yes, they did. They provided it willingly to him.

2 Q. All right. And at some point did the lieutenant
3 indicate that he was going to pat them down and search them
4 for weapons?

5 A. As the --

6 MR. MILLS: Your Honor, again, I ask him not to
7 lead the witness.

8 THE COURT: All right, please avoid leading,
9 counsel.

10 BY MR. SPRINGS:

11 Q. Let me rephrase that.

12 At some point were these men going to be patted down
13 for weapons?

14 A. As the --

15 MR. MILLS: Your Honor, I think that's a leading
16 question again.

17 THE COURT: Counsel, you can ask him what they did
18 and when they did it. All right.

19 MR. SPRINGS:

20 Q. After they provided the identification, what's the next
21 little thing that happened?

22 A. Sure. After their identification was provided, we
23 continued the investigation. We could -- officer -- or
24 Lieutenant Ligon could determine that the marijuana smell
25 was coming from the two individuals that were standing over

1 here. Also he noticed that there was a pistol, a weapon,
2 coming out of Mr. Robinson's --

3 MR. MILLS: Objection. I don't know how he can
4 testify as to what Mr. Ligon noticed. Mr. Ligon has already
5 testified to the jury. I don't think that he was in the
6 position.

7 THE COURT: I sustain the objection. Counsel,
8 he's testifying for Mr. Ligon. I think he can testify to
9 what he observed and what he saw and heard.

10 BY MR. SPRINGS:

11 Q. Just tell us what you saw with your own eyes. Take it
12 slow and easy. Slow motion, just like a playback, what
13 happened?

14 You were at the --

15 A. Lieutenant Ligon and I both smelled the green marijuana
16 coming from the two individuals.

17 Q. Yes, sir.

18 A. Lieutenant Ligon went ahead and advised the two
19 subjects that he could smell the marijuana. He was then
20 asking them if there was any weapons, going to pat them down
21 for weapons.

22 At that point, when he asked for that, Mr. Robinson
23 backed up towards the wall. As he backed up towards the
24 wall, I saw Lieutenant Ligon grab for his jacket and he
25 advised that "there was a gun. There was a gun. There was

1 a gun."

2 At that point there a struggle ensued. As the struggle
3 ensued, I went ahead and drew my service weapon. I asked
4 the other four individuals to go ahead and get on the ground
5 for my safety and Lieutenant Ligon's safety. I don't know
6 if there was either weapons or what they possibly had on
7 their person.

8 Q. Let me stop you. When you and Ligon approached the
9 porch, were your guns holstered?

10 A. Yes, they were.

11 Q. And at the point where Ligon is yelling "guns, guns,"
12 was his weapon holstered?

13 A. As far as I know, yes, his weapon was holstered.

14 Q. And yours was holstered?

15 A. Yes, it was.

16 Q. Okay. You said a struggle ensued. Taking it slow and
17 easy blow by blow, then what happened?

18 A. At that point a struggle ensued. Out of my peripheral
19 I saw Lieutenant Ligon come off the porch and he was in this
20 area over here.

21 I went ahead and turned my attention to the three
22 individuals that were here, and Mr. Patton that was right
23 here, I went ahead and ordered them down on the ground. Mr.
24 Patton attempted to walk off. About the point where he was
25 right here is when I ordered him on the ground. Mr. Patton

1 went ahead and laid down on the ground. I went ahead and
2 kept them at gunpoint.

3 Officer Ligon -- or Lieutenant Ligon continued his
4 struggle behind me, and to the point where the jacket and
5 the gun was ripped off, and Lieutenant Ligon advised me that
6 the gun and jacket was on the ground and he was going to
7 pursue the subject as he fled.

8 Q. Okay. Did you see the jacket on the ground?

9 A. Yes, I did. I turned to see where it was so I knew for
10 myself where the weapon was.

11 Q. Was that jacket close to any person as it lay on the
12 ground?

13 A. No, sir, the jacket ended up right in this area here.
14 I had positioned myself between the jacket and the suspects
15 that were here.

16 Q. Okay. And once the jacket come off, what happened to
17 the lieutenant and Jomar Robinson, the defendant in this
18 case?

19 A. They had fled. They went in this direction here. I
20 saw them leave and that is the last I saw of them until they
21 came back.

22 Q. All right. Let's go back to you and the four men that
23 were on the ground. Mr. Patton, did Mr. Patton remain on
24 the ground?

25 A. No, he did not.

1 Q. What happened there? What happened?

2 A. Mr. Patton was right here. Eventually he got up and
3 started to walk off in this direction. I repeatedly advised
4 him to get back down on the ground and to the point where he
5 took off running.

6 Q. All right. You didn't shoot him?

7 A. No, I did not.

8 Q. He wasn't presenting a threat to you?

9 A. At that time, no, sir.

10 Q. Okay. Which way did he run?

11 A. He -- he ran off in this direction. There is another
12 building that sits over here. He ran off in that direction
13 behind the building.

14 Q. Okay. Did he go out of your sight?

15 A. Yes, he did.

16 Q. And how long -- had you searched him before he ran off?

17 A. No, I did not.

18 Q. Did he eventually return?

19 A. Yes, he did.

20 Q. How long would you say was he gone and out of your
21 sight?

22 A. It's tough to say. I would roughly say a couple of
23 minutes. Anywhere between two to five minutes.

24 Q. And in those two to five minutes, would you, yourself,
25 have any knowledge as to whether he ditched or threw down --

1 MR. MILLS: Your Honor, that's an objectionable
2 question. He's asking him to speculate about something he's
3 qualified that he wouldn't know about.

4 MR. SPRINGS: I'm asking him what he knows.

5 THE COURT: Well, sustain the objection, counsel.
6 That's just speculation as to what may have happened.

7 MR. SPRINGS: Very good.

8 BY MR. SPRINGS:

9 Q. Go ahead and retake your seat.

10 A. Yes, sir.

11 (Witness back on the witness stand)

12 BY MR. SPRINGS:

13 Q. When Mr. Patton came back, did you search him?

14 A. Yes, I did.

15 Q. And as a result of the search, did he get arrested?

16 A. Yes, he was.

17 Q. Now, at some point did you take possession of the
18 jacket?

19 A. Yes, I did.

20 Q. Had anybody gotten near that jacket between the time
21 that it fell off of Mr. Robinson until you took possession
22 of it?

23 A. No.

24 Q. Did you search the jacket?

25 A. Yes, I did search the jacket.

1 Q. What sort of the things did you find in the jacket?
2 Describe them.

3 A. I found a semiautomatic pistol. I found two plastic
4 baggies - one containing crack and one containing some crack
5 residue; and I found a bag of marijuana.

6 Q. Okay. I'm showing you what's been marked State's
7 Exhibit 9. Look in there and tell the jury if you recognize
8 what's in there.

9 A. Yes, sir, this would be the pistol that I removed from
10 the jacket.

11 Q. Okay. Was it loaded?

12 A. Yes, it was.

13 Q. Was there a round in the chamber?

14 A. Yes, there was.

15 Q. It was ready to shoot?

16 A. Yes, it was.

17 Q. And what caliber is that?

18 A. I believe it's a 9-millimeter. Yes, 9-millimeter Ruger
19 semiautomatic.

20 Q. Would you make sure there are no bullets in the clip?

21 A. It's empty.

22 Q. No bullets in the gun?

23 A. The gun is clear.

24 Q. And put the clip in the gun.

25 That's the pistol that you found in the jacket?

1 A. Yes, it is.

2 MR. SPRINGS: Your Honor, at this time we do offer
3 into evidence State's Exhibit 9.

4 MR. MILLS: Your Honor, subject to our earlier
5 position.

6 THE COURT: Well, admitted over earlier objection,
7 yes, sir.

8 MR. SPRINGS: And I would ask to publish State's
9 Exhibit 9 to the jury.

10 THE COURT: You may.

11 MR. SPRINGS: Thank you.

12 Would you instruct the jurors to pass this among
13 themselves and examine it as much as they like.

14 BY MR. SPRINGS:

15 Q. You said that I found two baggies?

16 A. That is correct.

17 Q. I'm showing you what's been marked as State's Exhibit
18 11 for identification. Examine that and tell the jury if
19 you have ever seen what's inside State's Exhibit 11 before.

20 A. Yes, that's what I removed from the jacket.

21 Q. What did it appear to be when you removed it?

22 A. There was one bag that had some loose crack in it, and
23 there was another bag with eleven individually wrapped crack
24 rocks.

25 Q. These, I assume, to be small bags?

1 A: Yeah, they -- basically what they do is they will take
2 a piece of crack and put it in the corner of a sandwich
3 baggy, will twist it up and tear off that sandwich baggy and
4 that's how it was packaged.

5 Q. So you had a eleven smaller bags within a smaller bag?

6 A. Correct.

7 Q. After you got what you thought was crack cocaine out of
8 the jacket, did you bag it up in an evidence bag?

9 A. Yes. What I did is I went ahead -- I put it in these
10 individual plastic baggies so nothing would spill out. I
11 went ahead and marked those. I also went ahead and put it
12 in this evidence bag. I filled it out properly. I sealed
13 it, initialed it and dated, and then I dropped it into the
14 evidence drop.

15 Q. Did you have it in your possession, your custody, your
16 control, the whole time from the time that you took it out
17 of Jomar Robinson's jacket until the time you put it into
18 the evidence locker?

19 A. Yes, I did.

20 Q. Now, did you do a preliminary weighing of it?

21 A. I did.

22 Q. When you did the preliminary weighing, was everything
23 still in the bags?

24 A. Correct.

25 Q. So you were weighing drugs and plastic?

1 A. Correct. It's an approximate weight.

2 What we will do is we will take the plastic bags as
3 it's intact, place it on the scale. It gives us a weight
4 and that's an approximate weight on an uncertified scale.
5 It just gives us a general idea of what it is.

6 Q. I understand.

7 I'm showing you what's been marked Defendant's Exhibit
8 No. 1, and I'll explain to you why it's been cut open in a
9 minute, but look at that and look inside and tell the jury
10 if you ever seen what's in there before.

11 A. I have. This is the marijuana that I removed from the
12 jacket.

13 Q. All right. From Jomar Robinson's jacket?

14 A. Correct.

15 Q. Now, did you bag that up in an evidence bag?

16 A. Yes, I did.

17 Q. Seal it all up?

18 A. Correct.

19 Q. Put some identifying writing on it?

20 A. Right, my initials are on the back here, with the date
21 when I sealed it.

22 Q. And where did you deposit that?

23 A. I also deposited this one at the evidence drop at the
24 Moss Justice Center.

25 Q. Was it in your possession, your custody, your control

1 from the time you took it out of the jacket until the time
2 you put it in the evidence locker?

3 A. Yes, it was.

4 Q. Just go ahead and lay it down right there.

5 A. Yes, sir.

6 Q. At some point did Lieutenant Ligon come back with Jomar
7 Robinson?

8 A. Yes, he did.

9 Q. Let's go back to Mr. Patton. You said that you
10 searched him?

11 A. Myself and Officer Ervin did.

12 Q. Did you find some drugs on him?

13 A. Yes, we did.

14 Q. Where on him were the drugs found?

15 A. If you can picture, it's a black like bomber jacket.
16 It's got pockets all over it. Up on the top sleeve pocket
17 is where he had it. It's a zipper pocket up on the sleeve
18 of his coat. That was the only thing that we found on him.
19 We didn't find a wallet, keys, money, ID, or anything. That
20 was the only thing that he came back with.

21 Q. Did you look around the area where he ran?

22 A. We did. We eventually traced back his steps behind a
23 building. We located -- I believe we located some money, a
24 wallet, and might have been keys, but basically it was his
25 personal belongings.

1 Q. And where -- were they on the ground, on to of a wall?
2 Where were they?

3 A. They were behind the building where he ran behind on
4 the ground, like he had thrown them down.

5 Q. All right. Thank you, officer. If you would answer
6 any questions that the defense attorney may have.

7 A. Yes, sir.

8 CROSS EXAMINATION BY MR. MILLS:

9 Q. And So you took those things into evidence?

10 A. Say again?

11 Q. You took those things that you found into evidence?

12 A. They were --

13 Q. His wallet and all this other stuff that you found that
14 you claim is Mr. Patton's, you took that into evidence,
15 right?

16 A. No, we went ahead -- they are his personal belongings.
17 We went ahead and returned them to him in his property at
18 the jail.

19 Q. Why wouldn't you keep it in evidence?

20 A. They are his personal belongings.

21 Q. Well, I would assume his ID was his personal belonging
22 too, right?

23 A. Which he keeps in the jail.

24 Q. Okay. Now, this jacket that he had on -- you said he
25 was gone for one to two minutes completely out of your

1 sight, correct? Mr. Patton I'm talking about now.

2 A. Mr. Patton?

3 Q. Yes.

4 A. Yes, sir.

5 Q. That would have been plenty of time for him to -- if
6 he's got drugs, to go in his jacket and get rid of them,
7 wouldn't it, if he wanted to?

8 A. I suppose he could.

9 Q. All right. But instead he just kind of comes walking
10 back -- after leaving you at gunpoint, comes walking back
11 with dope in his jacket?

12 A. The best way I can explain it is -- I know everybody
13 has been in a stressful situation, a car wreck, things like
14 that. When something like that happens, you don't always
15 think clearly. Obviously he had enough time to think that
16 he needed to empty his pockets. He could have possibly
17 forgot that he had that up in his coat pocket because it was
18 away from his normal pockets.

19 Q. Right. So he had enough time to reflect and decide to
20 pull out his personal effects that you returned, but not get
21 rid of any kind of contraband that he would get him in jail?

22 A. As I said, in a lot of stressful situations you don't
23 think about the fine details. That might have been one that
24 he forgot.

25 Q. Just a minor point, right? Just a little fine detail,

1 the drugs, that he ran away from?

2 A. Obviously it was, because he forgot about it.

3 Q. Okay. Now, this jacket seems pretty central to what
4 you are talking about. This black jacket, this one that --
5 I'm sorry. That's switched on you. Mr. Robinson's jacket,
6 right?

7 A. I'm --

8 Q. I mean, that's a central thing. You are talking about
9 a big struggle and all that, remember?

10 A. Yes, sir.

11 Q. With Schettler.

12 Now, you and I just talked yesterday when you were in
13 this various position, right?

14 A. Yes, sir.

15 Q. And I believe at that time you told me that when he
16 asked to start searching, you had your back to him, to Mr.
17 Robinson and Officer Ligon?

18 A. I don't recall that. I said that officer --

19 Q. I'm sorry. Go ahead.

20 A. Can I finish?

21 Q. Sure.

22 A. Lieutenant Ligon was off to my side. He was out of my
23 peripheral. Okay. I was facing here.

24 When he approached him and the struggle ensued and they
25 went off the side of the porch, then, yes, my back

1 eventually did get turned to him, because I was worried
2 about the four other suspects.

3 Q. And I was asking you aren't you concerned with the life
4 and death struggle going for the gun and I believe you told
5 me he can take care of himself. You weren't worried about
6 him, because you had been working with him so long, that
7 there was no concern of yours, right?

8 A. That's correct. Officer Ligon was dealing with the
9 subject over behind me. I had four other suspects. You are
10 trained through the police academy and when you are out on
11 the streets that you address the initial threat. There was
12 four other subjects in front of me. That's my initial
13 threat. Officer Ligon was dealing with his threat, which
14 was behind me.

15 Q. And you could have easily moved yourself to a position
16 where you could actually see those individuals and see
17 what's going on with Officer Ligon too, couldn't you?

18 A. I don't believe that would have been as tactfully as
19 sound as where I was.

20 Q. Okay. So you were content to let Officer Ligon, who
21 has one hand on this gun and one hand his holster just get
22 beat up, and you didn't really see that as a threat to him
23 or something that you would have to step in on, right?

24 A. Well, sir, I wouldn't put it that simply. If
25 Lieutenant Ligon needed my help, I'm sure that he would have

1 called and asked for my help. We are all trained the same
2 way, that when a struggle ensues, you protect your weapon
3 and you try to eliminate the threat, which was the weapon
4 that he had. Through that time at no point did Officer
5 Ligon say that he needed help, "come help me. I have lost
6 my weapon. He's got a gun. I've lost his gun." At no
7 point did he say that. Eventually he said that "the gun is
8 on the ground." And when the gun was on the ground and he
9 had took off running, that I knew that that threat was
10 eliminated and I still had the concern in front of me.

11 Q. Now, here is the gun. Can you show me what you just
12 did with Mr. E.B -- with Mr. Springs about popping that
13 things out?

14 A. (Witness demonstrating).

15 Q. And how did you put you it back in?

16 A. (Witness demonstrating).

17 Q. All right. Pop it out again one more time for me.

18 A. (Witness demonstrating).

19 Q. Thank you.

20 Now, I saw as you did that you put your hands on here,
21 like this, right? Right?

22 A. Just right now?

23 Q. Yeah.

24 A. I placed my hands.

25 Q. Right, a big thumb print right there, right?

1 Did you send the gun off for fingerprints?
2 A. No.
3 Q. Why not?
4 A. It was in his jacket and his possession.
5 Q. And that's what you say, right?
6 A. That's what took place.
7 Q. And if he had taken this gun and had you got this
8 tested and it had his fingerprints on it, they wouldn't have
9 to rely on your testimony; they would his fingerprints on
10 the gun, right?
11 A. If that's what you are going to say, yes, sir.
12 Q. And on each of these little bullets too, right?
13 A. If they could obtain a fingerprint on there, I'm sure
14 they can.
15 Q. Did you smell anything?
16 A. When?
17 Q. Right now.
18 A. Right now?
19 Q. Yeah, did you smell anything?
20 A. What am I smelling for?
21 Q. I'm asking you if smell anything.
22 How about now? Do you smell anything?
23 A. I smell your cologne.
24 Q. Okay, I don't wear cologne, but maybe you were smelling
25 this.

1 A. That's in a sealed bag.

2 Q. It's kind of like the way it was when you got it out of
3 the jacket, wasn't it?

4 A. Actually it's different than a sandwich baggy --

5 Q. Uh-huh.

6 A. -- which it was originally in.

7 Q. Right. And this little baggy in here?

8 A. Correct.

9 Q. That was tied up with a little knot?

10 A. Correct.

11 Q. So it was sealed up, right?

12 A. So if you put a clove of garlic in there, would you be
13 able to smell it?

14 MR. MILLS: Your Honor, I don't think the rules
15 allow him to ask me questions.

16 A. I mean, I thought we were discussing the marijuana.

17 THE COURT: I think he's explaining his answer.
18 I'll allow him to explain his answer.

19 A. It's the same as if you put a clove of garlic in a
20 plastic bag. I'm sure everybody knows how garlic smells.
21 When you put a clove of garlic in a plastic bag, it smells
22 up the whole refrigerator or the whole cabinet.

23 The same thing as green. Green marijuana has a very
24 distinctive strong smell. And as time goes on, marijuana
25 deteriorates and it loses its smell. That's what's taken

1 place here.

2 BY MR. MILLS:

3 Q. Okay. So if we have had that jacket would much a lot
4 of smell in it, the one that was kept in, right, but it was
5 all that pot in there and it would perforate into the
6 jacket?

7 A. That night, yes, sir.

8 Q. It would have been -- you know, hey, where is that
9 jacket?

10 A. Is it a trick question? I don't know.

11 Q. Yeah, where is the jacket?

12 No. Well, if that's the theme here. It's his jacket.
13 You got it up off the ground. You got all the stuff in it.
14 Where is the jacket?

15 A. I can't recall for sure, but I believe it was returned
16 in his property.

17 Q. You didn't take it into evidence?

18 A. It's his jacket.

19 Q. Well, presumably it was his gun.

20 A. It was.

21 Q. Are you saying that there is something that prevents
22 from you taking that into evidence because it's his jacket?

23 A. It's his jacket. We recovered the illegal contraband
24 out of his jacket and returned his jacket to him. It's his
25 personal property.

1 Q. How do they know it's his jacket?

2 A. Because I'm here telling you it was on him that night
3 and we removed it from him.

4 Q. Well, you also said there was one on Laquaris Patton
5 just like that.

6 A. Which he was wearing when he came back.

7 Q. Right.

8 And, you know, you have heard three letters, DNA,
9 right? You have heard that have, haven't you?

10 A. Uh-huh.

11 Q. And so if you had that jacket that was supposedly Jomar
12 Robinson's, you could have that tested for DNA?

13 A. Once again, sir, we are beating a dead horse. It was
14 his jacket on his person. There was no reason to test it.
15 I mean, it's the same thing that as if I was to take your
16 jacket off you now. I know that jacket came from you. I
17 physically saw it. I physically took it off of you. I know
18 that it's your jacket.

19 Q. Right. And you would have done it right in front of
20 this jury and they could have seen that.

21 A. The jury wasn't there that night.

22 Q. Yeah, and neither was I, and you didn't take any
23 videos, you didn't put a video in your car and tape
24 anything, right, so there is nothing to see.

25 A. We don't have video cameras in our cars. It's not a

1 normal patrol vehicle.

2 Q. Right.

3 So we have no jacket, we have no fingerprints, we have
4 no DNA, do we, at all on Mr. Robinson --

5 A. No, sir. We have got --

6 Q. -- linking them to these things at all?

7 A. We have got the crack and the marijuana and the gun was
8 removed off the jacket that was on his person.

9 Q. Which you say was on his person?

10 A. Yes, I was there that night.

11 Q. Now, I believe Mr. Patton pled guilty to possession
12 with intent to distribute crack cocaine, didn't he?

13 A. I believe so. I know he pled guilty.

14 Q. And he was wearing a black jacket that night, correct?

15 A. Yes.

16 Q. And that was the individual that Officer Ervin said he
17 saw go into the cars and meeting with people, right?

18 A. Officer Ervin said there was a black male wearing a
19 black jacket go into the cars.

20 Q. You have read the summary report, right, by Officer
21 Ligon?

22 A. Yes, sir.

23 Q. And you have read the part where he said "Ervin
24 observed one of the subjects, who was later identified as
25 Laquaris Patton, meeting with the vehicles as they came into

1 the parking lot."

2 A. Yes, as he said, one of the subjects.

3 Q. Right.

4 And there is no other mention of Jomar Robinson going
5 to any car and having any interaction, is there?

6 A. I don't have it in front of me. I don't know exactly
7 what it says.

8 Q. Okay. The first paragraph here they were talking about
9 the observations.

10 A. Okay.

11 Yes. In this sentence it says "Officer Ervin observed
12 one of the subjects," one of the subjects, "who was later
13 identified as Laquaris Patton meeting with vehicles as they
14 came into the parking lot."

15 Q. Okay. It doesn't say anything about a black jacket
16 either, does it?

17 A. (Witness reviewing document).

18 No, sir, it does not.

19 Q. All right. Now, I think you had a concern for Mr.
20 Robinson's personal property and that he got his jacket back
21 and you didn't want to take that, right?

22 A. Yes, sir.

23 Q. Because it might get stolen.

24 But I noticed that y'all took a lot of pictures that
25 night of evidence. A picture of a gun?

1 A. Uh-huh.

2 Q. Right.

3 Took a picture of the dope?

4 A. Uh-huh.

5 Q. Why didn't you take a picture of the jacket?

6 A. As I said before, the jacket was on Mr. Robinson. We
7 removed it off Mr. Robinson personally. We removed the
8 contraband from him and his jacket. We went ahead and
9 returned the jacket to him, took pictures for our evidence.

10 Q. You have heard of crime scenes, right? The phrase a
11 crime scene?

12 A. I'm familiar with it, yes, sir.

13 Q. Okay. And you can preserve evidence as it lies,
14 correct, and not disturb it, if there has been a crime
15 scene, correct?

16 A. Well, if it was a crime scene, then, yes.

17 There is different types of crime scenes. This wasn't
18 a murder. We didn't have blood everywhere. We didn't have
19 bodies laying anywhere. This was a simple struggle that
20 ensued over some drugs and a gun. We recovered all the
21 things that was there. There was no need to go ahead and
22 preserve a crime scene, call out the forensics unit, or
23 anything like that.

24 Q. You mean no need to bother with fingerprints or
25 something like that, right?

1 A. No, sir, it came directly from his person. I knew
2 whose gun it was.

3 Q. No reason to bother with taking a picture of this
4 jacket that you saw on the ground where it laid with the gun
5 in it, right?

6 A. No, sir. Like I said, I knew where the jacket had come
7 from. It come from his person. I knew it was on the
8 ground. No one had touched it, except for myself who
9 recovered it. There was no reason to go ahead and
10 photograph that.

11 Q. Except if you wanted to preserve it for somebody to
12 look at later on who wouldn't necessarily have to take your
13 word on it, you could actually show them where it was,
14 right?

15 A. For lack of better terms, a picture I'm sure would have
16 been great.

17 Q. Worth a thousand words, isn't it?

18 A. Well, you have got three officers that came up here and
19 testified. I'm sure that's just as good as a picture.

20 Q. Thank you, Officer Schettler.

21 A. Thank you.

22 REDIRECT EXAMINATION BY MR. SPRINGS:

23 Q. Just one question.

24 Let me ask you the bottom line question. Did you go
25 out there that night in good faith?

1 A. Yes, I did, sir.

2 Q. Did you tell the truth here today?

3 A. Yes, I have.

4 MR. MILLS: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MR. SPRINGS:

7 Q. Do you have any grudge against Jomar Robinson?

8 A. To be honest with you, I didn't even know Jomar
9 Robinson before this night.

10 Q. Thank you.

11 MR. SPRINGS: That's all.

12 THE COURT: Anything further?

13 MR. MILLS: One moment.

14 (Off the record)

15 (Back on the record)

16 MR. MILLS: Nothing, Your Honor.

17 THE COURT: Thank you, sir. You may stand down.

18 MR. SPRINGS: May the officer be excused?

19 THE COURT: No objection?

20 MR. MILLS: No objection.

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

23 MR. SPRINGS: Mr. Burris, would you ask the lady
24 by the name of Barbie Traylor to come in? Barbie Traylor.

25 Ms. Traylor, step over here to the Bible and

1 accept the oath.

2 BARBARA TRAYLOR, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. SPRINGS:

5 Q. Tell the jury your name, ma'am.

6 A. It's Barbara D. Traylor.

7 Q. All right. Keep your voice up, please.

8 We have been talking about March of 2008. Where were
9 you working in March of 2008?

10 A. I was working with the sheriff's office in the evidence
11 department.

12 Q. Okay. As part of your duties in the evidence room, did
13 you carry evidence from one place to another and put it away
14 on shelves and things such as that?

15 A. I did, uh-huh.

16 Q. Would it be fair to say that you were an evidence room
17 clerk back in March of 2008?

18 A. Yes.

19 Q. Okay. If narcotics officers come in after hours with
20 evidence, where do they put it?

21 A. They put it into one of our evidence holding
22 facilities, either into one of our lockers or in our
23 evidence drop.

24 Q. Okay. And is that a secure facility?

25 A. It is.

1 Q. How close is it to the actual evidence room?

2 A. It's right outside of our office.

3 Q. Okay. So when you evidence room people leave for the
4 day, the police still have a place to put evidence?

5 A. That's correct.

6 Q. Once the evidence goes in that locker, could the
7 officer change his mind and say I'm going to get it back
8 out?

9 A. No. We're the only ones -- the evidence personnel are
10 the only ones that have keys.

11 Q. Okay. I'm showing you what's been marked State's --
12 I'm sorry, Defense Exhibit 1, and it's been cut open. Don't
13 worry about that. I'm going to ask you if you have ever
14 seen or handled or done anything with Defense Exhibit 1?

15 A. I have.

16 Q. Okay. Where did you -- where did you get it?

17 A. I got it from our evidence drop here at the Moss
18 Justice Center.

19 Q. That locker, after-hour locker, we have been talking
20 about?

21 A. That's correct.

22 Q. And when you took it out there, where did you take it
23 and put it?

24 A. Into our secure evidence room.

25 Q. Okay. When you got it out of the locker, was it in a

1 sealed-up evidence bag that looked like it had not been
2 tampered with?

3 A. That's correct, it was in this inner bag.

4 Q. Okay. All right.

5 Let me show you another one. This has been marked
6 State's Exhibit 11. Look at that and tell the jury if you
7 have ever handled that stuff and had it in your possession
8 before?

9 A. I have.

10 Q. Where did you find it and take it into your possession?

11 A. At our evidence drop here at the Moss Justice Center.

12 Q. That same after-hours evidence locker we have been
13 talking about?

14 A. That's correct.

15 Q. And when you took it out of that locker, where did you
16 take it and put it?

17 A. Into our secured evidence room.

18 Q. When you pulled it out of the locker, did the evidence
19 bag appear to be sealed up intact and not tampered with in
20 any way?

21 A. That's correct.

22 Q. Okay. And the chemist that works over there, does the
23 chemist have access to these drugs after you bring them into
24 the evidence room, the secured facility?

25 A. No, not until they are signed out to her.

1 Q. Okay. And going back to State's Exhibit 11, who signed
2 out the stuff in there to the chemist?

3 A. Her -- who signed it out to here was myself.

4 Q. You gave it to her?

5 A. Uh-huh.

6 Q. All right. And, again, when you handed it to her, was
7 it still sealed up in and intact?

8 A. That's correct.

9 Q. Okay. I'm sorry. Who was the chemist? What's her
10 name?

11 A. Dee Anne Johnson.

12 Q. All right. Let's go back to this one, Defense Exhibit

13 1. Who gave that to the chemist?

14 A. I did.

15 Q. Okay. Was it still sealed up and intact and not
16 tampered with when you gave it to the chemist?

17 A. It was.

18 Q. And who was the chemist that you gave it to?

19 A. Dee Anne Johnson.

20 Q. Thank you very much. Please answer any questions that
21 the defense attorney has.

22 CROSS EXAMINATION BY MR. MILLS:

23 Q. Hey Ms. Traylor, how are you?

24 A. Good.

25 Q. I'm Chris Mills.

1 I have got an evidence inventory sheet. Is that
2 something that you see regularly, or does that come through
3 your department?

4 A. Uh-huh.

5 Q. This is one in this case. Do you recognize that?

6 A. This one is not signed by me, but this is typically one
7 of our forms.

8 Q. Okay. Now, did you have room in your evidence
9 locker -- let's say if somebody brought a jacket, to keep a
10 jacket?

11 A. Yes, uh-huh.

12 Q. And you can go through the same procedures of
13 protecting it and keeping it safe and only allowing the
14 people who signed it out who are authorized to look at it,
15 right?

16 A. That's correct.

17 Q. Okay. And so like with these -- this gun that was in
18 evidence, that was in the possession of York County
19 sheriff's department the whole time, from the time it was
20 dropped off until today's trial, correct?

21 A. Yes, according to the chain, uh-huh.

22 Q. And they could have come down at any time and gotten
23 it, correct?

24 A. If they would have signed for it.

25 Q. And isn't there a procedure where you can send stuff to

1 SLED and have it checked out and sent back?

2 A. That's correct.

3 Q. SLED will come and sign out for it, they will do all
4 the testing down there in Columbia and then they will bring
5 it back?

6 A. That's correct.

7 Q. Do you remember actually when this came in, or you just
8 relying off your signature?

9 A. Going off my signature.

10 Q. Okay. Can you smell any marijuana where you are
11 sitting?

12 A. At this point, no.

13 Q. One moment, please, Ms. Traylor.

14 (Off the record)

15 (Back on the record)

16 MR. MILLS: That's all I have, Your Honor.

17 MR. SPRINGS: That's all we have.

18 THE COURT: Thank you, ma'am. You may step down.

19 MR. SPRINGS: Your Honor, could we take a five
20 minute restroom break?

21 THE COURT: Yes, sir.

22 Thank you, ma'am. You may stand down.

23 Do you want to excuse this witness?

24 MR. SPRINGS: Yes, please.

25 MR. MILLS: By all means.

1 THE COURT: Thank you for coming, ma'am. You may
2 be excused.

3 Mr. Foreman, ladies and gentlemen of the jury, we
4 are going to go ahead and take about a ten minute break at
5 this time. You may refresh yourselves during the break. Of
6 course, do not begin discussing the case yet. We are not
7 ready to do that. Thank you. Please retire to the jury
8 room.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right. Any matters we need to
12 take up at this time?

13 MR. SPRINGS: No, sir.

14 THE COURT: Let's take about ten minutes or so.

15 (Proceedings were recessed)

16 (Proceedings were reconvened)

17 (Whereupon, State's Exhibit No. 4 and State's
18 Exhibit No. 7 were withdrawn)

19 THE COURT: Ready to proceed?

20 MR. SPRINGS: Yes, sir.

21 THE COURT: Ready to proceed?

22 MR. MILLS: Yes, Your Honor.

23 THE COURT: Please bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Counsel, ready to proceed.

2 MR. SPRINGS: Yes, we call Ms. Dee Anne Johnson.

3 Ms. Johnson, come over here and the clerk will
4 swear you in.

5 DEE ANNE JOHNSON, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. SPRINGS:

8 Q. Ma'am, I'm going to ask you to speak towards the
9 microphone, which will take your voice over to the audience.
10 We want to hear you, and tell these folks your name, please?

11 A. Dee Anne Johnson.

12 Q. Ms. Johnson, have you ever done some work for the York
13 County sheriff's office?

14 A. Yes, sir, I have.

15 Q. What kind of work have you done for them?

16 A. I was responsible for doing controlled substance
17 analysis in the absence of the full-time chemist on
18 maternity life.

19 Q. Are you what's called a chemist?

20 A. Yes, sir.

21 Q. And what sort of training and education and experience
22 do you have that would entitle you to call yourself a
23 chemist?

24 A. I have a Bachelor of Science Degree in Criminal Justice
25 from 1989, from the University of South Carolina.

1 In 1993, I obtained a Bachelor of Science in chemistry
2 from the University of South Carolina, in Columbia.

3 I have completed their one-week seminar for forensic
4 chemists sponsored by the Drug Enforcement Administration.
5 And while working at the Columbia Police Department, I
6 developed and operated the drug analysis laboratory for that
7 local police department.

8 Once leaving there, I went to work at the
9 Charlotte-Mecklenburg Police Department in 2004, and left
10 there in 2008.

11 Q. All right. So your work for the York County sheriff's
12 office, as part of that work, did you test and identify
13 illegal drugs and controlled substances?

14 A. Yes, sir, that's correct.

15 Q. And have you ever been qualified and found to be an
16 expert in a court like this, an expert in testing and
17 identifying illegal drugs and controlled substances?

18 A. Yes, I have.

19 Q. You have before?

20 A. Yes.

21 MR. SPRINGS: Your Honor, we do offer Ms. Johnson
22 as an expert in testing and identifying illegal drugs and
23 controlled substances.

24 MR. MILLS: No objection.

25 THE COURT: All right. Without objection, she's

1 so qualified.

2 Counsel, let me give an explanatory instruction to
3 the jury, as I usually do.

4 Mr. Foreman, ladies and gentlemen of the jury, I
5 charge you that although lay witnesses are limited to
6 testifying about facts within their knowledge and not
7 allowed to give opinions, certain witnesses, who by
8 training, education, or experience are considered as experts
9 in a particular field, may give opinions in that field,
10 based upon the facts of a matter and their conclusions. And
11 these opinions constitute evidence to be considered by you,
12 in connection with all of the other evidence and testimony
13 in the case, and it is for you, the jury, to give it such
14 weight as you, in your experience, and discretion may
15 determine. By this I mean that you must weigh such evidence
16 and accept or reject it in the same manner as you treat all
17 other evidence in the case.

18 The value of expert testimony does not depend upon
19 the skill and knowledge professed by experts, but upon the
20 skill and knowledge they actually possess. Expert testimony
21 is given for the purpose of enlightening you and not for the
22 purpose of controlling your judgment.

23 Please proceed, sir.

24 MR. SPRINGS: Thank you, Your Honor.

25 BY MR. SPRINGS:

1 Q. Ms. Johnson, when you did your work for the York County
2 sheriff's office, where was the laboratory located?

3 A. On the grounds here at the York County sheriff's
4 office, in the crime lab.

5 Q. Over at the evidence room?

6 A. That's correct.

7 Q. I'm showing you what's been marked State's Exhibit 11
8 for identification. Please look at this and tell the jury
9 if what's in that bag has ever come into your possession and
10 you have done some business with it?

11 A. Yes, I have.

12 Q. Where did you take it into your possession?

13 A. I received this evidence on April 17th of 2008, from
14 evidence technician Barbie Traylor at the York County
15 sheriff's office evidence room.

16 Q. Very good.

17 When you received it, was it in a sealed-up bag that
18 looked like it hadn't been tampered with?

19 A. Yes, sir, it was.

20 Q. And did you take it into your possession?

21 A. Yes, I did.

22 Q. Okay. At some point did you open that bag and analyze
23 the stuff that was in there?

24 A. Yes, I did.

25 Q. And you tested it?

1 A. That's correct.

2 Q. Did you weigh it?

3 A. Yes, sir.

4 Q. All right. And after you tested the stuff in that bag
5 and weighed it, did you write up a report?

6 A. Yes, sir, I did.

7 Q. All right. When you first got it, how was the stuff
8 packaged, do you recall?

9 A. I'll refer to my work sheet.

10 Q. Very good.

11 A. This particular piece of evidence was labeled as item
12 2. However, I itemized because the two items of evidence
13 inside had a different appearance and were packaged
14 differently.

15 Q. Yes, ma'am.

16 A. And the --

17 Q. I guess what I'm asking you is -- how many bags were in
18 there? Do you recall?

19 MR. MILLS: Your Honor, object to him leading the
20 witness.

21 MR. SPRINGS: I don't know how asking how many
22 bags were in there suggests the answer.

23 THE COURT: Well, I agree. I'll overrule. You
24 may answer.

25 BY MR. SPRINGS:

1 Q. Do you recall how many separate bags were in there?

2 A. Item number 2 contained one bag and item number 2.1,
3 that I have labeled, contained eleven tied plastic bags.

4 Q. All right. And you said that you did test it and weigh
5 it?

6 A. Yes, sir.

7 Q. And you prepared a report?

8 A. Yes, sir.

9 Q. May I see your report, please?

10 (Drug Report marked as State's Exhibit No. 13 for
11 identification)

12 MR. MILLS: Can we take a matter up with the
13 court?

14 THE COURT: Yes, sir.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 BY MR. SPRINGS:

18 Q. One second, Ms. Johnson.

19 A. Sure.

20 (Off the record)

21 (Back on the record)

22 BY MR. SPRINGS:

23 Q. Ms. Johnson, I had -- the original report got kind of
24 dog-eared and wrinkled I had to type up a nice pretty new
25 one, but we want to go back use the original and I'm going

1 to ask our court reporter to mark that.

2 (Drug Report marked as State's Exhibit No. 14 for
3 identification)

4 MR. SPRINGS: Thank you for your patience.

5 BY MR. SPRINGS:

6 Q. Thank you for your patience in that.

7 A. Sure.

8 Q. Now, we've put State's Exhibit 14 sticker on it. Is
9 that an accurate copy of the report that you did?

10 A. Yes, it is.

11 Q. And let's go ahead and offer that into evidence.

12 MR. SPRINGS: Your Honor, we offer State's Exhibit
13 14 into evidence at this time.

14 THE COURT: Show it to counsel.

15 MR. MILLS: No objection, Your Honor.

16 THE COURT: Admitted without objection.

17 BY MR. SPRINGS:

18 Q. Before I ask you the results of your report, I'm going
19 to ask you -- going back to the actual stuff, State's
20 Exhibit 11, after you did your testing, did you package it
21 back up, bag it back up?

22 A. Yes, sir, I did.

23 Q. And sealed it back up?

24 A. That's correct.

25 Q. Okay. And take a look at State's Exhibit 11. Does

1 that look like the way it was when you sealed it back up?

2 No one has messed with it or tampered with it since?

3 A. That's correct. I have a seal date and my initials
4 across the seal.

5 Q. Okay. All right. Let's talk about one more.

6 This is Defense Exhibit 11 (sic). It was opened
7 yesterday by the defense attorney, so don't let that shock
8 you, but I'm going to ask you to look into Defense Exhibit 1
9 and tell the jury if you have ever done business with what's
10 in there before?

11 A. Yes, I have.

12 Q. Where did you receive it?

13 A. I received this evidence on the same date as State's
14 Exhibit 11, on April the 17th of 2008, from Barbie Traylor
15 out of the York County sheriff's office evidence room.

16 Q. And was the bag sealed up and intact and not tampered
17 with when you got it?

18 A. Yes, it was.

19 Q. And did you do at some point open it up and test the
20 stuff inside?

21 A. Yes, sir.

22 Q. And is the result of that test also on your report
23 here, which is now the paper marked State's Exhibit 14?

24 A. It is.

25 Q. Okay. Now, these bags -- you received an evidence bag

1 back last year, is that right?

2 A. Yes, sir.

3 Q. And then after you tested the stuff, did you take that
4 original evidence bag and everything and put it inside
5 another evidence bag?

6 A. I did.

7 Q. So this is a bag in a bag?

8 A. That's correct.

9 Q. Okay. All right.

10 MR. SPRINGS: Your Honor, at this time we do offer
11 into evidence -- Defense Exhibit 1 is already in.

12 We are going to offer State's Exhibit 11 into
13 evidence and the report, State's Exhibit 14.

14 THE COURT: I believe the report came in. It
15 already came in, didn't it?

16 MR. MILLS: Yes.

17 THE COURT: That was the report. You didn't
18 object to it.

19 MR. SPRINGS: That's right.

20 THE COURT: That's on the record.

21 And how about 11?

22 MR. MILLS: Just subject to my prior motion.

23 THE COURT: Subject to that, it's admitted.

24 MR. SPRINGS: All right.

25 BY MR. SPRINGS:

1 Q. Now, I'm going to ask you to take a look at your report
2 there. You got a lot of papers. Just put them you so we
3 don't get confused. Very good.

4 All right. This stuff, State's Exhibit 11, what did
5 you find it to be? What is that stuff that's in there?

6 A. State's Exhibit 11, the item that I have labeled item
7 2, is cocaine base or crack found in the amount of .84
8 grams.

9 Q. And is there more than .84? Is there a second amount
10 in that bag?

11 A. There is.

12 Q. How much does that weigh?

13 A. Item 2.1 is cocaine base found in the amount of 2.97
14 grams.

15 Q. So I'm not going to do math in public, but I am going
16 to say if we added the .84 and the 2.97 grams, we would have
17 the total weight of the crack cocaine in here?

18 A. That's correct.

19 Q. I wouldn't dare do that without a calculator. Okay.

20 Now, this is already in evidence, but what is stuff in
21 there? What's that green stuff?

22 A. Defendant's Exhibit 1, which is item number 3, was
23 found to be marijuana in the amount of 3.20 grams.

24 Q. Okay. Thank you very much.

25 And if you would, please answer any questions that the

1 defense attorney has for you. Thank you.

2 A. Thank you.

3 CROSS EXAMINATION BY MR. MILLS:

4 Q. Ms. Johnson?

5 A. Yes, sir.

6 Q. Do you have your notes?

7 A. Yes, sir, I do.

8 Q. May I see those please?

9 A. There you are.

10 Q. Do you have any other notes about this incident?

11 A. Notes that were given to me with the case. Those are
12 actually my notes.

13 Q. Okay. These are your notes?

14 A. Yes, sir.

15 Q. Okay. And you were initially given that nice clean
16 copy you talked about, that was a revised report?

17 A. The initial?

18 Q. No, the one that Mr. Springs was just commenting on?
19 When he came up and started your conversation, talked about
20 this one instead of that dog-eared one, as opposed to that
21 one?

22 A. Right.

23 Q. And that one was a revised report, right?

24 A. An amended report.

25 Q. An amended report?

1 A. That's correct.

2 Q. But this is the original report?

3 A. That's correct.

4 Q. All right. And the original report it had cocaine that
5 you were told was from Mr. Patton, right?

6 A. There is a second suspect, yes.

7 Q. Okay. So all you know is what you were told who
8 associates with what, but you don't know where they actually
9 came from, correct?

10 A. That's correct.

11 Q. So you don't know if that all came from Mr. Patton?
12 You can't say that, can you?

13 A. I cannot.

14 Q. Now, we talked about examining these things. Did you
15 do anything like -- was there anything unusual about this
16 testing?

17 A. No, sir.

18 Q. Anything special about any of the contraband?

19 A. No, sir.

20 Q. Anything distinct?

21 A. No, sir.

22 MR. MILLS: One moment.

23 (Off the record)

24 (Back on the record)

25 BY MR. MILLS:

1 Q. You don't do fingerprints?

2 A. No, sir.

3 Q. There is somebody who does -- a separate person who
4 does that, a separate expert?

5 A. There are separate crime scene individuals who handle
6 the fingerprints.

7 Q. Thank you.

8 A. Yes, sir.

9 MR. SPRINGS: May I ask one more clarify
10 questioning?

11 THE COURT: Sure.

12 REDIRECT EXAMINATION BY MR. SPRINGS:

13 Q. The weights of the drugs, is that just the drug? You
14 don't weigh the plastic baggies as well, do you?

15 A. No, sir.

16 Q. That's just the drugs?

17 A. Yes, sir.

18 Q. All right.

19 MR. SPRINGS: That's all I have.

20 THE COURT: All right. Thank you, ma'am. You may
21 stand down.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Do you want to have this witness
24 excused?

25 Any objection?

1 MR. MILLS: No objection.

2 THE COURT: Thank you for coming, ma'am. You may
3 be excused.

4 THE WITNESS: Thank you, Your Honor.

5 MR. SPRINGS: Commander Brown, if you would step
6 up and be sworn by the clerk.

7 MR. MILLS: Your Honor, we have something we need
8 to approach about.

9 THE COURT: Yes, sir.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion).

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, there is a matter I need to take up with counsel
14 out of your presence very briefly. It would not be a full
15 break. Just very briefly. Please retire to the jury room.
16 We will have you right back in. Thank you.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: We might as well go ahead and place
20 him under oath just briefly.

21 COMMANDER MARVIN BROWN, having been first duly
22 sworn, testified as follows:

23 THE COURT: I think you can answer from right
24 there. This is going to be very brief, as long as you speak
25 loud enough for the court reporter to hear you.

1 The question has come up -- the witnesses in this
2 case are sequestered. The question is -- a question has
3 been raised as to whether you were in the courtroom while
4 any of the State's witnesses have testified.

5 THE WITNESS: No, sir.

6 THE COURT: Have you been?

7 THE WITNESS: I have not.

8 THE COURT: Okay. I note that you were in the
9 courtroom. You were sitting in the back before we got
10 started and once when the jury was out, you came up and
11 spoke to Mr. Springs --

12 THE WITNESS: Uh-huh.

13 THE COURT: -- and Somebody else. As a matter of
14 fact, you know, I kind of pointed out to everybody the jury
15 was coming back in, so they needed to end the conversation.
16 I didn't say it that way, but I just let everybody know the
17 jury is coming back in, and you left from there then.

18 My question is, under -- you are under oath. Were
19 you in the courtroom for any witness' testimony for the
20 State while they were actually testifying?

21 THE WITNESS: No, sir, I was not.

22 THE COURT: All right. Do you want to ask any
23 questions about that?

24 MR. MORTON: No, sir, Your Honor.

25 MR. MILLS: I would just ask the court to inquire

1 whether he's had any contact with any of the witnesses.

2 THE COURT: Have you discussed the case with any
3 of the persons who have testified on behalf of the State in
4 this case, since the -- at any time while they were --
5 before or after they testified?

6 THE WITNESS: No, I came late this morning.

7 THE COURT: Okay. Any other questions?

8 MR. MILLS: No, sir.

9 THE COURT: All right. And I would say from the
10 court's observation, I know Mr. Brown has been in the
11 courtroom early on, but not today and not mostly yesterday.
12 He was in here -- the jury was out at the time that I saw
13 him in here. There were no questions asked of any
14 witnesses. He was discussing something with Mr. Springs and
15 somebody else.

16 All right. I think are you satisfied with that?

17 MR. MILLS: Yes, Your Honor.

18 THE COURT: Counsel?

19 MR. MORTON: Yes, sir.

20 THE COURT: All right. Just have a seat. We will
21 call you right back up and we will bring the jury back. You
22 have to be sworn again. I was just doing it for the
23 purposes of this hearing.

24 All right. Please bring them in.

25 (The following takes place in the presence of the

COMMANDER MARVIN BROWN - DIRECT BY MR. SPRINGS

269

1 jury panel)

2 THE COURT: Counsel, please proceed.

3 MR. SPRINGS: Yes. We call Marvin Brown.

4 COMMANDER MARVIN BROWN, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. SPRINGS:

7 Q. Please tell the jury your name.

8 A. My name is Marvin Brown.

9 Q. What do you do for a living?

10 A. I'm the commander of the Drug Enforcement Unit.

11 Q. Are you a police officer?

12 A. I am. I'm a certified police officer.

13 Q. How long have you been a police officer?

14 A. Thirty-three years.

15 Q. And how long have you worked in narcotics?

16 A. About thirty years.

17 Q. Thirty years?

18 A. About thirty.

19 Q. Okay. And you run the narcotics unit now?

20 A. Yes. I ran the Rock Hill Police Department narcotics
21 unit for ten years. I have been with the county now for
22 twelve, and I have run the Drug Enforcement Unit just a
23 little over ten years.

24 Q. Okay. That Drug Enforcement Unit, where do the
25 officers come from, the narcs on it?

1 A. Eight different police agencies here in York County.
2 Every law enforcement agency in York County has come
3 together to form the Drug Enforcement Unit, so it's eight
4 different agencies on this drug unit, is what we call it,
5 the drug unit.

6 Q. Similar to a task force?

7 A. Similar to a task force, yes.

8 Q. Now, in your thirty years in law enforcement -- and how
9 many in narcotics?

10 A. My first search warrant was in 1977.

11 We didn't form the official narcotics unit at the Rock
12 Hill police department until '87, but I was working
13 narcotics through the late seventies and eighties, so I have
14 been working drug enforcement for thirty years.

15 Q. All right. In all those years have you come to be
16 acquainted with the drug crack cocaine?

17 A. I have, but the first time we saw crack was in the
18 mid-nineties.

19 Q. And have you actually been involved on actual crack
20 cocaine sales and distribution cases?

21 A. Yes. Actually I made the first crack arrest here in
22 York County. And the Drug Enforcement Unit makes about
23 between 100, 150 cases a month, and I have been involved in
24 most of those, so hundreds of crack cases, if not thousands.

25 Q. All right. Would you say that you have learned through

1 those years and all those cases how crack cocaine is sold
2 here in York County?

3 A. Yes, I have. And also I have been to quite a few --
4 quite a bit of training.

5 Q. Let me ask you real quick a side question. How does a
6 crack addict get that stuff in his body? How does he take
7 the drug?

8 MR. MILLS: Objection, Your Honor.

9 MR. SPRINGS: I would like to know the basis for
10 this objection.

11 THE COURT: Counsel, approach just a minute.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: The objection is overruled. You may
15 proceed, counsel.

16 BY MR. SPRINGS:

17 Q. Thank you, sir.

18 How does a crack addict typically, in your experience,
19 in York County, get the drug into his body?

20 A. Crack is a smokeable form of cocaine, so it's smoked
21 through either a pipe. A drink can be made up to be a
22 pipe. It's a smokeable form of cocaine.

23 Q. Okay. All right.

24 And in your years have you learned and become
25 knowledgeable about the street price, the going rate for

1 crack cocaine, what it cost?

2 A. Yes, I have.

3 Q. Have you learned in your years of experience how it is
4 packaged and sold?

5 A. Yes.

6 Q. Have you learned in your years of experience the habits
7 of the typical addict versus the habits of a dealer?

8 A. Yes, I have.

9 Q. Have you ever been qualified in a state court of record
10 like this as an expert?

11 MR. MILLS: Objection. Relevance, Your Honor. At
12 this point that's a little premature.

13 THE COURT: Overruled. You are a little
14 premature, I think, counsel. Let him finish his question.
15 Then I may respond to you.

16 Go ahead.

17 BY MR. SPRINGS:

18 Q. Commander, have you ever been qualified as an expert in
19 a state court of record like this in how crack cocaine is
20 packaged, sold, the going price, the typical intoxicating
21 dose? Have you ever qualified as an expert in the drug
22 dealing of crack cocaine?

23 A. I have.

24 Q. In state court?

25 A. Yes, sir.

1 Q. Approximately how many times?

2 A. More than six, less than twelve.

3 Q. All right. Have you ever been qualified in the United
4 States District Court, the Federal Court, at the same type
5 expert?

6 A. Yes, twice.

7 MR. SPRINGS: Your Honor, we offer Commander
8 Marvin Brown as an expert in how crack cocaine is packaged,
9 sold, the going price, the typical intoxicating dose, and
10 the difference in habits between the typical addict, the
11 user, and the typical drug dealer.

12 MR. MILLS: Your Honor, may we approach again?

13 THE COURT: Yes, sir.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, again, there's a matter I need to take up with
18 counsel out of your presence. It will be very brief,
19 probably about five minutes or so. Please retire to the
20 jury room and have you right back in.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: All right. Go ahead, counsel.

24 VOIR DIRE EXAMINATION BY MR. MILLS:

25 Q. Major Brown?

1 A. Commander.

2 Q. Commander Brown.

3 Mr. Brown, have you ever done any writings or
4 publishings on this area of expertise?

5 A. I did an article in a national magazine for United
6 States Attorney's Office that was published in all fifty
7 states in reference to the Drug Enforcement Unit, how we put
8 it together, but not specifically about crack cocaine
9 itself.

10 Q. Not about the packaging and sale of crack cocaine or
11 anything of that nature, is that correct?

12 A. No, I do have -- I teach three blocks of search and
13 seizure, asset forfeiture, basic narcotics, and once a year
14 I normally -- I'm a guest instructor at a commander's school
15 for the United States Attorney's Office also about drug
16 enforcement units and the drug trends and that kind of
17 thing. And I have been to several other schools, but I
18 haven't done any publishings in reference to the street
19 level crack cocaine.

20 Q. Okay. So what is your expertise in the ability to
21 do -- have you actually been involved in the actual
22 transactions yourself?

23 A. I have, but that's been awhile. It's twenty-five of us
24 on the unit. Now, the younger guys do the actual
25 transactions, but I have been the supervisor over narcotics

1 for over twenty years, and actually the first crack cocaine
2 case we made was three guys from New York, so I was on -- I
3 was involved from the very beginning when crack cocaine
4 first came in, and I have watched it evolve as to how it's
5 packaged and sold throughout the years, especially here in
6 York County. We make hundreds of crack cases.

7 Q. Is it all done the same way?

8 A. Oh, no, it's different ways.

9 Q. So it can be -- there is a variance between -- there is
10 a generalization, but there is always exceptions? Is
11 that -- I mean, I'm trying to get handle on what you are
12 going to testify to. Is that --

13 A. There is exceptions to way it's packaged. It's just
14 certain amounts that it's normally sold in. There is
15 certain dosage units, which is usually considered
16 intoxicating unit. How much it takes -- like how many --
17 what size is normally an intoxicating unit for a person who
18 uses crack. The cost of crack, you know, the -- I guess
19 compared to the liquor or beer, you know, how much you --

20 Q. Okay.

21 A. I don't think you are going to get into liquor and beer
22 but --

23 Q. So you are just talking about sale to different size
24 and that's enough to get a buzz off it and that's distribute
25 that at that level?

1 A. I'm assuming that's what -- that's what I have
2 testified to -- it's more of a street level. I deal with
3 street level, mid level, and upper level drug dealers, but I
4 think today we are talking more of a street level dealer.

5 Q. Just customer to a street level, right?

6 A. I think so.

7 Q. All right.

8 MR. MILLS: Thank you, Your Honor.

9 One moment, please.

10 (Off the record)

11 (Back on the record)

12 MR. MILLS: I would like to go ahead and object
13 for the record. I under the situation. Under 702 I don't
14 believe that he's qualified.

15 THE COURT: Well, reading from 702 of the Rules of
16 Evidence, the South Carolina Rules of Evidence, it says "if
17 scientific, technical, or other professionalized knowledge
18 will assist the trier of fact to understand the evidence or
19 to determine a fact in issue, a witness qualified as an
20 expert by knowledge, skill, experience, training, or
21 education may testify thereto in the form of an opinion or
22 otherwise."

23 And so as I understand the cases in South
24 Carolina, a person has special knowledge and skill and would
25 help the jury understand the issues before them, and they

1 have special knowledge and skill that would be helpful to
2 them in that regard, that they can testify concerning that.

3 I -- in this -- let me say in this particular
4 case, I think he can testify, whether he's qualified as
5 expert or not, once a foundation is laid as to how he comes
6 to that knowledge. He testified generally about that
7 knowledge.

8 And, of course, he can't testify as to what
9 somebody intended to do in this particular case, obviously,
10 as an expert. He can only testify as to what his knowledge
11 and understanding is based on what he has seen in the past.

12 And I certainly find the information he gives, as
13 long as the foundation is laid as to how he has knowledge, I
14 think he could testify that to the jury whether he is
15 qualified as expert or not. I think he can testify
16 concerning that, if the proper foundation is laid as to how
17 he came about his knowledge, but the court would find under
18 South Carolina Rules of Evidence 702, I think he's qualified
19 as an expert. He's been qualified in other state courts
20 before. He's been qualified in federal courts with regard
21 to that knowledge, and I think whether he's qualified as an
22 expert or not, I think he can testify as to his experience
23 and knowledge and what he understands. It wouldn't have
24 anything to do with the issues in this particular case. He
25 can't testify as to any opinions with regard to this

1 particular case, but he could testify generally about what
2 he knows.

3 MR. MILLS: And the only additional sustaining
4 ground I would make is that we have had three other officers
5 testify to this, and I think this testimony would be
6 cumulative.

7 THE COURT: Oh, no, no, no, they haven't -- they
8 haven't testified concerning that.

9 MR. MILLS: I'm talking about --

10 THE COURT: As I understand what he's testimony is
11 going to be is about the typical dose of -- intoxicating
12 dose, what it sells for, how it's normally packaged for
13 sale, and that sort of thing by a dealer. None of that has
14 been testified by the officers. They testified as to what
15 they found, but nobody has told the jury what that means.

16 MR. MILLS: Well, my recollection -- of course,
17 I'll defer to the court on the record, is Mr. Springs asked
18 each of those individuals is that the way it's distributed,
19 is that the way it's packaged for sale on the street.

20 THE COURT: Well, there was -- one officer was
21 asked about that, I believe. I believe it was Officer
22 Schettler was asked about that and he -- I don't even know
23 if he was asked about that, but in response to either your
24 questions or Mr. Springs questions, one or the other, he
25 said typically that's how it's done, put in a corner of a

1 sandwich bag and torn off and put -- and then put in a
2 plastic bag and sold out of there, but it's tear out of a
3 corner --

4 MR. MILLS: Right.

5 THE COURT: -- of a baggy and wrapped into that
6 and it's sold like that. That's all the testimony that I
7 recall. I don't remember any testimony about what a dose
8 of -- intoxicating dosage would be and what it would cost or
9 what amount constitutes an intoxicating dosage. I don't
10 remember any testimony concerning that.

11 MR. MILLS: I don't recall any testimony either.
12 The other ones I did. I think both Ligon and Schettler and
13 Ervin testified, but I agree with the court.

14 THE COURT: Well, if I'm mistaken about that, I'm
15 mistaken about what they testified, but the record will show
16 it. But, in any event, I'm quite sure that nobody testified
17 concerning values and how -- what amount of intoxicating
18 dosage, what it sells for, and that -- those sources.
19 Nobody has testified to any of that.

20 MR. MILLS: Right. Thank you, Your Honor.

21 MR. MORTON: Your Honor, I didn't -- Mr. Springs
22 informs us that this is his last witness, probably. We
23 would have a directed verdict motion and send the jury back
24 out again? I didn't know if there was any way you could
25 preserve that and let us make -- whatever you want to do. I

1 just want to bring it to the court's attention.

2 THE COURT: All right. Well, you know, I think in
3 order for me to consider a directed verdict motion, I would
4 need whatever testimony -- I certainly should consider
5 whatever testimony that this witness would give --

6 MR. MORTON: All right.

7 THE COURT: -- in deciding whether they've
8 established their case or not, particularly I guess with
9 regard to intent to distribute. I guess that's where their
10 testimony is going, evidence on this issue, because they
11 have the burden of proof on the intent to distribute it, and
12 so that's why I'm allowing his testimony, but -- so -- and I
13 guess we will need to have that information. So I
14 appreciate that, trying to keep the jury from sending in and
15 out, but we may just have to do that. We make just take a
16 short break. Y'all can probably use that time anyway.

17 MR. MORTON: Thank you, Your Honor.

18 THE COURT: So what I would suggest -- and you are
19 offering him as an expert witness. I'm going to allow him
20 to testify as an expert witness, but we will do that on the
21 record. You can object to it, if you want to, whatever.

22 Please bring the jury in, please.

23 MR. MILLS: Your Honor, do I might just object
24 just now for the jury now, or do I need to do that in front
25 of the jury?

1 THE COURT: No, I think you could be.

2 MR. MILLS: Pardon me?

3 THE COURT: No, it be noted now. I don't think
4 you need to do in front of the jury.

5 MR. MILLS: Thank you, Your Honor.

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: Counsel, approach just a second,
9 please.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 MR. SPRINGS: Your Honor, pursuant to our earlier
13 foundation of this officer's years of experience in
14 narcotics and with crack cocaine, his training and so forth,
15 we do -- we are going to ask questions under Rules of
16 Evidence 701.

17 THE COURT: Yes, sir.

18 CONT'D DIRECT EXAMINATION BY MR. SPRINGS:

19 Q. Now, commander, have you learned what the typical
20 intoxicating dose, a typical hit that the crack addict on
21 the street is looking for to get his fix?

22 A. Yes, sir.

23 Q. What's the typical intoxicating dose?

24 A. It's a tenth of a gram, what we call a 20. Normally it
25 cost \$20 and it's a small rock. It looks like a peanut, a

1 small piece of peanut brittle. It's a tenth of a gram.

2 Q. Okay. \$20?

3 A. It's a \$20 rock or called a 20. On the street it's
4 called a 20.

5 Q. Okay. And if the addict buys two hits, two doses, or
6 three, does he get a price break, typically in your
7 experience?

8 A. Yes, the more you buy, the cheaper it gets. A tenth of
9 a gram is \$20; and .3 grams would be \$40; and another half,
10 .35, would be \$50. It gets cheaper as it goes up.

11 Q. Okay. Now, in your experience, does the typical street
12 corner addict, when you find that poor soul and arrest him,
13 does he have multiple, as many as eleven separate bags of
14 crack cocaine?

15 MR. MILLS: Object to leading, Your Honor. We're
16 talking about fact specific now about this case.

17 THE COURT: All right. Yeah, avoid the leading,
18 counsel, please.

19 BY MR. SPRINGS:

20 Q. Tell us your experience with multiple baggies and a
21 typical user, as opposed to somebody selling it in a
22 business, if you would?

23 A. Crack is a highly addictive substance. On crack
24 abusers, you wouldn't find multiple bags in a crack abuser's
25 pocket. When you have -- crack is broken down for sale in

1 corner baggies. You get an eighth of an ounce or a half an
2 ounce and you break it down and put in these little corner
3 baggies. Usually they are packaged about the same to sell
4 for \$50 apiece, or whatever, but a crack abuser normally
5 would not walk around with a dozen bags in his pocket broken
6 down for sale. I mean, that's what they are is broken down
7 for sale in individual baggies. You wouldn't buy it that
8 way, because you pay far too much for it. A crack abuser
9 would buy -- the more you buy, the cheaper it gets, so you
10 wouldn't buy ten or twelve bags. You would buy a bigger
11 piece, like buying a pint of milk as opposed to buying a
12 gallon.

13 Q. I understand.

14 And in your experience, is it typical or would it be
15 unusual to find the addict, the buyer, going around armed
16 with a pistol? Would that be typical or unusual?

17 A. That would be unusual. What you would find on a crack
18 abuser normally would be several lighters and a crack pipe,
19 because it takes lighters to use it, but not a gun. Rarely
20 do we find crack abusers walking around with guns on them.

21 Q. And have you ever found pistols on dealers, people in
22 the business?

23 A. Yes, that's quite common. The drugs unit itself has
24 recovered seven hundred and some weapons.

25 Q. And what, in your experience, would the dealer be using

1 a gun for? Why would he carry a gun?

2 MR. MILLS: Objection. It calls for speculation.

3 MR. SPRINGS: In your experience.

4 THE COURT: I'm going to -- I think it's certainly
5 speculation there. I'm going to sustain the objection.

6 BY MR. SPRINGS:

7 Q. Commander, in your experience -- I'll strike that.

8 I'll strike that, and I'm finished. Thank you very much,
9 sir.

10 CROSS EXAMINATION BY MR. MILLS:

11 Q. Commander Brown, you don't know anything about this
12 specific case, do you?

13 A. No.

14 Q. All right. So you are not offering testimony about
15 what the source of the cocaine in evidence, who had it or
16 where it came from?

17 A. No, sir, not about this case.

18 Q. Okay. So you are just talking about other people and
19 other times in your experience, correct?

20 A. Dealers versus users, yes.

21 Q. And that's a generalization, not as a hard and fast
22 rule, right?

23 A. It's not hard and fast, but it's --

24 Q. Pretty consistent?

25 A. Yes, it is, eleven bags, twelve bags in your pocket.

1 Q. Okay. But, once again, you don't know where these came
2 from and you don't know anything about the specifics of this
3 case?

4 A. I don't.

5 Q. Okay. Thank you, sir.

6 MR. SPRINGS: That's all we have.

7 May the officer please be excused?

8 MR. MILLS: Yes, of course.

9 THE COURT: Thank you for coming, sir. You may be
10 excused.

11 MR. SPRINGS: Yes, sir.

12 Your Honor, that's our case. We rests.

13 THE COURT: Counsel, approach just a minute for
14 scheduling purposes now.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 THE COURT: Counsel, I tell you what we will do is
18 we will consider all motions timely made when made, if you
19 are ready to proceed on.

20 MR. MILLS: Your Honor, we are protected for the
21 record?

22 THE COURT: Yes, timely made when made. We will
23 take it up later, so we can move on with the case.

24 All right. Are you ready to proceed then?

25 MR. MORTON: Yes, sir, Your Honor.

1 We would call Mr. Odarius Williams to the stand.

2 ODARIUS WILLIAMS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. MORTON:

5 Q. Mr. Williams, please say your name for the court.

6 A. Odarius Antwan Williams.

7 Q. And how do you spell Odarius?

8 A. O-D-A-R-I-U-S.

9 Q. Okay. My name is Jim Morton and I'm helping Mr. Mills.

10 You and I met for the first time this morning, correct?

11 A. Yes, sir.

12 Q. Okay. And Odarius, let me ask you a little bit about
13 yourself. Where are you from?

14 A. I'm from York, South Carolina.

15 Q. And where do you live?

16 A. I live like -- I live in York, South Carolina.

17 Q. Were you born and raised here?

18 A. Yes, sir.

19 Q. Do you go to school here?

20 A. Yes, sir.

21 Q. And where do you go to school?

22 A. York Comprehensive High.

23 Q. York High School?

24 A. Yes, sir.

25 Q. Speak up just little bit. You want to make sure the

1 last juror over here understands what you are saying, okay?

2 A. All right.

3 Q. Okay. I'm going to stand back here so you can talk to
4 us, okay?

5 Where do you go to school?

6 A. York Comprehensive High.

7 Q. And what year are you there?

8 A. What year?

9 Q. Yes, sir.

10 A. What year did I start going?

11 Q. No, what, you a sophomore, junior, senior?

12 A. Oh, I'm a senior.

13 Q. You are a senior there?

14 A. Yes, sir.

15 Q. Is this your last semester there?

16 A. Yes, sir.

17 Q. Are you going to graduate?

18 A. Yes, sir.

19 Q. Okay. Are you doing okay in school?

20 A. Yes, sir.

21 Q. What's your grade point average?

22 A. My GPA is a 2.78, I believe.

23 Q. Okay. And what do you plan to do when you get out of
24 school?

25 A. I plan on going to Winthrop to follow my career in

1 broadcast journalism.

2 Q. In broadcast journalism?

3 A. Yes.

4 Q. That's what you want to do?

5 A. Yes, sir.

6 Q. And do you know Jomar Robinson?

7 A. Yes, sir, as a friend.

8 Q. Okay. How good a friend?

9 A. I know his girlfriend like real good, so --

10 Q. Okay.

11 A. -- that made us able to be friends.

12 Q. Okay. Do y'all hang out together?

13 A. No, sir.

14 Q. Okay. Do you know Officer Schettler?

15 A. No, sir.

16 Q. Do you know Officer Ervin?

17 A. No, sir.

18 Q. Do you know Officer Ligon, who was also out there that
19 night?

20 A. No, sir.

21 Q. Do you have any grudges against them?

22 A. No, sir.

23 Q. On the night of March 20th of 2008, you were present
24 when Jomar Robinson and Mr. Patton were arrested over on
25 Hall Street, correct?

1 A. Yes, sir.

2 MR. SPRINGS: Your Honor, I'm going to object to
3 the leading.

4 THE COURT: Please avoid the leading, counsel.

5 MR. MORTON: I'm just trying to get to the subject
6 matter. I apologize, Your Honor.

7 BY MR. MORTON:

8 Q. Tell me where you were on the night of March 20th,
9 2008.

10 A. I had just came down and -- me and a couple of my
11 buddies, we had just came down there just to hang out.

12 Q. And hang out and do what?

13 A. Just hang out. That's my old neighborhood. That's
14 where I used to stay at, so I just came back to see
15 everybody.

16 Q. So you used to live in that area?

17 A. In the area, yes, sir.

18 Q. Do you remember when the police came there that night?

19 A. Yes, sir.

20 Q. Okay. How long had you been there?

21 A. Maybe five, ten minutes.

22 Q. Okay. And during that five or ten minutes that you
23 were there, did you see any car traffic come into Hall
24 Street?

25 A. No, sir.

1 Q. You didn't see any?

2 A. None.

3 Q. Did you see anybody -- any of the cars -- did you see
4 any cars stop in front of the [REDACTED] [REDACTED] [REDACTED] where you
5 were?

6 A. No, sir.

7 Q. Did you see any of the five people who were there
8 approach a car?

9 A. No, sir.

10 Q. Are you sure about that?

11 A. Positive.

12 Q. Okay. Did you see anybody selling dope?

13 A. No, sir.

14 Q. Okay. Are you sure about that?

15 A. I'm positive.

16 Q. Okay. You saw officers pull up?

17 A. Yes, sir.

18 Q. Tell us -- tell the jury what happened, how that
19 occurred.

20 A. All right. We was just standing on the porch maybe
21 five minutes and then the police, they just -- those two
22 officers, they came in one car and they hopped out. And as
23 soon as they hopped out, they said that they smelled green
24 marijuana.

25 Q. Now, you say as soon as they hopped out. Tell us again

1 how they pulled up. Did they pull up slowly, or --

2 A. No, they pulled up real fast. It was like "voo" and
3 then they stopped and it was like "we smell green
4 marijuana."

5 Q. They got out of the car?

6 A. And they said they smelled green marijuana.

7 Q. About how far from their car were they when they said
8 they smelled green marijuana?

9 A. Maybe at least -- at least ten feet away.

10 Q. Okay. Did they wait until they got this close --

11 A. No, sir.

12 Q. -- to y'all?

13 A. No, sir.

14 Q. Are you sure about that?

15 A. They said that they smelled green marijuana.

16 Q. As soon as they got out of the car?

17 A. Yes, sir.

18 Q. Are you sure about that?

19 A. Positive.

20 Q. And --

21 MR. SPRINGS: I going to object to the repeating
22 "are you sure about that?" It bolsters the testimony. It's
23 improper.

24 THE COURT: Yes.

25 BY MR. MORTON:

1 Q. After -- and I'll retract in a minute.

2 They arrested two individuals that night, right?

3 A. Yes, sir.

4 Q. Were you one of the ones they arrested?

5 A. No, sir.

6 Q. And who did they arrest?

7 A. They arrested Jomar and Mr. Patton.

8 Q. Did you observe that night Mr. Patton or Mr. Robinson
9 with any kind of drugs?

10 A. No, sir.

11 Q. Okay. Now, after they were arrested -- again, I'll
12 retry it. Did other officers come to the scene?

13 A. Yes, sir, like after they had us on the ground and
14 everything, it was maybe at least five or six cars and it
15 was a bunch of police officers running down there, flooded
16 down there.

17 Q. They flooded out of there. Marked police car units?

18 A. Yes.

19 Q. Unmarked?

20 A. It was some marked, but some unmarked.

21 Q. So they flooded where y'all were?

22 A. Yes, sir.

23 Q. Okay. And were they taking pictures?

24 A. I'm not sure if they were taking pictures. They had me
25 on the ground.

- 1 Q. Okay. And did they talk to you?
- 2 A. No, sir. They searched me three times.
- 3 Q. They searched you three times?
- 4 A. Yes.
- 5 Q. Well, you were a witness to this incident, right?
- 6 A. Yes, sir.
- 7 Q. And I assume they took a statement from you?
- 8 A. No.
- 9 Q. They didn't ask you for any kind of statement?
- 10 A. No, sir.
- 11 Q. In other words, the police did not give you a form and
- 12 ask you for your statement about the events that happened
- 13 that night?
- 14 A. No, sir.
- 15 Q. Do you know whether they did that to any of the other
- 16 three who were not arrested?
- 17 A. No, sir.
- 18 Q. They didn't do that?
- 19 A. No, sir.
- 20 Q. Okay. Now, Mr. Patton, when the police got there, I
- 21 understand -- what did -- what happened when the police got
- 22 there, as far as Mr. Patton is concerned? Did they search
- 23 him?
- 24 A. They searched him whenever he came back.
- 25 Q. What did he do when they got there?

1 A. He ran.

2 Q. Okay. And what did Mr. Robinson do? When the police
3 came up, they got out of their car, they said they smelled
4 green marijuana. Then what did the police say?

5 A. They told -- they was like "I'm going to search you,"
6 and he was like "no, you don't have a reason to search me."

7 Q. Okay.

8 A. And they tried to search him and he ran.

9 Q. Okay. And did you see them take a gun from him?

10 A. No, sir.

11 Q. Did you see him -- what was he wearing?

12 A. He had on a pair of Timberlands. He had on some black
13 pants and a white T-shirt.

14 Q. Did you see him with a jacket on?

15 A. No, sir.

16 Q. Did you see a gun?

17 A. No, sir.

18 Q. Are you sure about that?

19 A. Yes, sir.

20 MR. SPRINGS: I'm going to object to the --

21 THE COURT: Please quit asking him "are you sure
22 about that," counsel.

23 BY MR. MORTON:

24 Q. So Mr. Robinson ran after they tried to search him,
25 right?

1 A. Yes, sir.

2 Q. And Mr. Patton ran?

3 A. Yes, sir.

4 Q. And how long do you think Mr. Patton was gone before he
5 came back?

6 A. It had to be probably two or three minutes.

7 Q. Okay. So he was gone for two or three minutes.

8 Did anybody chase Mr. Patton? Did any of the police
9 chase him?

10 A. No, sir.

11 Q. Was he gone from the scene for two or three minutes?

12 A. Yes, sir.

13 Q. And then he came back?

14 A. Yes, sir.

15 Q. And was he searched then?

16 A. Yes, sir.

17 Q. And how many times did they search him?

18 A. Three times.

19 Q. Okay. After they searched him the first time, what did
20 they find?

21 A. Nothing.

22 Q. After they searched him the second time, what did they
23 find?

24 A. Nothing.

25 Q. So he was gone -- here are the police. He runs. He's

1 gone out of sight for two or three minutes?

2 A. Yes, sir.

3 Q. Then he comes back, right?

4 A. Yes, sir.

5 Q. And after they searched him the third time, what
6 happens?

7 A. They said that they found dope on him.

8 Q. Did you see that dope?

9 A. I seen -- I didn't see any dope.

10 Q. Did you see them arrest Mr. Patton?

11 A. Yes, sir.

12 Q. Did you see them arrest Mr. Robinson?

13 A. Yes, sir.

14 Q. Did you see -- did they show you any drugs that they
15 took from Mr. Robinson?

16 A. No, sir.

17 Q. Did they show you a gun that they took from Mr.
18 Robinson?

19 A. No, sir.

20 Q. How long were you out there, Mr. Williams, after the
21 police came?

22 A. Maybe five more minutes.

23 Q. Okay. Did they ask you to come down to the police
24 station and give a statement?

25 A. No, sir.

1 Q. Would you have done that?

2 A. No, sir.

3 Q. You would not have gone down there and done that?

4 A. No, sir.

5 Q. Why not?

6 A. Because I don't -- I didn't want to be involved in all
7 of this.

8 Q. Okay. Did they ask you there that night on the scene
9 to talk to them about what had happened?

10 A. No, sir.

11 Q. They did not?

12 A. No, sir.

13 Q. Why not?

14 A. I'm not sure.

15 Q. Were you there?

16 A. Yes, sir.

17 Q. Were you on the ground?

18 A. Yes, sir.

19 Q. Mr. Williams, when Mr. -- when the police officers came
20 up to the scene, you said that they indicated that they had
21 smelled marijuana?

22 A. Yes, sir.

23 Q. Okay. And that they came up and they wanted to search?

24 A. Yes, sir.

25 Q. Mr. -- search you?

1 A. They searched all of us.

2 Q. They did?

3 A. But they -- when they first came, they wanted to search
4 Jomar.

5 Q. Okay. And when Jomar -- when they wanted to do that,
6 what did Mr. -- what did Mr. Robinson do?

7 A. He told them that he couldn't search him. They didn't
8 have a reason to search him.

9 Q. And then what happened?

10 A. He tried to grabbed for him. He grabbed his shirt and
11 he ran.

12 Q. Okay. And one of officers grabbed his shirt?

13 A. Yes.

14 Q. Was -- again, did he grab his jacket?

15 A. No, sir. No, there was no jacket.

16 Q. There was no jacket?

17 A. No, sir.

18 Q. And when the officer grabbed his shirt, then Jomar did
19 what?

20 A. He ran.

21 Q. Okay.

22 A. He got away from them, and they -- maybe five minutes
23 later he brought Jomar back around.

24 Q. Did Jomar -- did you see Jomar hit the officer?

25 A. No, sir.

1 Q. Were you in a position to see that?

2 A. Yes, sir.

3 Q. Did you see the officer grab Jomar thus so and Jomar
4 starting to hit the officer in the face?

5 A. No, sir.

6 Q. Or in the chest?

7 A. No, sir.

8 Q. Did that happen?

9 A. No, sir.

10 Q. Please answer any questions that Mr. Springs may have.

11 CROSS EXAMINATION BY MR. SPRINGS:

12 Q. Hi, Mr. Williams.

13 I do have some questions for you. If anything I ask
14 you, if you don't understand, just tell me. I'm not trying
15 to trick you. We just got to find out what you know about
16 this. So again --

17 A. Okay.

18 Q. -- if anything I ask is confusing, just say "I don't
19 understand what you are asking me."

20 A. Okay.

21 Q. And I'll ask a different question.

22 Now, this was a -- this was March 20th of last year, a
23 Thursday night. Do you remember it being a school night?

24 A. I wasn't sure that it was a school night. I didn't
25 really remember it being a school night, but apparently it

1 was.

2 Q. Well, you got a very, very detailed memory on it, so
3 much you don't remember if you were out there at 10:30 on a
4 Thursday, school night?

5 A. I remember I was out there, but I don't remember it
6 being a school night. It may have been.

7 Q. Now, you said that you are more friends with the
8 defendant Jomar Robinson's girlfriend, is that right?

9 A. Yes, sir.

10 Q. Would you say you are close friends with her?

11 A. Yes, sir.

12 Q. What is her name?

13 A. April Hayes.

14 Q. April what?

15 A. April. I don't know her last name. April.

16 Q. But you are close friends?

17 A. Yes, sir.

18 Q. Now, how old are you? Well, how old were you back
19 March last year?

20 A. Sixteen.

21 Q. Are you seventeen now?

22 A. Yes, sir.

23 Q. And do you know Jomar Robinson is twenty-six,
24 twenty-seven?

25 A. Yeah, something. I guess so.

1 Q. But you were on the porch with him that night, you were
2 on the porch?

3 A. Yes.

4 Q. You were in the group?

5 A. Yes, sir.

6 Q. Hanging out on a Thursday night?

7 A. Yes, sir.

8 Q. Now, was April there?

9 A. No, sir.

10 Q. Where does she live?

11 A. She stays like in the back of the apartments, I mean
12 further down.

13 Q. Does she live at the Hall Street Apartments?

14 A. Yes, sir.

15 Q. Did you ever live at the Hall Street Apartments?

16 A. No, sir, I stayed in the trailer park, the Meadowbrook
17 Trailer Park before.

18 Q. So you had gotten there -- I was taking notes and I
19 don't write very fast. You had been there, what you say,
20 about ten minutes before the police arrived?

21 A. Yes, sir.

22 Q. So you wouldn't know what was going on twenty or thirty
23 minutes before?

24 A. No, sir.

25 Q. Because you weren't there?

1 A. No, sir.

2 Q. Now, the officers, when they got out of their car,
3 there was no question they were police officers? They had
4 badges and they said they were police officers, did they
5 not?

6 A. Yes, sir.

7 Q. And in those ten minutes while you were on the porch
8 before the police rolled up, what did you fellows talk
9 about?

10 A. Nothing. We was just sitting around. I hadn't seen
11 them in a while, because I had moved and I just came back
12 and I was just telling them what's up.

13 Q. So we had the defendant in this case, Jomar Robinson,
14 he was there?

15 A. Yes, sir.

16 Q. And Mr. Patton was there?

17 A. Yes, sir.

18 Q. And there was you.

19 And what's the next fellow's name?

20 A. Jerome Neely and Travis Walton.

21 Q. Travis Walton?

22 A. Yes, sir.

23 Q. And do you know where Jerome Neely lives?

24 A. I don't know his address, but --

25 Q. Does he live at Hall Street Apartments?

1 A. No, he stays in the trailer park, the Meadowbrook
2 Trailer Park.

3 Q. Travis Walton, do you know where he lives?

4 A. He stays in the valley.

5 Q. In the valley section of York?

6 A. Yes.

7 Q. Which is some -- which is several miles from Hall
8 Street Apartments?

9 A. Yes.

10 Q. And did you know that the defendant, Jomar Robinson, he
11 lived on Washington Street, some other place. Did you know
12 he --

13 A. No, I didn't know that.

14 Q. Now, this was 10:30 at night on March the 20th. What
15 was the temperature like?

16 A. It was fairly warm.

17 Q. What were you wearing?

18 A. I had on -- I believe I had on some Timberlands myself
19 and a red T-shirt and blue jeans.

20 Q. Did you go to school the next day after this happened?

21 A. I -- I'm guessing I did, because you said it was on a
22 school night, so, yes, sir. I don't miss school.

23 Q. Did you tell your friends at school about what had
24 happened; that you were standing there when two guys got
25 arrested?

1 A. No, sir. I told my parents.

2 Q. Did you tell anybody at school?

3 A. No, sir. It's not something that you just talk about.

4 Q. Okay. Now, how did you end up here today? Who came to
5 you to talk to you ask you to come today?

6 A. Me and -- I talked to Mr. -- I can't remember his name.

7 Q. The man that was asking you questions just now?

8 A. No, this man right here, the black guy. I can't
9 remember his name. He had called me and --

10 Well, no, at first a woman called me and then he
11 contacted me.

12 Q. And what did they want you to do?

13 A. They wanted me to testify for Jomar.

14 Q. And how long ago was that conversation with the
15 attorney?

16 A. Maybe a couple months back. I'm not sure how long, but
17 maybe four months back, something like that.

18 Q. Okay. And how many times did you go over what you were
19 going to say here today?

20 A. We -- he just asked me if I would testify. At first I
21 didn't -- I wasn't really going to do it, but then they told
22 me that they really need me, so I said that I would. We
23 didn't really go over it, though.

24 Q. You didn't have any idea what you were going to say?

25 A. Yeah, we went over it a little bit, but not that much,

1 but like maybe twice.

2 Q. I don't mean to be picking at you, but didn't you go
3 over everything that you said today?

4 A. Yes, sir.

5 Q. Now, how well did you know Laquaris Patton?

6 A. I have known him maybe ten years.

7 Q. Let me ask you about this. You said the police
8 searched Laquaris Patton three times?

9 A. Yes, sir.

10 Q. Now, when was the first time that they searched him?

11 A. The first time -- they did it like consecutively.

12 Q. Okay. Well, let's talk through it.

13 You had been on the porch with these fellows for about
14 ten minutes --

15 A. Yes.

16 Q. -- and the police came up?

17 A. Yes, sir.

18 Q. And the police got out and came up and said "we smell
19 marijuana"?

20 A. Yes, sir.

21 Q. They asked Jomar Robinson and Laquaris Patton for ID?
22 Do you remember that?

23 A. Yes, sir.

24 Q. And then there was a tussle between one of the officers
25 and Jomar Robinson. Do you remember that?

1 A. It wasn't really a tussle. It was more like he just
2 grabbed his shirt and Jomar ran.

3 Q. Okay. Fine.

4 And they ran?

5 A. Yes.

6 Q. That left one officer there with you?

7 A. Yes, sir.

8 Q. What did that officer say to you?

9 A. He told us to get on the ground.

10 Q. Did you get on the ground?

11 A. Yes, sir.

12 Q. Did everybody get on the ground?

13 A. Yeah, the remaining of us - me, Travis, and Jerome - we
14 all got on the ground.

15 Q. Okay. And Mr. Patton took off?

16 A. Yes, sir.

17 Q. And came back a couple minutes later?

18 A. Yes, sir.

19 Q. Now, when he got back, did he get searched?

20 A. Yes, sir.

21 Q. When he got back, did you get searched?

22 A. Yes, sir, I got searched three times, whenever all the
23 police had came. It was most of the police squad that had
24 came and most police that came and I got searched three
25 times.

- 1 Q. Did the same officer search you three times?
- 2 A. No, sir.
- 3 Q. So you got searched by three different officers?
- 4 A. Yes, sir.
- 5 Q. What were they doing, patting you?
- 6 A. Yes, sir, checking.
- 7 Q. And then they let you go?
- 8 A. Yes, sir.
- 9 Q. And they let Jerome Neely and Travis Walton go?
- 10 A. Yes, sir.
- 11 Q. You didn't have anything to do with it?
- 12 A. No, sir.
- 13 Q. They didn't hit you or beat you, did they?
- 14 A. No, sir.
- 15 Q. Were they polite to you?
- 16 A. Yes, sir.
- 17 Q. And now when this officer said he was going to search
- 18 Jomar Robinson and Laquaris Patton, that's when Jomar takes
- 19 off?
- 20 A. Yes, sir.
- 21 Q. Is that what you said.
- 22 And he was wearing a T-shirt that night?
- 23 A. Yes, sir.
- 24 Q. March 20th?
- 25 A. Yes, sir.

1 Q. What was Laquaris Patton wearing?

2 A. I believe he had on a white T-shirt as well, and I
3 think -- I'm not really sure what he had on. I think he had
4 on some pants and a pair of tennis shoes.

5 Q. Did he have on a black jacket?

6 A. I think he did have a jacket on.

7 Q. Are you more certain he had a black jacket on or more
8 certain he had a white T-shirt on?

9 A. I think he had on a white T-shirt and a jacket on.

10 Q. Okay. Okay.

11 How about Jerome Neely, what was he wearing?

12 A. Jerome, he had on like a thin hoodie like this, but --
13 and he had on maybe a black T-shirt.

14 Q. And Travis Walton, what was he wearing?

15 A. Travis had on like a little sweat suit.

16 Q. Okay. You got a great memory. What did you have for
17 dinner that night?

18 A. That night, probably oodles of noodles. Oodles of
19 noodles.

20 Q. Oodles of noodles on March 20th.

21 What did you have the next night, March 21st?

22 A. I'm not sure about that.

23 Q. Why do you remember the March 20th night that you had
24 oodles of noodles?

25 A. This was the first night that I have ever been

1 searched, ever been involved with the police like -- big.
2 like that.

3 Q. You are not saying that you have never been arrested?

4 A. No, sir.

5 MR. MORTON: Your Honor, may we approach the
6 bench?

7 THE COURT: Yes, sir.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, I have a matter I need to take up with counsel out
12 of your presence at this time. Please retire to the jury
13 room. It will be brief.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Yes, sir.

17 MR. MORTON: Your Honor, Mr. Springs asking this
18 witness whether he had ever been arrested before was an
19 improper question. It leads to probably improper
20 implications to the jury. I think that there needs to be
21 some type of retraction or some type of curative
22 instruction. This man does not have an impeachable record.
23 He indicated to Mr. Springs, when Mr. Springs asked him --
24 or he indicated he had never been searched before, and then
25 Mr. Springs I think asked the question "have you ever been

1 arrested before?"

2 THE COURT: He said "you are not saying you
3 haven't been arrested before?"

4 MR. MORTON: Sir?

5 THE COURT: He said "you are not saying you
6 haven't been arrested before," you just haven't been
7 searched before. He didn't say searched, but he said "you
8 are not saying you have never been arrested before."

9 MR. MORTON: Which is asking -- which is the same
10 as asking the question to the jury "have you ever been
11 arrested before?" The implication is the same. And so the
12 implication to the jury is the same and it's an improper
13 question, that I think there needs to be some type of
14 curative instruction for the jury --

15 THE COURT: What --

16 MR. MORTON: -- to disregard it.

17 Disorderly conduct.

18 THE COURT: I don't mind instructing them to
19 disregard that question and answer, if that's what you want
20 me to do, give it no consideration. I will be glad to do
21 that, if that's what you want me to do.

22 Counsel, I would say, though, it be very unusual
23 for somebody to be arrested for public disorderly conduct
24 and not be searched, which follows along with his question.
25 And so, you know, I don't know. I mean, he might have

1 opened the door to that by saying he's never been searched
2 before, and -- he said he remembered what he had to eat that
3 night, but he has never been searched before, gave that
4 impression. But follows then -- you know, follow up he may
5 have opened that door to that, "you are not saying you have
6 not been arrested." And so -- I mean, it's possible he
7 wasn't searched when he was arrested, but I think that would
8 be very unusual.

9 MR. SPRINGS: He -- he got arrested for the
10 disorderly conduct, though, after this, and so I would -- I
11 didn't remember the date, so I think a curative instruction
12 would be appropriate, even though the way I phrased the
13 question I don't think sent some big message to the jury.

14 The disorderly conduct was after this night, which
15 I did not remember, so I think a curative instruction is
16 called for.

17 THE COURT: All right. I will give them a
18 curative instruction to disregard the question and answer
19 and give it no consideration whatsoever.

20 MR. MORTON: Your Honor, I'll ask him. I'll ask
21 him what he's been arrested for. I think that's just as
22 good a way to handle it, if the court will allow me.

23 THE COURT: Would you rather do it that way?

24 MR. MORTON: Yes, sir.

25 THE COURT: That really might be the better thing

1 to do, because the solicitor asked him before you could
2 object to it and he answered, okay, that he had been. And
3 it might be if it was just disorderly conduct, then it might
4 be better to bring that out to the jury, rather than simply
5 giving them a curative instruction, but I'll do it either
6 way.

7 MR. MORTON: I'm going to ask him. I think that's
8 the best way to handle it.

9 THE COURT: I mean, obviously disorderly conduct
10 goes to the credibility issue, so I'll leave it up to you.

11 MR. MORTON: I'll ask him what he's been arrested
12 for and when. Thank you, Your Honor.

13 THE COURT: Okay.

14 Please bring the jury back.

15 Counsel, approach just a minute while the jury is
16 coming in.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. Counsel, ready to proceed.
22 Are you finished with this witness?

23 MR. SPRINGS: I'm finished.

24 Thank you, Mr. Williams. You have a good day.

25 MR. MORTON: Just a couple of followup questions.

1 REDIRECT EXAMINATION BY MR. MORTON:

2 Q. Mr. Williams, Mr. Springs asked you if you had -- you
3 indicated that you had -- it's the first time that you had
4 ever been searched?

5 A. Yes, sir.

6 Q. Had you ever been searched before?

7 A. Yes, sir, I have been searched recently. It was like
8 the beginning of this school year.

9 Q. Okay. And you were, in fact, arrested for disorderly
10 conduct?

11 A. Yes, sir. For arguing.

12 Q. I'm sorry?

13 A. It was an argument.

14 Q. An argument at school?

15 A. Yes, sir.

16 Q. And so that's what that came from?

17 A. Yes, sir.

18 Q. And that was after this?

19 A. Yes, sir.

20 Q. Anything else?

21 A. No, sir.

22 Q. Okay. And he also asked you about what you ate that
23 night and you indicated that you had oodles of noodles. Do
24 you eat that a lot?

25 A. Yes, sir.

1 Q. Okay.

2 A. That's my favorite food.

3 Q. I'm sorry?

4 A. That's my favorite food.

5 Q. Okay. When the officers came up, just real quickly in
6 response to what Mr. Springs said, and they was -- who did
7 they go to first?

8 A. Jomar.

9 Q. Okay. And they grabbed -- did they -- did they grab
10 Jomar?

11 A. At first they just -- it was like they just talked to
12 him and they was --

13 MR. SPRINGS: Objection. This has been covered.

14 THE COURT: Counsel, this is not new matter that
15 they brought up on cross, I don't think. It's something
16 that you have already been over on direct.

17 BY MR. MORTON:

18 Q. Let me ask this. You indicated, I think, in the
19 response to the questions by Mr. Springs that when Mr.
20 Robinson, he ran off?

21 A. Yes.

22 Q. Let me show you this. This is marked State's Exhibit

23 1. Do you recognize that?

24 A. Yes, sir.

25 Q. Okay. And is that a photograph of [REDACTED] [REDACTED] [REDACTED]?

1 A. Yes, sir.

2 Q. Okay. And on the porch right here, do you know where
3 this is?

4 A. Yes, sir.

5 Q. What is that?

6 A. That's where we were standing.

7 Q. Right.

8 And is that a bush there?

9 A. Yes, sir.

10 Q. Do you know what kind of bush that is?

11 MR. SPRINGS: I'm going to object. This is new
12 material. I didn't go into it.

13 THE COURT: I sustain the objection, counsel.

14 BY MR. MORTON:

15 Q. You indicated that Mr. Robinson's girlfriend lived
16 there?

17 A. She didn't live in that apartment.

18 Q. But did she live in --

19 A. Yes, sir.

20 Q. -- those apartments?

21 A. Yes, sir.

22 Q. That apartment complex?

23 A. Yes, sir.

24 MR. MORTON: That's all I have.

25 MR. SPRINGS: Nothing further. Thank you.

1 THE COURT: Thank you, sir. You may stand down,
2 sir.

3 MR. MILLS: Your Honor, the defense rests.

4 THE COURT: Anything in reply, solicitor?

5 MR. SPRINGS: No, sir.

6 THE COURT: Mr. Foreman, ladies and gentlemen of
7 the jury, this concludes all the taking of testimony and
8 evidence in the case. We have yet remaining final arguments
9 from counsel and my instruction to you with regard to the
10 law which applies to the issues in this case.

11 We are at, by the courtroom clock, about 12:30, so
12 we are going to go ahead and recess for lunch at this time
13 and we will resume after lunch.

14 I'm going to ask you to be back in the jury room
15 at 1:50. At 1:50. That's ten minutes to two. And the
16 reason I'm taking a little longer than normal is the matters
17 I need to take up with counsel that's going to take a little
18 while, not to long, but no used in your sitting back here
19 while I'm doing that. You can take that extra time for
20 lunch. So that will give you about an hour and fifteen or
21 twenty minutes for lunch.

22 So, please, again, I'll remind you not to discuss
23 the case among yourselves or with anyone else during the
24 recess from court. Enjoy your lunch. Please be back in the
25 jury room at ten minutes to two.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: All right, counsel, as I told you
4 earlier that motions would be considered timely made when
5 made, so let's go back to the time that the State rested
6 their case.

7 Any motions that you wish to make which would be
8 effective as of that time?

9 MR. MILLS: Yes, Your Honor.

10 Taking in the light most favorable to the State as
11 to the evidence presented, I would ask the court to grant a
12 directed verdict in Mr. Robinson's favor. I think the
13 testimony was the officers approached the scene without a
14 sufficient basis to effectuate a seizure; that they seized
15 Mr. Robinson forcibly and without reasonable suspicion or
16 probable cause; and, therefore, any -- I would renew my
17 motion to suppress those items, save the marijuana, as being
18 the fruit of the poisonous tree.

19 I would also move --

20 THE COURT: Save the marijuana? You mean with the
21 exception of the marijuana?

22 MR. MILLS: With the exception, I'm sorry.

23 THE COURT: Yes, sir.

24 MR. MILLS: All right. I would also move for a
25 directed verdict on all the charges, that there is

1 insufficient evidence for the court to conclude that Mr.
2 Robinson possessed the drugs with intent to distribute and
3 at most it would be mere possession.

4 Second, I would move to dismiss the gun, the
5 unlawfulness of the gun. It's not a proper foundation led
6 to show that he was in illegal possession of it.

7 I would move to dismiss the proximity charge for
8 insufficient evidence establishing the proximity to a park
9 or school.

10 THE COURT: All right. Anything else?

11 MR. MILLS: No, I think that covers it.

12 THE COURT: Do you wish to be heard on that
13 motion?

14 MR. SPRINGS: No, sir.

15 THE COURT: In looking at a motion for directed
16 verdict, the court is required to look at the evidence in
17 the light most favorable to the party against whom the
18 motion is being made.

19 In this case, looking at the evidence most
20 favorable to the State, I find there is substantial evidence
21 from which the jury could infer that the State had proven
22 the elements of each of these offenses beyond a reasonable
23 doubt.

24 Going back to your statement, of course, as I
25 stated earlier on the record in pretrial motions, the police

1 officers -- to go back over that briefly. The police
2 officers were getting -- according to their testimony, were
3 getting calls from people in the area, residents in the
4 area, who were complaining that there were drug deals taking
5 place in the parking lot of this particular apartment
6 building and that there were men out there with drugs,
7 conducting drugs -- selling drugs there.

8 They initiated an investigation in that particular
9 area and had an officer in the woods or on a wooded lot
10 across from there, observing with binoculars, and he
11 observed what, in his experience -- he had a number of years
12 experience in narcotics investigations, drug investigations,
13 that he observed what appeared to him to be drug
14 transactions taking place. Several cars came up in a fairly
15 short period of time. Somebody goes out to the car or a
16 person could drive up and go up to the porch and stay a very
17 briefly time and go back and leave. And so based on that,
18 the court finds he had a reasonable suspicion to believe
19 that there was drug transactions going on.

20 Then the officers go up to the apartment, which I
21 think they had the right to, to investigate what they
22 believed, had reasonable suspicion to believe, that drug
23 activity or crime was being committed there, based on the
24 observations of the other officers. They go up there and
25 ask for, according to their testimony, for identification.

1 Persons voluntarily presented their identification.

2 Insofar as -- they did say when they got up close
3 to them, they said they smelled green marijuana; that is,
4 un-smoked marijuana. Now, whether they did it or he didn't,
5 I think that's a question for the jury to determine whether
6 they did or didn't. They said they did. And obviously they
7 worked in narcotics for years, all of them that testified,
8 and they would be familiar with the smell of green
9 marijuana.

10 Now, there are a number of things that -- of
11 course, it's a matter of argument for the jury. The court
12 is not concerned with evidence, whether there is any
13 evidence -- whether it's the amount of evidence, whether
14 there is any substantial evidence. And their testimony --
15 of course, it's -- you know, the jury could believe or infer
16 that drugs could have been in somebody's jacket pocket for
17 awhile or they could have been drugs in and out of that
18 jacket pocket for awhile as to either of these two
19 defendants, and they thought the smell of marijuana was
20 coming from. I don't know. I don't have any way of knowing
21 it. You know, one -- both of them really ran off before
22 they were searched or anything. And so -- and, in
23 particular, Mr. -- the other co-defendant in this case --

24 MR. MILLS: Patton, Your Honor.

25 THE COURT: Patton ran off and was out of view of

1 the officer and that, and, of course, came back and they
2 testified they found something in the little pocket of his
3 that jacket he had on.

4 So, I mean, you know, whether there was drugs or
5 not, that's a question for the jury about that, but officers
6 testified -- each of them testified that they smelled the
7 green marijuana, and they obviously have a lot more
8 knowledge about that than the average person, what marijuana
9 smells like, or green marijuana smells like.

10 They also testified, though, while they looked at
11 the identification, he also spied the handle of a gun
12 hanging out of Mr. Robinson's pocket in a jacket he had on,
13 and he spotted that, and he was watching that while he was
14 checking the identification. Mr. Robinson didn't live at
15 that address. He lived, according to that driver's license
16 and address, on Washington Street, I believe, which is not
17 even on that same street. And so they observed that and
18 also said he observed the handle of a pistol in his pocket.

19 At that point obviously the reasonable suspicion,
20 one could certainly establish that as a probable cause,
21 based upon them having a weapon, without any explanation of
22 why he was out there, outside of this apartment building
23 where he didn't live with a gun in his pocket, as to whether
24 there was illegal of carrying a pistol. Also the smell of
25 the marijuana. And at that point they -- the police

1 officers had a right to be there. No question about that.
2 They had a right to investigate what was going on in that
3 parking lot and that. And so, obviously, Mr. Robinson could
4 have refused to cooperate and left before they saw that
5 weapon on him. And, of course, they could have investigated
6 the smell of green marijuana, if, in fact they smelled
7 marijuana and had reasonable suspicion to believe that drugs
8 were there. Going with the prior information they had had,
9 that actions were on which appeared to be drug transactions.
10 So each heightened. Each of it made a little more suspicion
11 a little greater, a reasonable suspicion a little greater to
12 the point of the seeing the weapon.

13 Now, the courts have held in numerous cases
14 recently, the Supreme Court, the Fourth Circuit,
15 particularly the Supreme Court, has found the connection or
16 a nexus between guns and drugs. And obviously the police
17 officer acts for their safety pat-down, and that sort of
18 thing. And then at that time Mr. Robinson refused to
19 cooperate and took off, i.e., the resisting arrest.

20 So I find there is substantial evidence in
21 support. And, of course, the cocaine was found in his --
22 according to the police officers, the jacket they pulled off
23 of him -- Officer Ligon pulled off of him, and it was there
24 and uninterrupted. Nobody had access to it and they found a
25 total of -- they found 3.02 grams of marijuana. They found

1 3.81 grams of crack cocaine. This is over the inference
2 level. If the person has more than one gram of crack
3 cocaine on him, the jury could infer from the amounts
4 involved that they intended to distribute it.

5 Furthermore, they found ten individually wrapped
6 bags, the testimony is that typically sold for sale, and
7 it's rare that a person who simply has it for their own use
8 would have it in that many -- that much crack and in that
9 form, packaged for sale in little baggies, rather than
10 bigger piece than that, if they bought a bunch of it for
11 their own use, to take advantage of the price of it.

12 So, I mean, then that comes down to a question for
13 the jury as to what he intended to do with it, if he
14 intended to sell it. If you have presumption level for
15 being over a gram; you have the way it was packaged,
16 etcetera; and the way it was found.

17 So there is substantial evidence to support from
18 which the jury could infer the State had proven the elements
19 of each of these five offenses beyond a reasonable doubt.
20 So for that reason I deny your motion for directed verdict.

21 Why did I go into this much detail? The courts
22 have asked us to give our reasoning on the record, and I do
23 that, and so --

24 Anything else?

25 MR. MILLS: Well, no. I guess I would just renew

1 my motion at the end of the defendant's case on the same
2 grounds there, taking into light Mr. Williams testimony
3 about the officers coming out, claiming that they just
4 smelled marijuana, immediately seizing the individuals.
5 And, again, renew my motion along the same lines as -- I
6 don't know if I need to repeat them for the record, but I
7 will be happy to.

8 THE COURT: No, I understand.

9 Well, of course, the only difference would be his
10 testimony. And, again, it's a question for the jury who
11 they are going to believe in the case.

12 The court, again, does not weigh the evidence or
13 determine the credibility of the witnesses. Those are
14 matters for the jury. And so, again, the court finds there
15 is substantial evidence from which the jury could infer the
16 State had proven the elements of the offense. The weight of
17 the evidence and credibility of the witnesses is a matter
18 for the jury, so I will deny your motion again for the
19 record on that.

20 MR. MILLS: Thank you.

21 THE COURT: Anything else.

22 MR. MILLS: I don't think so.

23 THE COURT: All right. Then why don't we do this.
24 Why don't you meet me briefly for about five minutes back in
25 chambers. Let me run through the proposed charge, what I

1 plan to charge, and let me see your thoughts on it and that
2 will give me a few minutes to work on it and get lunch.

3 MR. MILLS: All right. Come back now?

4 THE COURT: Yes, sir.

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 MR. MILLS: Your Honor, these have never been cut
8 open but they are in evidence. Am I allowed to pull them
9 out?

10 THE COURT: If you need to do that. I prefer you
11 didn't, but if you need to do that --

12 MR. MILLS: I just -- it's hard for me to able to
13 tell through here, really. They are talking about these
14 eleven bags in here and all.

15 OFFICER LIGON: It's not going to be eleven
16 baggies anywhere. The chemist cut them all open. That's
17 why the crack is all spread out in there.

18 MR. MILLS: Well -- yeah, I would like to cut it
19 open.

20 THE COURT: I just don't want the jury playing
21 around with the stuff back there.

22 (Whereupon, Mr. Mills opened the sealed crack
23 cocaine bag)

24 (Off the record)

25 (Back on the record)

1 THE COURT: All right. We all set to proceed?

2 MR. MILLS: Yes, Your Honor.

3 MR. SPRINGS: Yes.

4 THE COURT: All right.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: Good afternoon, Mr. Foreman, ladies
8 and gentlemen of the jury. I hope you enjoyed your lunch
9 today. We are ready now to resume with the trial.

10 We are to that part of the trial where counsel
11 will make their final arguments to you. I ask that you
12 listen attentively now as counsel address you in final
13 argument.

14 Counsel, ready to proceed.

15 MR. MILLS: I am, Your Honor.

16 THE COURT: Yes.

17 MR. MILLS: May it please the court?

18 THE COURT: Yes, sir.

19 MR. MILLS: When I stood in this spot yesterday I
20 told you pay attention as this case developed and to see
21 what kind of concrete evidence, unmovable facts, that the
22 State would bring to you to help you do your job and to
23 decide what happened out there and who is responsible and
24 who is not.

25 I told you that the other thing you need to pay

1 attention to is what people say and does it make sense.

2 The judge is going to charge you on a term called
3 credibility; in other words, it means believability. And I
4 hope as you have seen this case unfold, you have been able
5 to focus on what evidence was brought to you and what
6 evidence was not brought to you. The court will instruct
7 you that those are appropriate areas for you to consider in
8 rendering your verdict.

9 You have taken an oath and you are in a awesome
10 position right now. You hold the fate of Jomar Robinson in
11 your hands. And the State has an obligation, a duty, to
12 prove to you beyond a reasonable doubt that what they say
13 is, in fact, what occurred. To do that, let's first talk
14 about those things that the State could have brought you,
15 could have done, the things that you deserve as a jury to
16 help you make your decision.

17 This weapon that they claim came off Jomar
18 Robinson. I thought I knew how to do it. There it is.
19 Basic 101. Hard surface. I think if you even look on this
20 here you can see fingerprints. The smudges right there.
21 How hard is that? How hard is that? Wouldn't that make
22 your job easier if that had Jomar Robinson's fingerprints on
23 it, but you also have to ask yourself why didn't they even
24 to check? Why didn't they even bother to test it? Don't
25 they want to know? Or they would just rather you believed

1 them about what they tell you, as opposed to proving it to
2 you?

3 They are asking you to sit in judgment between
4 competing stories, when they had the ability and the duty to
5 bring that evidence right before you, and it's been sitting
6 in their evidence room the whole time. The whole time.

7 The things they have got -- bullets. People
8 picked up bullets. Fingerprints.

9 The jacket. A lot of the State's case was about
10 that jacket; what kind it was, what color it was, the kind
11 they wear, the young people wear, all those things. Talks
12 about a struggle with it; how the gun was in here. Do you
13 remember Officer Ligon talked about that permeating smell of
14 marijuana that would have been in that -- you know, from
15 having that pot sitting in there so long. You know, they
16 find the gun in it, they find the dope in it, and they don't
17 take it into evidence? The center piece of their case they
18 don't take at all? In fact, the only evidence we have about
19 a jacket is on Mr. Patton, who they described as wearing a
20 black jacket with zippers on it, with orange inside. And if
21 you remember, I asked each of those officers when they wrote
22 that report "who did you see? Who did you put in that
23 report was going out to the cars?" One person was in that
24 report and that was Mr. Patton. There was no mention of Mr.
25 Robinson doing any of that.

1 And if Officer Ervin is sitting up in the trees
2 with binoculars, how hard would it have been to sit there
3 with a camera or film it? Again, "believe me. I'm an
4 officer. Why would I lie?"

5 Why would narcotics officers who are engaged --
6 and Mr. Springs will probably get up here and tell you that
7 these officers put their life on the lines, they are out
8 there to rid drugs, and they are doing their jobs, and they
9 are really into it, and they are trying their best, and they
10 are hyped up to do it and they are into it and they are true
11 believers, but that's not you. You're the independent
12 arbiters of impartial justice. So when you have to believe
13 somebody when they say "trust me, believe me," when you have
14 to assess that credibility, you have to ask yourselves "did
15 they smell green marijuana in a pocket from three or four
16 feet away?" Is that -- does your common sense tell you that
17 that doesn't quite jive? Something is really amiss there,
18 if they have that kind of supersensory smell, but it just
19 collides with common sense. It collides with common sense,
20 and so you have to assess that when you determine that
21 believability.

22 Officer Ligon got off the stand and showed us how,
23 that little demonstration. If you remember, I kind of got
24 toted halfway across the courtroom on the jacket, you know,
25 about how he had a -- you know, said he was up there. He

1 had taken their ID's and was looking at it and he's looking
2 at the gun the whole time and then he says he wanted to get
3 a jump on them, so he telling them he's going to search
4 them. And I don't know that gets the jump on them when you
5 are telling them about what you are going to do, but I'm
6 wondering where his third hand came in, because he says he
7 grabs the gun and then he holds this things and then, you
8 know, the only -- I said "what about the flashlight?"

9 "Oh, yeah the flashlight. I dropped that." You
10 know, it just didn't make sense.

11 And then he's also talking about how he's got the
12 gun here, he's got it here, and he's getting beat about the
13 face by Robinson. No whelps, no bruises, a scratch.

14 What's the uncontradicted testimony in this case?
15 You look at Exhibit 1 of the State, if I can find it. Both
16 1 and 3 shows this. You will get a chance to look at this
17 when you go back there, but this is where it's all taking
18 place right here on this porch. Okay? And Ligon testifies
19 that he takes off through here, and there is a big old rose
20 bush right there. And when he's running through there, that
21 rose bush is on his right side, and it's got big old
22 spinally things, and it catches him and he gets a scratch on
23 his neck. Other than that, we see no other bruising on him,
24 although he's in this supposedly life and death struggle and
25 this guy is beating on him, when he can't even get his hands

1 to protect himself and he's so worried about his gun.

2 Mr. Springs may say "why in the world would they
3 ever fabricate something like this? Why would they ever do
4 this? They have no basis to do it." Two people want to
5 avoid contact with that police that night and two people
6 fled. Both people got charged. Okay? Now, we know one is
7 described as going to the cars and having a jacket on, a
8 flight jacket.

9 You heard Mr. Williams. Young Mr. Williams who
10 came up here and testified who was out there that night. I
11 think Mr. Springs tried to attack his credibility that he
12 was, you know, out later than he should have been on a
13 school night, that he had a fantastic memory, but he can
14 remember oodles of noodles on a regular basis when he lives
15 in the trailer park. I don't find that incredibly
16 spectacular. I think that's pretty much common sense. And
17 he told you what happened, and he told you how it went down,
18 and that fits with the logic of what happened that night.

19 They want to talk about the intent to distribute.
20 There was no testimony anybody ever saw Jomar Robinson go to
21 any car and distribute anything. Zero testimony. So if all
22 they want to do is they want to claim these - this crack -
23 came out of that coat pocket, but we don't even have the
24 coat pocket. The basic thing that they found this evidence
25 in, they didn't bring it. The container, which the stuff

1 was in, they didn't do it. I would love to be able to have
2 that jacket here to put that pot in that jacket and hold the
3 jacket right here and be able to tell you can you smell it.
4 We could look at it and touch it. In other words, it's
5 nowhere to be seen. And these -- I'm not picky about this.
6 I'm talking about central pieces of evidence that you can
7 use to do your job.

8 They came in here to say "well, this is the way
9 it's packaged when you sell it." I would imagine that ends
10 up the same way it's packaged when you buy it too.

11 One moment.

12 (Off the record)

13 (Back on the record)

14 MR. MILLS: The credibility about -- you know, I
15 was talking about getting toted across the room by the
16 stripping off of this jacket while somebody was hitting me.
17 It just seemed a very awkward thing -- well, you got that
18 form fitted tailor-made jacket off the rack, but it doesn't
19 matter. You got the other jacket. He still wanted to do
20 this somehow unbelievable physical act happens, which
21 doesn't make any sense and inconsistent with somebody
22 fighting and struggling with.

23 Officer Schettler describing this fight for
24 possession of a weapon and he's got his back to him. He
25 said he's not worried about him, and says "hey, he can take

1 / care of himself." Really. Somebody is going for your
2 partner's gun and you are in this struggle and you are not
3 saying a word to the person, you are not telling them to
4 cease and desist, threatening them with deadly force? Is
5 that really believable?

6 So the theme that the State brings you is "trust
7 us. We are from the government. Trust us. Don't ask to
8 look behind what we say. Don't ask for any proof." I think
9 Officer Schettler said "hey, we are telling you this is what
10 happened," but is that what the bedrock of our liberty and
11 our nation, this Constitution is founded on, somebody coming
12 in and saying something? Is that what proof beyond a
13 reasonable doubt gets broken down to, "because I said so."
14 When they had -- when they have these awesome resources, the
15 power of the State to nail this case shut. Trace this gun;
16 who bought this gun; where did it go from; is it stolen; who
17 is it registered to? They are not giving you any of that,
18 not the first lick. "Trust us. We are from the
19 government."

20 "Well, we didn't want to take his jacket because
21 it's personal property." Well, how about the picture? You
22 know, you don't even have to get it developed. Take a
23 digital picture. Boom, there you got it. There it is
24 there. You see it. You see where it is. You know what's
25 happening. You can take your place within. You can

1 preserve the evidence. They can show it to you. You can
2 touch it. You can feel it. Instead they want you to
3 believe them. They want you to believe what they are
4 saying, that they can smell it from a distance away. They
5 can pick out -- I said "who are they smelling it from?" In
6 the wide open. I submit to you, ladies and gentlemen,
7 that's not correct.

8 I asked the chemist "was there anything unusual
9 about this pot? Anything struck you as unique or anything?"

10 "No." She didn't talk about the overwhelming
11 smell of green marijuana. She didn't talk about anything
12 about the marijuana. Their witness. Their chemist. Did
13 they talk about decomposing and can't smell it. They didn't
14 ask the experts, but the narcs volunteered their own take on
15 it about how it goes bad.

16 The judge is going to charge you that simply being
17 out in an area where a crime is committed, you aren't guilty
18 of anything. Mere presence. The mere fact that Jomar
19 Robinson is out there does not make him guilty of somebody
20 else. If Laquaris Patton has pled guilty to the offense of
21 distributing cocaine, it's not a crime. Just like those
22 other three boys.

23 What's the difference about Jomar and the other
24 three boys? Jomar ran from them. Why would you run? I
25 don't know. Somebody comes up to me and starts telling me

1 they are smelling green marijuana, when there is nothing
2 around, how reliable s that person? How much can you trust
3 that person? What's that experience like for those
4 individuals at Hall Street with law enforcement with this
5 narcotics unit, when they come up and they say "trust us, we
6 are the government."

7 I'm not going to be able to speak to you again.
8 Mr. Springs is going to get up here and he's going to
9 advocate for the State's case. He'll probably direct you to
10 these officers and ask you to make a referendum on them and,
11 you know, a referendum on the problems we have with our
12 society. It's not about them. It's not about problems of
13 drugs in society. There is a problem. This is about this
14 case, this defendant, this evidence, and this lack of
15 evidence. You swore when you took the oath here that you
16 were going to judge this case on this case, not on what
17 happens in other times, not what happens generally, not
18 about what societal concerns are. This case. You took a
19 solemn oath that you are going to return a verdict based on
20 what the government does, what they have proved beyond a
21 reasonable doubt. And the judge will tell you that means a
22 doubt which would cause a reasonable person to hesitate and
23 act.

24 I have got two daughters. They tell me that they
25 have done their homework. I love them. "Can I see it?" I

1 trust them. I also like to verify it. You earn trust. You
2 don't expect it. And if the government wants you to trust
3 them, they need to come in and verify their story when they
4 have the ability to do so. It was there for them and they
5 chose not to do it. Why didn't they test it? Why didn't
6 they run it down? What don't they want to know? They don't
7 want to find Patton's fingerprints on that gun? They don't
8 want to find a jacket with DNA in it that establishes? I
9 mean, or more importantly, why wouldn't they want to find --
10 if they're claiming it's Jomar's gun, why not get his
11 fingerprints off it? And then you don't have to worry about
12 it. Then you don't have doubts about it. And the court is
13 going to tell you if you have that doubt, you are going to
14 have to resolve that in favor of the defendant, because the
15 quality and our security as citizens in this country rests
16 upon good solid work. We don't tell people to go out and do
17 it halfway, come in just tell us that you do it. We want
18 you to go out and do it the proper way. Get it done. Give
19 us something that we can believe in with a clear conscience
20 and say, yes, that's actually what happened. Don't give us
21 come in with half-stories, things that don't make sense,
22 things that won't match up, things that you have to rely on
23 without being able to touch, see, and feel.

24 Ladies and gentlemen, your duty in this case is to
25 render the verdict on the evidence. And this is an

1 important case for Mr. Robinson. It is a serious as you
2 get. And before you are going to convict somebody of these
3 most-serious offenses, they are going to have to meet their
4 burden of proof. Mr. Springs said it would be no problem.
5 No problem. It's a breeze. But it's not. It's a big
6 problem. There is doubt in that gun, doubt on those
7 bullets, doubt on the lack of DNA, doubt on the lack of
8 fingerprints, doubt on the lack of a jacket, lack of video.
9 They have all these officers out there. It did not happen.
10 It did not happen the way they said it did. Thank you.

11 MR. SPRINGS: That was a great closing argument.
12 It really was. Both of these attorneys have fought like
13 tigers for Jomar Robinson. That's their job. I mean, think
14 about it. When your client is caught red handed by the
15 police, you got to do something. Your client has pled not
16 guilty. You don't get to just go well, it's over. You have
17 got to do something, and they have fought very hard for him.

18 I think you understand through your common sense
19 that what happens on TV and what happens in here are two
20 different things. TV is not reality and this is reality. I
21 don't know if this is the way you pictured real drug cases,
22 police cases, going down. This is the way the real world
23 is. In the real word the people that work for you, like
24 these narcotics officers, they go out and they do their job.
25 And when they catch people red handed, they actually believe

1 that you will believe them if they come in here and tell you
2 the truth. They don't get paid on commission. If you find
3 this person not guilty, they are going to go back to work,
4 shake their heads, but they will go back to work. They have
5 no axe to grind here. No axe to grind whatsoever. They
6 caught this fellow red handed with these things and they
7 didn't spend your money, extra money, to check what they
8 found on him for fingerprints. This isn't a who done it.
9 His isn't a murder mystery. The guy was caught red handed.

10 The police responded to calls for help. Somebody
11 calls and says "I need help. Come out here." That's what
12 these officers did. They were responding to a call for
13 help. Citizens were where calling and saying "there are
14 people out here selling drugs and carrying guns." Multiple
15 people were calling for help. And so they did what you pay
16 them to do and they did it well. These are all experienced
17 officers. These aren't rookies. Some of them have decades
18 of experience, and they went out there and they set up
19 surveillance. The citizens wanted help and they didn't say
20 "oh, that's a bunch of poor people down on Hall Street. We
21 are not going to worry about them." They took it seriously.
22 They devoted multiple officers to this, hours of their time,
23 and they went down there and they did what you pay them to
24 do. You pay them to catch drug dealers and they went down
25 there to do their job.

1 They put Sergeant Rayford in the woods watching
2 with binoculars, and he saw a series of cars come in. And a
3 man in a black jacket would walk over to the cars and meet
4 the people that were in the cars. The people would get out,
5 they would huddle up for a very short period of time and
6 then the man from the porch in the black jacket would step
7 back.

8 Would you get the light, please?

9 That's where it happened. But you notice out of
10 five guys, how many people actually lived there? One.
11 Everybody else lived somewhere else. They are standing
12 right in front of [REDACTED]. Right in front of [REDACTED]. Jomar
13 Robinson is carrying this with his crack, loaded, a round in
14 the chamber ready to go.

15 It's got to be fun for the people that live down
16 there and live here and over here and over there to have
17 Jomar Robinson out there with his pistol and his crack
18 cocaine. The elderly person trying to live on their social
19 security, the family trying to raise small children --

20 MR. MILLS: Your Honor, I'm going to object.
21 There has been no evidence about who lives in those
22 apartments and what their status is.

23 THE COURT: I sustain the objection, counsel.
24 Stay within the record, please.

25 MR. SPRINGS: It's got to be a lot of fun for the

1 other folks that live out there for this to be going on. A
2 whole lot of fun. They don't deserve that. The other folks
3 that live out, there they don't deserve that.

4 Concrete evidence and real evidence? That's real.
5 It's by the grace of God this is a drug deal trial and not a
6 murder trial. When Ligon went for that gun, Jomar Robinson
7 was going too and Ligon was quicker. He was quicker on the
8 draw. What was Jomar Robinson going to do if he got to it
9 first with two police officers with holstered guns? That
10 should scare you to death.

11 Those officers drove up got, out of that car,
12 holstered guns. They went up and struck up a conversation
13 with these guys, after they had had reports of people
14 selling drugs and carrying guns. It takes guts to do their
15 job. It takes guts. And then after they have done that,
16 literally put their life at risk, they get to come in here
17 and be called liars.

18 You know, conspiracy theories are great on TV. I
19 love them. I rent those movies all the time, but there is
20 fantasy and there is reality. These are multiple officers
21 from different departments. Do you think they are going to
22 put their retirements and their careers on the line for
23 Jomar Robinson and somebody is going to come up with an
24 expensive pistol and seven or eight hundred dollars worth of
25 crack and set up Jomar Robinson? Please use your common

1 sense. This isn't a TV conspiracy. This is reality.

2 The officers come up. They smell green marijuana.
3 Did they smell this marijuana? We will never know what
4 Laquaris Patton had. He ran off. He ran off and was gone
5 for a couple of minutes. We will never know if he threw
6 something away when he was gone. We do know that he felt
7 confident enough to come back. We will never know if he had
8 marijuana that the police were smelling, but you know what?
9 The marijuana doesn't matter. Why would the police make it
10 up? It doesn't matter. They go up there. They smell it.
11 Okay, "I smell the green marijuana. I'm interested in your
12 guy in a black jacket." There are two guys there. We see
13 some ID and this guy is packing a pistol and he doesn't live
14 there. He lives somewhere else. And the officers out there
15 at 10:30 at night finally says "I'm going to pat you down
16 and search you for weapons." Then the guy with the pistol
17 starts to back up, and the officer goes for the gun and you
18 know the rest of the story. They wrestle. He gets the
19 jacket off. He chases him, catches him, handcuffs him,
20 brings him back. Schettler watched the jacket, picked up
21 the jacket, searches the jacket and finds the drugs and the
22 pistol.

23 The defense attorney has got to do something. I
24 grant you that. He's got to make some kind of show, but why
25 would the police make this up? What do they -- they are not

1 getting anything out of this. Different officers from
2 different departments putting everything that they have at
3 risk to come in here for Jomar Robinson, somebody that they
4 didn't even know? That's ridiculous. That's not real.

5 The crack cocaine that Jomar Robinson had in his
6 jacket, if you total it up, it's 3.81 grams in eleven little
7 baggies packaged for sale. Two of the charges here relate
8 to having the crack intending to distribute it.

9 The defense attorney was exactly right when we
10 didn't show you anything actual drug sale. We showed you
11 somebody and proved that somebody - Jomar Robinson - had
12 crack intending to move it on, to deal in it. Like walking
13 into the convenience store and the clerk is standing here in
14 front of the beer cooler and you go "I think you are
15 intending to sell that. I didn't see you sell it, but, boy,
16 everything looks like you are intending to sell beer here."
17 You put it together through your common sense. You figure
18 it out. You infer. Infer is a fancy word, a legal word for
19 figure out.

20 He's got eleven baggies. He's got crack bags for
21 sale. He's carrying his pistol. Why is he carrying a
22 pistol? He's loaded for bear. He's got the round in the
23 chamber. He's ready to go.

24 The judge, when he gives you the rules, the law,
25 he is going to tell you that there is a law in this state

1 that if someone has more than one gram of crack cocaine, you
2 can infer that they are going to distribute it, the logic
3 being if a hit, if a dose of crack, a typical dose is
4 one-tenth of a gram, you have got one gram, you have got ten
5 doses. Think of a drunk with ten fifths of Scotch. At some
6 point, buddy, it ain't all for you. Jomar Robinson had
7 almost four times that inference. He had about thirty-eight
8 doses. 3.81 grams works out to thirty-eight doses.
9 Somebody with thirty-eight doses of crack or thirty-eight
10 fifths of Scotch, they're in the business, folks. They're
11 in the business.

12 You took an oath to judge this case and you told
13 the judge that you could do this. He asked you "are you
14 going to be able to do this" when you were sitting out
15 there. You indicated that you could, that you could be the
16 triers of the facts. As I told you at the beginning, you
17 are judging his behavior. Did he do this. Just take your
18 good old common sense that you have used all your life to
19 figure out whether something happened or not and you judge
20 whether he did this behavior using the law, the rules that
21 the judge gives you. One of those rules is if somebody has
22 more than one gram of crack cocaine, you can infer, you can
23 figure out, that they are going to distribute it, they're in
24 the business.

25 Mr. Williams, the young high school kid who came

1 in, he had a great memory for things that happened on March
2 30th of last year. The things that helped Jomar Robinson he
3 had down pat. I don't think he came in here to sell you a
4 bill of goods. I think he came in here maybe putting a spin
5 on this that somebody put him up to it, because, really,
6 folks, does anybody have a memory so good that you can
7 remember the color T-shirt and what kind of shirt that
8 everybody in that group had and what you had for dinner that
9 night, but you can't remember if you went to school that day
10 or the next day? And you don't know what you had for dinner
11 the next night. Just -- it doesn't -- it doesn't jive. It
12 just doesn't jive. It makes more sense that he's shaded the
13 story a bit. I don't know what his relationship is with
14 Jomar Robinson or Jomar Robinson's girlfriend, but I think
15 your good common sense would tell you that when it comes
16 down to his story and the police officers story, the police
17 officers comes across as much more credible. They just
18 don't have any reason to come in here and lie to you. They
19 did their job. They did a great job, what you pay them to
20 do, and they went out there helping the people that were
21 calling in for help. That's what we want the police to do,
22 go help people that are calling for help.

23 THE COURT: Counsel, you have been over that a
24 couple of times, so let's move on.

25 MR. SPRINGS: Yes, sir.

1 For some of you that would be the most important
2 thing you do. You represent all of York County, and
3 particularly represent the people that needed help out
4 there. You may actually be helping Jomar Robinson. You may
5 actually be doing him a great kindness when you look at this
6 evidence and say yeah, yeah, he's guilty, because there is
7 an old saying, you live by the sword, you are going to die
8 by the sword. You live by the gun, you are going to die by
9 the gun. By proving this case to you beyond a reasonable
10 doubt, you put the brakes on him and you may have saved his
11 life.

12 There have been a number of definitions of
13 reasonable doubt in courts like this. The one that's used
14 now most often is a reasonable doubt is the kind of doubt
15 that would cause you to hesitate to act. We want you to go
16 back in the jury deliberation room and deliberate. That's
17 not the kind of hesitation -- that's not the kind of
18 hesitation that legal term refers to. You may -- you
19 hesitate on all big decisions that you make when you know
20 good and well what the answer is. If somebody offers you a
21 \$200,000 a year job, but you got to move to Atlanta, you are
22 going to hesitate, you are going to talk to your family
23 about it, you are going to think about what's it going to be
24 like to live in Atlanta, but are you going to take a
25 \$200,000 job in Atlanta? Oh, yeah, but you hesitate to

1 discuss it, to deliberate, to go over it. So the hesitate
2 to act does not mean taking the time to deliberate, as well
3 you should in this case. You are going over the evidence
4 and see if there was any reason why the eyewitnesses, the
5 direct witnesses, the police officers in this case, would
6 have any reason to come in here and lie to you. You will
7 have all the evidence back there, the real evidence,
8 evidence that you can put your hands on.

9 I'm going to conclude by mentioning the proximity
10 charge. If you are possessing crack cocaine intending to
11 distribute it. That's one crime. If you are within a half
12 mile of a public park or a school, in this case it's a park,
13 that's a separate crime. The legislature didn't want drug
14 dealers near schools and parks. Here he was three-tenths of
15 a mile. That's less than a half mile from York Recreational
16 Complex. That's a public park in York.

17 I ask you please just to do your duty here. You
18 took an oath to do your duty, your duty as good jurors, as
19 triers of the facts. I ask you, please, on behalf of
20 everyone in York County, on behalf of the folks down on Hall
21 Street, please find Jomar Robinson guilty of these crimes.

22 (Whereupon, at 2:48 p.m., the Court charged the
23 jury panel their jury instructions)

24 THE COURT: Mr. Foreman, ladies and gentlemen of
25 the jury, you have heard the final arguments of counsel.

1 It's now time for me to charge you, that is, to instruct you
2 with regard to the law that applies in this case.

3 In this case the State charges Jomar Antavis
4 Robinson with three offenses. They charge him with
5 possession with intent to distribute crack cocaine;
6 possession with intent to distribute crack cocaine within
7 proximity of a school or park; resisting arrest, violent
8 section; carrying a pistol unlawfully; and possession of
9 marijuana.

10 To these charges the defendant has pled not
11 guilty, which then places upon the State the burden of
12 proving the defendant guilty of these charges.

13 A person charged with committing a criminal
14 offense in South Carolina is never required to prove himself
15 or herself innocent. I charge you that it is a vital
16 important rule of law that a defendant in a criminal trial
17 must always be presumed innocent, until his guilt has been
18 proved beyond a reasonable doubt. This presumption of
19 innocence remains with the defendant at all times throughout
20 the trial and is only removed when, and if, the State has
21 proved guilt beyond a reasonable doubt. For it is your
22 solemn duty, ladies and gentlemen, if not clearly convinced
23 of guilt beyond every reasonable doubt to the contrary, to
24 find the defendant not guilty.

25 Mr. Foreman, ladies and gentlemen of the jury, I

1 instruct you and emphasize to you that the fact that the
2 defendant is not present for this trial and did not testify
3 in his own behalf is not a factor to be considered by you in
4 any way in your deliberations. You must not consider the
5 fact that the defendant has chosen not to be present or not
6 to testify when you determine the guilt or innocence of the
7 defendant. It must not be considered by you in any manner
8 whatsoever, either against or for the defendant. A
9 defendant has the Constitutional Right to remain silent and
10 not to be present for the trial, for that matter. The
11 assertion of that Constitutional Right cannot and must not
12 be considered by you in your deliberations. Under your oath
13 then you are to reach no inference and draw no conclusion
14 whatsoever from the fact that the defendant was not present
15 for the trial or did not testify in the trial. The fact
16 that the defendant did not testify or was not present should
17 not even be discussed in your jury room. The burden of
18 proof, as I have stated to you, is upon the State. It is
19 not the burden of the accused to prove his innocence. The
20 burden of proof remains upon the State to prove guilt beyond
21 every reasonable doubt.

22 Again, I emphasize the fact that the defendant was
23 not present and did not testify is not a factor to be
24 considered by you in determining the guilt or innocence of
25 the defendant, or in any other aspect of your deliberations.

1 So the State has the burden of proving the
2 defendant guilty beyond a reasonable doubt. What is
3 reasonable doubt? Some of you may have served as jurors in
4 civil cases where you were told it is only necessary to
5 prove the fact is more likely true than not, such as by the
6 greater weight or preponderance of the evidence.

7 However, in criminal cases the State's proof must
8 be more powerful than that. It must be beyond a reasonable
9 doubt.

10 Now, ladies and gentlemen, proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the defendant's guilt. There are very few things in this
13 world we know with absolute certainty, and in criminal cases
14 the law does not require proof that overcomes every possible
15 doubt.

16 A reasonable doubt may also be described as the
17 kind of doubt that would cause a reasonable person to
18 hesitate to act. If you have such a doubt as to the guilt
19 of the defendant, then he would be entitled to a verdict of
20 not guilty.

21 Reasonable doubt may arise from evidence which is
22 in the case, or from the absence or lack of evidence in the
23 case.

24 If, based on your consideration of the evidence
25 you are firmly convinced that the defendant is guilty of the

1 crimes charged, you must find him guilty.

2 If, on the other hand, you think there is a real
3 possibility that he is not guilty, you must give him the
4 benefit of the doubt and find him not guilty.

5 You alone must make the determination of whether
6 or not reasonable doubt exists as to the guilt of the
7 defendant.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 there are two types of evidence which are generally
10 presented during a trial: Direct evidence and
11 circumstantial evidence.

12 Direct evidence is the testimony of a person who
13 asserts or claimants to have actual knowledge of a fact,
14 such as an eyewitness.

15 Circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a fact.

17 The law makes absolutely no distinction between
18 the weight or value to be given to either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than of direct
21 evidence.

22 You should weigh all the evidence in the case.
23 After weighing all the evidence, if you are not convinced of
24 the guilt of the defendant beyond a reasonable doubt, you
25 must find the defendant not guilty.

1 Mr. Foreman, ladies and gentlemen of the jury, you
2 have heard the testimony of a witness who has special
3 knowledge, skill, experience, training, or education in a
4 particular field who has given opinions as to matters in
5 which she is skilled. In determining the weight to be given
6 such opinions, you should consider the qualifications and
7 credibility of the expert witness and the reasons given for
8 her opinions. You are not bound by such opinions. Give
9 them the weight, if any, you deem them entitled.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 under the Constitution of South Carolina you are the finders
12 of facts in this case. I do not have the right to pass upon
13 the facts, or even to express any opinion I might have as to
14 the facts, nor, may I suggests in any way what I may think
15 about the guilt or innocence of the defendant. You should
16 form no opinion in that regard from anything that I may have
17 said or any ruling that I have made during the course of the
18 trial.

19 As the sole judges of the facts in this case, you
20 are also necessarily the sole judges of the credibility or
21 believability of each of the witnesses that have testified
22 during the course of the trial.

23 Now, there are a number of factors which you may
24 consider in arriving at your assessment as to a particular
25 witness' credibility or believability. Some factors I'm

1 going to list for you now, and should you think of other
2 factors that you believe also ought to be considered when
3 you go back into your jury room on the question of
4 credibility or believability, then you should consider those
5 factors as well, but you may consider the demeanor of the
6 witness from the witness stand. What was that witness'
7 manner of appearance? Was the witness straightforward in
8 answering questions or hesitant in responding to questions?
9 Simply put, do you believe the witness was telling the truth
10 or not telling the truth? Do you believe that the witness
11 knew of what that witness testified, or did not know of what
12 that witness testified?

13 You may consider whether or not the testimony of a
14 witness is consistent or inconsistent with that witness' own
15 testimony or with other testimony or evidence presented
16 during the course of the trial.

17 You may also consider how the witness came to know
18 the facts to which he or she testified.

19 You may consider the opportunity that a witness
20 had to observe or hear, that is to perceive the existence of
21 a fact by means of their senses.

22 You may also consider whether or not a witness is
23 biased or prejudiced. That simply means do you find that
24 the particular witness had some reason to come into court
25 and testify one way or another to help or hurt one side or

1 the other.

2 You may also consider whether or not the testimony
3 of a witness was strengthened or weakened by other testimony
4 or other evidence presented during the course of the trial.

5 Now, you as the finders of facts in this case and
6 you as the judges of the credibility or believability of
7 each of the witnesses that have testified may believe as
8 much or as little of what a witness testifies to as you deem
9 appropriate. You may believe all of what a witness says,
10 you may believe none of what a witness says, or you may
11 believe only part of what a witness says. You may believe
12 one witness as against several, or several as against one.
13 Whatever your good judgment and common sense tells you is
14 the most believable testimony is the testimony that you
15 should accept, and reject that testimony which you find not
16 to be credible or believable.

17 Mr. Foreman, ladies and gentlemen of the jury, the
18 same Constitution that makes you the finders of facts in
19 this case makes me the sole and only instructor in the law.
20 You must accept as correct the law that I charge and apply
21 to the law the evidence as you find it and reach your
22 verdict. Put aside any conceptions that you may have had as
23 to the law before coming here today and accept the law as I
24 instruct it to be. You, for purposes of your duty as jurors
25 today, should not be concerned about what the law ought to

1 be, but what I charge you the law is now in this state.

2 Mr. Foreman, ladies and gentlemen of the jury, I
3 charge you with regard to intent, criminal intent. Criminal
4 intent is a necessary element of each crime that must be
5 proved by the State beyond a reasonable doubt. Criminal
6 intent is always a matter that must be determined by the
7 jury from the circumstances surrounding the situation.

8 There is no way to prove intent to a mathematical
9 certainty. There is no way medical science can dissect a
10 person's brain and determine what he had in mind, so the law
11 says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how the jury
13 makes a determination whether or not the element requiring
14 intent was present.

15 Criminal intent is a state of mind, which operated
16 jointly with an act, is the commission of a crime. Criminal
17 intent is a mental state, a conscious wrongdoing, so it is
18 up to you, the jury, to determine what the defendant
19 intended to do, based on the circumstances shown to have
20 existed.

21 I tell you that the State must prove criminal
22 intent beyond a reasonable doubt, just as the State must
23 prove every element beyond a reasonable doubt.

24 It is not necessary to establish intent by direct
25 and positive evidence, but intent may be established by

1 inference, in the same way as any other fact, by taking into
2 consideration the acts of the parties and all of the facts
3 and circumstances of the case.

4 While the State may prove motive, it is
5 unnecessary that the State do so. However, the State must
6 prove intent.

7 Mr. Foreman, ladies and gentlemen of the jury, I'm
8 going to charge you now or instruct you with regard to the
9 law that applies to the particular charges in this case.
10 You will not have these instructions written down for you
11 back in the jury room to look at, so you will have to call
12 on your collective memories as to what I instruct you the
13 law is. However, once you begin your deliberations, if you
14 are unsure about any part of the law, or any, or all of it,
15 for that matter, and you wish for me to be re-instructed on
16 any part of the law, I will be glad to bring you back out in
17 the courtroom and re-instruct you on any of it that you do
18 not understand, once you begin deliberations. But what I
19 would ask you at this time is to listen carefully as I go
20 through the elements of these offenses.

21 I'll charge you first with regard to the offense
22 of possession of crack cocaine with the intent to
23 distribute.

24 Section 44-53-370, 1976, Code of Laws of South
25 Carolina, as amended, provides in pertinent part: In a

1 subsection A, accept as authorized by this article, it shall
2 be unlawful for any person, subsection 1, to possess with
3 intent to distribute a controlled substance. This section
4 make it unlawful for any person to possess with intent to
5 distribute a controlled substance.

6 Crack cocaine is classified as a controlled
7 substance.

8 The indictment charges, in substance, that Jomar
9 Antavis Robinson, the defendant, did on or about the 20th
10 day of March, 2009, in York County, State of South Carolina,
11 possess with intent to distribute a quantity of crack
12 cocaine, a controlled substance, in violation of the laws of
13 the State of South Carolina.

14 Before the defendant can be found guilty of this
15 charge, the State must prove beyond a reasonable doubt that
16 the defendant, Jomar Antavis Robinson, did possess with
17 intent to distribute a quantity of crack cocaine, a
18 controlled substance, at the time and place and in the
19 manner alleged.

20 Possession requires that a person be in actual or
21 constructive possession of a controlled substance with
22 actual knowledge of its presence.

23 Actual possession of a controlled substance exists
24 when the controlled substance is found in the actual
25 physical custody of the person charged with possession.

1 Constructive possession of a controlled substance
2 exists when a person, although not in actual physical
3 possession of the controlled substance, exercises dominion
4 and control over the controlled substance, or has the right
5 to exercise dominion and control over the controlled
6 substance.

7 A person has possession of a controlled substance
8 within the meaning of the law when he has both the power and
9 the intent to control its disposition or use.

10 Mere presence where drugs are found is not
11 sufficient. It must be shown that the defendant had
12 possession of crack cocaine, and that the defendant knew he
13 had the crack cocaine in his possession. Knowledge of the
14 presence of crack cocaine by the defendant is essential.

15 The State must not only prove possession of the
16 crack cocaine by the defendant, but the State must also
17 establish beyond a reasonable doubt that the defendant
18 possessed the crack cocaine with the intent to distribute
19 it. The intent to distribute the controlled substance is an
20 essential element of that offense.

21 Intent is defined as a purpose, or aim, or design,
22 and in law it is the state of a person's mind which directs
23 his actions toward a specific object.

24 Distribute means to deliver the crack cocaine, the
25 actual, constructive, or attempted transfer of the substance

1 with or without payment.

2 Intent may be shown by acts and conduct of the
3 defendant and other circumstances from which you may
4 naturally and reasonably infer intent.

5 In determining whether the defendant had the
6 intent to distribute the crack cocaine, you may consider the
7 circumstances surrounding the defendant's alleged
8 possession. You may consider the amount of substance
9 alleged to have been possessed; the manner in which it was
10 allegedly possessed; the place where it was allegedly
11 possessed; and other factors which you consider to be
12 important.

13 You must find that the defendant did not intend to
14 have crack cocaine solely for his own use.

15 I charge you that possession of more than one gram
16 of crack cocaine creates a permissive inference that the
17 defendant possessed the crack cocaine with the intent to
18 distribute it. The resulting implication only permits
19 rather than requires you, the jury, to infer a violation of
20 the intention. This permissive inference does not relieve
21 the State from actually proving beyond a reasonable doubt
22 the element of intent to distribute it. This permissive
23 inference is simply an evidentiary fact to be taken into
24 consideration by you, the jury, along with the other
25 evidence in the case and to be given such weight as you

1 determine it should receive. A permissive inference is one
2 which you may or may not make, based on your view of the
3 evidence.

4 I further charge you that if you find beyond a
5 reasonable doubt that the defendant possessed crack cocaine
6 but did not intend to distribute it, then you would find the
7 defendant guilty of the lesser included offense of simple
8 possession of crack cocaine.

9 I have already instructed you as to what
10 possession is.

11 Of course, you would not find the defendant guilty
12 of either offense, that is to say possession with intent to
13 distribute crack cocaine or possession of crack, unless you
14 find that the State had proven the elements of that offense
15 beyond a reasonable doubt.

16 Now, Jomar Antavis Robinson is also charged with
17 the offense of possession with intent to distribute a
18 controlled substance within proximity of a public park, this
19 being -- the park alleged is York Recreation Complex.

20 The State must prove on this charge beyond a
21 reasonable doubt that the defendant possessed with the
22 intent to distribute a quantity of crack cocaine within
23 one-half mile of a grounds of a public park.

24 The State also charges Jomar Antavis Robinson with
25 the offense of possession of marijuana.

1 To prove possession, again I'm going to go back
2 through the elements of possession. It won't hurt again to
3 go through it again with regard to the marijuana charge.

4 To prove possession, the State must prove beyond a
5 reasonable doubt the defendant had both the power and the
6 intent to control the disposition or use of the marijuana.

7 Possession may be actual or constructive.

8 Actual possession means that the marijuana was in
9 the actual physical custody of the defendant.

10 Constructive possession means that the defendant
11 had dominion and control over the right to exercise dominion
12 or control over either the marijuana itself, or the property
13 on which the marijuana was found.

14 Mere presence at the scene where the marijuana was
15 found is not enough to prove possession.

16 Actual knowledge of the presence of the marijuana
17 is strong evidence of the defendant's intent to control its
18 disposition or use.

19 The defendant's knowledge and possession may be
20 inferred when a substance is found on the property and under
21 the defendant's control. However, this inference is simply
22 an evidentiary fact to be taken into consideration by you,
23 along with the other evidence in the case, and to be given
24 such weight as you decide it should have.

25 The defendant is also charged with the offense of

1 unlawful carrying of a pistol under Section 16-23-20, of the
2 South Carolina Code of laws, 1976, as amended.

3 In order to convict the defendant of this charge,
4 the State must prove beyond a reasonable doubt that the
5 defendant carried a pistol about his person, whether
6 concealed or not.

7 A weapon is about the defendant's person if it is
8 readily accessible and convenient for immediate use. The
9 pistol need no be actually touching the person of the
10 defendant.

11 Mr. Foreman, ladies and gentlemen of the jury, the
12 defendant in this case, Jomar Antavis Robinson, is also
13 charged with the offense of resisting arrest under
14 Subsection B of 16-9-320 of South Carolina Code of laws
15 South Carolina, 1976, as amended.

16 Subsection B is what is sometimes called the
17 violent section or assault on an officer, and I'm going to
18 go over that with you. Then after I have done that, I'm
19 going to go through with you a lesser included offense of
20 resisting arrest, which would be the nonviolent section
21 under Subsection A of 16-9-320.

22 Section 16-9-320, Subsection B of the South
23 Carolina Code of laws provides, in pertinent part, that it's
24 unlawful for a person to knowingly and willfully assault,
25 beat, or wound any law enforcement officer when such person

1 is resisting an arrest, whether under process or not.

2 In order for you, the jury, to find the defendant
3 guilty of violating this statute, you must find that the
4 State has proven every element of this offense beyond a
5 reasonable doubt.

6 The first element of this offense concerns the
7 defendant's state of mind at the time he committed the
8 offense. The State must prove beyond a reasonable doubt
9 that the defendant knowingly and willfully committed this
10 offense.

11 Now, I'll define for you the words knowingly and
12 willfully.

13 The word knowingly means to act voluntarily. In
14 order to have acted knowingly, the defendant must have been
15 aware that the person making the arrest was a law
16 enforcement officer. The circumstances must be such that
17 you, as jurors, determine that a person of ordinary reason
18 and prudence under the same or similar circumstances would
19 have realized that the person making the arrest on the
20 defendant was a law enforcement officer.

21 Knowingly means that an act is consciously and
22 intelligently performed. It means that an act is performed
23 with an awareness and it meant that the defendant knew what
24 he was doing when he committed the offense.

25 The word willfully means an intent to achieve the

1 result which actually occurs.

2 Willful behavior is neither accidental or
3 involuntary. Rather it involves a purposeful deliberation.
4 Willfully indicates the intentional and deliberate doing of
5 a wrongful act without legal justification. It indicates
6 that doing of a forbidden act purposely in violation of law.

7 The second element of this offense is that the
8 defendant resisted an arrest by assaulting, beating, or
9 wounding a law enforcement officer.

10 The word assault is an unlawful attempt or offer
11 with force or violence to do corporal hurt or injury to the
12 person of another where there is the present apparent
13 ability to complete the attempt or offer by a battery.

14 Sometimes I just give this example of an assault.
15 If I draw back my fist in an angry, resentful, rude manner
16 and threaten to hit somebody directly in front of me and I
17 have the present means and ability to carry out that assault
18 and strike that person, and I do it in a mean, angry,
19 violent way, then that is an assault without a battery.

20 Battery is the touching. You can have an assault
21 without the touching. Okay. So that's what an assault is.
22 It is an attempt to do bodily harm which falls short of
23 touching the body.

24 Mere words or threats are not sufficient to
25 constitute an assault.

1 The word beat and the word wound both simply mean
2 to strike or hurt.

3 To wound means to inflict an injury upon or do
4 damage to the person of another.

5 The third element of this offense is that the
6 person who was either assaulted, beat, or wounded was at the
7 time this offense was committed a law enforcement officer,
8 which means any duly appointed or commissioned law
9 enforcement officer.

10 The fourth element of this offense is that the
11 arrest was lawful. No citizen is required to submit to an
12 illegal arrest and force may be used in resisting an illegal
13 arrest.

14 An arrest is lawful when it is made with a
15 properly executed warrant of arrest, which is served upon
16 the defendant in accordance with law; or, when an arrest
17 warrant is unnecessary, as when a misdemeanor is committed
18 in the presence of a law enforcement officer; or, when the
19 arresting officer has reasonable and probable grounds to
20 believe the suspect has committed a felony.

21 It is the duty, however, of every citizen to
22 peacefully submit to a lawful arrest when the arrest is made
23 or sought to be made by lawful authority.

24 So I just said, when a police officer is engaged
25 in a lawful arrest, it is the duty of the subject to submit

1 or yield to the arrest. And should the subject resist, the
2 law enforcement officer is justified in using as much force
3 as is reasonably necessary to take this subject into
4 custody.

5 A citizen is not, of course, required to submit to
6 an illegal arrest and may use as much force as is reasonably
7 necessary to prevent an unlawful arrest.

8 The fifth and final element of this offense is
9 that the defendant resisted a lawful arrest.

10 The word resist means to refuse to cooperate with
11 the arresting officer. It means their refusal by the
12 defendant to comply with the lawful order and lawful
13 direction of the law enforcement officer.

14 The word resist means to hinder, to obstruct, or
15 to strive against the law enforcement officer in the lawful
16 performance of his duty.

17 The resistance by the defendant may be active or
18 it may be passive. And if the means employed by the
19 defendant are intended to prevent the law enforcement
20 officer from accomplishing of a lawful arrest, the
21 resistance by the defendant is complete.

22 It is not necessary that the defendant shall have
23 used force in resisting a lawful arrest, but a mere
24 momentary delay in responding to an officer's command does
25 not constitute resisting a lawful arrest.

1 In order to convict the defendant and find him
2 guilty of this offense, the State must prove to your
3 satisfaction each and every one of these elements. Not just
4 one, but each and every one of these elements, all of them
5 beyond a reasonable doubt.

6 Now, Mr. Foreman, ladies and gentlemen of the
7 jury, under the legal theory that a greater offense includes
8 a lesser included offense, I'm going to instruct you also
9 with regard to the lesser included offense of resisting
10 arrest, nonviolent. It's sometimes called nonviolent, or
11 pursuant to Subsection A of this section; that is, to say
12 16-9-320.

13 The lesser offense of simple resisting arrest
14 under Section 16-9-320, Subsection A of the Code of laws of
15 South Carolina, 1976, as amended, which I'll instruct you on
16 that.

17 To find the defendant guilty under this section,
18 you must find all of the elements I have previously
19 explained to you with regard to resisting arrest with
20 assault on an officer, except that there is no assault on an
21 officer present. In other words, to find the defendant
22 guilty under this section, you must find the defendant
23 knowingly and willfully resisted arrest and that such arrest
24 was lawful and that such arrest was made by a law
25 enforcement officer.

1 Again, this does not have to be any kind of
2 violent resisting or including any assault.

3 If you should find the defendant guilty and there
4 is a reasonable doubt as to whether he is guilty of assault
5 on an office while resisting arrest or simple resisting
6 arrest, you would give the defendant the benefit of the
7 doubt and find him guilty of the lesser offense of simple
8 resisting arrest.

9 Of course, you wouldn't find him guilty of either
10 of these offenses unless you found the State had proven the
11 elements of those offenses beyond a reasonable doubt.

12 Mr. Foreman, ladies and gentlemen of the jury, I
13 charge you that mere presence is not enough and the
14 defendant cannot be found guilty on any charge solely
15 because he was merely present at the scene of a crime.

16 To be found guilty, a person must personally
17 commit the crime or be present at the scene and
18 intentionally take a role in the commission of the crime.

19 Mr. Foreman, ladies and gentlemen of the jury, the
20 defendant is charged with several offenses in this case. He
21 is not to be prejudiced by the fact that there are several
22 offenses. As to all of these offenses, you are instructed
23 to consider each of these offenses separately and make a
24 separate finding as to each of these offenses. You could
25 find the defendant guilty of one and not the others. You

1 could find him not guilty of all of them. You could find
2 him guilty of all of them, or any part of them. And so you
3 are to consider each charge separately. Consider the
4 evidence separately as to each offense. If the evidence
5 warrants it, you may convict the defendant on all counts, on
6 one and not the other, and so forth, or you can find the
7 defendant not guilty on all counts. You are to write a
8 verdict of guilty or not guilty to each charge that would be
9 presented to you.

10 I think I have instructed on you this, but I'll
11 say again to you, if you have a reasonable doubt as to
12 whether the defendant is guilty of a lesser offense or a
13 greater offense, and there are two such cases here, it's
14 your duty to resolve that doubt in the defendant's favor and
15 find him guilty of the lesser offense. And you wouldn't
16 find him guilty of any offense unless you found the State
17 had proven the elements of that offense beyond a reasonable
18 doubt.

19 Mr. Foreman, ladies and gentlemen, I want to
20 instruct you also that the defendant is charged with
21 distribution of crack cocaine -- excuse me, possession with
22 intent to distribute crack cocaine within proximity of a
23 public park. Now, you could not find the defendant guilty
24 of this charge, unless you also found him guilty of
25 possession with intent to distribute crack cocaine. In

1 other words, in order to possess crack cocaine with intent
2 to distribute within proximity of a park; you first have to
3 have possession of the crack cocaine with intent to
4 distribute. So if you did not find the defendant guilty on
5 the charge of possession of crack cocaine with intent to
6 distribute, then you would not -- you would find him not
7 guilty on the charge of possession of crack cocaine within
8 proximity of a school or park.

9 And if you found him guilty of the lesser included
10 offense of simple possession of crack cocaine, again, you
11 could not find him guilty of the possession with intent to
12 distribute crack cocaine within proximity.

13 In order to find him guilty of proximity, you also
14 have to find him guilty of possession with intent to
15 distribute.

16 All right, Mr. Foreman, ladies and gentlemen of
17 the jury, nothing that I may have said or done during the
18 course of this trial has been in any way intended to express
19 or suggest a view of the case or an opinion as to the facts,
20 the weight of the evidence, or the credibility of the
21 witnesses. If any of my actions or words have seemed to so
22 indicate, you will disregard such and form your own opinion
23 as to these matters.

24 You have been selected as fair and impartial
25 jurors, sworn to impartially try and determine the facts of

1 this case. And when you comply with your oath to do so,
2 then no one will have a right to criticize your verdict and
3 you will have fully discharged your duty as jurors. You are
4 to decide this case according to the testimony that you have
5 heard from the lips of the sworn witnesses, along with the
6 other evidence introduced during the course of the trial.

7 I charge you that as jurors you must decide the
8 issues in this proceeding without bias and without prejudice
9 to any party. You should not allow yourself to be governed
10 by sympathy, by prejudice, by passion, by public opinion, or
11 any other arbitrary factor. Both the State and the
12 defendant have the right to expect that each of you will
13 carefully and impartially consider all of the evidence in
14 the case and you will follow the law as I have explained it
15 to you.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 whatever your verdicts in this case, it must be your
18 unanimous verdict on each charge. All twelve jurors must
19 agree on the verdict, which the foreperson would be
20 authorized to write on behalf of the jury.

21 Mr. Foreman, I instruct you or charge you that
22 once the jury begins its deliberations, that you maintain
23 some order in those deliberations. Everyone who wishes to
24 participate and to be heard in deliberations should be
25 allowed to do so.

1 If for any reason any member of the jury panel
2 take a break from deliberations, all should take a break.
3 By that I mean all twelve jurors should be present and
4 deliberating when the deliberations are going on.

5 Now, I have prepared for your use in the jury room
6 a verdict form for each of the charges in this case, five
7 all total. I'm going to run through those with you now.

8 I have in front of me first the verdict form with
9 regards to resisting arrest. The following possible
10 verdicts appear on that form:

11 The first possible verdict that appears on the
12 form is we, the jury, find the defendant Jomar Antavis
13 Robinson guilty of resisting arrest (assault on an officer
14 under Subsection B).

15 The second possible verdict on the verdict form is
16 we, the jury, find the defendant Jomar Antavis Robinson
17 guilty of the lesser included offense of resisting arrest
18 under Subsection A. That would be the nonviolent section.

19 And the third possible verdict is we, the jury,
20 find the defendant Jomar Antavis Robinson not guilty.

21 As to the carrying a pistol unlawfully, there are
22 two possible verdicts:

23 The first is we, the jury, find the defendant
24 Jomar Antavis Robinson guilty of carrying a pistol
25 unlawfully;

1 Or, we, the jury, find the defendant Jomar Antavis
2 Robinson not guilty.

3 As to the possession of marijuana, the same
4 possibilities:

5 Find him guilty and find him not guilty.

6 On the distribution of crack cocaine, there are
7 three possible verdicts which appear to that verdict form:

8 The first is we, the jury, find the defendant
9 Jomar Antavis Robinson guilty of possession with intent to
10 distribute crack cocaine.

11 The second possible verdict, we, the jury, find
12 the defendant Jomar Antavis Robinson guilty of the lesser
13 included offense of simple possession of crack cocaine.

14 And third and final possible verdict, we, the
15 jury, find the defendant Jomar Antavis Robinson not guilty.

16 On the distribution of crack cocaine within
17 proximity of a school or park -- excuse me, possession with
18 intent to distribute crack cocaine within proximity of a
19 school or park, two possible verdicts on that form:

20 We, the jury, find the defendant Jomar Antavis
21 Robinson guilty of possession with intent to distribute
22 crack cocaine within proximity of a school or park;

23 Or, we, the jury, find the defendant Jomar Antavis
24 Robinson not guilty.

25 Now, Mr. Foreman, ladies and gentlemen of the

1 jury, in preparing the verdict forms I have to put the
2 verdicts on the verdict form in some order. I do it the
3 same way every time, but the order in which the possible
4 verdicts appear on the verdict form mean absolutely nothing
5 and you should infer nothing from it. What you should do,
6 Mr. Foreman, is you should consider each of these charges
7 separately. And once you have considered that charge and
8 the jury has reached a unanimous verdict on that particular
9 charge, you will go to the verdict form on that charge, find
10 the verdict on the verdict form which corresponds to the
11 unanimous verdict reached by the jury and you will simply
12 put a check mark in the blank beside that particular
13 verdict. Sign your name on the line above the word
14 foreperson's signature, put the date. And once you have
15 done that as to all five charges in this case, you would
16 then knock on the door, let the bailiff know that you have
17 reached a verdict and the bailiff will let me know and I
18 will bring you back out into the courtroom and receive that
19 verdict.

20 Now, if you become divided in this case, Mr.
21 Foreman, and you send a message out to the court, please do
22 not indicate how you are divided. I do not wish to know how
23 you are divided; that is, numbers. If you are divided, you
24 can tell me that, but you should not tell me the numbers. I
25 do not wish to know how you are divided by numbers, okay?

1 Like 6 to 6, or, you know, 10 to 2, or something like that.
2 I don't want to know that.

3 Now, I'm going to ask you, if you will, at this
4 time to retire to the jury room, but do not yet begin your
5 deliberations. I have to give counsel an opportunity to
6 request additional instructions on the law. If additional
7 instructions are requested and I deem them necessary, I will
8 bring you back out into the courtroom and give you those
9 additional instructions.

10 If no additional instructions are necessary, I
11 will send to you by means of the bailiff the verdict forms,
12 any exhibits that have been admitted into the record with
13 instructions to begin deliberating. Please do not begin
14 deliberating until you get that instruction.

15 Please retire to the jury room, all except the two
16 alternates. At this time I'll ask the alternates not to go
17 into the jury room, but wait just outside the courtroom door
18 for further instructions. Thank you.

19 (Whereupon, at 3:23 p.m., the jury room went to
20 the jury room, awaiting instructions to begin deliberations)

21 THE COURT: Exceptions or additional requests to
22 charge, from the State?

23 MR. SPRINGS: Not really, Your Honor. I noticed
24 that you gave the date of offense, you spoke at one time and
25 you said March 20th, 2009.

1 THE COURT: Did I do that?

2 MR. SPRINGS: I think they will understand that
3 that was like a typo, and I'll mention that.

4 THE COURT: Okay. Well, if I did that, I misspoke
5 then. Let me see on my instruction here.

6 You are absolutely right. I wrote it down that
7 way. Okay.

8 All right. I'll bring them back and correct that.
9 I'll bring them back and correct that. I don't want to
10 mislead them.

11 How about from the defense?

12 MR. MILLS: Only from the defense perspective, we
13 would request the charge that the proximity statute would
14 require an intent to distribute to someone in the park or in
15 the school grounds. I'll just preserve the record for that.

16 THE COURT: Of course, I'll deny that request,
17 because the statute doesn't say that. It just says
18 possession with intent to distribute within one-half mile.
19 It doesn't require an intent to actually distribute to
20 someone at the site, the park.

21 MR. MILLS: Thank you, Your Honor.

22 THE COURT: Your objection or request is noted for
23 the record. It's denied.

24 MR. SPRINGS: If Your Honor is going to bring them
25 back, I'll mention one other little picky thing. You

1 used -- for the PWID you used Section 44-53-370, and, of
2 course, it's 375 for crack.

3 THE COURT: Well, is that the --

4 MR. SPRINGS: Crack has its own Code Section.

5 THE COURT: Well, you are right.

6 Does anybody want me to correct that?

7 MR. MILLS: I don't.

8 THE COURT: I charged the law correctly, but I
9 charged section --

10 MR. MILLS: No exception from the defense.

11 THE COURT: Sir?

12 MR. MILLS: No exception from the defense.

13 THE COURT: Well, I'll just go ahead and correct
14 it.

15 MR. MILLS: They are coming back anyway.

16 THE COURT: It's not going to make any different
17 to them. They are not going to remember what Code Section,
18 unless they got a sharper mind on that than mine.

19 Please, ma'am, just bring them back for just one
20 second.

21 THE BAILIFF: Do you want the alternates?

22 THE COURT: All of them.

23 (Whereupon, at 3:26 p.m., the jury panel returned
24 to the courtroom)

25 THE COURT: You don't have to get too comfortable,

1 Mr. Foreman. Two minor corrections I want to make on my
2 charge.

3 One is I charged you that Jomar Antavis Robinson
4 was charged -- that it was alleged that the offense occurred
5 on or about the 20th day of March, and I said 2009. That
6 was my error. It was 2008, is what the allegation. The
7 allegation is March the 20th, 2008, and not 2009.

8 The other thing I told you that Section 44-53-370
9 applies to possession with intent to distribute crack
10 cocaine. In fact, it's 44-53-375. Not 370, but 375. Not a
11 major difference, but that's the only two corrections.

12 Thank you. Now, again, if you will retire to the
13 jury room, all except the alternates and wait for further
14 instruction.

15 Alternates, just please wait outside.

16 (Whereupon, at 3:28 p.m., the jury panel went to
17 the jury room, awaiting instructions to begin deliberating)

18 THE COURT: Any other exception or additional
19 requests?

20 MR. SPRINGS: No.

21 THE COURT: From either side?

22 MR. MILLS: No, Your Honor.

23 THE COURT: Thank you. All right, please, ma'am,
24 if you will take -- counsel, would you check the exhibits
25 and make sure only those that are admitted into evidence

1 back to the jury.

2 MR. SPRINGS: Are we going to tape up these drugs?

3 THE COURT: It's not a bad idea. We don't need
4 them to get into the drugs, do we?

5 MR. MILLS: The smell issue is something that I
6 want to have them be able to do that.

7 THE COURT: Well, let's just leave it. Fine. All
8 right.

9 You can give them all that and tell them to begin
10 deliberating.

11 (Whereupon, at 3:30 p.m., the jury panel was
12 instructed to begin deliberating)

13 (Whereupon, the alternate jurors were brought into
14 the courtroom)

15 THE COURT: We made it all the way through the
16 trial without an emergency developing, so it will not be
17 necessary for you to participate in deliberations. I'm
18 going to excuse you at this time. I would like to take this
19 opportunity to thank you for your service on the jury this
20 week and the sacrifices that you have made thus far this
21 week, and I'm going to excuse you and ask you please to call
22 in tonight after seven o'clock to your voicemail number and
23 you will get instructions then as to when you need to report
24 back or call back again, as the case may be.

25 Again, thank you for your patience and for your

1 service and you are free to go. You are welcome to stay, if
2 you want to, or you are free to go.

3 (Whereupon, the alternate jurors were discharged)

4 (Whereupon, at 3:32 p.m., proceedings were
5 adjourned, pending the verdict of the jury panel)

6 (Whereupon, at 4:26 p.m., proceedings were
7 reconvened)

8 THE COURT: We have got a verdict in this case.
9 Please bring the jury in.

10 (Whereupon, at 4:28 p.m., the jury panel returned
11 back to open court to report its verdict)

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 have you reached a unanimous verdict in these cases?

14 JURY FOREMAN: Yes, Your Honor.

15 THE COURT: Sir, would you please hand the verdict
16 forms up to the bailiff?

17 The clerk will please publish the verdicts.

18 THE CLERK: In the case of South Carolina versus
19 Jomar Robinson with Indictment 2008-GS-46-3141, possession
20 of crack cocaine with the intent to distribute within
21 proximity of a school or park. We, the jury, find the
22 defendant Jomar Robinson guilty of possession of crack
23 cocaine with intent to distribute between proximity of
24 school or park. Signed by the foreperson this day.

25 2008-GS-46-3142, possession with intent to

1 distribute crack cocaine, we, the jury, find the defendant
2 guilty of possession with intent to distribute crack
3 cocaine. Signed by the foreperson this day.

4 2008-GS-46-3143, resisting arrest. We, the jury,
5 find the defendant Jomar Robinson guilty of the lesser
6 included offense of resisting arrest under Subsection A.
7 Signed by the foreperson this day.

8 2008-GS-46-3144, carrying a pistol unlawfully.
9 We, the jury, find the defendant Jomar Robinson guilty of
10 carrying a pistol unlawfully. Signed by the foreperson this
11 day.

12 2008-GS-46-3145, possession of marijuana. We, the
13 jury, find the defendant Jomar Robinson guilty of possession
14 of marijuana. Signed by the foreperson this day.

15 If this so be your verdicts, so say you all by
16 raising your right hand.

17 Let the record show all affirmed.

18 THE COURT: Any questions of the jury panel, from
19 the State?

20 MR. SPRINGS: No, sir.

21 THE COURT: From the defense?

22 MR. MILLS: None, Your Honor.

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, this will conclude your service on this case. I
25 would like to take this opportunity to thank you for your

1 service thus far this week and also for the sacrifices that
2 you have made thus far this week to help make our justice
3 system work. We understand the sacrifices on your part and
4 we do not take that for granted. We deeply appreciate your
5 service. I'm going to free you up at this time.

6 Do they need to call in tonight, is that right?

7 THE CLERK: Call after seven and I need the
8 foreperson.

9 THE COURT: I'm going to excuse you at this time
10 and ask you to call to your voicemail number tonight after
11 seven o'clock. You will get instructions as to when you
12 either need to call back or report back, as the case may be.

13 Again, thank you very much for your service. You
14 are free to go at this time, all except the foreperson.

15 Sir, we will ask you, if you will, to come him up
16 and sign off on the indictments for us, please. Thank you.

17 (Whereupon, at 4:31 p.m., the jury panel was
18 discharged)

19 THE COURT: Counsel, let me ask you, can I hear
20 you tomorrow morning on your arguments and --

21 MR. MILLS: I was going to make actually a motion
22 to defer sentencing and give me an opportunity to see if
23 there is anything I could bring to the court's attention
24 that may bear on my client.

25 THE COURT: Why don't we do this. I know that you

1 have another argument that you want to make and we got to
2 consider the other things here. There is no hurry about it,
3 apparently, so can we do that in the morning at around 9:30?

4 MR. SPRINGS: That's fine.

5 THE COURT: Does that suit you?

6 MR. MILLS: Yes.

7 MR. MORTON: I could do it -- well, we probably
8 won't start another trial in the morning, but around 9:30,
9 if we can do that.

10 MR. MILLS: Yes.

11 THE COURT: I'll hear you on any motions that you
12 wish to make at that time. We will hold that open and I'll
13 hear you with regard to sentencing.

14 MR. MILLS: Thank you, judge.

15 MR. SPRINGS: She'll have the paperwork here in
16 the morning.

17 (Whereupon, proceedings were adjourned to February
18 11, 2009)

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1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

4
5 THE STATE) TRANSCRIPT OF RECORD
6 -vs-) 2008-GS-46-3141
7 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142
8 DEFENDANT.) 2008-GS-46-3143
9) 2008-GS-46-3144
10) 2008-GS-46-3145
11) FEBRUARY 11, 2009
12) YORK, SOUTH CAROLINA

13 (VOLUME III)

14 B E F O R E:

15 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

17 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
18 ATTORNEY FOR THE STATE

19 J. CHRISTOPHER MILLS, ESQUIRE
20 JAMES MORTON, ESQUIRE
21 ATTORNEYS FOR THE DEFENDANT

22 MICHAEL R. WATTS
23 CIRCUIT COURT REPORTER
24
25

INDEX

(FEBRUARY 9, 2009)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 23

(PRETRIAL HEARING)

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 62

CROSS EXAMINATION BY MR. MILLS 72

REDIRECT EXAMINATION BY MR. SPRINGS 91

RECROSS EXAMINATION BY MR. MILLS 92

OFFICER BRIAN SCHETTLER (SW)

DIRECT EXAMINATION BY MR. SPRINGS 93

CROSS EXAMINATION BY MR. MILLS 95

(JURY TRIAL)

JURY SWORN -- PAGE 126

OPENING STATEMENT BY MR. SPRINGS -- PAGE 135

OPENING STATEMENT BY MR. MILLS -- PAGE 139

LIEUTENANT MIKE LIGON (SW)

DIRECT EXAMINATION BY MR. SPRINGS 142

CROSS EXAMINATION BY MR. MILLS 165

REDIRECT EXAMINATION BY MR. SPRINGS 190

INDEX

(FEBRUARY 10, 2009)

	WITNESSES	PAGE
1		
2		
3		
4	SERGEANT RAYFORD ERVIN, JR (SW)	
5	DIRECT EXAMINATION BY MR. SPRINGS	202
6	CROSS EXAMINATION BY MR. MILLS	208
7	REDIRECT EXAMINATION BY MR. SPRINGS	215
8	OFFICER BRIAN SCHETTLER (SW)	
9	DIRECT EXAMINATION BY MR. SPRINGS	216
10	CROSS EXAMINATION BY MR. MILLS	232
11	REDIRECT EXAMINATION BY MR. SPRINGS	244
12	BARBARA TRAYLOR (SW)	
13	DIRECT EXAMINATION BY MR. SPRINGS	246
14	CROSS EXAMINATION BY MR. MILLS	249
15	DEE ANNE JOHNSON (SW)	
16	DIRECT EXAMINATION BY MR. SPRINGS	253
17	CROSS EXAMINATION BY MR. MILLS	263
18	REDIRECT EXAMINATION BY MR. SPRINGS	265
19	COMMANDER MARVIN BROWN (SW)	
20	DIRECT EXAMINATION BY MR. SPRINGS	269
21	VOIR DIRE EXAMINATION BY MR. MILLS	273
22	CONT'D DIRECT EXAMINATION BY MR. SPRINGS	281
23	CROSS EXAMINATION BY MR. MILLS	284
24	STATE RESTS -- PAGE 285	
25		

INDEX

(FEBRUARY 10, 2009)

WITNESSES	PAGE
ODARIUS WILLIAMS (DW)	
DIRECT EXAMINATION BY MR. MORTON	286
CROSS EXAMINATION BY MR. SPRINGS	299
REDIRECT EXAMINATION BY MR. MORTON	313
DEFENSE RESTS -- PAGE 316	
CLOSING ARGUMENT BY MR. MILLS -- PAGE 326	
FINAL ARGUMENT BY MR. SPRINGS -- PAGE 337	
COURT'S JURY INSTRUCTIONS -- PAGE 346	
JURY VERDICT -- PAGE 379	

INDEX

(FEBRUARY 11, 2009)

WITNESSES

PAGE

SEALED SENTENCE RENDERED -- PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		146
4	S-2	PHOTOGRAPH		149
5	S-3	PHOTOGRAPH		149
6	S-4	PHOTOGRAPH (WITHDRAWN)	13	
7	S-5	PHOTOGRAPH		159
8	S-6	PHOTOGRAPH		159
9	S-7	PHOTOGRAPH (WITHDRAWN)	14	
10	S-8	MAP		162
11	S-9	GUN		228
12	S-10	DRUGS (REMARKED AS DEFT'S EX. # 1)		
13	S-11	DRUGS		261
14	S-12	PHOTOGRAPH		164
15	S-13	DRUG REPORT	258	
16	S-14	DRUG REPORT		259
17				
18	D-1	DRUGS		166
19				
20	CT-1	LETTER DATED 1/26/09	23	
21	CT-2	DEFENSE REQUESTED VOIR DIRE	200	
22	CT-3	PRIOR SENTENCING DOCUMENTS	389	
23				
24				
25				

1 (PROCEEDINGS, FEBRUARY 11, 2009)

2 (Prior Sentencing Documents marked as Court's
3 Exhibit No. 3 for identification)

4 MR. SPRINGS: May it please the court?

5 THE COURT: Solicitor.

6 MR. SPRINGS: Your Honor, at the latter part of
7 yesterday afternoon a jury came back with guilty verdicts in
8 the case of the State of South Carolina versus Jomar Antavis
9 Robinson, finding him guilty of possession with intent to
10 distribute crack cocaine, and it would be third offense;
11 possession with intent to distribute that crack cocaine,
12 proximity of a park; resisting arrest A; unlawful carrying
13 of a pistol; possession of marijuana. That would be a third
14 offense. And I think I have covered everything, finding him
15 guilty of these charges.

16 We deferred sentencing until this morning, and we
17 are ready now to sentence this gentleman at the trial in
18 absentia. The clerk has the sentence sheet.

19 I would like to go into our notice on the
20 intention to seek life without parole in this case, but
21 before I go through that and put all that on the record, I
22 would like to note that yesterday we had a bench conference
23 discussing some of the drug evidence in this case. We had
24 our chemist on the stand and the chemist had prepared
25 originally, last year in July, a report which showed Mr.

1 Robinson's drugs and her analysis, plus the drugs that had
2 item number 4 for a co-defendant, a man named Laquaris
3 Patton. We had prepared a redacted drug report and shared
4 that with the defense and took off the co-defendant's item
5 number 4, and that report only had Mr. Jomar Robinson's
6 drugs on it.

7 We had a bench conference wherein the defense
8 asked to use the original report that had co-defendant
9 Patton's drugs on it and item number 4, which obviously
10 thought by the defense to be a good trial tactic or
11 strategic move. I wanted to put on the record that we did
12 have that bench conference and that the original report was
13 brought in at the request of the defense, pursuant to their
14 tactical and strategic ideas.

15 I would also like to say that way last year --

16 MR. MILLS: If I could just respond to that?

17 THE COURT: Yes, sir.

18 MR. MILLS: I believe that the circumstances of
19 the trial were that the State sought to introduced an
20 amended order. I objected and I insisted the original order
21 was the one that she prepared be submitted. So --

22 THE COURT: Well, the report, you mean?

23 MR. MILLS: Yes, from the report. Right, I
24 objected to the amended report, because it's dated, of
25 course, two days ago and was not the original document, and

1 I thought we should just have the original document as
2 opposed to a modified one.

3 MR. SPRINGS: That's a correct statement.

4 THE COURT: All right. Now, I would agree with
5 that. That was the objection. When she filled out the
6 amended report, she put 2009 on it, as opposed to 2008, when
7 that report was actually done, and that was the objection.

8 And then, of course, the offer was -- I think at
9 that point the offer was maybe to correct it, but defense
10 wanted the original report put in the record, and that's
11 what you did. Okay.

12 MR. SPRINGS: Okay. Last year, I would say, Mr.
13 Mills, through my eyes, did an extremely thorough job in
14 preparing this case and covering all its basis in
15 anticipation of trial, including way last year going to our
16 evidence room with an investigator and closely examining all
17 the evidence that was going to be introduced in this case.

18 Having said that, I would turn now to our notice
19 of intent to --

20 THE COURT: Before do you that --

21 MR. SPRINGS: Yes.

22 THE COURT: -- I didn't give counsel an
23 opportunity yesterday if he wanted to make any motions. We
24 were trying to -- the jury came back right at the last, and,
25 you know, when I was trying to get out and go to a meeting,

1 and so we just deferred all that until this morning, so I
2 will give you an opportunity to put any motions that you
3 wish to make on the record this morning.

4 MR. MILLS: Thank you, Your Honor.

5 I would, of course, renew my motions which were
6 made at the end of the State's case, as well as at the end
7 of the close of evidence, that there was not sufficient
8 evidence submitted to the jury for which they could find
9 guilt beyond a reasonable doubt, based only upon officers
10 testimony without any forensic evidence.

11 I would also renew my motion to suppress the
12 initial seizure of Mr. Robinson and any evidence seized as a
13 result of the illegal seizure should be suppressed as the
14 fruits of the poisonous tree under one son. I believe those
15 are it.

16 THE COURT: All right. And do you wish to be
17 heard on those motions, solicitor?

18 MR. SPRINGS: No, sir.

19 THE COURT: All right. Of course, those motions
20 are noted for the record and denied for the same reasons I
21 gave earlier in denying them at the directed verdict stage
22 of the trial.

23 All right. Now, you may proceed with regard to
24 the LWOP offense, solicitor.

25 MR. SPRINGS: Yes, Your Honor.

1 Your Honor, I met personally with Attorney Mills
2 and the defendant Jomar Antavis Robinson on November the
3 11th, 2008, and I put a paper copy of our notice of
4 intention to seek life imprisonment without the possibility
5 of parole sentence in this matter into -- one into Mr.
6 Robinson's hand and another copy into Attorney Mills hands.
7 I have with me an affidavit stating I did just that.

8 I am also holding a copy of the notice which we
9 have filed with the Clerk of Court, and it basically says
10 that because Mr. Robinson has prior convictions -- two prior
11 convictions for proximity charges, distribution or PWID of
12 crack within proximity of a school on one and a park on the
13 other, that we -- in this case, upon conviction of this
14 proximity charge, we intended to seek a life sentence. That
15 was done back in October.

16 I'm also holding two true copies of those prior
17 sentences. One shows that he did -- these are convictions,
18 True Billed convictions. They are on February the 13th,
19 2001 -- February 13th, 2001, day of offense, he possessed
20 with intent to distribute crack cocaine within proximity of
21 a school. He was convicted of that on April 27th, 2001.
22 That was on Indictment Number 2001-GS-46-1061.

23 And then the second, on August the 14th, 2001,
24 date of offense, which, of course, is much after the April
25 27th, 2001 conviction date of the first, date of offense

1 August 14th, 2001, he did possess crack cocaine with intent
2 to distribute within proximity of a public park. He was
3 convicted of that on January 24th, 2002, making these two
4 prior sentences and previous convictions.

5 I passed to Attorney Mills a copy of State v.
6 Gordon, wherein -- and I'll hand up to the court, wherein
7 the Supreme Court says "the recidivist statute is aimed at
8 career criminals, those who have been previously sentenced
9 and then commit another crime, not at those whose recidivist
10 status is premised solely upon acts which occur at times so
11 closely connected in point of time."

12 I'll hand a copy of Gordon up to the court. I
13 think that it clearly falls under the three strikes and you
14 are out regime and I would ask our clerk to please staple
15 these documents I have referenced together. Our court
16 reporter has marked this as Court's Exhibit No. 3 and I
17 would ask that those documents be made a part of the record.

18 THE COURT: All right, they will be made part of
19 the record.

20 MR. SPRINGS: As far as sentencing, Your Honor --

21 THE COURT: Let me just note for the record, under
22 South Carolina Code Section 17-25-45, a distribution or
23 possession with intent to distribute a controlled substance
24 within proximity of a school, pursuant to 44-53-445 (b) (1)
25 is a serious offense; and, therefore, this conviction would

1 be a third serious offense, pursuant to the serious offense
2 statute, the so-called three strikes law.

3 MR. SPRINGS: Yes.

4 THE COURT: With regard to sentencing,

5 MR. SPRINGS: Your Honor, you have already
6 referenced 17-25-45. It says a person must be sentenced to
7 a term of imprisonment for life without the possibility of
8 parole if that person has two or more prior convictions for
9 it. And, of course, he does have those two prior strikes,
10 this being the third, and the State is seeking life on this
11 proximity.

12 As to the other charges, Your Honor, this would be
13 the regular PWID crack cocaine that he was convicted of
14 yesterday is a third offense. We are asking you to sentence
15 him to the 23 years he could have had, if he had chosen to
16 come to court and taken the deal that was on the table when
17 this trial started on Monday.

18 As to the other charges, we leave that in the
19 court's good discretion.

20 THE COURT: All right, counsel.

21 MR. MILLS: Well, Your Honor, I am constrained, of
22 course, to acknowledge Mr. Springs' recitation of regarding
23 the notice. My client and I did appear with Mr. Springs and
24 he did hand deliver it to us back in November of 2008.

25 I, of course, was appointed to represent Mr.

1 Robinson last May of 2008, and I have been in numerous
2 negotiations, originally with Assistant Solicitor Colton.
3 Subsequently Mr. Springs took over the case. At one point
4 it had actually went up to the federal authorities.

5 I would say that the decision to seek life without
6 parole, I would -- of course, that is in the solicitor's
7 discretion. It is mandatory with the court.

8 I would note that the State had approached Mr.
9 Robinson about testifying in a murder trial, based on the
10 State's view of evidence, and at which time an offer was
11 made, which would have given him a lesser sentence. Mr.
12 Robinson indicated he did not have information that would
13 support the State's theory of that case. Therefore, I would
14 suggest that the decision to prosecute him for life without
15 parole was a retaliatory decision, and, therefore, it's
16 improper under the law for his failure to cooperate or
17 testify, in his mind, falsely for the State. Having said
18 that, of course, Mr. Springs did serve the notice on him.

19 As for the prior offenses, Your Honor, I would
20 note that the first prior offense that he's suggesting in
21 February of '03, was a car stop. And the car stop by
22 fortuity, as the court is kind of aware of in York, is going
23 to be by a park or school. As a result of that there was no
24 intent to either possess at that time. There was certainly
25 no evidence there was any distribution to any children at

1 any school or at any park, which is designed that -- of
2 course, the proximity charge is designed to ensure against.
3 Therefore, I feel using that February 13th charge violates
4 my client's rights under both the Eight Amendment and the
5 United States Constitution, as well as Article 15 under the
6 South Carolina Constitution's prohibition against cruel and
7 unusual punishment.

8 Mr. Springs passed up the Gordon case. We do have
9 a probably more recent decision by our South Carolina
10 Supreme Court in State v. Williams, which came out in
11 October of 2008, dealing specifically with the ability to
12 get life and parole without the proximity charge. As an
13 office of the court, of course, I'm constrained to tell the
14 court that they did not find it violated the Eighth
15 Amendment to the United States Constitution. However, there
16 is no mention in that case of the Eighth Amendment -- or
17 excuse me, Article 15 under the South Carolina
18 Constitution's prohibition against cruel and unusual
19 punishment. And I would suggest that that is a separate
20 ground, much like our Fourth Amendment Juris Prudence.
21 South Carolina has a particular right of privacy, which
22 provides more protection than does the Federal Constitution.
23 Therefore, in a like argument I would suggest that the South
24 Carolina cruel and unusual punishment provides greater
25 protection to our citizens, which I consider an arbitrary

1 discretionary act by the solicitor in choosing when to seek
2 life without parole and when not to seek life without
3 parole. And, therefore, the arbitrary nature of it highly
4 focus due process rights, as well as his right under Article
5 15 of the South Carolina Constitution.

6 I would also ask the court to consider that the
7 age of these offenses, the February offense and the
8 September offense, which Mr. Springs has referred to and is
9 using as a basis for the life without parole occurred in the
10 same year when he was nineteen years old. And the courts
11 have recognized a continuous course of conduct can be
12 treated as a single event. In this instance, there is a
13 disparity of months, but I would argue to the court that
14 there is a sufficient basis for the court to find that it
15 was a single event and he should be treated as such;
16 therefore, only counting as one prior offense and making Mr.
17 Robinson ineligible for a life without parole sentence.

18 THE COURT: Let me ask you in that regard, these
19 charges -- those charges weren't disposed of at the same
20 time, were they?

21 MR. SPRINGS: No, sir. He was convicted of the --
22 date of offense February 13th, 2001. Convicted April 27th,
23 2001.

24 Then he went out August 14th, 2001, committed the
25 next crime, and was convicted in January of 2002 on that.

1 So, after he was convicted in April, later in
2 August he went on out and did it again. Entirely
3 separately.

4 THE COURT: Well, the court would find that it is
5 not a continuous course of conduct. These are two distinct
6 separate offenses that were priors. But, at any rate, your
7 motion is made is on the record.

8 MR. MILLS: Yes, sir.

9 Final -- well, I don't know if it's final, but as
10 I sit here, I also would object to using the proximity
11 charge, again recognizing the courts have adopted it, but
12 without any type of scienter requirement that there be
13 intent to distribute be done within the proximity of a
14 school or else somehow involved distribution onto a grounds,
15 or to school children, or to park participants, or done on
16 park grounds; that the sheer arbitrary nature of the statute
17 and strict liability nature of it flies in the face of our
18 protections of due process, both under the Federal
19 Constitution and under State Constitution, and does not have
20 a rational relationship to the punishments which is imposed.

21 I would note that Mr. Robinson, while he does have
22 these two prior offenses at nineteen years old, now has the
23 conviction at aged twenty-six. I think that's a stretch
24 called a career armed criminal or to describe him as such as
25 being the worst of the worst. We are talking about three

1 offenses of a street level dealer trying -- we can argue the
2 dynamics of society, and I'm not trying to justify use of
3 drugs, but the harm inflicted in that is disproportionate to
4 the punishment authorized by the legislature. And,
5 therefore, I believe it's arbitrary violation of due
6 process, as well as his under Article 15 of the South
7 Carolina Constitution.

8 THE COURT: Okay. Well, counsel, I think these
9 issues have been raised before. They have been raised
10 before me some several years ago. I did some extensive
11 research on it and concluded that in that research and I was
12 not reversed on appeal, so that scienter element is not
13 required, as far as distribution to a child, or to someone
14 on school grounds, or park grounds, or something like that,
15 or when they are stopped in the area. So I went through
16 that extensively before. I don't have all that research
17 here in front of me. That was probably seven or eight years
18 ago.

19 I would say also with regard to arbitrariness of
20 the solicitor doing this, I think you would agree with me
21 that we had a discussion about this before we actually went
22 to trial and the State was asking for twenty-five years and
23 agreed to drop it to twenty-three years in the event that
24 he, the defendant, would plead to the charges. My
25 understanding is you relayed that to him by phone, by cell

1 phone. He was aware of it, is that correct?

2 MR. MILLS: That's correct, Your Honor.

3 THE COURT: All right. And so he had the
4 opportunity to take advantage of that and he didn't do it.
5 I think that's important to put on the record, insofar as
6 your statement that this was in punishment for failing to
7 cooperate with some prior case or some offers were made.

8 All right. Anything else?

9 I don't make the laws. You know, judges don't
10 make the laws. We are here to interpret and enforce the law
11 as they come up. We don't -- we don't make the laws.
12 That's a matter for the legislature to make them and for
13 them to do, and that's the law that they -- the law they
14 have enacted down there in the legislature. So --

15 MR. MILLS: Your Honor, the only thing I would --
16 and it's not premature. I know the court is getting ready
17 to issue a sentence in this case, and I have ten days
18 subsequent to that to make a motion for reconsideration.
19 It's my intent to probably do that; to see if there is any
20 other law I can bring to the court's attention, which may
21 cause the court to reconsider at that time?

22 THE COURT: Well, of course --

23 MR. MILLS: I'm not very optimistic, but I'm going
24 to scower it.

25 THE COURT: Of course, the sentence is going to be

1 sealed today, and -- bench warrants have already been issued
2 for Mr. Robinson. If he's picked up and brought in -- I
3 assume it's been issued.

4 MR. SPRINGS: It has.

5 THE COURT: And when he's picked up and brought
6 in, the sentence would be unsealed and whatever motions you
7 want to make at that time can be made.

8 MR. MILLS: All right.

9 THE COURT: Anything else? Does the State wish to
10 be heard any further with regard to sentencing?

11 MR. SPRINGS: No, sir.

12 THE COURT: Anything else you want to say,
13 counsel?

14 MR. MILLS: No thank you, Your Honor.

15 THE COURT: All right. The court has issued
16 sealed sentence in this case. They will be sealed. I'm
17 sealing them as of today.

18 When Mr. Robinson appears in court, then the
19 sentences will be opened and imposed at that time. Any
20 motions you wish to make at that time can be made at that
21 time. Thank you.

22 MR. SPRINGS: Thank you, Your Honor.

23 MR. MILLS: Thank you, Your Honor.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 9TH, 10TH, 11TH days of FEBRUARY, 2009.

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

NOVEMBER 3, 2009



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS
3)

4 THE STATE) TRANSCRIPT OF RECORD

5 -vs-) 2008-GS-46-3141

6 JOMAR ANTAVIS ROBINSON,) 2008-GS-46-3142

7) 2008-GS-46-3143

8) 2008-GS-46-3144

9) 2008-GS-46-3145

10 DEFENDANT. MARCH 12, 2009

11 YORK, SOUTH CAROLINA

12

13 (SENTENCING HEARING)

14

15 B E F O R E:

16 THE HONORABLE LEE S. ALFORD, JUDGE.

17

18

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

20 E.B. SPRINGS, IV, ASSISTANT SOLICITOR
21 ATTORNEY FOR THE STATE

22

23 J. CHRISTOPHER MILLS, ESQUIRE
24 ATTORNEY FOR THE DEFENDANT

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MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
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WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
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3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, MARCH 12, 2009)

2 THE COURT: Solicitor.

3 MR. SPRINGS: Your Honor, on February the 9th and
4 10th of 2009, the trial of State versus Jomar Antavis
5 Robinson was held. The charges were PWID cocaine base on
6 2008-GS-46-3142; PWID cocaine base in proximity of a park on
7 2008-GS-46-3141; possession of marijuana on 2008-GS-46-3145;
8 resisting arrest on 2008-GS-46-3143; and carrying a pistol
9 unlawfully on 2008-GS-46-3144.

10 Mr. Jomar Antavis Robinson did not attend the
11 trial. He was tried in his absence. He was represented by
12 Mr. Christopher Mills, who stands here beside him now,
13 assisted by Mr. James Morton.

14 On February 10th, 2009, a jury found him guilty of
15 those charges and the court entered a sealed sentence.

16 We are here today to open the sentence and
17 sentence Mr. Robinson.

18 THE COURT: Remind me of what we did with regards
19 to the offenses which made this a third strike.

20 MR. SPRINGS: The State at -- at the time on the
21 morning of February the 11th of 2009, the State produced
22 evidence that we had served the proper notice of intention
23 to seek life without parole on the proximity charge.

24 We went over his prior offenses and basically
25 putting everything on the record about proper notice for

1 life without parole and his prior record.

2 Also I believe put in the clerk's file are
3 certified proof of two prior proximity charges, making this
4 conviction a third serious offense and appropriate for life
5 without parole. That's my recollection.

6 THE COURT: Okay. I'm thinking we did put in
7 certified copies of those previous convictions.

8 MR. SPRINGS: Yes, sir, I did.

9 THE COURT: All right. The record will reflect
10 that the court sealed the sentence from a jury verdict on
11 these charges on February the 11th of 2009. I have just
12 unsealed the sentences and have them in front of me here
13 now.

14 I'm going to read those sentences to you and then
15 I will be glad to hear from you, counsel.

16 MR. MILLS: Thank you, Your Honor.

17 THE COURT: On the charge of possession of crack
18 cocaine with intent to distribute within proximity of a
19 park, the jury convicted Mr. Robinson. The court sentenced
20 him, pursuant to the Three-Strikes Rule, to the State
21 Department of Corrections for a determinate term of life
22 without parole, this being a third strike. He's given
23 credit for any jail time served.

24 Case number 2008-GS-46-3142, Jomar Antavis
25 Robinson again was found guilty by a jury of possession with

1 intent to distribute crack cocaine, being a third drug
2 offense. The court sentenced him to the State Department of
3 Corrections for a determinate term of 23 years. That was
4 concurrent. He is given credit for time served.

5 On resisting arrest, Subsection A, which the jury
6 found him guilty of Subsection A, nonviolent, the court
7 sentenced him to the State Department of Corrections for a
8 determinate term of one year. That sentence is to run
9 concurrent. And again he's given credit for time served.

10 In case number 2008-GS-46-3144, the jury found Mr.
11 Robinson guilty of carrying a pistol unlawfully and the
12 sentence of the court was to the State Department of
13 Corrections for a term of one year. That was concurrent and
14 given credit for time served.

15 And in case number 2008-GS-46-3145, the jury
16 convicted Jomar Antavis Robinson of possession of marijuana,
17 third offense. The court sentenced him to the State
18 Department of Corrections for a determinate term of one
19 year. That sentence was concurrent and he was given credit
20 for time served.

21 Now, of course, a bench warrant was issued for Mr.
22 Robinson. He was arrested and he was picked up and brought
23 in on a bench warrant. I'm rescinding the bench warrant at
24 this time and I'll be glad to hear from you, counsel.

25 MR. MILLS: Well, Your Honor, I did make a brief

1 presentation at the original sentencing. What I would like
2 to be able to do is, and I understand the court's sentence,
3 and I think I have ten days under the rule for
4 reconsideration motion, but the only basis at this time
5 which I would like to raise to the court is in regards to
6 the life imprisonment without parole sentence. One of the
7 prior offenses that was from, I think, January 13th was
8 actually a stop in a car. They stopped the car and found
9 the amount of drugs and charged him, and they charged him
10 with a proximity charge. And I understand it's a strict
11 liability offense there, but I would just say that as
12 opposed to dealing drugs from a specific location, knowing
13 that you are in a proximity, the fact that fortuity of the
14 stop happened within the proximity should not qualify as an
15 offense for life without parole.

16 Other than that, I would just reserve any other
17 arguments I might have for reconsideration that I'll file
18 within the time frame. I don't know what those would be, if
19 any, but -- and, of course, we're aware of the right to
20 appeal within ten days.

21 THE COURT: Mr. Robinson, anything that you wish
22 to say to the court?

23 THE DEFENDANT: Yes, sir. I would just like to
24 say, you know what I'm saying, I know I was -- I was gone
25 and I apologize to the court for the time, you know what I'm

1 saying. And I would like to thank my attorney personally,
2 you know what I'm saying, for his time and consideration,
3 and that's it.

4 THE COURT: Thank you. Well, of course, Mr.
5 Robinson, on the -- I recall on the day of trial some
6 attempt was made to try to work out some kind of a plea
7 bargain agreement. Your attorneys were working with the
8 solicitors on that trying to work something out. I recall
9 that. But, in any event, that didn't work out, so your
10 attorney indicated that he had talked with you on the
11 morning of trial and you were supposed to be here and you
12 just chose not to come. So, of course, you were tried in
13 your absence and they represented you. They tried very hard
14 to represent you, both of them. And so -- of course, the
15 jury convicted you of these charges and the third strike,
16 that being proximity, possession with intent to distribute
17 near proximity of a park, the third strike requiring the
18 court to sentence you under life without -- to life without
19 parole, the solicitor having served notice and was seeking
20 life without parole at the time. And so -- I understand
21 your counsel's position with regard to being stopped, but I
22 just want -- in an automobile, but I believe it's still --
23 it's still proximity if that's where you were.

24 I have had this come up years ago. I can't
25 remember everything about it, and I did some research on it,

1 came up with it, and was satisfied. That case was certainly
2 not overturned. They found it to be a proximity charge and
3 that case was not overturned. I don't remember which the
4 name of the case.

5 MR. MILLS: Well, in all candor --

6 THE COURT: It was years ago.

7 MR. MILLS: In all candor to the court, there is a
8 recent case by our Supreme Court -- not on that issue, but
9 just on the ability of proximity charges to be supported
10 by --

11 THE COURT: In any event, of course, your
12 objection is noted for the record and denied.

13 So the sentences of the court are imposed and I
14 would not change any of the sentences today. I have not had
15 any reason to change the sentences today and I'm not going
16 to change the sentences today. So, Mr. Robinson, good luck
17 to you.

18 MR. SPRINGS: Thank you, Your Honor.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)

20

21

22

23

24

25

1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for YORK County, South Carolina, on the
9 12th day of March, 2009.

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

12
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14 NOVEMBER 3, 2009

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18 Michael R. Watts
19 Circuit Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jomar Antavis Robinson, #281722,

2013-CP-46-0455

Applicant,

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

v.

State of South Carolina,

Respondent.

FILED-RECEIVED
2013 JUL -8 PM 2:10
DAVID H. HARRIS
CLERK OF COURT
YORK COUNTY, SC

This matter comes before the Court by way of an application for post conviction relief (PCR) filed February 12, 2013.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the June 2008 term of the York County Grand Jury for possession of cocaine base (crack) with intent to distribute within proximity of a public park or playground (2008-GS-46-3141), possession of cocaine base (crack) with intent to distribute (2008-GS-46-3142), resisting arrest (2008-GS-46-3143), carrying a pistol unlawfully (2008-GS-46-3144), and possession of marijuana (2008-GS-46-3145). The Applicant was represented by J. Christopher Mills, Esquire, and Jim Morton, Esquire. On February 10, 2009, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant to confinement for life without parole (3 strikes) for possession of cocaine base with intent to distribute proximity park, twenty-three (23) years, concurrent, for possession with intent to distribute crack cocaine, 3rd offense, one (1) year, concurrent, for resisting arrest (A), one (1) year, concurrent, for carrying pistol unlawfully, and one (1) year, concurrent, for possession of marijuana, 3rd offense.

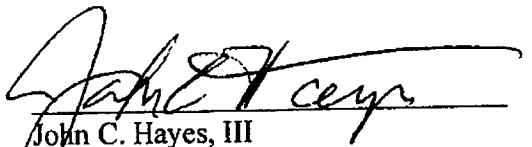
A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, Op. No. 2012-P-4942 (filed February 15, 2012). A Petition for Rehearing was filed by the Applicant and denied by the Court on March 29, 2012.

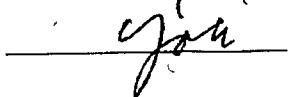
The Applicant filed a timely petition for writ of certiorari with the South Carolina Supreme Court. The matter is presently pending before the South Carolina Supreme Court.

In accordance with Rule 71.1(b), SCRCP, this Court finds that at the present time PCR is not available to the Applicant because the direct appeal is pending in the South Carolina Court of Appeals. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, this Court finds that this Application for PCR must be summarily dismissed without prejudice until such time as the direct appeal is resolved.

IT IS THEREFORE ORDERED that the Application filed on February 12, 2013, be denied and dismissed without prejudice.

AND IT IS SO ORDERED!


 John C. Hayes, III
 Chief Administrative Judge
 Sixteenth Judicial Circuit #2

, 2013
, South Carolina.

3015CP4600941

FORM 5
FILED RECEIVED

STATE OF SOUTH CAROLINA

2015 MAR 19 AM 11:32

COUNTY OF York, S.C.

DA) HAMILTON

() P. & GS

YO) COUNTY, SC

James William Robinson

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention York County Detention Center
2. Name and location of Court which imposed sentence York County Detention Center,
Kawatah 5085005-1675-34 York Hwy. York,
S.C. 29745
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-BS-46-3141; 2008-BS-46-3142; 2008-BS-46-3143;
 - (b) 2008-BS-46-3144; 2008-BS-46-3145
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/11/09
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 15, 2012 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See [redacted] attachment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See [redacted] attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 12/14
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. 10/15
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The case was on appeal
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓ _____
- (c) your sentencing? ✓ _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓ _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. J. Christopher Mills Esq.
 - ii. Jim Morton, Esq.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

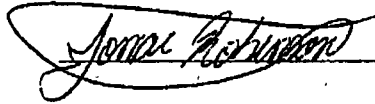
No

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

I, J. J. being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 16th
day of March, 2015

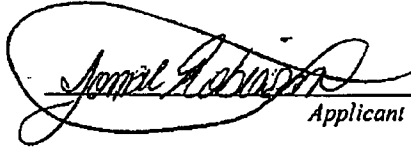
Ludson Bryant (L.S.)
Notary Public

My Commission Expires: May 21, 2020

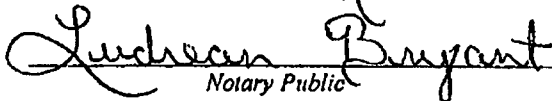
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, J. H., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
16th day of March, 2015.


Notary Public

My Commission Expires: May 26, 2020

INEFFECTIVE ASSISTANCE OF COUNSEL

(Issue 1)

Triak counsel was ineffective for not suppressing the drugs on the grounds that the drugs were mixed with (co-defendants) drugs, in the same evidence bag, causing the drugs to be tampered with, and therefore tainted.

(Issue 2)

Triak counsel was ineffective for not requesting a Directed Verdict on the grounds that the drugs were mixed with (co-defendants) drugs, in the same evidence bag, causing the drugs to be tampered with, and therefore tainted.

(Issue 3)

Triak counsel was ineffective for not asking for a Mistrial due to the fact that the drugs were mixed with (co-defendants) drugs, in the same evidence bag, causing the drugs to be tampered with, and therefore tainted.

(Issue 4)

Triak counsel was ineffective for failing to subpoena owner of apartment to show that A had a legal right to be on the premises.

(Issue 5)

Triak counsel was ineffective for introducing marijuana during his cross-examination.

Issue 6)

Trick counsel was ineffective for not investigating to see if A was properly charged.

Issue 7)

Trick counsel was ineffective for not pointing out Government witnesses perjury.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-0941
Jomar Robinson,	)	
S.C.D.C. # 281722,	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 27, 2015, would respectfully show this Court

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2010 term of the York County Grand Jury for possession of cocaine base with intent to distribute in proximity of a park (2008-GS-46-3141), possession with intent to distribute crack cocaine (2008-GS-46-3142), resisting arrest (2008-GS-46-3143), carrying a pistol unlawfully (2008-GS-46-3144), and possession of marijuana (2008-GS-46-3145). Christopher Mills and Jim Morton, Esquires, represented him. On February 9-11, 2009, Applicant's Counsel proceeded to a trial in Applicant's absence before the Honorable Lee S. Alford, after which Applicant was found guilty as indicted¹. Applicant and his counsel came before the court for sentencing on March 12, 2009. Applicant was sentenced to imprisonment for life without parole for possession of cocaine with intent to distribute in proximity of a park, twenty-three years for possession with intent to

¹ For resisting arrest, Applicant was found guilty of the lesser included offense resisting arrest under subsection A (§16-09-320).

distribute crack cocaine, one year for resisting arrest, one year for carrying a pistol unlawfully, and one year for possession of marijuana. All sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012). A Petition for Rehearing was filed by Applicant and denied by the Court on March 29, 2012.

On June 8, 2012, Applicant filed and served a Petition for Writ of Certiorari on one of the two issues presented on appeal to the Court of Appeals and Respondent submitted a Return to the Petition for Writ of Certiorari on June 15, 2012. The South Carolina Supreme Court granted the Petition for Writ of Certiorari by order dated August 7, 2013. The Supreme Court affirmed Applicant's convictions as modified by an opinion filed November 12, 2014. The remittitur was sent December 2, 2014.

PCR 2013-CP-46-0455

On February 12, 2013, Applicant filed an application for post-conviction relief. By an order dated June 24, 2013 and filed July 8, 2013, the Honorable John C. Hayes, III, dismissed the application without prejudice as Applicant's direct appeal was still pending.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Trial counsel was ineffective for not suppressing the drugs on the grounds that the drugs were mixed with (co-defendants) drugs, in the same evidence bag, causing the drugs to be tampered with, and therefore tainted."
 - b. "Trial counsel was ineffective for not requesting a directed verdict on the grounds that the drugs were mixed with (co-defendants) drugs, in the same

- evidence bag, causing the drugs to be tampered with, and therefore tainted."
- c. "Trial counsel was ineffective for not asking for a mistrial due to the fact that the grounds that the drugs were mixed with (co-defendants) drugs, in the same evidence bag, causing the drugs to be tampered with, and therefore tainted."
 - d. "Trial counsel was ineffective for failing to subpoena owner of apartment to show that I had a legal right to be on the premises."
 - e. "Trial counsel was ineffective for introducing marijuana during his cross-examination."
 - f. "Trial counsel was ineffective for not investigating to see if I was properly charged."
 - g. "Trial counsel was ineffective for not pointing out government witnesses perjury."

Attached herewith and incorporated herein by reference are the York County Clerk of Court records regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at

117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

[Signature block on following page]

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DON ZELENKA
Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

March 8, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2015-CP-46-0941

JOMAR ROBINSON, #281722,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

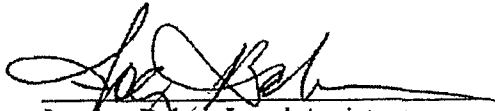
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29731-7015

DATED this 8th day of March, 2017.


Jocelyn Baker, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 JOMAR ROBINSON,

4 Petitioner,

5 Case No.

6 -against-

2015-CP-46-0941

7 STATE,

8 Respondent.

9 -----x

10 April 18, 2018

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER E. HENDERSON

15

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

17 LEAH MOODY, Esquire

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

1	<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Jomar Robinson			
4	Ms. Moody	5		
5	Mr. Hunter		12	
6	Christopher Mills			
7	Ms. Moody	44		74
8	Mr. Hunter		72	
9	Jim Morton			
10	Mr. Hunter	81		
11				
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	e-mail	28	80
P-2	statement	33	80
P-3	incident report	33	80
P-3	evidence sheet		80
P-5	inventory sheet		80

1 THE COURT: All right Mr. Hunter.

2 MR. HUNTER: Good morning, Your Honor, May it
3 please the Court. The first case today is Jomar
4 Robinson versus the State of South Carolina, 2015-CP-
5 46 -- 941.

6 Your Honor, he was indicted in York County for
7 possession with intent to distribute crack cocaine,
8 possession with intent to distribute crack cocaine
9 within proximity of a park, resisting arrest,
10 carrying a pistol unlawfully and possession of
11 marijuana.

12 He was represented by Mr. Chris Mills and Jim
13 Morton. On February 9, 2009 he proceeded to trial or
14 his counsel proceeded to a trial in his absence
15 before Judge Alford after which he was found guilty.
16 The sentence was sealed.

17 On March the 12th, 2009 he appeared with his
18 counsel before the Court for sentencing and was
19 sentenced to one year for the marijuana charge, one
20 year for pistol charge, one year for resisting arrest
21 and 23 years for PWID for crack cocaine and life
22 without parole for the proximity charge.

23 He did file a Notice of Appeal. The Court of
24 Appeals affirmed his convictions and then he
25 petitioned for a Writ of Certiorari to the South

1 Carolina Supreme Court. The Supreme Court granted
2 his petition but affirmed his convictions by opinion
3 filed November 12, 2014. Remittitur was sent
4 December 2, 2014. Filed this this correct action
5 March 27, 2015.

6 He is today represented by Miss Leah Moody.

7 THE COURT: Yes, ma'am.

8 MS. MOODY: Thank you, Your Honor. May it please
9 the Court.

10 We are ready to proceed and at this time I would
11 call Jomar Robinson to the stand.

12 THE COURT: Come forward Mr. Robinson.

13 JOMAR ROBINSON, called as a witness, having been
14 duly sworn by the clerk, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. MOODY:

18 Q Mr. Robinson.

19 A Yes, ma'am.

20 Q Could you please I need to you to speak into that
21 microphone.

22 Q Could you please state your name for the record?

23 A Jomar Robinson.

24 Q Okay. And where are you currently incarcerated?

25 A Leiber Correctional Institute.

1 Q And how long have you been at Lieber Correctional
2 Institute?

3 A Since 2012.

4 Q And the charges that your in Lieber for can you
5 please state for the record?

6 A Unlawful carrying fire arm, possession of marijuana
7 with intent to distribute, possession of crack cocaine within
8 a position to distribute, possession of crack cocaine within
9 proximity.

10 Q And as far as those charges are concerned, who was
11 your attorney?

12 A Christopher Mills.

13 Q Did you have any other attorneys?

14 A Mr. Morton.

15 Q Okay. Now, just so it is clear for the Court, did
16 Mr. Mills and Mr. Morton represent you on all of the same
17 charges?

18 A Yes, ma'am.

19 Q Okay. And how did Mr. Miles and Mr. Morton become
20 your attorneys?

21 A They were appointed.

22 Q By the Court?

23 A Yes, ma'am.

24 Q Did you are have any other charges that they
25 represented you on?

1 A No, ma'am.

2 Q When do you recall first meeting with Mr. Mills and
3 Mr. Morton?

4 A I met with them first right here at the Moss Justice
5 Center 2009 -- 2008.

6 Q Was that around the time that you were arrested?

7 A Right.

8 Q Okay. And when you first met with them at the Moss
9 Justice Center was that for a hearing or a bond setting?

10 A No, it was to make -- to become familiar with each
11 other, you know what I am saying. He was telling me he was my
12 attorney. He was representing me.

13 Q Okay. So they scheduled to met you here?

14 A Yeah.

15 Q Okay. All right. And your first meeting you met
16 with both attorneys or one attorney?

17 A Mr. Mills.

18 Q Mr. Mills. And at that meeting what, if anything,
19 did you all discuss?

20 A Really, he just asked me -- went over my charges.
21 You know, he told me to give him a layout of the situation.
22 How it happened. You know what I'm saying. That was pretty
23 much our first meeting.

24 Q And when next did you meet with Mr. Mills?

25 A I can't remember specific dates.

1 Q Was it shortly after?

2 A Nah, it wasn't shortly after. You know what I'm
3 saying. It was a few months I believe before I seen him
4 again.

5 Q Do you recall when you might have met with Mr.
6 Morton?

7 A I think it was like after at least two meetings that
8 I had with Chris. Do you know what I am saying, that I was
9 introduced with Mr. Morton and Pete Skidmore was my
10 investigator. Well, was the investigator.

11 Q Okay. So you just stated you talked to -- or you met
12 with Mr. Mills on two other occasions before you met with Mr.
13 Morton, correct?

14 A Right.

15 Q And on those two other occasions what, if anything,
16 did you discuss with Mr. Mills?

17 A We discussed the fact that I was given a plea. You
18 know what I'm saying. You could go to trial. Life without
19 possibility of parole, if I he didn't place somebody at the
20 scene of the crime due to another situation. So I was like I
21 don't have any information on that. So then it was either
22 life without parole or 15 year sentence. You know what I am
23 saying. So we discussed that, the fact that I was trying to
24 get ten years. I was like -- you know what I am saying. So
25 we just debated that for a little while.

1 Q So on each meeting -- so of those two meetings you
2 discussed a plea offer, some sort of plea offer?

3 A No. One meeting we discussed a plea offer. When he
4 told me they were going to give me life without parole either
5 if I don't take a 15 years. Either take 15 years or it's life
6 without the possibility of parole if I don't agree to testify
7 on this guy and place him at the scene of this crime.

8 Q Okay. And the second meeting what did you all
9 discuss?

10 A Was whether I was ready to go or not.

11 Q What do you mean ready to go?

12 A Ready to proceed with trial with the life without
13 possibility of parole or I'm a going to take 15 years.

14 Q So the first meeting where you talked about the plea
15 offer, were you at Mr. Mills' office?

16 A Never been at Mr. Mills' office.

17 Q So were you able to see -- well, what documents did
18 you see as it relates to a plea offer?

19 A I didn't see no document. The only documentation I
20 got is when I got a file, a copy of my motion and all that,
21 but that was just based on my stuff. You know what I'm
22 saying. I ain't see nothing about no pleas, no offers or
23 nothing until I was already incarcerated. Do you know what I
24 am saying.

25 Q Okay. As far as you understood the plea offer was 15

1 years?

2 A Fifteen years.

3 Q And what if anything did you discuss with Mr. Mills
4 about the the terms of the plea offer? I realize you just
5 testified that you were asked to give testimony about placing
6 somebody at a scene.

7 A Right.

8 Q But what did you discuss as the -- what were the
9 conditions to receive that 15-year plea, or was it just plea
10 and you could get 15 years?

11 A Just plea, 15 years.

12 Q So when you received that offer you were on -- how
13 did you receive it? I guess I'm trying to figure out where
14 Mr. Mills was and where you were when you received that offer?

15 A I think the first time he told me they were offering
16 me just 15 years via telephone. You now what I'm saying.
17 That's how most of our meetings were. We spoke on the phone a
18 lot. You know what I'm saying, being that the commute was
19 different even though I tried volunteered to come to Columbia.
20 You know what I am saying. But, yeah, it was like you can
21 take the 15 years with no got to do this, do that. They're
22 offering you 15 years. No ten years. It is 15 years or life
23 without the possibility of parole. Until it was close to
24 trial then it was you take the 25 years. The 15 years is off
25 the table. You take the 25 years or you can proceed with

1 trial.

2 Q And just a few minutes ago you said you got to do
3 this or that. What was the this or that? Did you have any --
4 I mean, it was just straight offer?

5 A Straight offer 15 years.

6 Q Okay. So now when you talked to Mr. Mills via
7 telephone on these occasions did you provide him with any
8 information of persons he could talk to on your behalf?

9 A Absolutely.

10 Q Okay. What did you provide?

11 A First I wanted to show ownership. That I had a right
12 to be on those premises. Asked him to contact Shay Feaster,
13 you know what I'm saying. The propertier. (Sic) You know what
14 I'm saying. Place that I was at to show because I'd actually
15 been there all night. Do you know what I am saying. And
16 carried over till the previous day.

17 Q But you provided him with information?

18 A Right.

19 Q All right. So can you tell the Court exactly the
20 circumstances that led to your arrest?

21 A I mean according to the files they was conducting a
22 search, a sting. Someone -- Officer Irwin was in the woods
23 observing apartments and I was seen sitting on the porch and
24 the guy sitting on the porch with me was observed going to
25 multiple cars, multiple times, and I guess he called back up

1 and you know what I am saying. They performed a sting and ran
2 down the apartments and I was arrested.

3 Q Can you give the Court -- you realize the Court
4 doesn't know all the facts in your case, right?

5 A Right.

6 Q So when you say that there was a sting, can you just
7 clarify a little bit.

8 The officer that was in the woods stayed and he was
9 watching those apartments?

10 A Yes, he was watching the apartments.

11 Q Okay. And at some point that officer approached the
12 apartment that you were on the porch?

13 A No. First the officer observed all the cars that was
14 coming in. They had a spot set up. Every car that came in
15 and left out they pulled it over and searched it for drugs.

16 Q The police officers?

17 A The police officer. Narcotics. No drugs was ever
18 found. They pulled over another jeep and it was found with a
19 stolen pistol found. No drugs found. So then they called his
20 back up or whatever, and that's when they ran in to the
21 apartments. I guess like fourth or fifth car they pulled over
22 they didn't find no drugs.

23 Q And when you say they you're talking the police
24 officers?

25 A The narcotics, yes ma'am.

1 Q Narcotics. Okay. And so after about the fifth car
2 the narcotic officers came over to where you were?

3 A Yes, and they approached the porch.

4 Q And what happened next?

5 A They approached the porch. They asked for ID. You
6 know what I'm saying. Came on the porch. It was like you all
7 got any ID. Like the man right here showed his ID. I showed
8 my ID. You know what I am saying. I had ID.

9 So when I showed him my ID, I got my ID back. It was like
10 can I search you? I was like, search me for what? So he
11 immediately start coming toward me. So I started backing up.
12 Then there was a brick wall behind me so I can't go no further
13 now. So he reached out and grabbed me, you know. That's when a
14 tussle ensued. What not, and you know --

15 Q And then then you were arrested?

16 A Right.

17 Q And so did you give that information to Mr. Mills?

18 A Yes, ma'am.

19 Q And what other information did you provide to Mr.
20 Mills as it relates to, you know, trying to defend yourself?

21 A The fact about the drugs.

22 Q Okay.

23 A All right. The man -- I will feel more comfortable
24 reading off this paper. Is that possible?

25 THE COURT: I rather you just answer the

1 questions.

2 MR. ROBINSON: The answers are all right here
3 sir.

4 THE COURT: You can refer to them. I don't want
5 you reading from that.

6 A All right. Well, the thing is, the man when they
7 came and they made the arrest he stated -- he testified in
8 Court that he found two bags of crack cocaine and one bag of
9 marijuana that was seized and tagged and kept secured,
10 untampered until he signed it over to the chemist. All right.
11 But when he got on the stand he testified that he found two
12 bags of crack cocaine and bag of marijuana in my coat pocket.
13 He stated he found all the drugs that were found that night in
14 my coat pocket and I don't know how that is possible if there
15 is another suspect and he testified that there's drugs in this
16 bag also to the chemist that there's drugs in here from Mr.
17 Patton as well. So how can I be charged with all of those
18 drugs if some of them indeed belonged to Mr. Patton.

19 Q Did you explain that to Mr. Mills?

20 A Several times.

21 Q And so essentially what you are saying is that the
22 some total of the drugs --

23 A Right.

24 Q They then -- excused me -- the State argued that they
25 were all of your drugs?

1 A All of my drugs.

2 Q Okay. And what you are trying to relate to the Court
3 is that they with not all of your drugs?

4 A They were with not all my drugs.

5 Q And you explained that to Mr. Mills?

6 A Yes, ma'am I, did. I also explained to Mr. Mills
7 that like the one bag they found loose crack cocaine, one bag
8 they said they found 11 individually wrapped bags of crack
9 cocaine which they charged me with that. That's what got me
10 charged with possession with intent and the proximity. And I
11 feel like if I would have been charged with the loose crack
12 cocaine that would have been possession. No possession with
13 intent to distribute. No possession in proximity which got me
14 a life sentence.

15 Q All right. So, those are the facts surrounding your
16 case basically?

17 A Right.

18 Q It was all with that one incident?

19 A Right.

20 Q So now you filed this post conviction relief action
21 against Mr. Mills and Mr. Morton?

22 A Right.

23 Q And in your application you gave several grounds and
24 so your facts give some kind of backdrop to your grounds,
25 coreect?

1 A Right. Right.

2 Q One of your grounds is your trial counsel was
3 ineffective for not suppressing the drugs on the ground. That
4 the drugs were mixed with the co-defendants drugs in the same
5 evidence bag causing the drug to be tampered with and
6 therefore tainted?

7 A Correct.

8 Q And so when you just explained to the Court the
9 information you gave and the facts for your case you're
10 speaking of those drugs that you wanted your attorney to
11 suppress those drugs?

12 A Right.

13 Q Okay. And in fact you feel that he did not move to
14 suppress those drugs on those basis?

15 A Right.

16 Q You gave a second ground -- is there anything else
17 you want to say about that particular ground?

18 A No, ma'am.

19 Q You gave a second ground to the Court, the trial
20 Court was -- excuse me. The trial counsel was ineffective for
21 not requesting a directed verdict on the grounds that the
22 drugs were mixed with the co-defendants drugs in the same
23 evidence bag causing the drugs to be tampered with and
24 therefore tainted. Can you explain that allegation to the
25 Court?

1 A Meaning that once the man done heard everybody's
2 testimony. You got it in writing. You then heard it verbal,
3 the testimony. The original report that he wrote in his
4 testimony was inconsistent from the beginning.

5 I feel the man should have at least made an objection. He
6 should have made a motion to suppress. Something. You know
7 what I am saying. Instead of just just letting it go. I mean,
8 he questioned the chemist. He questioned him. He got him on
9 the borderline of how could this be possible and just backed off
10 of it. You know what I am saying.

11 Q So when you say the man and he, you're talking --

12 A Mr. Mills.

13 Q Thank you. All right.

14 So, what if anything are you stating as far as Mr. Morton is
15 concerned?

16 A I mean, Mr. Morton was really just second man. You
17 know what I am saying. He was just second counsel. I did
18 most of my speaking with Mr. Mills.

19 Q Okay. All right. Your third ground that you
20 indicated in your PCR application, you stated that your trial
21 counsel was ineffective for not asking for a mistrial due to
22 the fact that the grounds the drugs were mixed with the
23 co-defendants drugs in the same evidence bag causing the drug
24 to be tampered with and therefore tainted?

25 A Correct.

1 Q And so you wanted your attorney to move for a
2 mistrial based off of the testimony from the chemist and the
3 officer's testimony?

4 A Correct.

5 Q Is there anything else you want to say about that?

6 A No, ma'am.

7 Q Your fourth ground you state that your trial counsel
8 was ineffective for failing to subpoena owner of the apartment
9 to show that you had the legal right to be on the premises.
10 Can you explain what you mean in that ground?

11 A Chief Toaler, when I filed my first briefs, you know
12 what I'm saying, she wrote me back when they denied me. She
13 said my key thing was to show ownership because that I had a
14 right to be on those premises because being that, it is public
15 that I had a right to some privacy. You know what I'm saying,
16 to be on that porch. She was just like just show that I had a
17 right to be there. She felt like my outcome on my case would
18 have been totally different.

19 Q So when you say Toaler you mean Justice Toal?

20 A Yes, ma'am.

21 Q When she wrote the opinion or her opinion of the
22 case --

23 A Yes, ma'am.

24 Q And so, did you at any point discuss with your
25 attorney why you were there at that particular apartment?

1 A Yeah, we was just -- I was just out there, you know
2 what I'm saying.

3 Q But I'm saying did you tell him that the person who
4 owned that particular -- or was leasing that apartment was
5 somebody you were visiting?

6 A Yeah.

7 Q And what was your relationship with that individual?

8 A She was a close friend.

9 Q Okay. And so when you say close friend what does
10 that mean?

11 A Intimate friend.

12 Q Girlfriend?

13 A Something like that.

14 Q Okay. All right. You explained that to Mr. Mills?

15 A Right.

16 Q And did he seem to understand who this young lady
17 was?

18 A Obviously not because he didn't speak with her.

19 Q Okay. Did you give him the name?

20 A Yes, ma'am.

21 Q Okay. And do you know -- did you ask him about yes
22 did not speak with her?

23 A I mean, I asked him why he didn't contact several of
24 the witnesses. I asked him about the people that he did
25 contact, Mr. Williams, and I asked him about Shay Feaster and

1 he's was like, I asked him. It was unheard. He never
2 elaborated on the fact of why you didn't contact this lady.
3 Why you didn't contact her to show that I had a right to be
4 where I was, you know what I am saying.

5 It was like he was more concerned with questioning Odarius
6 Williams and the guys that were actually out there with me that
7 night. You know what I am saying. Opposed to showing that I
8 had right to be where I was that night.

9 Q Okay. All right.

10 So, is there anything else, any other witness outside of the
11 Miss Feaster that you felt he should have subpoenaed and did
12 not?

13 A No, ma'am, that was it.

14 Q All right. Your fifth ground you have is your trial
15 counsel was ineffective for introducing marijuana during his
16 cross examination.

17 Can you explain to the Court what you mean in regards to the
18 marijuana?

19 A Because man, you just admit this in the evidence like
20 your just giving it to me. Well, okay, that's his then. So I
21 admit that. You know what I am saying. And if you admit the
22 the marijuana it's like you just -- I felt like he was giving
23 it all to me. If the man said he found the marijuana with the
24 crack cocaine if you admit to the marijuana it's like you
25 okaying everything else. You you know what I'm saying like --

1 Q So you felt your attorney should not have stated or
2 allowed the marijuana in because it makes you look guilty?

3 A Absolutely.

4 Q Okay. And did you -- well, in the time that you
5 talked to Mr. Mills about your case did you all discuss, you
6 know, the marijuana, the cocaine, and I know you talked about
7 the drugs being mixed, but what did you all specifically
8 discuss about the marijuana?

9 A He was more interested in how the fact could the man
10 say he approached the porch to search us based off the fact
11 that he smelled the odor of green marijuana coming out of one
12 our pockets off of the porch.

13 Q So how he approached the porch?

14 A Yeah, his whole reasons for approaching the porch.
15 What he felt gave him probable cause to approach the porch and
16 to walk up on our persons and crowd us the way he did was the
17 fact that he say he smelled green marijuana coming out of one
18 of our pockets but he stated he didn't actually smell the
19 green marijuana coming out of the pockets until he was
20 actually on the porch.

21 Q So you felt that he should have objected to the
22 marijuana coming in?

23 A Right.

24 Q All right. Your next ground that you have is your
25 trial counsel was ineffective for not investigating to see if

1 you were properly charged?

2 A Correct.

3 Q What do you mean, properly charged?

4 A When I say properly charged I mean by if -- if is a
5 known fact that only two bags of crack cocaine were found that
6 night and there's another suspect that went to jail for crack
7 cocaine as well, it's totally impossible for both of those
8 bags of crack cocaine to be found in my possession. It's
9 impossible. If I was charged with the loose crack cocaine,
10 like I said they would have gave me possession, simple
11 possession. No intent to distribute. No intent to distribute
12 within a proximity which struck me out and gave me a life
13 sentence.

14 I asked him to check and see what Mr. Patton was charged
15 with. Was he charged with loose crack cocaine or was he charged
16 with the 11 individual bags of crack cocaine which he ran and
17 they came back and got him and got it out of his coat pocket.
18 You know what I'm saying. I asked him to establish ownership of
19 these drugs and they couldn't do that from the jump. You know
20 the man gave the drugs to the chemist. The chemist say there's
21 drugs in here from two suspects. You know what I'm saying. He
22 was like, there's drugs in there from another man as well. And
23 so he asked, so you don't know who's associated with what? All
24 you know is what you were told. She was like correct.

25 This is during trial and he just backed off of that. You

1 know what I'm saying.

2 Q Well, now did you and your attorney in fact before
3 the trial, before you decided you were going to trial, did you
4 all talk about like the drugs? I mean, just like you just
5 presented it, did you all talk about the drugs prior to the
6 trial?

7 A Yeah, I talked about the drugs every chance I got.

8 Q Okay. All right, and did Mr. Mills seem to
9 understand your position?

10 A I mean, he made me feel like kinda that he understood
11 what I was going at, but now in the end he don't seem like he
12 understood what I was trying to say because he didn't fight
13 none of my -- you know I what I am saying -- what I thought
14 was my strong points. What I thought he should attack. It's
15 like he laid down. You know what I'm saying. Just walked on
16 by. I don't understand that.

17 Q All right. You stated that your trial attorney, your
18 trial counsel was ineffective for not pointing out the
19 government's witnesses perjury?

20 A Right.

21 Q What do you mean by that?

22 A By in his original report he stated that he found all
23 the drugs that were seized and tagged that night. He found
24 two bags of crack cocaine and one bag of marijuana.

25 Q When you say "his" you're talking about the police

1 officer?

2 A Yes, ma'am.

3 Q Okay.

4 A Officer Sheffler, (phonetics) Officer Brian Sheffler,
5 testified that he found in his original report he stated that
6 he found two bags of crack cocaine and one bag of marijuana.
7 Okay. But then he come and testify, he testified under oath
8 that he found two bags of crack cocaine and a bag of marijuana
9 inside my left coat pocket. But in your original report you
10 stated to the lady that it's drugs in that one of those bags
11 of crack cocaine actually belonged to somebody else. So how
12 could one of them belong to somebody else if you found both of
13 them in my coat pocket. I don't understand that. That's
14 totally consistent.

15 Q All right. And you feel that during the trial that
16 your attorney should have objected?

17 A Absolutely.

18 Q Or challenged them on those statements?

19 A Absolutely.

20 Q And after reviewing the transcript you felt that he
21 did not do that?

22 A He didn't.

23 Q All right. I want to take you back to something.
24 When you talk about your many discussions with your attorney
25 after you met with him, the first two times you indicated that

1 Mr. Morton -- that's when you met Mr. Morton and I guess Pete
2 Skidmore?

3 A Pete Skidmore, yes, ma'am.

4 Q Did you physically meet them like face to face?

5 A Actually came to the Halltree Apartments.

6 Q Okay so you met with the two them together?

7 A Right.

8 Q And was Mr. Mills with them?

9 A Yes, ma'am.

10 Q Okay. And that was after you decided you were going
11 forward on a trial?

12 A Yes, ma'am.

13 Q Okay. Did you discuss with Mr. Morton at any point
14 in time your plea offer that you received?

15 A Yes. I was trying to get lower than 15. They were
16 offering me 15 years so I was trying to ask them is it
17 possible that you could get me ten years.

18 Q Right, but did you discuss with with Mr. Morton at
19 that meeting whether or not you should go to trial or take a
20 plea?

21 A No, ma'am. It was just trial. I was basically on
22 trial. If I couldn't get anything less than 15 years I was
23 wanting to go to trial.

24 Q All right. Okay. So what I'm trying to be clear for
25 the Court is, when did you discuss anything about your me plea

1 with Mr. Morton?

2 A Mr. Morton, he advised me, he say, he say I don't
3 want to see you go to jail for a long time. He say, life
4 without possibility of parole, Mr. Robinson that is serious.
5 I was like, I understand. He was like, so you don't think it
6 would be in your best offer to take 15 years. I say,
7 especially not being it the way that the situation played
8 itself out. For ten years, I will take ten years and I will
9 go and sign a paper for ten years.

10 Q But I want to know did you talk to him at that
11 meeting or was it after that meeting that you discussed the
12 plea offer?

13 A Oh, it was after that meeting. It was after that
14 meeting.

15 Q Okay. All right, so at that time you were all in
16 trial mode?

17 A Yeah, we was in trial mode.

18 Q Do you recall after discussing with Mr. Mills any
19 plea offer that came from an attorney by the name of EB
20 Springs?

21 A Yes, ma'am, 15 years.

22 Q Okay. And EB Springs was who in regards to this
23 case?

24 A EB Springs was -- he was my prosecutor, but he was
25 also the prosecutor that came off of the previous case where

1 he wanted me to testify and play somebody at the scene of a
2 crime.

3 Q All right. So let's talk about Mr. Springs. But
4 first was there another solicitor on the case?

5 A Jennifer Colston.

6 Q Colton?

7 A Colton I believe was the first.

8 Q So is she the person who gave you the first plea
9 offer?

10 A Yes, ma'am.

11 Q And then you received a second plea offer?

12 A Yes, ma'am.

13 Q And that second plea offer came from who?

14 A EB Springs.

15 Q Okay. When you discussed the second offer with Mr.
16 Mills what were the terms of the plea offer?

17 A The first plea when I went up there and they served
18 me life without possibility of parole papers Mr. Springs say
19 if you agree to place this guy at the scene of the crime I
20 could get you another sentence like you had the first time,
21 which was seven years, 85 percent, or lower.

22 If you don't agree then I am going to go forward serve the
23 paper without the possibility of parole. So I made motion,
24 okay, well go ahead serve me the paper of life without
25 possibility of parole.

1 Q So that's was in this courthouse?

2 A Right.

3 Q Okay. So prior to coming up to the courthouse on
4 that day, did you have an opportunity to talk Mr. Mills?

5 A No, ma'am, not prior to coming up here. No, ma'am.

6 Q All right. So you don't recall having a conversation
7 with Mr. Mills via telephone?

8 A Based on what? We had plenty of conversations.

9 Q Okay. But in any of those conversations did you all
10 talk about this plea offer where Mr. Springs says either you
11 take this plea offer or I'm going to serve you with a notice
12 of life without parole?

13 A No, I got that up, right up there. (Indicating)

14 Q Out in the hallway?

15 A In office upstairs. Some office we met over there.

16 MS. MOODY: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, ma'am.

19 (Petitioner's Exhibit 1, document, marked for
20 identification as of this date.)

21 Q I will hand this to you. Can you identify that
22 document?

23 A No, ma'am.

24 Q What is that document?

25 A It's an e-mail.

1 Q Okay. And who is that e-mail from?

2 A EB Springs.

3 Q And who is that is e-mail to?

4 A Christopher Mills.

5 Q What is the date on that e-mail?

6 A Friday, October 17th, 2008.

7 Q Okay. And does that e-mail have a reference line?

8 An RE line on it? Subject?

9 A Yes, ma'am, Jomar Robinson.

10 Q Okay. So that's an e-mail from EB Springs to Chris
11 Mills, October 17, 2008 regarding you?

12 A Right.

13 Q Okay. And can you review that e-mail? Can you read
14 it?

15 A Yeah, I can read it.

16 Q Okay. What do you understand that e-mail is about?

17 A It's about a plea agreement and I don't -- can I say
18 something right here about this?

19 Q Well, I will get to that.

20 A Okay.

21 Q The plea agreements is from the State to you,
22 correct?

23 A Correct the.

24 Q And what is the plea offer?

25 A This right here says 12 to 16 years, no parole time.

1 Q And is that the offer that you received?

2 A No, ma'am. I never heard of 12 or 16. I was brought
3 15 years.

4 Q And so when you discussed the plea offer with Mr.
5 Mills that Mr. EB Springs gave, is it your testimony that the
6 offer was for just 15, no range of time?

7 A No range, 15 years.

8 Q Can you look further at that e-mail does that e-mail
9 state any conditions or what the State is seeking from you in
10 exchange for that plea?

11 A They wanted me to place Mr. Matkins at the scene of a
12 crime.

13 Q Okay. And are they talking about the charges that
14 you with charged with?

15 A No, ma'am, a previous charge that didn't have nothing
16 to do with me.

17 Q All right. And so take a minute and look at that
18 plea offer, or agreement, and see if there is any other terms
19 to the the agreement.

20 Have you had enough time to review that?

21 A Yes, ma'am.

22 Q What are the other conditions stated in that e-mail?

23 A Place Mr. Mackins at the scene of the crime and say
24 that Mr. Patton was there as well.

25 Q Okay. And what did the State -- what did EB Springs

1 say as it related to you in providing that information?

2 A It said that he would get me -- it says he would try
3 to get me -- eventually try to get me sentenced in a range
4 from 12 to 16 years with no parole time being that he couldn't
5 charge me with anything pertaining to the other crime.

6 Q Pertaining to the other crime?

7 A Yes. Couldn't charge me with nothing pertaining to
8 the other crime. He wanted to make Mr. Matkins and Mr. Patton
9 at the scene of the crime.

10 Q So, the State wasn't interested in charging you with
11 any other charges just handling your charges that were you
12 charged with?

13 A Correct.

14 MR. HUNTER: I would object as to speculation.

15 THE COURT: I will sustain the objection.

16 Q As to the e-mail, would you read what the State is
17 saying? I believe it's at the bottom paragraph.

18 A All right. If, in testifying on cross exam he says
19 he was shooting, I don't care. I would hope he tells the
20 truth, and if he was shooting and is asked on cross, I hope he
21 answers truthfully. Or he can take the Fifth if he is asked
22 on cross. That will not violate our plea agreement. If he
23 helps us here and get his no parole years, I'm not interested
24 in seeing him charged for the shooting and I am pretty sure I
25 can speak for the police, but I put the last paragraph of the

1 plea agreement in there to get him covered for now and the
2 future, when I'm retired and gone. Actually I really can't
3 see Bucket Mackins' attorney asking Jomar if he was shooting,
4 but you never know.

5 Kenneth Patton, as I said, I will not ask Jomar if Patton
6 was shooting, just if he was there. If the defense attorney
7 asks Jomar if Kenneth Patton was shooting and Jomar says yes, he
8 was, Kenneth Patton is probably going to be charged, and I am
9 not making any deals or offer promises on Patton.

10 I will see you Thursday, and call in the meantime with any
11 questions

12 Q And so based on your reading the State wanted you to
13 testify as to two other individuals, and they were not going
14 to charge you with additional charges, correct?

15 A Correct.

16 Q Okay. Did you discuss that with Mr. Mills?

17 A Yes. Me and Mr. Mills discussed it together. I told
18 him I can't place somebody somewhere where I wasn't at. I
19 don't know.

20 Q Okay, but did you understand the extent to which the
21 State wanted you to testify to help yourself out?

22 A To help me our right.

23 Q But now when you discussed your plea agreement with
24 Mr. Mills, the ten to 16?

25 A Twelve to 16.

1 Q Excuse me, 12 to 16 range, did that come up in your
2 conversation?

3 A I'd never seen a 12 or a 16. It was either 15 -- the
4 first was 15 years. If I didn't plead to 15 years it was to
5 go forward with life without possibility of parole. Then like
6 two days before trial I was like, okay, what kind of plea
7 agreement can I get if I can't get ten. So the next plea
8 agreement was to take 25 years. The 15 years is off the
9 table. Now you take 25 years or move forward with the LWOP.

10 MS. MOODY: All right, if I may Your Honor, can I
11 have these two marked?

12 (Petitioner's Exhibit two and three, document,
13 marked for identification as of this date.)

14 Q I am going to hand you what has been marked as
15 Plaintiff's Exhibit Two and Three but I am going to start with
16 three first.

17 Can you tell me what that -- can you identify that document?
18 What is it?

19 A It's an incident report.

20 THE COURT: Speak up.

21 A Incident report.

22 Q Okay. So that incident report deals with what
23 charges?

24 A Mr. Mackins.

25 Q And what are the charges?

1 A Assault with intent to kill, possession of weapon
2 during a violent crime, damage to property over one thousand
3 dollars.

4 Q Have you ever seen this incident report before?

5 A No, ma'am.

6 Q Okay. And I will hand you what has been marked as
7 Plaintiff's Exhibit Number Two. Can you tell me what that
8 document is?

9 A Statement of Jomar Antavis Robinson.

10 THE COURT: Speak up.

11 A It's a statement of Jomar Antavis Robinson

12 Q Have you seen that it document before?

13 A No, ma'am.

14 Q Okay. And if you can look through that document, can
15 you take a minute.

16 All right. Have you seen this document before?

17 A No, ma'am.

18 Q And so in this statement of Jamar Antavis Robinson,
19 that's you?

20 A Jomar.

21 Q Jomar, I'm sorry.

22 THE COURT: Speak up. Speak up.

23 A Jomar, that's me, ma'am.

24 Q Okay. All right. And so some of these questions are
25 asking you about an incident that occurred July 30th of 2008,

1 when gunshots were fired?

2 A Right.

3 Q And that doesn't have anything to do with your
4 underlying charges?

5 A No, ma'am, it does not.

6 Q Okay. And so this document here, did you ever go
7 over this document with Mr. Mills?

8 A I've never seen that document until you just handed
9 it to me.

10 Q Well, did you ever discuss any kind of questions on
11 the telephone with Mr. Mills?

12 A Not pertaining to placing Mr. Mackins at the scene of
13 the crime. Once they spoke that once, I let it be known that
14 it was impossible for me to place somebody somewhere I wasn't
15 so there's no need for us to even explore those options no
16 more. I'm thinking about my case.

17 Q So if you had been given these questions you think
18 that you might have considered that plea offer?

19 A For 12 to 16 years?

20 Q Well, I mean that's part of it to?

21 A Yeah, absolutely. Yeah yeah.

22 Q Okay, but even if it was 15 years and if you had gone
23 through this, would you have at least reviewed this document?

24 A Yes, I would have known more than I know now. Do you
25 know what I'm saying, going in to trial. You know what I'm

1 saying.

2 Q Okay. So when you talked with Mr. Morton and Mr.
3 Mills -- and this is after you met with Mr. Skidmore, were you
4 presented with anything that might have led you to providing
5 any information to the State regarding Mr. Mackins or Mr.
6 Patton?

7 A No, ma'am.

8 Q Okay, did you ever discuss the fact that Mr. Springs
9 was not interested in charging you with any other charges with
10 Mr. -- as to the charges related to Mr. Mackins or Mr. Patton,
11 did you discuss it with Mr. Mills or Mr. Morton?

12 A Yes, I told Mr. Mills that it felt like they was
13 bringing a lot of pressure down on me based on my charges
14 because I wouldn't testify and place Mr. Mackins and Mr.
15 Patton at the scene of another crime. You know what I am
16 saying.

17 Q When you say "they" are bring pressure --

18 A Meaning Mr. Mills -- I mean, Mr. EB Springs.

19 Q Okay. And what, if anything, did Mr. Mills state to
20 you when you brought that to his attention?

21 A I mean, he asked me could I place him. You know what
22 I mean. I told him, no, I couldn't place them. I couldn't
23 place him or Mr. Patton at the scene of the crime because I
24 wasn't at the scene of the the crime. You know what I am
25 saying. So we pretty much left that alone.

1 Q Okay. So you didn't go through any questions? You
2 didn't see this e-mail from Mr. Springs?

3 A No, ma'am. Especially not 12 to 16 years.

4 Q Okay.

5 MS. MOODY: I beg the the Court's indulgence.

6 Q So you didn't see those documents. Did you receive
7 any mail from your attorney regarding any plea offer?

8 A No, ma'am. The only thing I received from him was a
9 copy of like my motion and that type thing. After I got my
10 motion of discovery we didn't exchange no more mail.

11 Q Okay. So going forward your past the point of
12 accepting any kind of 15-year offer. What, if anything, did
13 you all do, meaning you and your attorney in preparation of
14 your trial?

15 A Nothing really. We just talked about the fact I
16 just kept stressing the fact that I don't find -- I don't see
17 how it could just be possible that he found everything in my
18 coat if somebody else was arrested. We just spoke on the
19 facts that I was bringing. My questions. My uncertainty
20 about my trial. You know what I'm saying. And he was just
21 like, if that's what you want to do then we will go with it.
22 You know what I am saying. But I wish I could have taken the
23 12 years.

24 Q So tell me this, you understood what life without
25 parole meant?

1 A Right.

2 Q And going into the trial what, if anything, did you
3 feel about you succeeding in the trial as to getting acquitted?

4 A I mean, I actually felt like I would have had a good
5 shot. You know what I'm saying. If he would have felt like
6 my strong points. If he felt the same way I felt about and
7 argued the way -- you know what I am saying. I think it could
8 have came out a whole lot different.

9 I felt all right being that I said I'd be willing to go and
10 accept, face life without the possibility of parole if I went to
11 trial because I know for a fact he didn't find all nothing in my
12 coat pocket.

13 Q So that begs the question why didn't you accept the
14 15 years?

15 A Why didn't I accept the 15 years because I felt like
16 I had just came home for one, and I felt like 15 years is a
17 lot of time for me to be taking for me and somebody else,
18 period.

19 Q So now there is something else that you need to tell
20 the Court. Can you explain to the Court why this trial
21 occurred in your absence?

22 A Because honestly I was afraid. You know what I'm
23 saying. Like at the end Mr. Mills we weren't seeing eye to
24 eye. It's like he didn't have me feeling like he was going to
25 come in here and represent me to the best of his ability

1 because like he had me feeling like he didn't think the
2 arguments like I wanted to argue or how I wanted to proceed
3 with my trial was for the best. You know what I'm saying. So
4 I felt like he was going in kind of half hardly. You know
5 what I'm saying. That scared me. I wasn't prepared.

6 Q So, at some point in time the 15 years came off the
7 table. But by then was the offer -- I mean, you talked to
8 him. You just testified that you talked to him about if there
9 was an offer still available?

10 A Yes, ma'am.

11 Q Okay. And that offer again at that time was?

12 A 25 years.

13 Q So you were looking at 25 from the State if you just
14 went forward and plead and as LWOP if you --

15 A If we went to trial.

16 Q Went to trial?

17 A Right.

18 Q And so Mr. Mills went forward with the trial?

19 A Right.

20 Q And you had an opportunity to read the transcript?

21 A Yes, ma'am.

22 Q Okay. And when you read the transcript the other
23 issues that we talked about those are the issues that you
24 found that were different from what you had discussed with
25 your attorney?

1 A Right.

2 Q Okay. And so you're here today with this PCR action.
3 How do you feel you were prejudiced in this matter?

4 A I felt like I was prejudiced for the fact that -- for
5 one, now I felt like I was prejudiced because I was seeking
6 ten years and I was told I couldn't receive no less than 15.
7 I was prejudiced because I didn't know nothing about 12 years.
8 If I know I could take anywhere between 12 and 16 and EB
9 Springs was actually saying that he's not concerned with me
10 getting no more than the bottom part of the deal, which is 12
11 years, I would have took that 12 years. You know what I am
12 saying. So that would have played a big outcome. Period.

13 We wouldn't be here today. I wouldn't have filed no PCR. I
14 wouldn't have done none of that. I would actually been home
15 now. You know what I'm saying.

16 Q And so, what are you asking the Court to do for you
17 here today, recognizing that the Court can't change your
18 sentence but they can start this process. If your granted
19 relief you start all the the way over, do you understand that?

20 A Right.

21 Q What are you seeking from the Court here today?

22 A I'm seeking -- I'm seeking for another trial. I will
23 be -- lesser -- a reasonable plea. I'm seeking any kind --
24 I'm seeking some kind of relief. Period.

25 Q Is there anything else you wish to tell the Court --

1 A No, ma'am.

2 Q With regard to this?

3 A No, ma'am.

4 Q Thank you for answering questions. Please answer any
5 questions the State may have.

6 A Right.

7 MR. HUNTER: Just a few things. May it please
8 the Court.

9 CROSS EXAMINATION

10 BY MR. HUNTER:

11 Q So you're saying you would have taken that 12-year
12 offer had you seen it?

13 A Yes, I'm pretty sure I would have taken the 12.

14 Q But that meant you would have to testify against Mr.
15 Mackins, right? That's what it says, doesn't it?

16 A That's what it says.

17 Q So you want the 12 years but you don't want to
18 testify against Mackins?

19 A But see, when the whole thing was placing Mr. Mackins
20 at the crime the 12 years wasn't even in the equation, so I
21 never knew anything about the 12 years. So if the 12 years
22 was made known to me it's a possibility, yeah, that I would
23 have cooperated.

24 Q But you if weren't there you would have to lie and
25 make something up?

1 A The man said he didn't care if I told the truth or
2 not. He just wanted me to place somebody anywhere.

3 Q So you wanted the 12 years so then you could lie at
4 Mr. Mackins' trial?

5 A Huh?

6 Q You wanted to take the 12 years so that then you
7 could then go to Mr. Mackins' trial and lie about him being
8 there even though he wasn't here?

9 A No. What I'm saying -- I'm not saying that I would
10 have done anything. What I'm saying is if I would have been
11 known, made known that it was possibility of 12 to 16 the
12 whole outcome would have been different regardless of whether
13 I went and testified and placed Mr. Mackins at the scene of a
14 crime or Mr. Patton or anybody.

15 The whole thing is if I would have been known that the 12 to
16 16 was available it would have prejudiced -- it would have
17 redirected the whole -- this whole outcome, period.

18 Q Even though you weren't there at the scene of the
19 crime in Mackins' case?

20 A Even though I wasn't there because if you would have
21 gave me 12 to 16 I could have looked at another strategy. I
22 could have talked to him about trying anything different
23 because for her to offer me 15 and for you to come and say
24 your trying to give me 12, no more than 12.

25 Somebody knows something that somebody don't know or

1 somebody don't know something. I don't know.

2 Q Those first offers I guess the offer of 15 years then
3 the final offer was it 25 or 23 years?

4 A Twenty-five.

5 Q You rejected those offers, right?

6 A Yeah, I rejected 25.

7 MR. HUNTER: That's all I have. Thank you.

8 THE COURT: Miss Moody, anything else?

9 MS. MOODY: Yes, sir, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. MOODY:

12 Q Mr. Robinson, the statement where you just testified
13 that Mr. Springs didn't care whether you told the truth or
14 not. Are you paraphrasing his last paragraph in the e-mail
15 where he states that you could come in to the Court and plead
16 the Fifth as to whether or not you were a shooter?

17 A Right.

18 Q So, is that what you are talking about that the Court
19 -- excuse me -- that EB Springs did not care about you being
20 charged with those charges?

21 A Being charged with truth or whatever he just wanted
22 me to come and plead the Fifth. Yeah.

23 Q And, again, you did not get to see the questions that
24 Mr. EB Springs asked you to answer regarding the 12 to 16-year
25 period of time?

1 A I've never seen none of that until today.

2 MS. MOODY: Thank you. No further questions.

3 MR. HUNTER: Nothing further.

4 THE COURT: All right, you can step down sir,

5 MS. MOODY: If I may, Your Honor, I would like to
6 Mr. Mills to the stand.

7 CHRISTOPHER MILLS, called as a witness, having
8 been duly sworn by the clerk, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MOODY:

12 Q Good morning Mr. Mills?

13 A Good morning Miss Moody.

14 Q Can you please state your full name for the record?

15 A John Christopher Mills.

16 Q And where are you currently practicing?

17 A I practice in Columbia, South Carolina, since 1986.

18 Q Obviously that's where your office is?

19 A I grew up in Rock Hill, York County. My parents were
20 long time residents.

21 They were short on attorney to take appointed cases and I was
22 asked by Judge Hayes to sign up and I agreed to take appointment
23 of cases in York County.

24 Q All right. And so in fact you were appointed to Mr.
25 Robinson based on your signing up to take appointed cases?

1 A Yes, ma'am.

2 Q And how did Mr. Morton become Mr. Robinson's attorney
3 as well?

4 A Well, of course I had to make trips up here to try
5 see Jomar and I've known Jim for a long time. We were in law
6 school together knew each other. Our families knew each
7 other. In fact lived a couple houses down from each other at
8 Hawthorne Lane. Jim had a firm. It was a place where I could
9 meet with Jomar before hand.

10 As the the trial approach Jim asked me what was going on. I
11 told him my client was in for a life without parole trial and
12 Jim volunteered to seat as second chair. Of course I welcomed
13 Jim's help not only because of the seriousness of the charge but
14 Jim's familiarity with the solicitor's office and the area.

15 Q All right. And so he wasn't technically appointed by
16 the Court?

17 A No, he was not. I don't believe so. I think he just
18 did that voluntarily because he realized it was serious and we
19 had a good case to try and an important case to try.

20 Q Okay. And so, now when you came on the case, the
21 attorney on this case was Jennifer Colton?

22 A She was the solicitor, correct.

23 Q And she made an offer in the case?

24 A Her original position I think it was - I've looking
25 through my notes and my memo to the file her -- and I may have

1 to refer back to it but just speaking out I believe it was
2 always, charged him with 2nd offense and they were offering a
3 15-year sentence, non- parolable, and Mr. Robinson had
4 rejected that from the beginning. As your familiar with
5 practicing law up here in this county, its very I consider
6 draconian on their view in their drug crime and he had only
7 prior convictions for distribution of proximity. This circuit
8 requires the defendants to plead to proximity charges any time
9 they get charged knowing it's going to set them up for a
10 possibly LWOP, life without parole next time.

11 In fact as I invested the case I realized that you can not
12 be in the city of York without being a half mile within a park
13 or church. So if you're in here and you got drugs you are going
14 to get both charges and they will make you plead to both
15 charges.

16 Q Okay. So the the original plea was 15. And do you
17 recall talking with Mr. Springs?

18 A Sure.

19 Q I am going to hand you what has been marked as
20 Plaintiff's Exhibit One, Two and Three.

21 A All right.

22 Q All right. So, Plaintiff's Exhibit One --

23 A The e-mail?

24 Q Yes.

25 A Okay.

1 Q And that's EB Springs e-mail to you on October 17th?

2 A Yes, ma'am.

3 Q Can you tell me how that e-mail came about?

4 A Well, Jennifer Colton was in charge of the case and
5 she had been indicating -- well, this case had a couple of
6 hi-cups because it looked like feds were going to get involved
7 at one time and take the case up to federal, so it kind of
8 went dormant. That did not happen.

9 The next I heard Jennifer Colton made a contact with me
10 saying that EB Springs was prosecuting a different murder case
11 and he thought my client might be a helpful witness and wanted
12 to arrange a potential proffer for him to come up and talk to
13 him to see if he had any information that would be helpful in
14 that case.

15 I think specifically he was wanting Jomar to put some people
16 at the location. I think Patton, I think Matkins at the scene.
17 Jomar indicated he didn't know what the deal was. What they
18 were going to offer. I told him I think if I look -- if may
19 refer to my file, sir?

20 THE COURT: Yes.

21 Q That e-mail is dated October 17th of '08. And I have
22 notes here on October 21st a telephone call with Jomar. I
23 read him EB's e-mail, the proffered deal, the incident report,
24 the proposed topics of testimony discussed and detailed the
25 situation and his options. He maintains he did not see what

1 the State thinks he saw. We had phone trouble and he is to
2 call back. And the next day I had a telephone call with Jomar
3 this morning because he did not call back yesterday. He stuck
4 to his story and he is not afraid of a trial. Not scared of
5 trial. Wants to know when we go court. J.C. advised he will
6 call and let him know.

7 At that point, of course my -- one of my big concerns here
8 is as I explained to Jomar they were threatening life without
9 parole which I thought was pretty poor on the State's part. It
10 looked like a retaliatory prosecution. They were trying to get
11 Jomar to testify about something he didn't know anything about.
12 And with trying to dangle with the fact that going to life of
13 prison just because he wouldn't lie for the State.

14 Q Okay. So now going back -- you looked at your notes
15 -- on the 21st you talked to Jomar Robinson

16 A Sure did.

17 Q And who talked to him on the 22nd? I'm a little
18 unclear on that.

19 A TC with Jomar. I assume that's me.

20 Q Telephone call with Jomar. I'm assuming TC means
21 telephone call?

22 A It does.

23 Q Okay. And then in the second -- or excuse me, the
24 third sentence wants to know when we go court. J.C.M. advised
25 he will call and let him know.

1 A Right.

2 Q So J.C.M. is you?

3 A Right.

4 Q So this is your phone call with him. You talked to
5 him on the 22nd?

6 A Right. I referred to myself in the third person.

7 Q All right. And so when you were reading on the 21st
8 the e-mail from EB and the proffer, deal, the incident report,
9 and the proposed topics of testimony, did you go through all
10 of those topics?

11 MS. MOODY: If I may approach, Your Honor?

12 THE COURT: Sure.

13 Q That's the -- I'm assuming those are the topics.
14 That is the statement that is proposed?

15 A Yeah, that kind of took me back. EB sent me a copy
16 of my client's proposed testimony. I thought it was rather
17 interesting prior to even speaking to him. He already had
18 outlined what he wanted him to say.

19 Q Okay.

20 A The problem -- I had problems, difficulty as the memo
21 reflects contacting Jomar and making trips up here. He
22 wouldn't meet me. I would have to go different place to meet
23 him. I gave him my personnel cell phone number so he could
24 call me when he needed to. And so, we were in constant
25 communication. Sometimes we had phone trouble. Sometimes I

1 had a hard time finding him, but we were always eventually
2 able to communicate. And what I did in this instance was,
3 they wanted to set up a meeting with Jomar come up, right down
4 the hall here and have a proffer meeting. Of course I wanted
5 to get a proffer agreement from the State that anything he
6 said would be protected and they couldn't use it.

7 I'm much familiar with doing defense in the federal system.

8 Q Right.

9 A And you know, that's kind of standard operating
10 procedure. The State not so much. But kind of made
11 assurances. Got assurances from EB that we could have a
12 confidential proffered conversation in the back room. We did.
13 EB did his spiel, trying to put a head on.

14 My recollection was when EB made this offer of 12 years we
15 were like, are you kidding? You want us to testify and you are
16 to willing to just give us like a potential three-year break.
17 That to me didn't even seem like much of offer, but we discussed
18 it. But anyway, I read him verbatim what it was on, what the EB
19 e-mail was because I wanted him to hear directly what the State
20 was offering.

21 Q So your testimony is that when you talked to Jomar
22 that he knew about the 12 to 16, is that what you're saying?

23 A Yes, ma'am. Well, at least if you're asking me, my
24 memo to file reflects that I read EB's e-mail to him. So I
25 would have read him the complete e-mail.

1 Q Okay, and when you came to the courthouse and I guess
2 you were talking -- I guess the meeting was with -- correct me
3 if I'm wrong -- your talk with EB, Jomar --

4 A And me.

5 Q And yourself?

6 A Right.

7 Q And so you all went through the e-mail or was that
8 just --

9 A You know, I can't recite you verbatim what was
10 discussed. I will tell you the gist of it. I had gone there.
11 We discussed the general terms again. Jomar was adamant I
12 wasn't there. I'm not going to testify against somebody that
13 I can't testify. I'm not going to have my client lie. You
14 know,

15 I couldn't obviously do that. If he had told me that in
16 fact he was there and was willing to testify I would have tried
17 to bargain for a better deal. It was kind of a non-starter
18 because Jomar didn't have anything to offer them so --

19 Q So, did you explain to Jomar that Mr. Springs was not
20 concerned about him with these other charges?

21 A Yeah, of course.

22 Q Okay.

23 A I mean there was never any -- don't recall any
24 threat of Jomar being charged independently with other
25 charges.

1 Q Okay.

2 A Okay. He had not been arrested in that charge. I
3 think my understanding was the government had heard word that
4 he was out there because he was associated, a friend of
5 Pattons and they kind of made some assumptions.

6 I'm no fan of EB Springs, okay. And EB was trying to get
7 somebody to snitch on somebody and I wasn't pleased with the way
8 EB was going about it. I was not pleased with the threatening
9 of higher prosecution if he didn't cooperate. I made that known
10 to EB, but I also felt it was my obligation as Jomar's defense
11 attorney to communicate the offers of the State and he can make
12 his own decisions about his own life.

13 Q And so now after that conversation did you -- I mean,
14 I guess it was with EB in the room -- did you have opportunity
15 to discuss it further with Jomar regarding what the State was
16 asking, and I'm not saying discussing -- telling or lying or
17 anything, but did you all discuss, you know, the plea range
18 and benefit of taking that plea?

19 A Yeah. I told him obviously. I think the basic thing
20 was the State was not coming off the 15. The only way they
21 were offering to come off was if you testified at Mackins'
22 trial. He said I'm not going to do it.

23 So it was pretty much a non-started from that point other
24 than communicating that if he did testify the way they thought
25 he should or they thought he could that they would give him

1 this, you know, 12 to 16 and not object very much if it was 16.
2 Like I said, it didn't seem like much of an offer to me anyway
3 but it was certainly something Jomar could take if he wanted to.

4 Q But it's definitely a better offer than life without
5 parole?

6 A Well, they never -- life without parole was never
7 offered. It was threatened that he would have to go to trial
8 and he could face life without parole and so the option was
9 either you take 15, or if you testify in Mackins's trial we'll
10 think about you get 12.

11 They weren't even negotiating a 12. They were trying to get
12 a range with a year higher. It was crazy. I didn't see much of
13 it, but again getting back to the point, it was non-starter
14 because Jomar wasn't there and wasn't going to testify. And he
15 was aware they were offering that, but he wasn't going to
16 testify anyway and he wanted to go to trial.

17 His position in this case was, man, they have planted this
18 stuff on me. I wasn't even wearing a jacket that night. Okay.
19 And that's the way we designed our defense.

20 Q Okay. So --

21 A The transcript reflects they didn't even have the
22 jacket.

23 Q Well, I understand that, but what I'm saying is when
24 you were -- this is at the point where he has to make a
25 decision.

1 He is served with life without parole, correct?

2 A He hadn't been served with it at that point. They
3 were threatening. We then had to come back up here in
4 November for a separate notice hearing. And I think -- I
5 can't remember if EB offered it one more time again. I think
6 Mackins' trial had already come and gone, but maybe not.

7 Q Okay.

8 A But essentially we were getting served with the
9 notice and at that point, game on. And I think probably at
10 that point Jim -- excuse me, Mr. Morton, because I was calling
11 him up trying to get some help. I was getting funding further
12 for private investigators. We had difficulty contacting the
13 witnesses.

14 Q Okay. So, let's go back to there was another offer.
15 Potentially. I don't see that on here, but there was another
16 offer of the 12 to 16 or another offer of the 15?

17 A I think all that was offered was 15 at that point
18 because he had already indicated he was not going to cooperate
19 and the trial may or may not have gone but that shipped had
20 sailed. He had rejected repeatedly the 15. Said he was not
21 going to take it. So we had to come and went to the notice
22 hearing on the LWOP.

23 Q So when the notice hearing on the LWOP? You
24 indicated that was in November. Was that the 10th of
25 November?

1 A Yeah, whatever the notice is. I think there's a
2 record of it in the file.

3 Q Okay. And so between October 21st and November 10th
4 you were able to talk to Jomar again about another 15 years
5 and that's when he indicated that he was not going to take the
6 15 years?

7 A If you don't mind let me just take a look to see if I
8 had specific conversations.

9 Let's see. It looks like we had some contact. My paralegal
10 had contact with Jomar right before that. I was going to meet
11 him at the courthouse the next day but this is no discussion. I
12 didn't make any note of any discussion we had

13 A So on 10/22 you talked about the plea offer on this
14 date. Later on that day there was some discussion either by
15 e-mail and then the next time that you or anybody spoke to
16 Jomar from your office was November 10th where I believe your
17 paralegal Liz spoke with Jomar?

18 A Other than the meeting we had up here between -- we
19 had a discussions in October and then we came up here and had
20 the meetings.

21 Q So, I guess --

22 A When we had the meetings when we discussed all the
23 whole Mackins' participation. That fell through so we then
24 set the date for the LWOP notice which was a little bit later
25 and then I met him up here that morning to do that.

1 Q Right. What I am saying -- I'm agreeing with you on
2 October 22nd that's the last time somebody talked to him about
3 a plea offer and the only time that somebody talked to him
4 about the meeting at the courthouse for the service was
5 November 10th. So between 10/21 and October 22nd -- excuse
6 me -- I'm getting confused.

7 Between October 21st to November 10th there was no other
8 discussions other than the ones that you noted in your record?

9 A October 22nd to November 10th I don't think we had
10 any discussions other than to meet at the courthouse.

11 Q Okay. So from there when you all decided that you
12 were going forward with the trial what then was the defense
13 that you were going to advance on at trial?

14 A The defense at trial was that a couple of things. I
15 was going to focus on suppression motion pretrial. You know up
16 here you can't do a suppression motion until you are on the
17 door step of trial.

18 I had to do some want minding to keep EB from trying to
19 ex-parte the judge before hand before I even made a motion.
20 Then we had the trial. That's next thing.

21 Q But what was your defense?

22 A Oh, the defense of the case was Jomar's -- Jomar's
23 story was that he had been over there visiting some friends.
24 I believe my notes reflect he had a girlfriend that lived over
25 at another part of the little area, the apartments -- excuse

1 me -- at one point.

2 She was not there. They were not on her porch. I'm not
3 actually sure the individual's porch. If you remember in the
4 file this is a couple of letters I had from him. Here's the
5 witnesses you have given me. Here's who I talked to. Here's
6 what they say right now. Do you have any other names I could
7 get. I need to give them to the investigators. Please give me
8 names of any witnesses you think we could have.

9 Q And so there weren't any other names given?

10 A Not by Jomar. We had the ones from the incident
11 report. Mr. Patton of course had been arrested as well. At
12 the time of trial he had already plead guilty to distribution
13 from that location. He had changed his story on us two or
14 three times in our interviews with him. So we realized he was
15 going to be an unreliable witness to put on the stand.

16 We had another younger guy who had no prior record. A young
17 fella, I think Mr. Williams was going to testify. But the
18 statement that Jomar had told us I think I heard him today say
19 that he was just caught and grabbed. Now the statement he had
20 given to the investigators that I have in the file indicated
21 that he had come up. The police had -- well, here was our
22 theory of the case. The police had said they had a stakeout and
23 they were viewing somebody with a jacket going up and doing drug
24 deals in a car. That they stopped the car and they found a gun
25 in it.

1 Now, we couldn't find any record of that stop. I finally
2 found the person who kind of confirmed that the stop did happen.
3 So, we were hoping to impeach him that way. Then that the
4 police came straight up on him. That they hopped out the car
5 and yelled we smell green marijuana. And that they came up and
6 they grabbed Jomar and they started searching him and he ran.
7 He said, why are you searching me and they grabbed him and he
8 ran and they caught him, brought him back. Did a search. And
9 they came over with a jacket that had dope in it and a gun and
10 said it was his. And of course our trial strategy was they
11 didn't have the jacket. Okay. So, you know why didn't have the
12 the jacket. Why didn't you film this. You all had a
13 opportunity to film it. You didn't do anything like that. And
14 that was going to be the defense at trial was that they just got
15 confused. We don't know why they gave him a jacket. He didn't
16 have one on that day. Our witness would testify that Jomar
17 didn't have a jacket on that day. And so that would have been
18 our substantive, you know, approach at trial.

19 Now of course, the problem was Jomar didn't show up for
20 trial. I mean, I'm here to try that case and he's gone so
21 that's the difficulty we have that day of presenting evidence
22 about I heard him say about, you know, his possessory interest
23 in the porch. While he hadn't told that to me before I would
24 have been happy to present that, but we didn't have him here to
25 do that.

1 Q Okay. So, did you feel confident about the strategy,
2 that you all elected to present for trial?

3 A I did. I thought we actually, you know, under the
4 circumstances it was questionable whether Jomar would have
5 testified anyway at trial because of his prior convictions.

6 Q Right.

7 A But I could certainly put him up in a suppression
8 hearing prior to trial. He could have testified without any
9 risk there and I might have been able to establish a
10 possessory interest in that instance. That would have carried
11 the day of the suppression motion. I don't think with Judge
12 Alford quite honestly, but the appellant opinion -- I mean,
13 that's where we got hooked. Is we didn't have -- while the
14 government had the burden of proof they said we didn't present
15 any evidence of a possessory interest.

16 I don't have in my notes any notation that we had any
17 grounds to make that argument, but I will take Jomar's proof
18 that he had sufficient connection with it that if he was here I
19 would have presented him and certainly put up that testimony in
20 a suppression hearing.

21 Q So, now, did you talk to Miss Feaster? Did you have
22 that information?

23 A I don't see her name in the file. I don't know if
24 you all found it in there anywhere. I don't recall seeing
25 that name. I mean, it might have been his prior girlfriend's

1 name. I'm not sure, but I didn't see it.

2 Q So, I guess what I'm getting to as far as his right
3 to be there did you all discuss why was he there in the first
4 place when you talked about his case?

5 A Sure.

6 Q And what, if anything, did he tell you about why he
7 was there?

8 A That was he over there visiting some friends. I
9 think he had a girlfriend at one time who lived over there.
10 She may have lived in one the other apartments. She wasn't
11 there.

12 Q So, you didn't feel that knowing that he had a
13 girlfriend there at that particular location?

14 A Not at that apartment. No, she lived in a different
15 place.

16 Q Okay. So, the individual who lived at that apartment
17 did you have any conversation with them?

18 A Yeah. I certainly inquired about it. I wasn't given
19 anything. Just on the porch they were hanging out.

20 Q And so, let's go back to you said that he did not
21 show up at the trial.

22 A I'm not saying he didn't have a connection with the
23 place. I don't have any notes saying that he did and if he
24 did I would have certainly -- I believe, I would have put it
25 down because that's my hook.

1 Q Okay. So when you -- you just testified earlier that
2 he didn't appear at the trial and so the purpose of had he
3 been there it would have been for the purpose of you would
4 have been able to get into the right to be there on that porch
5 through the suppression hearing, but was there any other
6 reason he would have needed to be there to testify?

7 A I mean, just caused some confusion that morning
8 because I was on the phone with him about two or three times
9 and he was telling me I'm on my way, I'm on my way and I got
10 Judge Alford looking at me like where's your client? And EB
11 Springs is going crazy and trying to indict me for being in
12 conspiracy. You know how EB is. He's just going nuts.

13 So we're just trying to do damage control at that point.
14 But, you know, I don't think we really intended -- we would have
15 made a judgement call in the trial depending on how the other
16 witnesses went. Whether Jomar should take it or not -- take the
17 stand or not.

18 The officers' stories had a lot of inconsistencies with
19 them. Didn't make sense. And so I really thought that we could
20 have some good cross examination and I think we did have some
21 good cross examination of some of the officers. The jury
22 ultimately didn't go with it, but, you know -- all the things
23 they said. They didn't have any fingerprints on the gun. They
24 didn't have any DNA because supposedly Jomar was in horrible
25 fight with the officer. He didn't have a single scratch on him.

1 The officer claims he chased him through a rose bush and things
2 to that nature. Their story didn't fit. This idea they hopped
3 out of the car, they smelled unburnt green marijuana, which is
4 why I entered the pot because it didn't smell. I mean, the cops
5 testified, hopped out of the car and from 20 feet away I'm
6 smelling green marijuana.

7 We thought it wasn't a problem for me to introduce it
8 because we were never claiming it was ours. We never said it
9 came off us. Introducing it we did not admit that it was
10 Jomar's pot.

11 We did realize the risk. Mind you, Judge Alford had already
12 denied the suppression motion. So the drugs were coming in.
13 And ultimately as you know the cocaine and all that came in
14 later on. So my feeling was the drugs were coming in but I
15 wanted to just have the kind of shock value of having the cross
16 examination when they weren't expecting it and again, because I
17 didn't have Jomar about the possessory interest I had to go with
18 they didn't have reasonable suspicion to even initiate the stop.
19 But I didn't have him testify he didn't have a coat on or
20 anything else like that.

21 Q So, at a point where you were talking to Jomar and
22 you had an opportunity to go over the information, did you all
23 discuss kind of like what his tragedy, where you're going to
24 show that its not his marijuana, that he didn't have a coat,
25 any of those things?

1 A Sure. Of course. Of course.

2 Q So were you able to talk about it?

3 A Of course.

4 Q Okay. And your testimony is he didn't show up on the
5 day of the the trial and so you couldn't put that information
6 up?

7 A Handicapped certainly. Handicapped in the
8 suppression motion more than anything because, again, it was
9 debatable whether we would have him testify at trial.

10 So, I can't really say at that point, but we would have made
11 as I say a game-time decision.

12 MS. MOODY: Beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 Q Mr. Miles, can you we go back to the suppression?

15 A Sure.

16 Q When you went forward in terms of filing your
17 objections to the drugs, did you move to suppress the drugs?
18 I think you said you didn't get to -- you didn't want the
19 prosecutor to ex-parte the judge and you wanted to file your
20 motions?

21 A Well, EB Springs what he started doing is he wanted
22 to find memorandum of law in anticipation of a motion to
23 suppress and put forth all the State's facts and everything
24 else that he wanted to get in there that would never come off
25 the stand to the Court. So I told him, hey, I object. I sent

1 a letter to Judge Alford. I said Judge Alford, I object to
2 this. My understanding is EB is going to try and preemptively
3 contact you under the guise of filing a memorandum.

4 EB said, well, Judge Alford doesn't like to get, you know,
5 sidetracked with anything or surprised with anything. So we got
6 to let him know in advance. I told him like, hey, you know,
7 that's my motion, not your motion. You only file it when I
8 respond to it. And so you are trying to actually prejudice the
9 Court. It was kind of just lawyering back and forth.

10 Q Okay. So kind of explain to the Court because like
11 you said it's a little bit different here. You can't -- when
12 you say you can't do a suppression hearing you're saying it's
13 on the eve of trial. You can't do a separate --

14 A They do not allow you to file and have a separate
15 hearing and a separate motion suppression to determine what it
16 is. You have to do it as the case is called for trial prior
17 to seating a jury.

18 Q So that day?

19 A On that day.

20 Q And so in this particular case your saying that EB
21 Springs was trying to file something to handle something
22 before the very thing that most people would want. He was
23 trying to file something ahead of time without having your
24 motion?

25 A He wasn't responding to anything. He was just laying

1 out his theory of the case and what happened. This could have
2 been big contested facts. But I thought, hey, you're not
3 letting me make the motion. You're not going to have a
4 hearing but you're going to give the judge a memorandum before
5 we even have the Court and you don't even know the grounds of
6 my suppression.

7 Q But so ultimately you did do a hearing?

8 A Yes.

9 Q You did pretrial motions?

10 A I did.

11 Q Okay. And what was the context of those pretrial
12 motions?

13 A Well, mainly to suppress the drugs that they didn't
14 have -- suppress it because they did not have reasonable
15 suspicion to originally come on the porch, that the seizure
16 was illegal and that they violated the Fourth Amendment.

17 Q And so that's all of the drugs?

18 A Right. Sure at that stage we were trying to
19 challenge the guns and the drugs. Those were the three
20 charges; the pot, the coke and the gun.

21 MS. MOODY: Beg the Court's indulgence.

22 THE COURT: Ma'am.

23 Q So Mr. Mills, were you able to argue or object to the
24 actual charges like the proximity charges and how it was
25 possible for him to have the other person's drugs on him?

1 A You know, I saw that in the PCR motion. I'm still a
2 little bit mystified on that. I looked back at the report and
3 the officers testified that these were what we seized on him.
4 It went to SLED and then the evidence as his stuff. Patton's
5 name wasn't on the evidence sheet, so I don't know.

6 I never looked at Mr. Patton's case to see what drugs they
7 seized off of him. I know he plead guilty to something
8 independently. He didn't plead guilty to Jomar's drugs. And
9 the evidence bag for Jomar Robinson and tested by SLED, or
10 whoever the person was that came who came in testified. I
11 forgot her name. They had two people. The evidence person came
12 in to establish a chain of custody and then they brought in the
13 chemist who came in and testified that it was actually cocaine.

14 Q Okay. And so, I guess, like as oppose to just
15 suppressing the drugs period for a search and seizure, was
16 there any other way that you could have objected to the drugs
17 as it relates to Jomar being found on him?

18 A Well, as I understood -- as I think I understand
19 Jomar's claim is that they seized the drugs from both him and
20 Patton and how could they tell whose was whose being they
21 co-mingled that them and they might have charged him with
22 Patton's drugs.

23 Q Right.

24 A I think that's what he is alleging. Now, the -- you
25 know, the items of evidence that were seized it just had a

1 case number here and it had Jomar's name and it had the two
2 bags of cocaine and the bag of marijuana.

3 So, if the police mixed that up where I guess you could have
4 made -- I guess I could have made a defense that, hey, how do
5 know they actually -- the stuff they put in with Jomar's
6 evidence was his. That could have is Patton's stuff, I guess.
7 Yeah, I suppose I could have made that argument.

8 I didn't have any basis to support it other than throwing it
9 up against the wall. And it was inconsistent with our theory
10 that Jomar had nothing on him.

11 Q Okay.

12 A Of course the fact if you mix it up it still quite
13 honestly would help him. He's still admitting he's had drugs
14 on them then he's still screwed for possession -- excuse me --
15 he's still charged with possession with intent because he's
16 still got the little rocks and they're claiming they're
17 selling it for 10 and \$20 dollars a rock. So it might have
18 cut down the amount of cocaine. It wouldn't have ultimately
19 effected the charge I don't believe.

20 Q As to the proximity?

21 A They were claiming whatever he possessed he was
22 selling.

23 Q Okay.

24 A They're doing that proximity charge -- if he's in
25 possession and he's got more than one rock, up here they are

1 going to charge with possession with intent because they're
2 saying they're viewing him. There are people going out.
3 Although I got them to admit they never saw Jomar go out to
4 the car.

5 There big thing is that they were hanging out. They're
6 selling dope and people were driving there and they were selling
7 them rocks. Okay. And so -- I'm sorry, I cut myself into a
8 dead end.

9 MS. MOODY: Beg the Court's indulgence.

10 Q Mr. Mills, in items of your questioning of the
11 officer, you didn't ask the officer how is it possible for
12 them to find the different amounts of crack cocaine on one
13 individual. And I'm trying to understand is as your -- what
14 you understood it as. Is it your understanding that Jomar
15 said he had nothing on him?

16 A The question is what is Jomar's position about it?

17 Q All right. Going in to the trial, what was Jomar's
18 position?

19 A Our position based on what Jomar has told us and I
20 understand it's in the file, what Investigator Pete Skidmore
21 took, is that I was up there. I was standing up there. I
22 wasn't wearing a jacket. I was just sitting up top there and
23 the police come up and they try to grab me and I say, you
24 ain't got a right to search me and I ran. And they came back
25 and they had me on the ground. They came walking up with this

1 jacket.

2 Now what the police claim is they came up there. I walked
3 up there and I smelled the marijuana and I looked at him and I
4 saw that he had this it gun sticking out of his pocket and that
5 he then bolted. I grabbed him. The jacket came off of him and
6 this is what we found in the jacket. Okay. That was the police
7 story.

8 We had a witness that said Jomar had no jacket on and that
9 essentially the police came up with this stuff. There was never
10 really any challenge to the idea -- the police were going to
11 testify this is what we found in the jacket and we didn't have
12 any contrary evidence other than the fact Jomar was not wearing
13 a jacket.

14 Q Okay. So you all --

15 A And they didn't have a jacket at trial. They didn't
16 have a jacket.

17 Q So you weren't arguing what was found in the jacket.
18 You were arguing the fact -- your defense was that he didn't
19 have a jacket so it doesn't matter what you found in the
20 jacket?

21 A It wasn't his.

22 Q Okay. So is when you all went in to trial based on
23 your conversations with Jomar that's the defense you all were
24 going for?

25 A That was our substantive defense to the trial if the

1 suppression motion failed. Right.

2 Q And so then after that failed could you not have
3 objected to how is it possible you can find drugs on Patton
4 and then find drugs on Jomar Robinson and its all the drugs
5 that were found at that location that night?

6 A I don't even understand that question.

7 Q Sorry.

8 A So let me just tell you what the police testified to
9 is that these are the drugs we found on Jomar and these are
10 the drugs we found on Patton.

11 Q That's what they testified to?

12 A I had no evidence that those drugs were ever placed
13 together in evidence, or that they were ever co-mingled at any
14 time.

15 Q But looking at the evidence and talking to the
16 chemist about the evidence the drugs were all in the same bag?

17 A They were two different bags.

18 Q Okay. Well then one larger bag?

19 A I can't remember right now. I think what they said
20 is the found two bags they found. Got a picture over here in
21 the file the stuff they had. They found two separate baggies
22 and a small baggy of pot. A small baggy of pot.

23 Q Okay.

24 A Let me see if I can -- excuse me for a second. Here
25 In the discovery motion they said they're sending picture of