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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ANDERS
NO RESPONDENTS BRIEF FILED
NO DEFENDANT'S BRIEF

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SC Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ABEL DEWAYNE GAUSE,

APPELLANT

APPELLATE CASE NO. 2018-001378

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2017-GS-26-3047

The State,)
))
Plaintiff,) Transcript of Record
))
vs.) July 18, 2018
))
Abel Dewayne Gause,)
))
Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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1 (On the record, July 18, 2018.)

2 THE COURT: All right. What have we got?

3 MR. MARTIN: Your Honor, this is the State of South
4 Carolina versus Abel Gause, possession with intent to
5 distribute heroin third offense. The State is ready to
6 proceed at this time. It's my understanding the Defense is as
7 well. We do have a couple of pretrial matters to address with
8 the Court.

9 THE COURT: All right. What pretrial matters do we have
10 from the State?

11 MR. MARTIN: Your Honor, the State wishes to play a
12 video. It's a redacted version. I have -- we did send it to
13 the Defense. We talked about it this morning. The redacted
14 video combines the officer's dash cam and body cam, and it
15 takes about one to two hours of video footage and condenses it
16 into 16 minutes and 31 seconds. Judge, we do not believe this
17 is a Jackson v. Denno issue. The Defendant does make
18 statements to Officer Rabon. However, it is pursuant to the
19 traffic stop. Case law does show that Miranda warnings are
20 not required in a traffic stop. Additionally, it does also
21 take a few statements out that the Defense would have
22 objection to. Also, there is some dead time in between where
23 just nothing happens. That was redacted as well. We do have
24 the video cued up, and we can certainly play it for Your Honor
25 out of an abundance of caution at the appropriate time.

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1 THE COURT: All right. What's the Defense's position?

2 MR. STANKO: And Your Honor, he is, he's correct
3 regarding Jackson v. Denno. There, there are no statements
4 that we believe, we believe were inappropriate or improperly
5 made. So we are not opposing any of -- any of what he said
6 coming in.

7 With regards to the video, it's my understanding it's 16
8 and a half minutes. As he said, out of an abundance of
9 caution we would like to at least play that before the --
10 before the trial commences just to make sure that there is
11 nothing in there that, that we would object to so that once it
12 comes time for it to be played for the jury it can just be
13 played straight on.

14 THE COURT: Oh, okay. So they've provided it to you but
15 you haven't seen the redacted portion?

16 MR. STANKO: Correct, Your Honor.

17 THE COURT: Okay.

18 MR. STANKO: I've, I've, I've watched the, the full one,
19 but it is as he said about two hours long. Yes.

20 THE COURT: Okay. All right. Do we want to go ahead and
21 do that now?

22 MR. MARTIN: Yes, Your Honor. Additionally, it's my
23 understanding the Defense does not have a motion for a
24 suppression hearing. If the Defense does we would like to
25 address that at the same time as playing the video.

1 THE COURT: Okay. Is there a motion? Well, let's play
2 the video because if he hasn't seen it --

3 MR. MARTIN: Okay.

4 THE COURT: -- then he's not going to know the grounds to
5 raise an objection.

6 MR. MARTIN: We would like to call Officer Rabon in order
7 to authenticate the video.

8 THE COURT: All right. Let's go ahead and do that.

9 MR. STANKO: Your Honor, we would stipulate to this.
10 It's his body camera. You can, you can see him on it.
11 There's -- and if the, if the State wishes to do that again
12 out of an abundance of caution we wouldn't object to that, but
13 it is --

14 THE COURT: Okay.

15 MR. STANKO: -- it is the body cam video that, that --

16 THE COURT: Well, if there are any statements made by the
17 Defendant I think we need to go ahead and authenticate it.

18 MR. STANKO: Very well.

19 THE COURT: All right.

20 Whereupon, Brandon Rabon is called to the stand, duly
21 sworn by the clerk and testified as follows:

22 MR. RABON: My name's Brandon Rabon, B-R-A-N-D-O-N, last
23 name's R-A-B-O-N.

24 EXAMINATION

25 BY MR. MARTIN:

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1 Q Officer Rabon, with whom are you currently employed?

2 A The Horry County Police Department.

3 Q How long have you been there?

4 A About four and a half years.

5 Q What's your current position?

6 A I'm currently a canine handler.

7 Q What was your duties on March 28th, 2017?

8 A I was a patrolman in north precinct.

9 Q And on that date were you involved in the arrest or
10 investigation of anyone you see here in court today?

11 A I was.

12 Q And who would that have been?

13 A The gentleman here to the left.

14 MR. MARTIN: Your Honor, may the record reflect the
15 officer is identifying the Defendant seated at the Defense
16 table?

17 THE COURT: Well, one, two -- there's a bunch of people
18 to the left so.

19 A I'm sorry, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. MARTIN:

22 Q Would you point out specifically what he's wearing?

23 A Yes. He's wearing the, the plaid shirt and the blue
24 jeans.

25 MR. MARTIN: May the record reflect he's pointed to --

1 THE COURT: All right.

2 MR. MARTIN: -- the gentleman in the plaid shirt and blue
3 jeans.

4 BY MR. MARTIN:

5 Q Officer Rabon, during the course of that day did you have
6 any audio or recording video that occurred?

7 A I did.

8 Q And what would that have been?

9 A My body worn camera and my dash camera.

10 Q And really quickly for the Court's information, how does
11 that work?

12 A Basically when you're going -- taking enforcement action
13 you activate the body camera by two pushes of the main button
14 on the front. It goes back 30 seconds, records video but no
15 audio, and then after the 30 second rewind, it starts
16 recording audio as well until it's cut off.

17 Q Did you upload or move that video from the recording
18 device to something else?

19 A I did.

20 Q And what did you do?

21 A I downloaded it onto a desktop so it could be made and
22 submitted.

23 Q Did you materially alter or edit the video in any way?

24 A I did not.

25 Q And did you view that video?

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9

1 A I did.

2 Q At this time I'm showing you what's been previously
3 marked for identification purposes as State's Exhibit One. Do
4 you recognize this and you can remove it from the casing if
5 you need to.

6 A I do.

7 Q What is it?

8 A A video I've reviewed and initialed.

9 Q Okay. And you're able to identify that because of the
10 initialing?

11 A Yes, sir.

12 Q Are you familiar -- is this a complete version or a
13 redacted version?

14 A This is the redacted version.

15 Q For the Court's information, what was exactly redacted?
16 Was -- what was the reason for the redaction?

17 A Due to the length and lulls in, in time of not -- stuff
18 not going on.

19 Q That redacted version that you viewed, was it a fair and
20 accurate representation of the events you witnessed that day?

21 A It was.

22 Q Is it altered in any way?

23 A No, sir.

24 MR. MARTIN: Judge, at this time the State would request
25 the opportunity to play the video.

1 THE COURT: Any objection?

2 MR. STANKO: Without objection, sir.

3 THE COURT: All right. Go ahead.

4 MR. MARTIN: Your Honor, would you care for me to move
5 the podium out of the way?

6 THE COURT: I can see fine. All right.

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

8 MR. MARTIN:

9 Q Officer Rabon, after seeing the video again, is that a
10 fair and accurate, accurate representation of what happened
11 that day?

12 A It is.

13 Q Has this video appeared, other than the redactions,
14 appeared to have been altered or changed in any way?

15 A It does not.

16 Q For the Court's information, what's a 10-51?

17 A That's a wrecker off rotation.

18 Q A tow vehicle?

19 A Yes, sir.

20 Q And why were you searching the car?

21 A I was conducting the inventory. The tag doesn't match
22 the vehicle. So I had no way to verify if there was a
23 cancellation of insurance via tag. He could not provide me
24 proof of insurance. By South Carolina law I cannot allow him
25 to operate that vehicle uninsured on the roadway. It's

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1 standard protocol.-

2 Q It is a standard search?

3 A It is.

4 MR. MARTIN: Your Honor, at this time I don't know if we
5 want to put it into evidence yet because we do want to put
6 that in evidence in front of the jury, but if Your Honor
7 wishes we would move to put into evidence now. If not we can
8 do at, at trial.

9 THE COURT: All right. Any questions or challenges?

10 MR. STANKO: Your Honor, after, after viewing the, the
11 video here, any, any part that we would have had objection to
12 or anything that we would have requested to get redacted has
13 been redacted. So at this time we do not object to, to the
14 video either coming into evidence or as it is in that form.

15 THE COURT: All right. I'll leave it up to you. If you
16 want to put it in now we can put it now or if you want to wait
17 and do it at trial you can do it at trial.

18 MR. MARTIN: Your Honor, to save time we would go ahead
19 and move it into evidence now, certainly in front of the jury
20 we will still go through some of the standard questions, but
21 we would request to move this into evidence at this time.

22 THE COURT: All right. Any objection?

23 MR. STANKO: Without objection at this time.

24 THE COURT: All right. That's State's Exhibit One? Is
25 that correct?

Motions

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1 MR. MARTIN: That is correct, Your Honor.

2 THE COURT: All right. State's Exhibit One admitted into
3 evidence without objection.

4 (State's Exhibit Number One [Video] admitted into
5 evidence and appropriately marked.)

6 MR. MARTIN: Your Honor, we have no further questions for
7 Officer Rabon at this time.

8 THE COURT: All right. Any questions?

9 MR. STANKO: None at this time, sir.

10 THE COURT: All right. Sir, you may step down.

11 All right. Anything further from the State?

12 MR. MARTIN: That concludes all of our pretrial matters
13 at this time.

14 THE COURT: All right. Anything from the Defense?

15 MR. STANKO: Yes, Your Honor. We did have a couple of
16 motions in limine.

17 THE COURT: All right.

18 MR. STANKO: Obviously, we would, we would ask and, you
19 know, it's certainly understood that, that it wouldn't come
20 out unless he took the stand but because this is a -- this is
21 being charged as a third offense we would certainly ask that
22 no mention be made of his prior criminal history or the fact
23 that, that this is a third offense, Your Honor.

24 THE COURT: All right. Does he stipulate that he has at
25 least two prior offenses --

Motions

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1 MR. STANKO: He --

2 THE COURT: -- for possession of heroin?

3 MR. STANKO: He does, sir.

4 THE COURT: All right.

5 MR. STANKO: Well, not for, not for heroin but for other
6 controlled substances that would enhance this.

7 THE COURT: That would make this a third offense?

8 MR. STANKO: Correct, sir.

9 THE COURT: Okay. All right. Let me hear from the State
10 in that regard.

11 MR. MARTIN: Your Honor, we have no intention of saying
12 third offense in front of the jury.

13 THE COURT: Okay. Now, his prior offenses, are they all
14 possessions or are there any PWIDs or --

15 MR. MARTIN: Your Honor, it is actually PWIDs and
16 trafficking.

17 THE COURT: Okay.

18 MR. MARTIN: Would Your Honor care to hear that at this
19 time or wait until --

20 THE COURT: No. Does he stipulate that the priors are
21 PWIDs and trafficking?

22 MR. STANKO: He does, sir. We've, we've --

23 THE COURT: Okay.

24 MR. STANKO: -- been over his criminal history.

25 THE COURT: All right. If it gets to that point for

Motions

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1 sentencing then I'll, I'll get into at that time --

2 MR. MARTIN: Thank you, Your Honor.

3 THE COURT: -- but, but at this point in time as long as
4 he's stipulating outside the jury that he's got at least two
5 prior possessions of either PWID or trafficking then we'll --
6 I'll, I'll grant the motion to suppress any reference to any
7 prior drug possession convictions. All right. Anything else?

8 MR. STANKO: Yes. There was, there was one other motion
9 in limine. Your Honor, we received emails from the, from the
10 State related to ongoing investigation into a couple of
11 individuals in, in that area. The emails stated that there
12 was an anonymous complainant claiming that, that a few
13 individuals, including Mr. Gause and including a vehicle with
14 that license plate, had been, had been dealing drugs in an
15 area. Without the, without the anonymous complainant to
16 actually verify that, taking the witness stand, and the fact
17 that, that these were all several weeks in the past, we would
18 ask that no mention be made related to those emails or related
19 to the fact that there was a pending investigation against Mr.
20 Gause. Again, I just believe that that would be significantly
21 more prejudicial than probative as it relates to this charge
22 at that time.

23 THE COURT: All right. So what is it now?

24 MR. STANKO: Your Honor, the, the emails came out that
25 said that anonymous complainants --

Motions

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1 THE COURT: Wait. These are emails to whom?

2 MR. STANKO: Between, between police officers with the
3 Horry County Police Department.

4 THE COURT: Okay. And what do they say?

5 MR. STANKO: Your Honor, the emails say an anonymous
6 complainant advised a black in color Acura was doing drug
7 deals in the Bombing Range Road area along with a tan in color
8 unknown sedan with license plate [REDACTED], [REDACTED], [REDACTED], [REDACTED],
9 South Carolina tag driven by an Abel Gause.

10 THE COURT: Okay. So you're seeking suppression of those
11 emails --

12 MR. STANKO: Correct. Suppression of the emails.

13 THE COURT: -- or reference --

14 MR. STANKO: And any reference to, to what the anonymous
15 complainant had said, again, because these were related to a
16 different area, and the incident that we're here for is a
17 traffic stop happening several days, actually eight days after
18 these emails went out.

19 THE COURT: All right. What's the State's position?

20 MR. MARTIN: Thank you, Your Honor. With regards to
21 actually presenting the email itself into evidence, the State
22 does not intend to do that, but to answer the question
23 regarding referencing any prior activity, the State's not
24 going to go down that route either. However, we do believe
25 that we should be allowed to ask a question of Officer Rabon

1 as to prior notification of a vehicle believed to be involved
2 in some type of narcotic activity. Now, we're not offering
3 that for the truth of the matter asserted. Rather to put --
4 to kind of characterize what was going on in the area that day
5 and what he was doing in that area, he was conducting patrols
6 in a well-known drug area, and that email itself, while we
7 will not enter the email into evidence or reference the email,
8 we do ask that he be allowed to comment that he did have
9 knowledge of that vehicle possibly being involved in drug
10 activity.

11 THE COURT: Well, if the knowledge is based upon
12 information from someone else, it's like a confidential
13 informant, you're going to have to show the reliability of the
14 person's statement in the past, the opportunity for the person
15 to have known the matters that they're telling the officer
16 about. It's just like a confidential informant. You can't
17 just say, "Oh, we received an anonymous tip and we're checking
18 it out." Who made the tip, are they reliable, have you used
19 them in the past, is there other evidence to support what
20 they're saying and things of that nature. So I mean, is it an
21 anonymous tip that they don't know who it's coming from or its
22 reliability or is it someone they've used in the past, they
23 know who's making it and they've proved reliable in the past.

24 MR. MARTIN: Well, Your Honor, it's more so just for
25 simply vehicle recognition and explains what he's doing there

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1 and the purpose of how he -- or how he is patrolling. As far
2 as whether it's --

3 THE COURT: Well, and I understand what you're saying,
4 but rather than an anonymous email, let's say he had a
5 confidential informant. Well, if the confidential informant
6 does not have any prior history of being truthful or honest or
7 something. I mean, it's like getting a search warrant. If
8 you go in to a magistrate and say, "I need a search warrant
9 based upon the information that we've received," the
10 magistrate has to know is the person reliable, is the person
11 -- do the facts show that the person or is it supported by
12 other facts. You can't just go -- I can't just go up to law
13 enforcement and say, "They're dealing drugs out of that
14 house," and he go get a search warrant and go into the house
15 and search the house. I can't just say, "I know there's drugs
16 in Mr. Martin's car," and that allows them to pull you over
17 and go search your car. There has to be a certain degree of
18 reliability from where they're getting the information. That
19 doesn't give probable cause. If they don't know who's making
20 the statement, whether the statement is -- tends to be
21 truthful, whether it's because the same person is providing
22 them information in the past that's been truthful, whether
23 they've used the person in the past or whether or not there's
24 other facts and circumstances that corroborate this person's
25 story, you can't just go off an anonymous email.

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1 MR. MARTIN: And Your Honor, it's not being offered for
2 probable cause purposes, and additionally, it's not an
3 anonymous email. It is an email from a narcotics detective at
4 Horry County that is sent out standard procedure to all other
5 Horry County road officers that are conducting patrols in
6 these well-known areas.

7 THE COURT: Okay. Now, if it is another narcotics
8 officer that has been making patrols and it is shown to be
9 accurate information in the past, then they can rely on what
10 that officer is telling them.

11 MR. STANKO: But, Your Honor, in this situation this is
12 an anonymous complainant. The complainant, the one who, who
13 claims that Mr. Gause was in that area is not another
14 narcotics officer. It's that -- the first two words in the
15 email anonymous complainant has advised that. Your Honor,
16 it's not a narcotics officer.

17 THE COURT: Do you know who the anonymous complainant is?

18 MR. MARTIN: Your Honor, I do not.

19 THE COURT: Okay. Have any information that shows that
20 this anonymous complainant has a propensity for telling the
21 truth and has just not -- doesn't have a vendetta against this
22 Defendant and wants to see him arrested?

23 MR. MARTIN: No, Your Honor.

24 THE COURT: Okay. Then I'm going to sustain their
25 objection. You can't reference any anonymous complaints or

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1 anything of that nature.

2 MR. MARTIN: And Your Honor, just to follow up, in order
3 to characterize the area that the officer is patrolling, it is
4 a well-known drug area. Our belief would be we could still
5 ask the question, asking him what he was doing in that area to
6 characterize the area. Certainly he cannot because of your
7 ruling make any reference to a narcotics complaint, but he can
8 say that he is doing --

9 THE COURT: Well, what --

10 MR. MARTIN: -- routine patrol in a well-known drug area.

11 THE COURT: -- how is it well-known as a drug area?

12 MR. MARTIN: Based off of his training and experience
13 patrolling that area.

14 THE COURT: How many arrests has he made for drug
15 activity in that area?

16 MR. MARTIN: Your Honor, we were going to go into that
17 line of questioning in front of the jury. It is too many for
18 him to be able to count.

19 THE COURT: Okay.

20 MR. MARTIN: Dealing with possession and PWID.

21 THE COURT: If he's made a number of arrests in that
22 area, if, if he's got something to support that that is a high
23 drug area aside from this one anonymous email, then, yeah, you
24 can get into that, but if he is calling this a high drug area
25 based upon an anonymous email that he doesn't know who sent it

1 or where it came from or how they would have knowledge that
2 it's a high drug area then he's not going to be able to say
3 it's a high drug area, but if it's a high drug area and he
4 knows that because he's personally been out there and made a
5 number of drug arrests in that area, then, yeah, he can do
6 that. All right.

7 MR. MARTIN: Thank you, Your Honor.

8 MR. STANKO: And, and again, Your Honor, just to clarify,
9 you're allowing them to, to characterize this area as a high
10 drug area without getting into any specifics related to Mr.
11 Gause; correct?

12 THE COURT: Well, as long as it is not based upon an
13 anonymous email from somebody that they don't know who sent it
14 or how that person would have knowledge.

15 MR. STANKO: Understood.

16 THE COURT: Then -- I mean, they're going to have to base
17 it upon how they know either your client or that area is
18 dealing in drugs.

19 MR. STANKO: Understood.

20 THE COURT: Okay.

21 MR. MARTIN: Your Honor, we will lay the -- attempt to
22 lay the proper foundation --

23 THE COURT: Yeah.

24 MR. MARTIN: -- before we ask that question.

25 THE COURT: I mean, it, it -- for it to get to the jury

Motions

21

1 there has to be a reliability standard.

2 MR. STANKO: Absolutely.

3 THE COURT: Okay. The Court has to deem it as reliable,
4 and the courts have said it is not reliable as accurate
5 information if it's an anonymous tip from somebody and you
6 don't know their propensity for honesty or lying, whether
7 they've got a grudge or whether they have actual knowledge,
8 that's why when you use a confidential informant it's going to
9 be based upon how reliable is that confidential informant,
10 have you used them in the past, have their stories always
11 checked out, is it supported by other evidence. There's a
12 reliability standard where you can't just go on somebody's
13 word. Like I say, I can't just go to the cops and say, "Mr.
14 Stanko has got drugs in his car," without them knowing me,
15 knowing my propensity to tell the truth or whether I just have
16 a vendetta against Mr. Stanko. They're not going to be going
17 through your car based upon that alone, and I think it's the
18 same standard here. Before it gets to the jury you're going
19 to have to show a certain degree of reliability in what you're
20 testifying to.

21 MR. STANKO: Thank you, Your Honor.

22 THE COURT: All right.

23 MR. STANKO: Oh, and no further pretrial matters from the
24 Defense.

25 THE COURT: All right. All right. Anything further from

Voir Dire

22

1 the State?

2 MR. MARTIN: No, Your Honor.

3 THE COURT: All right. So we're ready to bring the jury
4 up, begin with the jury selection?

5 MR. STANKO: Yes, sir.

6 THE COURT: Okay. Now, let's see this -- oh, so this is
7 PWID. So it's still a five and five?

8 MR. STANKO: Yes, Your Honor.

9 MR. MARTIN: Yes, Your Honor.

10 THE COURT: Yeah. Okay. All right. Let's go ahead and
11 bring the jury panel up. Let me know when they get up here
12 and we'll go ahead and get started then. Okay.

13 OFF THE RECORD.

14 (On the record. The following takes place in the presence of
15 the jury panel.)

16 THE COURT: Thank you very much. Please be seated.

17 All right. Good morning, ladies and gentlemen. We are
18 getting ready to start the trial of the case of the State of
19 South Carolina versus Abel Dewayne Gause. Mr. Gause has been
20 charged with possession with intent to distribute heroin.
21 Now, all of you have been qualified to serve as jurors for
22 this term of General Sessions Court when I qualified you the
23 other day. I do have a series of questions to go over with
24 you now, which is referred to as voir dire questioning. That
25 is to determine whether or not you're qualified to serve as

Voir Dire

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1 jurors on this particular case, and it also gives the
2 attorneys some additional information that assists them in the
3 jury selection process. So as I told you during jury
4 qualifications, jurors, just like witnesses, are constantly
5 taking oaths. So if I could get all members of the jury panel
6 to please stand and raise your right hand.

7 (Jury panel sworn by Court.)

8 THE COURT: Thank you very much. You may be seated and
9 put your hands down.

10 Is there any member of the jury panel that did not
11 respond to the oath by saying "I do"? If so, please stand.

12 (No response.)

13 THE COURT: All right. Very well. Please listen up as I
14 go over these questions, and if any of them apply to you
15 please stand and let us know when I direct you to do so.

16 Now, as I said, this is the State of South Carolina
17 versus Abel Dewayne Gause. Mr. Abel Dewayne Gause is the
18 Defendant. Is there any member of the jury panel related by
19 blood or marriage, have a close personal relationship,
20 business relationship, social relationship or any other type
21 of relationship with Mr. Gause? If so, please stand.

22 (No response.)

23 THE COURT: All right. Please listen carefully as these
24 are the potential witnesses who may testify in this case. You
25 have Donna Bell, Ashley Hardee, Courtney Johnson, Sharon

Voir Dire

24

1 Lilly, Brandon Rabon and Jackie Witherspoon, all of whom are
2 employed by the Horry County Police Department. Is there any
3 member of the jury panel related by blood or marriage, have a
4 close personal relationship, business relationship, social
5 relationship or any other type of relationship with any of
6 these potential witnesses? If so, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel who
9 either personally, has a family member or a close personal
10 friend employed with the Horry County Police Department? If
11 so, please stand.

12 Yes, ma'am, your name and number.

13 JUROR NUMBER 42: Shekinah Brunt, Number 42.

14 THE COURT: All right. Hold for one second. All right.
15 Ms. Brunt, who is it that you know or what is your association
16 with --

17 JUROR NUMBER 42: I'm related to Tyres Nesmith.

18 THE COURT: Who?

19 JUROR NUMBER 42: Tyres.

20 THE COURT: Now, who is Tyres?

21 JUROR NUMBER 42: She's a detective for Conway.

22 THE COURT: For the Horry County Police Department?

23 Okay. Now, is he involved in this case?

24 JUROR NUMBER 42: She.

25 MR. MARTIN: No, Your Honor.

Voir Dire

25

1 THE COURT: She. Okay. All right. Now, would the fact
2 and she is -- she's related or a friend?

3 JUROR NUMBER 42: She's related to me.

4 THE COURT: Okay. And how is she related?

5 JUROR NUMBER 42: Cousins.

6 THE COURT: Okay. Would the fact that you have a cousin
7 employed with the Horry County Police Department and the fact
8 that these witnesses are from the Horry County Police
9 Department, would that affect your ability to give the
10 Defendant and the State a fair and impartial trial?

11 JUROR NUMBER 42: It wouldn't affect it.

12 THE COURT: Excuse me?

13 JUROR NUMBER 42: No. It wouldn't.

14 THE COURT: All right. Would you be able to disregard
15 your relationship with your cousin in its entirety --

16 JUROR NUMBER 42: Yes.

17 THE COURT: -- and base your decision in this case
18 exclusively on the testimony and evidence in this case?

19 JUROR NUMBER 42: Yes.

20 THE COURT: All right. Thank you, Ms. Brunt, for
21 bringing that to our attention.

22 Yes, sir. Your name and number?

23 JUROR NUMBER 31: Number 31, Matthew Berger.

24 THE COURT: All right. Mr. Berger, is --

25 JUROR NUMBER 31: I just have a friend that's a state

Voir Dire

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1 trooper, Stephen Cotolese [spelled phonetically].

2 THE COURT: Okay. So he's not employed with the Horry
3 County Police Department?

4 JUROR NUMBER 31: No.

5 THE COURT: Okay. That's fine. Thank you.

6 Anyone else have any either personally employed or have a
7 family member or close personal friend employed with the Horry
8 County Police Department? If so please stand.

9 (No response.)

10 THE COURT: All right. The State -- prosecuting this
11 case on behalf of the State are George Henry Martin, III, and
12 David P. Caraker, both of the 15th Circuit Solicitor's Office.
13 Representing the Defendant is James Stanko. Any member of the
14 jury panel related by blood or marriage, have a close personal
15 relationship, business relationship, social relationship or
16 any other type of relationship with Mr. Martin, Mr. Caraker or
17 Mr. Stanko? If so, please stand.

18 (No response.)

19 THE COURT: Is any member of the jury panel ever been
20 represented by any of these attorneys? If so, please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel ever been
23 involved in any legal action in which any of these attorneys
24 represented another party to that action? If so, please
25 stand.

Voir Dire

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1 (No response.)

2 MR. CARAKER: Your Honor, may we approach?

3 THE COURT: Yeah.

4 (Whereupon, a bench conference is held in the presence
5 but out of the hearing of the jury panel.)

6 THE COURT: Has any member of the jury panel formed or
7 expressed an opinion about any issue or matter involved in
8 this case? If so, please stand.

9 (No response.)

10 THE COURT: Is any member of the jury panel aware of any
11 bias or prejudice towards either the State of South Carolina
12 or the Defendant in this case? If so, please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel that
15 was a member of the Grand Jury that issued the indictment in
16 this case? If so, please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel that is
19 a member of or a contributor to any organization which has as
20 its primary concern the promotion of law enforcement or
21 victims' rights? Now, some of these organizations are Mothers
22 Against Drunk Drivers, Students Against Drunk Drivers,
23 Citizens Against Violent Crime, also called CAVC and CASA,
24 Citizens Against Spousal Abuse, and other similar
25 organizations? Is there any member of the jury panel that is

Voir Dire

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1 either a member of or a contributor to such organization? If
2 so, please stand.

3 (No response.)

4 THE COURT: Does any member of the jury panel know of any
5 reason whatsoever why he or she should not serve as a juror in
6 this case with particular emphasis being placed on your
7 ability to be fair and impartial to both the State and the
8 Defendant? If so, please stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel who
11 either personally, has a family member or close personal
12 friend employed with the 15th Circuit Solicitor's Office or the
13 Horry County Public Defender's Office? If so, please stand.

14 (No response.)

15 THE COURT: All right. Any additional questioning from
16 the State?

17 MR. MARTIN: No, Your Honor.

18 THE COURT: Any from the Defense?

19 MR. STANKO: None, Your Honor.

20 THE COURT: All right. Now, ladies and gentlemen, the
21 way we select a jury in a General Sessions case is your names
22 have been placed on a list in random order, and the Clerk of
23 Court will read your name one at a time. When your name is
24 read, if you would please come forward, stand in front of the
25 attorneys and the State's attorney's going to look at you for

Jury Selection

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1 a minute and then look back at their notes and then look at
2 you a little while longer and look at their notes, and they're
3 going to decide if they want you as a juror, and if they want
4 you as a juror then the Defendant's going to look at their
5 notes and look back at you a while and look at their notes and
6 talk a little bit and decide if they want you, and we go
7 through this process until we get 12 jurors. So if you're
8 selected as a juror you'll be directed to come over here and
9 have a seat in the jury box. If you are struck from this case
10 by either the State or the Defendant, please do not take it
11 personally. It just means that for whatever reason you do not
12 fit a certain profile that they're looking for in this
13 particular case. I've often -- many cases there'll be a juror
14 that is struck in one case and then accepted by the same party
15 in the next case or accepted by someone in the first trial and
16 then struck by the same party in the second trial. So
17 there's really no rhyme or reason. It just means that for
18 whatever reason you don't fit a certain profile that they're
19 looking for in this particular case. So please listen up, and
20 as the clerk calls your name, if your name is called, please
21 come forward, bring with you any pocketbooks, umbrellas,
22 whatever you might have with you, stand in front of the
23 attorneys and we'll give you some further instruction. Now,
24 before we proceed, up here in the conference, on page two,
25 what was on the left-hand column 34, I've gone ahead and

Jury Selection

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1 excused that potential juror. You got that? Yeah.

2 All right. Please listen up, and if your name is called
3 please just come and stand in front of the attorneys.

4 THE CLERK: Number 276, Sharleen Nixon.

5 What say the State?

6 MR. MARTIN: Please present this juror.

7 THE CLERK: Please be seated in the jury box.

8 THE COURT: The Defense.

9 THE CLERK: Oh, I'm so sorry. Defense?

10 MR. STANKO: Please seat the juror.

11 THE CLERK: Thank you. Please be seated in the jury box.

12 Number 267, Bradley Moore.

13 What say the State?

14 MR. MARTIN: Please present this juror.

15 THE CLERK: Defense?

16 MR. STANKO: Please seat the juror.

17 THE CLERK: Please be seated in the jury box.

18 Number 122, Lindsay Fiebig.

19 What say the State?

20 MR. MARTIN: Please present this juror.

21 THE CLERK: Defense?

22 MR. STANKO: Please seat the juror.

23 THE CLERK: Please be seated in the jury box.

24 Number 395, Ashley Woodard.

25 What say the State?

Jury Selection

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1 MR. MARTIN: Please present this juror.
2 THE CLERK: Defense?
3 MR. STANKO: Please excuse the juror.
4 THE CLERK: You're excused from this particular case.
5 Number 17, Tanya Ayotte.
6 What say the State?
7 MR. MARTIN: Please present this juror.
8 THE CLERK: Defense?
9 MR. STANKO: Please seat the juror.
10 THE CLERK: Please be seated in the jury box.
11 Number 247, Robin Martin.
12 What say the State?
13 MR. MARTIN: Please present this juror.
14 THE CLERK: Defense?
15 MR. STANKO: Please excuse the juror.
16 THE CLERK: You're excused from this particular case.
17 Number 60, William Clark.
18 What say the State?
19 MR. MARTIN: Please present this juror.
20 THE CLERK: Defense?
21 MR. STANKO: Please seat the juror.
22 THE CLERK: Please be seated in the jury box.
23 Number 9, Rikke Ammentorp-Schmidt.
24 What say the State?
25 MR. MARTIN: Please present this juror.

Jury Selection

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1 THE CLERK: Defense?

2 MR. STANKO: Please seat the juror.

3 THE CLERK: Please be seated in the jury box.

4 Number 225, Justin Leighty.

5 What say the State?

6 MR. MARTIN: Please present this juror.

7 THE CLERK: Defense?

8 MR. STANKO: Please seat the juror.

9 THE CLERK: Please be seated in the jury box.

10 Number 188, Michelle Jarrett.

11 What say the State?

12 MR. MARTIN: Please present this juror.

13 THE CLERK: Defense?

14 MR. STANKO: Please seat this juror.

15 THE CLERK: Please be seated in the jury box.

16 Number 333, Ashley Shaw.

17 What say the State?

18 MR. MARTIN: Please present this juror.

19 THE CLERK: Defense?

20 MR. STANKO: Please excuse the juror.

21 THE CLERK: You're excused from this particular case.

22 Number 31, Matthew Berger.

23 What say the State?

24 MR. MARTIN: Please present this juror.

25 THE CLERK: Defense?

Jury Selection

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1 MR. STANKO: Please excuse the juror.

2 THE CLERK: You're excused from this particular case.

3 Number 77, Patrick Cox.

4 What say the State?

5 MR. MARTIN: Please present this juror.

6 THE CLERK: Defense?

7 MR. STANKO: Please seat the juror.

8 THE CLERK: Please be seated in the jury box.

9 Number 89, Christopher Davis.

10 What say the State?

11 MR. MARTIN: Please present this juror.

12 THE CLERK: Defense?

13 MR. STANKO: Please seat the juror.

14 THE CLERK: Please be seated in the jury box.

15 Number 211, Stuart Kirton.

16 What say the State?

17 MR. MARTIN: Please present this juror.

18 THE CLERK: Defense?

19 MR. STANKO: Please seat the juror.

20 THE CLERK: Please be seated in the jury box.

21 Number 177, Lisa Holzberger.

22 What say the State?

23 MR. MARTIN: Please present this juror.

24 THE CLERK: Defense?

25 MR. STANKO: Please seat the juror.

Jury Selection

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1 THE CLERK: Please be seated in the jury box.

2 THE COURT: All right. Let's choose one alternate. The
3 State gets one strike. Defense gets two.

4 THE CLERK: Number 237, Victoria Long.

5 What say the State?

6 MR. MARTIN: Madam Clerk, is that 237?

7 THE CLERK: 237, yes.

8 MR. MARTIN: Please present this juror.

9 THE CLERK: Defense?

10 MR. STANKO: Please excuse the juror.

11 THE CLERK: You're excused from this particular case.

12 Number 164, Jonathan Heffington.

13 What say the State?

14 MR. MARTIN: Please excuse this juror.

15 THE COURT: No, no. The Defense gets two. The State
16 gets one.

17 THE CLERK: Okay.

18 All right. Defense?

19 THE COURT: No. He's excused him.

20 THE CLERK: Oh, I'm sorry.

21 All right. That was -- I apologize.

22 Number 368, Tyler Tino.

23 What say the State?

24 MR. MARTIN: Please present this juror.

25 THE CLERK: Defense?

Jury Selection

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1 MR. STANKO: Please seat the juror.

2 THE CLERK: Please be seated in the jury box.

3 THE COURT: All right. Ladies and gentlemen, you will be
4 the jury that will preside over this first case, and I'm going
5 to excuse you back to the jury room for just a few minutes
6 while I excuse the remainder of the jury panel. While you're
7 in the jury room if I could get you to do me a favor and that
8 would be to select a foreperson for this jury. Now, you may
9 not know everyone and you may not be able to select a
10 foreperson, and if you cannot don't worry about it. I can
11 appoint someone to serve as foreperson. Many judges appoint
12 their own foreperson, but I like to give the jury the
13 opportunity to select one on their own accord if they're able
14 to do so.

15 Now, the foreperson has absolutely no more authority, no
16 more influence, no more importance than any other juror. The
17 function of the foreperson is to act as a liaison between the
18 Court and the jury. If the jury has a question, the
19 foreperson lets the Court know. If the jury has a need, the
20 foreperson lets the Court know. When it's time to deliberate
21 on a verdict, the foreperson will preside over the
22 deliberations and sign the verdict form, but other than that
23 the foreperson has no more authority, no more influence, no
24 more importance than any other juror. So if you can select a
25 foreperson, just write his or her name on a sheet of paper

Jury Selection

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1 with the jury number, give it to the bailiff and we'll bring
2 you back into the court at that time.

3 Now, when you come -- the only restriction would be at
4 this point in time is it Tino or Tino?

5 JUROR NUMBER 368: Tino.

6 THE COURT: Tino, Mr. Tino, you are an alternate juror.
7 So at this point in time you would not be eligible to serve as
8 a foreperson, but any of the rest of you can serve as
9 foreperson. Now, when you come back into the courtroom the
10 foreperson will always occupy the first seat on the front row
11 closest to the witness stand. Mr. Tino, you will always
12 occupy the alternate seat unless you become a member of the
13 12-panel juror [sic]. The rest of you are at liberty to sit
14 in whatever seat you like. If you want to sit in the same
15 seat throughout the trial you can do that. If you want to
16 alternate seats you can do that as well. The only restriction
17 is that the foreperson occupies the first seat on the front
18 row and the alternate occupies the alternate seat.

19 I'm going to excuse you back to the jury room for just a
20 few minutes while I excuse the remainder of the jury panel and
21 we'll bring you back out in just a second. Thank you very
22 much.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Any challenges to the selection

Jury Selection

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1 or composition of the jury by the State?

2 MR. MARTIN: No, Your Honor.

3 THE COURT: Any by the Defense?

4 MR. STANKO: None, Your Honor.

5 THE COURT: All right.

6 (Remaining jury panel excused by Court.)

7 THE COURT: All right. Let's give the jury about five,
8 ten minutes, see if they can select a foreperson, then we'll
9 bring them back in, I'll do opening charges, do opening
10 statements. I know Mr. Caraker has a phone appointment at
11 1:00 o'clock. Do you know -- do you have any idea as to how
12 long your first witness is going to take?

13 MR. MARTIN: Judge, we intend to introduce and play the
14 video with that witness. I don't anticipate more than
15 probably another maybe at the most 20 minutes of testimony in
16 addition to that.

17 THE COURT: Okay. So to be on the safe side, cross
18 examination we're looking at about an hour. Let's see what --
19 after opening charges, opening statements I'll look at the
20 clock and see how much time we've got as to whether or not we
21 can go ahead and get a witness in or not. Okay? All right.

22 OFF THE RECORD

23 (On the record. The following takes place outside the
24 presence of the jury.)

25 THE COURT: Do you go to the same church?

Jury Selection

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1 MS. COURTNEY JOHNSON: We don't, but he's one of my dad's
2 good friends.

3 THE COURT: Okay. But I mean I guess my -- oh, he is a
4 good friend of your dad's?

5 MS. COURTNEY JOHNSON: Yes, sir.

6 THE COURT: Okay. All right. I'm going to go ahead and
7 excuse him then and just seat the alternate. We'll do that.
8 If it's good friends with the dad. Okay. All right. So when
9 we come back in as long as he's not selected as foreperson
10 that won't be a problem. Okay. All right. All right. Let's
11 take about a five or ten minute break. Oh, wait a minute.
12 Here, we got it, the foreperson. Okay. It's not him. All
13 right. Let's take about a five-minute break.

14 OFF THE RECORD

15 (On the record. The following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. The jury has selected Juror
18 Number 89, Christopher Davis, as the foreperson, wrote on a
19 sheet of paper. I'll mark that as Court's Exhibit One.

20 (Court's Exhibit Number One [Foreperson Selection]
21 appropriately marked.)

22 THE COURT: All right. Let's go ahead and bring Mr.
23 Bradley Moore in. All right.

24 (Juror Number 267 enters courtroom.)

25 THE COURT: All right. Mr. Moore.

Jury Selection

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1 JUROR NUMBER 267: Yes.

2 THE COURT: Hi. It has just come to the Court's
3 attention that you unknowingly may know one of the State's
4 witnesses, Ms. Johnson. She said you probably know her by her
5 maiden name, which is Sellers, and so when I called out her
6 name you did not know who she was, but that you all grew up in
7 church together and things of that nature.

8 JUROR NUMBER 267: Correct. Yeah.

9 THE COURT: All right. So out of a sense of precaution
10 I'm just going to excuse you from this jury. Okay.

11 JUROR NUMBER 267: Okay.

12 THE COURT: Don't feel like you've done anything wrong.

13 JUROR NUMBER 267: Right..

14 THE COURT: That often happens where you don't recognize
15 the name when I call it out. So don't worry about that. I'm
16 going to excuse you for the remainder --

17 JUROR NUMBER 267: I thought she looked familiar but I
18 didn't --

19 THE COURT: Okay. I'm going to excuse you for the
20 remainder of the day.

21 JUROR NUMBER 267: Okay.

22 THE COURT: You've been given that phone number. Just
23 call it after six p.m. today to the Clerk of Court and that'll
24 give you some further direction. Okay?

25 JUROR NUMBER 267: Okay.

Opening Instructions by Court

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1 THE COURT: All right. Have you got anything in the jury
2 room?

3 JUROR NUMBER 267: No.

4 THE COURT: All right. Well, you're free to go. Thank
5 you very much.

6 JUROR NUMBER 267: All right. Thank you.

7 THE COURT: All right.

8 All right. Anything from the State before we bring the
9 jury in?

10 MR. MARTIN: No, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. STANKO: Nothing, Your Honor.

13 THE COURT: All right. Let's go ahead and bring the jury
14 in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: All right. Ladies and gentlemen, welcome
18 back. I understand, Mr. Davis, you've been selected as
19 foreperson; is that correct?

20 JUROR NUMBER: That is correct, Your Honor.

21 THE COURT: All right. I thank you. If you'd always
22 occupy the seat where you're now sitting, and I thank you for
23 serving in that capacity.

24 Also, Mr. Tino, it has come to our attention that I had
25 to excuse one of the jurors. It turned out that he did know

Opening Instructions by Court

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1 one of the witnesses, but did not recognize the witness by her
2 married name, only knew her by her maiden name. So I've
3 excused one. So Mr. Tino, you are now part of the 12-panel
4 juror. Okay? So you can sit in whatever seat you like during
5 the trial of this case as well.

6 All right. As I told in voir dire and in qualifications,
7 jurors just like witnesses are constantly taking oaths. So if
8 I could please get you to stand and raise your right hand
9 while the clerk administers the oath for you to serve as
10 jurors on this specific case. All right.

11 (Jury sworn by the Clerk.)

12 THE COURT: Thank you very much. Now, is there any
13 member of the jury that did not respond to the oath by saying,
14 "I do?" If so, please stand.

15 (No response.)

16 THE COURT: All right. Very well.

17 Ladies and gentlemen, we are getting ready to start the
18 trial of the case of the State of South Carolina versus Abel
19 Dewayne Gause. Now, before we begin the trial, I need to go
20 over some instructions with you, some preliminary instructions
21 so that you'll know what is happening in this case. I know
22 from watching movies, reading books, watching TV shows, trials
23 are often full of a lot of suspense, a lot of action, a lot of
24 anxiety, that might be the case in this trial, but it probably
25 won't be.

Opening Instructions by Court

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1 The State has charged the Defendant with violating a
2 criminal statute, and your primary function as jurors is to
3 determine and the purpose of this trial is to determine
4 whether or not the State can prove the Defendant's guilt
5 beyond a reasonable doubt. The presentation of evidence and
6 witnesses is often a slow, repetitive, deliberate process, the
7 exact opposite of what you might be accustomed to when you
8 watch trials for entertainment purposes, but I hope you do
9 find the trial entertaining. I hope you find it educational
10 and I want to thank you from the outset from serving -- for
11 serving as jurors in this case.

12 The attorneys appearing before you are advocates for the
13 parties they represent, but first and foremost, they are
14 officers of the court. They're sworn to uphold the integrity
15 and the fairness of our judicial system and to help you in a
16 search for the truth to determine what happened in this case.
17 You can expect them to be professional, competent and ethical
18 in the representation of their clients' interests.

19 Now, what I now say to you is intended to serve as an
20 introduction to the trial of this case. These remarks are not
21 a charge on the law in this case. I will instruct you on the
22 law applicable to this case at the end of the trial before you
23 retire to consider your verdict. This is merely an
24 explanation of the procedure that we will follow in the trial
25 of this case so that you may better understand what is

Opening Instructions by Court

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1 happening.

2 Now, the Defendant is charged by an indictment filed with
3 the court with the crime of possession with intent to
4 distribute heroin. This is the indictment. The elements of
5 that crime I'll explain to you at a later time. Now, the
6 indictment is simply the charge by which this case is brought
7 into this court. It is not in any sense evidence of any of
8 the allegations contained in it. The Defendant has pled not
9 guilty to this indictment. The State, therefore, has the
10 burden of proving each of the elements of the indictment
11 beyond a reasonable doubt. It will be your duty, ladies and
12 gentlemen, to decide whether or not the State has met that
13 burden. Your purpose as jurors is to find and determine the
14 facts of this case. You are the sole judge of the facts of
15 this case. If at any time I make a comment regarding the
16 facts of this case, you're to disregard my comments. You are
17 to determine the facts from the testimony you hear and other
18 evidence introduced in court. It is up to you to determine
19 the inferences which you feel may properly be drawn from that
20 evidence.

21 It is especially important that you perform your duty of
22 determining the facts diligently and conscientiously because
23 ordinarily there is no way to correct an erroneous
24 determination of the facts by a jury. Now, on the other hand,
25 and with equal emphasis, the same law that makes you the judge

Opening Instructions by Court

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1 of the facts of this case makes me the judge of the law. The
2 law as given by the Court is the only law that you may
3 consider. You must accept and follow the law as I give it to
4 you, even though you may disagree with it. Just as I cannot
5 tell you what the facts of this case are, you cannot disagree
6 with me about the law to be applied in this case. Your job is
7 to take the law as I give it to you and to apply it to the
8 facts as you find those facts to be, from the testimony of
9 witnesses and any other evidence that is introduced. After
10 doing that, you will then render your verdict, a true and just
11 verdict under the solemn oath that you just took as jurors.

12 Now, until I advise you to begin your deliberations, you
13 must not discuss this case with anyone, including your fellow
14 jurors. Don't discuss it with any friends, family members or
15 anyone involved in the case. After the case is submitted to
16 you, you must then discuss it, but only in the jury room with
17 your fellow jurors.

18 The attorneys and parties in the case have been advised
19 that they're not to talk to you at all. So if you see anyone
20 involved in the case and they don't speak to you they're being
21 -- they're not being rude. They're just following the
22 instructions of the Court.

23 Now, during the trial you are not to read or listen to
24 or watch any news reports about the case, if there is any.
25 This includes anything that might be in the newspaper or on

Opening Instructions by Court

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1 the internet, radio or television. You must not consider
2 anything you may have read or heard about the case outside of
3 the courtroom, whether that is before or during the trial of
4 this case. It is important that you keep an open mind and not
5 decide any issue in this case until all of the evidence has
6 been presented, the parties have made their closing arguments
7 and I have instructed you on the law to be applied in this
8 case.

9 It is your solemn responsibility to determine the guilt
10 or innocence of the Defendant, and your verdict must be based
11 solely on the evidence as it is presented to you in this trial
12 and on the law as I instruct you during and at the close of
13 the trial.

14 Now, in just a moment the Solicitor will make what is
15 called an opening statement in which the Solicitor will
16 explain to you the issues in this case, or at least what the
17 Solicitor thinks the issues in this case are. The attorney
18 for the Defendant may also make an opening statement, although
19 he is not required to do so. What the attorneys tell you
20 during their opening statements is not evidence in this case.
21 It is only their contention as to what the issues are. The
22 evidence in this case will be presented to you by testimony of
23 sworn witnesses from the witness stand and any other exhibits
24 that might be introduced into evidence.

25 Now, in determining what the true facts are in this case

Opening Instructions by Court

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1 you must decide whether or not the testimony of a witness is
2 believable. It will be my responsibility to rule as a matter
3 of law as to whether certain testimony is admissible at all or
4 not. However, once testimony is admitted into evidence,
5 whether or not you believe it is solely for you to determine.
6 In deciding whether to believe a witness, you have the right
7 to consider the interest of any witness, the bias of any
8 witness, the prejudice of any witness, the opportunity for the
9 witness to have seen the matters and things about which the
10 witness may testify, and the way the witness acts on the
11 witness stand. You have the right to consider anything that
12 is in the record that will help you evaluate the testimony of
13 the witnesses. That means that it is your duty to pay close
14 attention to these witnesses, to observe the witnesses, to
15 listen to the witnesses and to pay close attention to the
16 attorneys and the Court. Don't let your thoughts wander, but
17 give strict attention to the testimony in this case so at the
18 end of all of the testimony, after the arguments of counsel
19 and a charge on the law by the Court you will then be in a
20 position to determine what the true facts are and to apply the
21 law to those facts and thus render a true and just verdict.

22 All right. Are there any additional charges or
23 challenges to the opening charges by the State?

24 MR. MARTIN: None, Your Honor.

25 THE COURT: Any by the Defense?

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1 MR. STANKO: None, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, we're going
3 to begin the trial with the attorneys' opening statements, and
4 as I told you, these opening statements are not evidence. It
5 is simply the attorneys' contention as to what they think the
6 issues in this case are. All right. Mr. Martin.

7 MR. MARTIN: Thank you, Your Honor.

8 May it please the Court?

9 THE COURT: Yes, sir.

10 MR. MARTIN: A salt shaker, some of us use it to season
11 our food and others of us use it to hide heroin. On March
12 28th, 2017, in the Longs Section of Horry County, Officer
13 Brandon Rabon was conducting routine patrol, saw a vehicle
14 make a right-hand turn and failed to signal, also turned into
15 the oncoming lane. The vehicle had improper tags. The tags
16 for that vehicle actually belonged to another vehicle. He
17 initiated a traffic stop.

18 During the course of that stop, he went and spoke with
19 the driver and sole occupant of that vehicle, the Defendant,
20 Abel Gause. Mr. Gause did not have a valid driver's license.
21 In fact, only had a beginner's permit. Through the course of
22 his investigation, he decided that since he didn't have a
23 driver's license and improper tags, the vehicle needed to be
24 towed. So Officer Rabon made the decision to do what we call
25 an inventory search of the vehicle. It's a standard procedure

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1 that law enforcement conducts in order to tow a vehicle.
2 Pursuant to that search, underneath the driver's seat where
3 Mr. Gause was sitting was located a salt shaker, A Morton salt
4 shaker. Mr. Rabon picked it up, inspected it, noticed that
5 the seal hadn't been broken and the weight seemed off.
6 Something was very suspicious, you know, didn't, didn't add
7 up. A few seconds later, the bottom fell out. It was a false
8 bottom and inside were 14 slips of heroin. Subsequently, he
9 arrested Mr. Gause for possession with intent to distribute
10 heroin.

11 My name's George Henry Martin. With me is David Caraker.
12 We are solicitors in the 15th Circuit here in Horry County and
13 our job is to bring you the case against Mr. Gause here today.
14 Now, opening arguments, the way I like to explain it to juries
15 is it is sort of a roadmap, an outline of how we expect this
16 trial to unfold, and it's just that, how we expect it to
17 unfold. In addition to a brief recitation of the facts, which
18 I've already given to you, we also try to kind of lay out what
19 you are going to expect from us. Obviously, you're going to
20 hear from Officer Rabon. He's going to talk with you about
21 what he was doing in that area, the traffic stop itself, what
22 he did with the drugs, what he did with the other evidence
23 involved.

24 Additionally, you're going to hear from Lieutenant Ashley
25 Hardee with the Horry County Police. He's the officer who

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1 obtained the arrest warrants for the Defendant. He's going to
2 talk with you about the same things Officer Rabon will, what
3 is possession, how does one possess a drug, how does one use a
4 drug, what's the difference between a user and a dealer.
5 After hearing from Officer Hardee, going to also address the
6 fact that Officer Rabon did, in fact, put the drugs into
7 evidence. They were received by Ms. Donna Bell with the Horry
8 County Police, and they were later tested by Courtney Johnson,
9 who is a chemist here in the Horry County, and she's going to
10 talk with you about what she does and how she tests the drug,
11 what she does when she gets it, and then she's going to tell
12 you what she believes that drug to be, that it is heroin.

13 At the conclusion of the trial I'm going to come back and
14 speak with you again. At that point we'll talk about the
15 evidence and what we've seen, the law, which the Judge will
16 later read to you, and how it really does apply to this case.

17 This isn't a sexy case. It's not a murder case with 20
18 witnesses that's going to occupy a week, but it is important.
19 At the end of, after viewing all the evidence, you're going to
20 come back. You're going to have a, have a verdict, Mr. Gause
21 was in possession of the heroin and he intended to distribute.

22 THE COURT: All right. Mr. Stanko.

23 MR. STANKO: Thank you, Your Honor.

24 Mr. Martin's absolutely right, this is important. There
25 is no one in this entire courthouse that this is more

1 important to Mr. Abel Gause.

2 March 28th, 2017, as you heard, driving down the street,
3 makes a right-hand turn, fails to use his turn signal, gets
4 pulled over almost immediately. The place where he's pulled
5 over, the left side of the street, nothing but a wide open
6 grassy area, right side of the street, another wide open
7 grassy area. There's nobody around anywhere close, houses, no
8 businesses. It is a wide open. They find out that he doesn't
9 have insurance on the vehicle, and they do wind up doing an
10 inventory search in order to tow it.

11 Now, the State has charged him with possession with
12 intent to distribute. In order to get that charge, they have
13 to prove to you beyond a reasonable doubt that he knowingly
14 possessed heroin and that he knowingly intended to distribute.

15 Now, that's a very high burden for them to prove to you.
16 They have to convince you beyond a reasonable doubt. Now,
17 here on the third floor of the courthouse, we have two
18 different kinds of trials. We have civil trials and we have
19 criminal trials. Obviously we're involved in a criminal
20 trial. Civil trial, the way it works, I'm sure we've all seen
21 the scales of justice, Lady Justice with the blindfold on
22 holding the two scales. On a civil trial, which is typically
23 car accidents, personal injury, something like that, the
24 amount of proof that you have to put before a jury is a lot
25 less. It's merely a preponderance of the evidence,

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1 preponderance of the evidence. If you imagine those scales
2 all you have to do to win in a, in a case like that is tip
3 ever so slightly in your favor and you've won.

4 In a criminal trial, as I've said, the standard is beyond
5 a reasonable doubt. A reasonable doubt is that amount of
6 doubt that makes you pause. It makes you really think about
7 it, go have they actually met that burden, and again, if you
8 consider those scales, rather than just tipping it slightly,
9 they have to launch it down to their side. You have to, as I
10 said, be firmly convinced.

11 Now, it is my contention, the State will not come
12 anywhere close to that. They do not have enough evidence to
13 show you that he knew that the heroin was there and he
14 intended to sell it. Ladies and gentlemen, please pay
15 attention to what you, to what you hear from today. Obviously
16 as he said this is not going to be a lengthy trial. I will be
17 very surprised if it's not concluded, concluded today, but
18 don't let that length fool you. As I said before, this is
19 extremely important to Mr. Gause. Thank you very much.

20 THE COURT: All right. Ladies and gentlemen, we'll now
21 begin the evidentiary portion with the calling of witnesses in
22 this case. The State can call your first witness.

23 MR. MARTIN: Thank you, Your Honor. The State calls
24 Officer Brandon Rabon.

25 Whereupon, Brandon Rabon is called to the stand, duly

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1 sworn by the clerk and testified as follows:

2 MR. RABON: My name's Brandon Rabon. First name is B-R-
3 A-N-D-O-N, last name is R-A-B-O-N.

4 DIRECT EXAMINATION

5 BY MR. MARTIN:

6 Q Officer Rabon, what is your occupation or profession?

7 A I'm employed through the Horry County Police Department.

8 Q How long have you been in law enforcement?

9 A Approximately five and a half years.

10 Q Were you with any other agencies other than Horry County
11 during your course of law enforcement?

12 A I was.

13 Q And where would that have been?

14 A I was employed through the J. Reuben Long Detention
15 Center.

16 Q How long were you employed there?

17 A Nearly a year and a half.

18 Q So what is your total amount of time in law enforcement?

19 A Five and a half years total.

20 Q What are your current duties?

21 A I'm currently assigned to the street crimes unit as a
22 narcotics canine handler.

23 Q Were you in that same capacity on March 17th or excuse me,
24 March 28th, 2017?

25 A I was not.

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1 Q What were you doing then?

2 A At that time I was assigned to the patrol division, north
3 precinct.

4 Q During the past five and a half years of law enforcement,
5 what type of training and experience have you had?

6 A Field training through supervisors, fellow colleagues.
7 I've also been certified through Jetway Operations which is
8 bulk currency and narcotics interdiction, NCEA for patrol
9 stop, criminal interdiction on the highways, month long class
10 at K9 Handler reference to narcotics canine detection.

11 Q All of that pertain to drugs?

12 A It does.

13 Q During your training and experience as a law enforcement
14 officer, have you dealt or come into contact with drug users
15 or drug addicts?

16 A I have.

17 Q You have any idea how many?

18 A More than I could count.

19 Q How about heroin users and addicts, have you come into
20 contact with them?

21 A I have.

22 Q What about drug dealers?

23 A Multiple.

24 Q Any idea how many?

25 A More than I could count.

1 Q And did that also include heroin dealers?

2 A It does.

3 Q On March 28th, 2017, were you involved in the
4 investigation or arrest of anyone you see seated here in court
5 today?

6 A I was.

7 Q And who would that be?

8 A Mr. Abel Gause.

9 Q Could you point out what he's wearing to the jury?

10 A Plaid shirt, blue jeans, sitting to the left-hand of the
11 courtroom.

12 MR. MARTIN: Your Honor, may the record reflect the
13 witness is identifying the Defendant seated at the Defense
14 table?

15 THE COURT: All right.

16 BY MR. MARTIN:

17 Q The investigation that you were involved in, did it occur
18 in Horry County?

19 A It did.

20 Q Where exactly in Horry County?

21 A Near the intersection of West Shore Drive and Highway 90
22 in the Longs Section of Horry County.

23 Q And how were you brought into the case? What were you
24 doing that day?

25 A At the time I was assigned to the north precinct as the

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1 Sector 10 patrol officer, which encompassed the Longs Section
2 of Horry County.

3 Q Had you, in your five and a half years in law
4 enforcement, had you made arrests or been involved in arrests
5 drug related in that area in that community?

6 A Yes. I have multiple.

7 Q Any idea how many?

8 A I would say greater than a dozen.

9 Q Additionally, you said you were there conducting routine
10 patrol. What specifically -- how does that work? Explain to
11 the jury what you were doing there and how that works.

12 A Yes, sir. So as I said, I was the Sector 10 patrol
13 officer which encompassed the Longs Section of Horry County or
14 a piece of Longs Section of Horry County, as well as the
15 Conway Section. Started my shift that day. I was an hour
16 into shift, no current calls through dispatch, and during the
17 lull between calls I tried to proactively police what was my
18 assigned area. By proactive enforcement I chose to go to what
19 I knew through my training and experience and years in the
20 area to be the Longs Section, more importantly the Wampee
21 Community for the increased crime and violence associated with
22 drugs.

23 Q During your duties that day, did you perform a traffic
24 stop involving the Defendant?

25 A I did.

1 Q What happened?

2 A I was traveling on Highway 90 northbound. I observed the
3 vehicle, which I had seen in the area days prior. While
4 following the vehicle, the vehicle made a right turn without
5 using his signal. He improperly turned by turning into the
6 oncoming lane of travel.

7 Q What did you do next?

8 A I initiated a traffic stop on the vehicle.

9 Q What did you do after that?

10 A Upon initiating traffic stop on the vehicle I gave
11 dispatch the tag and the location and approached the vehicle.

12 Q What resulted from your request for the tag?

13 A Upon issuing the, the make and model of the vehicle with
14 the tag I give dispatch for my traffic stop, they advised me
15 back over the radio that that was not the correct tag.

16 Q Did you approach the vehicle and talk to the Defendant?

17 A I did.

18 Q During the course of your traffic stop did you find
19 anything out about the Defendant's driver's license?

20 A Yes. I did.

21 Q Did he have a valid driver's license?

22 A He did not.

23 Q Knowing that information that you've just said, what did
24 -- what, what did you do next?

25 A Upon speaking with the Defendant about his driver's

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1 license status, it was learned that he had a beginner's permit
2 which did not allow him to drive in the capacity that he was
3 driving. I also asked him for his registration, proof of
4 insurance, neither which he could produce for the vehicle.
5 After some time of him not being able to find it, he stated
6 that, you know, that he could call somebody, and I asked him
7 out of the vehicle so we could discuss further the crime at
8 hand.

9 Q After discussing with him did you make a decision as to
10 what to do?

11 A I did.

12 Q And what was that decision?

13 A I give him some time to try to get me the proof of
14 insurance for the vehicle. With the tag not correctly on the
15 vehicle I could not directly reflect a tag with the South
16 Carolina DMV to check for any insurance stops, valid insurance
17 or anything of the sort. Without him producing me a valid
18 insurance card I could not prove that -- I could not show that
19 he had current insurance on the vehicle. Based on that I
20 could not by policy or state law allow him to operate a
21 vehicle uninsured on the roadway. So I summoned dispatch and
22 asked for the next wrecker on rotation.

23 Q A wrecker being?

24 A A tow truck.

25 Q Did you search the vehicle?

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1 A I conducted an inventory.

2 Q Please explain to the jury what an inventory search is.

3 A An inventory of the vehicle is a standard procedure and
4 protocol when we tow a vehicle. It directly keeps all parties
5 -- it, it -- if I search the vehicle and I note that there is
6 pricey items in there, gold, anything, I have to document it
7 on the tow sheet. That protects the Defendant or the
8 occupants of the vehicle. If there's anything illegal in
9 there, that also protects the tow company from possessing
10 that, and it is, it is to be addressed.

11 Q Did you find anything pursuant to that standard procedure
12 search?

13 A I did.

14 Q And what did you find?

15 A I found a white Morton salt shaker with apparent false
16 bottom that contained heroin.

17 Q Where was it located?

18 A Up under the driver's seat of the vehicle.

19 Q And where was the Defendant seated inside the vehicle?

20 A He was driving in the driver's seat.

21 Q Were there any other occupants inside the vehicle?

22 A There was not. He was the sole occupant.

23 Q In addition to the salt shaker, did you find anything
24 else pursuant to your search?

25 A I found a black scale inside the vehicle.

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1 Q Officer Rabon, I am approaching and showing you what's
2 been marked for identification purposes as State's Exhibit
3 Two. Please examine it. Can you identify or can, can you
4 identify this?

5 A Yes. I can.

6 Q What is it?

7 A This is the Morton salt shaker that I found under the
8 Defendant's seat.

9 Q What did you do with that salt shaker after you found it?

10 A When I found the salt shaker I found it to be
11 suspiciously placed under the seat. It -- in my years I've
12 never found another -- any kind of condiment under a driver's
13 seat of the vehicle. I, I got it. I could see that it
14 appeared very used or rough on the outside. I noticed it to
15 be very light, and upon looking at the top I could see that it
16 had not been poked through and in its current state could not
17 be used without being punctured for salt to come out. I also
18 deemed that suspicious. So I began to manipulate the, the
19 article and found that the bottom would screw off, which is
20 not common with a salt shaker.

21 Q Did you put the salt shaker into evidence?

22 A I did.

23 Q Could you explain that process to the jury?

24 A Being that I found an illegal substance inside the salt
25 shaker I submitted it also as evidence as where it was found.

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1 I put it on a chain of custody, submitted our evidence
2 collection and they receive it and hold it for court.

3 Q And that does appear to be the salt shaker you saw on
4 March 28th, 2017?

5 A Yes. It does.

6 MR. MARTIN: Your Honor, at this time the State moves to
7 introduce Exhibit Two into evidence.

8 THE COURT: Any objection?

9 MR. STANKO: Without objection, sir.

10 THE COURT: All right. State's Exhibit Two admitted
11 into evidence without objection.

12 MR. MARTIN: Thank you, Your Honor.

13 (State's Exhibit Number Two [Salt Shaker] admitted into
14 Evidence and appropriately marked.)

15 BY MR. MARTIN:

16 Q Speaking of the salt shaker, Officer Rabon, were any
17 fingerprint analysis conducted?

18 A They were.

19 Q What were the results?

20 A The results were that there were no fingerprints found on
21 the article.

22 Q And based on your experience is that common?

23 A It is.

24 Q And why is that?

25 A As I said earlier, the article was found in the

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1 floorboard of the vehicle. There was nothing else in the
2 floorboard under that seat with that article. So it had with
3 the motion of the vehicle was able to roll around. It is
4 possible that anything on the salt shaker could be marked or
5 knocked off during rolling around. It is possible that a good
6 print just did not transfer.

7 Q Was anything else fingerprinted?

8 A No.

9 Q Officer Rabon, I'm going to approach and now show you
10 what's been marked for identification purposes as State's
11 Exhibit Three and do you recognize that?

12 A I do.

13 Q What is it?

14 A This is a scale.

15 Q Does it appear to be the scale you found on March 28th,
16 2017?

17 A It does.

18 Q What did you do with that scale after it came into your
19 possession?

20 A I submitted it to evidence.

21 Q Just like with the salt shaker?

22 A Yes, sir.

23 MR. MARTIN: Your Honor, at this time the States move to
24 enter its Exhibit Three into evidence.

25 THE COURT: Any objection?

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1 MR. STANKO: Without objection, sir.

2 THE COURT: State's Exhibit Three admitted into evidence
3 without objection.

4 (State's Exhibit Number Three [Scales] admitted into
5 evidence and appropriately marked.)

6 BY MR. MARTIN:

7 Q Officer Rabon, on March 28th, 2017, when you viewed the
8 events you've already testified to, were you operating any
9 audio or video recording devices?

10 A I was.

11 Q What kinds?

12 A I was wearing a body worn camera as well as a dash camera
13 inside the patrol vehicle I was driving.

14 Q Have you received training in operation of these cameras?

15 A I have.

16 Q Would you explain that to the jury?

17 A Yes, sir. When they issue us this equipment, more
18 specifically when it first came out or when it become a new
19 equipment they train us on how to use that. My body worn
20 camera was mounted to my chest. It was powered on, and in
21 accordance to the policy, any time I do any kind of traffic
22 stops or police action, I have it on. So at the beginning of
23 a traffic stop you double tap the main button on the center of
24 it. It goes back and records 30 seconds prior video, no
25 audio, and then immediately starts recording audio from the

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1 time you initiate it, the same way with the dash cam -- the
2 dash camera. It could be, it could be turned on several
3 different ways. In this event it was activated by my blue
4 lights. It also goes back and records 30 seconds of video and
5 then starts recording audio once it's initiated.

6 Q After recording with these cameras, did you upload or
7 move the videos to another device?

8 A I did.

9 Q Did you alter or edit the videos in any way after you
10 took them from the cameras?

11 A I did not.

12 Q Mr. Rabon, I'm showing you State's One previously entered
13 into evidence. Would you please examine that and tell me
14 whether or not you can identify it?

15 A Yes. I can.

16 Q What is it?

17 A This is the video I've reviewed of the events that
18 occurred and have initialed.

19 Q Is that how you're able to identify it based off of your
20 initials?

21 A It is.

22 Q And I believe you said this, but have you previously
23 viewed the video?

24 A Yes. I have.

25 Q Is it a fair and accurate representation of the actual

1 events you witnessed that day?

2 A Yes. It is.

3 MR. MARTIN: Your Honor, at this time the State requests
4 to play the video that's already in evidence. It's been
5 previously discussed with Your Honor and the Defense and has
6 been agreed upon that it is a redacted version of the events
7 that day.

8 THE COURT: All right. And this is what we put into
9 evidence pretrial?

10 MR. MARTIN: That is correct, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, State's
12 Exhibit One is already been admitted into evidence without
13 objection. Any objection to going ahead and publishing it for
14 the jury?

15 MR. STANKO: None, sir.

16 THE COURT: All right. You can go ahead and publish it.

17 MR. MARTIN: Your Honor, the Court's indulgence for a
18 moment as we get set up. Is that too close? Can everyone
19 see? Just let me know if it's too loud or it needs to be
20 louder. Am I blocking you?

21 BY MR. MARTIN:

22 Q Officer Rabon, you did say the first 30 seconds would be
23 muted?

24 A Yes, sir.

25 Q Thank you.

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1 MR. MARTIN: Can everyone hear?

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

3 MR. MARTIN: The Court's indulgence one moment, Your
4 Honor, while we move the screen back.

5 THE COURT: All right.

6 MR. MARTIN: May it please the Court?

7 THE COURT: Yes.

8 BY MR. MARTIN:

9 Q Officer Rabon, after viewing that agreed upon redacted
10 version, does the video still appear to be a fair and accurate
11 version of the events that you saw that day?

12 A Yes. It does.

13 Q Has it been edited or altered in any way other than the
14 redactions?

15 A It has not.

16 Q In your training and experience, are you familiar with
17 the concept of possession?

18 A I am.

19 Q Here was the Defendant in possession of the heroin?

20 A He was.

21 Q How?

22 A Being the sole occupant, the -- no one else in the
23 vehicle, up under the seat he had immediate access to it. He
24 could have stored it there or upon initiating the traffic stop
25 he could have placed it there, but that area was immediately

1 in his custody and control.

2 Q Was it his car?

3 A He said it was registered to his wife.

4 Q Did you find anything in the car belonging to the
5 Defendant?

6 A He had a jacket in there.

7 Q What about a scale?

8 A He said the scale was his, that he used it to sell
9 essential oils.

10 Q Did you find any oils belonging to him?

11 A I found one small glass of some kind of liquid.

12 Q Did you find anything in the car that looked like it
13 belonged to someone else?

14 A I did not.

15 Q What about credit cards?

16 A None.

17 Q IDs?

18 A Nothing.

19 Q Receipts?

20 A No, sir.

21 Q You mentioned his wife. Did you find a purse?

22 A I did not.

23 Q What about feminine products?

24 A No that I recall.

25 Q Wallets?

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- 1 A No, sir.
- 2 Q Clothing?
- 3 A No, sir.
- 4 Q Medication?
- 5 A None.
- 6 Q Nothing else belonging -- nothing that appeared to belong
7 to anyone else?
- 8 A Nothing apparent.
- 9 Q You always look for things like this?
- 10 A I do.
- 11 Q Since the Defendant was arrested on March 28th, 2017, has
12 anyone come forward to claim the drugs?
- 13 A They have not.
- 14 Q You've told us previously about your training and
15 experience. In your involvement with drug users and drug
16 dealers, how does an addict, a drug user, typically use
17 heroin?
- 18 A Intravenous, sometimes snorting heroin.
- 19 Q What do you mean by intravenous?
- 20 A Using a needle.
- 21 Q So what type of paraphernalia would usually be found with
22 someone who is a drug -- heroin user?
- 23 A Most commonly we see needles, q-tips, spoons or items to
24 use as a makeshift tourniquet.
- 25 Q What would a q-tip, q-tip be used for?

1 A When they melt it down, the spoon, they, they use it as a
2 filter of some sort in the spoon.

3 Q You talked about tourniquet, rubber band? You find a
4 rubber band?

5 A None other than the one on the packaging.

6 Q What about shoelace?

7 A None other than the ones on his shoes.

8 Q What about a belt?

9 A Not that I'm aware of.

10 Q Are there physical characteristics that are common to
11 heroin users?

12 A I'm sorry. Could you repeat that?,

13 Q Would there be any physical markings common to someone
14 who uses heroin?

15 A Yes. Track marks.

16 Q What is -- what are track marks?

17 A Tracks marks is a, a site where they have recently
18 injected or multiple injections that is often a raised bump, a
19 hole, an inflamed area normally around this area of the arm or
20 where there's a grouping of veins to use intravenous.

21 Q Did you observe any of that on the Defendant?

22 A I seen none.

23 Q What about syringe or a needle?

24 A Found none.

25 Q What type of paraphernalia would be commonly found with a

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1 dealer?

2 A Packaging items, in this case concealment items,
3 sometimes money, currency.

4 Q What do you mean by concealment items?

5 A Such as in this matter the salt shaker with the false
6 bottom, something that would not ordinarily be construed as
7 something to place something in like money or anything that an
8 average person would use rather someone using it as a
9 concealment item because it is not -- it would not be of the
10 normal person to look inside the bottom of it.

11 Q What about a scale?

12 A Yes. Most commonly used to weigh drugs, know how much
13 drugs they're selling or getting in and how much they're
14 worth.

15 Q I know this may sound repetitive since we've already
16 addressed it, but did you find a scale?

17 A I did.

18 Q Based on your training and experience, your five and a
19 half years in law enforcement, how is heroin broken down or
20 packaged for sale?

21 A Most typically are what we see on the street with a
22 heroin user, they, they package it in small glassine slips
23 like we were addressing in this case. Normally one slip is
24 one dose for the average heroin user. Some that have been
25 using heroin or have a high tolerance may use two at the time.

1 Q So is it fair to say one slip is one hit or one dosage
2 unit?

3 A Yes, sir.

4 Q How many slips did the Defendant have?

5 A Fourteen.

6 Q Would a user typically have this much?

7 A No, not typically.

8 Q And why not?

9 A Most typically we see with heroin users it's a very
10 strong addiction and they typically cannot keep that much
11 drugs around them. They will, they will want to venture out
12 and to use more to gain a more high and normally they use what
13 they have.

14 Q In your training and experience, would it be more common
15 for a dealer to have this much?

16 A It would.

17 Q And you arrested the Defendant for possession with intent
18 to distribute heroin. Did you base your decision on these
19 types of things?

20 A I did.

21 Q And based on your training and experience is it your
22 opinion the Defendant possessed the drugs?

23 A It is.

24 Q And that he had -- he possessed them for personal use or
25 with intent to distribute?

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1 A With intent to distribute.

2 Q Now, you've told us previously where you located the
3 heroin. What did you do with the drugs after you found them?

4 A I secured them. I transported the Defendant to jail, and
5 then I came back to our office where I broke it down, took
6 pictures of them, I noted them on our chain of custody, our
7 evidence sheet, and I also field-tested the product inside the
8 glassine slips.

9 Q When you field-tested it, what was the result?

10 A It tested positive for the presence of heroin.

11 Q Are you familiar with a BEST kit bag?

12 A I am.

13 Q What is that?

14 A That is the -- that is the bag we use to submit our
15 narcotics other than weed to our chemist to be analyzed.

16 Q Weed meaning?

17 A Marijuana.

18 Q I'm going to show you what's been marked for
19 identification purposes as State's Exhibit Four. Did you
20 examine this and please identify that for us.

21 A Yes. This is the BEST kit that was sealed and presented
22 to evidence containing the packaging with the narcotics.

23 Q And how are you able to identify it?

24 A I signed it.

25 Q Did you place the drugs in a package or a sealed

1 envelope?

2 A Yes.

3 Q And is that the BEST kit you are referring to?

4 A Yes. It is.

5 Q And I think you may have already said this. You put
6 markings on it for identification?

7 A I do. You have to sign it. You have to put case numbers
8 and as such.

9 Q And just to be clear, what did you do with those drugs
10 after you sealed them and signed the BEST kit bag?

11 A I submitted them to evidence so they could be tested.

12 Q And where do you submit those?

13 A In our evidence section at the central precinct.

14 Q And when would you have done that?

15 A That, during that course of that shift.

16 Q Is there some sort of locker you drop it in?

17 A There is.

18 Q Is that a secured locker?

19 A It is.

20 Q In addition to the field test that you testified
21 previously to, did you do anything else with the drugs?

22 A I did not.

23 Q Did you substantially alter them or change them in anyway
24 while they were under your care, custody and control?

25 A I did not.

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1 Q Did you tamper with them at all?

2 A No.

3 Q Did you tamper with the bag at all?

4 A No.

5 Q Now that you've seen the heroin, is it still your opinion
6 that the Defendant possessed it?

7 A It is.

8 Q And he did so with intent to distribute?

9 A Yes.

10 Q Any doubt in your mind?

11 A None.

12 Q Officer Rabon, I don't have any more questions for you at
13 this time. Please answer any questions the Defense may have,
14 and I'll get that.

15 THE COURT: Let me see the attorneys for a second.

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

18 THE COURT: All right. Ladies and gentlemen, given the
19 time of day we're going to go ahead and break for lunch. I'm
20 going to let you go to lunch. It's 12:15. Please be back in
21 the jury room at -- let's see -- 1:45. That'll give you an
22 hour and a half to eat lunch. Okay? Do not discuss the case
23 even among yourselves. It's too early for deliberations.
24 Don't conduct any independent investigations. Don't go
25 looking through the newspaper or on the internet or anything

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1 like that to try to find out anything about the case. I'm
2 going to let you go to lunch and I ask that you be back at
3 1:45 in the jury room. We'll see you then. Thank you.

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

6 THE COURT: All right. Mr. Rabon, we're still in the
7 middle of your testimony. So the law states that you cannot
8 discuss your testimony with anyone, even the State's attorneys
9 or any fellow officers. You can't discuss any testimony with
10 anyone, whether that be what you've testified to thus far or
11 what you anticipate testifying to in the future. Okay?

12 A Yes, sir.

13 THE COURT: All right. Anything from the State before we
14 break for lunch?

15 MR. MARTIN: Your Honor, since the Defendant is at trial
16 and his bond is now considered over, we would ask that he be
17 in custody until the conclusion of this trial.

18 THE COURT: All right.

19 MR. STANKO: Your Honor, he has shown up for every single
20 court appearance thus far. He, he has had many opportunities.
21 He lives in another state. He still shows up every single
22 time. We would ask that he be allowed to spend the hour and a
23 half out to lunch with his wife.

24 THE COURT: Okay. All right. I'm going to allow him --
25 I'm not going to take him into custody at this point in time,

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1 but Mr. Rabon [sic], please be advised the trial will continue
2 in your absence if you do not come back. Okay. All right.

3 MR. GAUSE: I understand.

4 THE COURT: All right. We'll be in recess until 1:45.

5 MR. STANKO Thank you, Your Honor.

6 MR. GAUSE: Thank you.

7 MR. STANKO: Yes, sir.

8 THE COURT: Thank you.

9 OFF THE RECORD

10 (On the record. The following takes place outside the
11 presence of the jury.)

12 THE COURT: Thank you very much. Please be seated. All
13 right. Anything from the State before we bring the jury in?

14 MR. MARTIN: No, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. STANKO: Nothing, Your Honor.

17 THE COURT: All right. Let's go ahead and bring the jury
18 in. I understand we're getting ready to start cross
19 examination. Is that correct?

20 MR. STANKO: Correct, sir.

21 THE COURT: All right. Mr. Rabon, if you want to come
22 back and take the stand.

23 A Yes, sir, Your Honor.

24 THE COURT: All right. And you're still under oath.
25 Okay?

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1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, welcome
4 back. I hope everybody had a good lunch. We're ready to
5 proceed with the trial of this case. Now, I did notice that
6 some of you are taking notes. Is that correct? Okay. Let's
7 go ahead and get some pads and some pencils and hand it out to
8 them so that they can do this and let me give you some
9 instructions. I will allow you to take notes. However, we
10 must follow some certain guidelines. Each of you will be
11 given a pad and each of you will be given a writing utensil.
12 You do not have to take notes if you do not want to take
13 notes, but you are permitted to take notes if you do want to
14 take notes. If you take notes, however, your notes are
15 personal to you and are not to be shared with anyone else. So
16 when you get your pad, write your name on the first page of
17 your pad. When you leave the courtroom you will leave your
18 notes in the jury box and we'll hand them back out to you when
19 you return to the jury room.

20 Now, I'll give you some further instructions on note-
21 taking when I charge you on the law to be applied in this
22 case, but for right now all you need to know is that if you
23 decide to take notes please do not try to write down
24 everything a witness says because that will cause you to miss
25 some of the testimony. The purpose of note-taking is to

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1 remind you of some testimony or of a matter that you think is
2 important and you want to refresh your memory at a later time.
3 So if that occurs then you can jot a quick note to refresh
4 your memory at a later time, but please do not try to take
5 down everything a person says because you might miss some
6 testimony, number one, and number two, it interferes with your
7 ability to observe the witness while on the witness stand. So
8 we'll wait a few minutes while the bailiff gets the notepads
9 and the writing utensils. When you get it, write your name on
10 the front of your notepad or on the first page of your
11 notepad. Do not share your notes with anyone else, and as I
12 said, you're permitted to take notes, but you're not required
13 to take notes. Okay. All right. It's going to take her just
14 a few minutes. So let's sit tight for just a second.

15 All right. Does everybody have their own pad and their
16 own writing utensil? As I said, write your name on the first
17 page and then start taking your notes on the second page so
18 that you get your own pad, if you choose to take notes.
19 You're not required to, but if you want to. Okay. All right.
20 Mr. Stanko, cross examination.

21 MR. STANKO: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. STANKO:

24 Q All right. You testified earlier that you had two
25 different kinds of cameras; correct?

1 A I'm sorry. Can you say that again?

2 Q You testified earlier you had two different kinds of
3 camera. You had your body cam and you had the one inside your
4 car; correct?

5 A Yes, sir.

6 Q Okay. Both of those, once you activate them, record a
7 tracking history back 30 seconds; correct?

8 A Yes, sir. Of just video.

9 Q Okay. That's right. There's a 30, there's a 30-second
10 muted period where audio doesn't kick in until you had
11 actually activated it.

12 A Upon activation. Yes, sir.

13 Q Okay. All right. Now, we noticed when, when the video
14 started you were already directly behind Mr. Gause's vehicle;
15 correct?

16 A Yes, sir.

17 Q About how long prior to that were you behind him that
18 day?

19 A If I recall I got behind Mr. -- the Defendant's vehicle
20 probably I would say two miles prior to that, around the,
21 around the Old Highway 31 and Highway 90 intersection.

22 Q Okay. So you followed him for two miles?

23 A Roughly..

24 Q Okay Did you observe any other traffic violations within
25 those two miles?

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1 A No, sir.

2 Q Okay. And then the reason for the stop was that he
3 didn't use his signal?

4 A As well as the improper turn.

5 Q Okay. All right. When you -- when you activated the,
6 the blue lights, did he, did he attempt to evade you in any
7 way?

8 A He did not.

9 Q Did, did he speed up?

10 A No, sir.

11 Q Okay. Pulled straight over?

12 A Yes, sir.

13 Q Okay. You, you walked up to, to the vehicle, began your
14 conversation?

15 A Yes, sir.

16 Q Okay. Once you, once you obtained his, his name and date
17 of birth you were able to run that through the DMV database;
18 correct?

19 A Dispatch does it. I run it through them. Yes, sir.

20 Q Correct. Sorry. And they returned back that he did have
21 a valid beginner's permit; correct?

22 A Beginner's permit. Yes, sir.

23 Q Okay. And what, what does mean exactly?

24 A It's the status before you're issued a driver's license
25 saying that you're in basically the beginner's stage of

1 driving. You have to be with a licensed driver, 21 or older,
2 that has to be in the front seat passenger with you.

3 Q Okay. Is there, is there a time cutoff for that as well?

4 A There -- the time cutoff is in regards to when a person
5 under age it has to be their parent or guardian.

6 Q No. I'm sorry, a time of day.

7 A Oh, no, sir.

8 Q So someone on a beginner's permit could drive at midnight
9 as long as they had a licensed driver with them?

10 A That's correct.

11 Q Okay. All right. Now, in the, in the two miles that,
12 that you were behind him, once we, once we saw the video start
13 you were fairly close upon him. Were you, were you about that
14 distance back the whole way from what you recall?

15 A Aside from actually coming up on him in the flow of
16 traffic, yes, sir.

17 Q Okay. All right. And his vehicle had a, had a back
18 windshield?

19 A A back window. Yes, sir.

20 Q Yes. Was there anything, was there anything obstructing
21 your view of him through that windshield?

22 A The only thing I could see is, is his head, if that's
23 what you're asking.

24 Q Okay.

25 A Could I see him?

Brandon Rabon - Cross by Defense

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1 Q Yes.

2 A Yes, sir.

3 Q Okay. All right. There, there wasn't a sticker or
4 anything obstructing your view of him?

5 A No, sir.

6 Q Okay. All right. Now, you got Mr. Gause out of the, out
7 of the vehicle after dispatch told you that he didn't have a
8 license tag; correct?

9 A I asked him to step out of the vehicle upon finding he
10 was driving with a beginner's permit in violation of that
11 section code as well as not being able to find his proof of
12 insurance and dispatch advising that the tag belonged to the
13 wrong vehicle... Yes, sir..

14 Q Okay. And you ran the VIN on the vehicle?

15 A I did.

16 Q And it came back to Mr. Gause?

17 A I don't recall. I know he said it belonged to his wife.

18 Q Okay. I believe from what I recall from the video again
19 it said it came back to same subject no current tag. Is that
20 -- that sound about accurate?

21 A Possibly.

22 Q Okay. And, and what would that mean? If somebody -- if
23 it comes back to him but no tag, wouldn't he at some point
24 have had to either register it or have a title or some way get
25 in touch with DMV and let them know, "This is my vehicle?"

1 A Well, it, it is possible to purchase a vehicle. You can,
2 you can put a vehicle in your name if it's not ready to, to be
3 driven or if at some point you have cancelled the insurance
4 and had notified the DMV that you're taking the tag off you
5 would still have that VIN registered to your person. However,
6 there may not be a tag registered or associated to that VIN
7 number.

8 Q Okay. All right. And the vehicle wasn't stolen?

9 A No, sir.

10 Q Okay. The, the tag wasn't stolen?

11 A No, sir.

12 Q It was just on the, on the wrong vehicle?

13 A Correct.

14 Q Okay. All right. Now, after you, after you got Mr.

15 Gause out of the, out of the car you, you let him know that
16 you were planning on inventorying the vehicle; correct?

17 A Well, I gave him some time. He was on the phone trying
18 to get someone to send. You, you heard him say that, "I'm
19 trying to get them to get me the insurance." I'm perfectly --
20 in -- normally if they can give me a proof of insurance even
21 if it's electronic to verify, I can work with that. After
22 some time he was not able to get that or get anyone on the
23 phone. At that point I made the decision that I was going to
24 summons a tow truck and conduct an inventory search.

25 Q Okay. And, and again, what was the, what was the reason

Brandon Rabon - Cross by Defense

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1 the vehicle was towed?

2 A Because it had no insurance, I had no way to verify it
3 had insurance.

4 Q The insurance. Okay. Before you began the, the
5 inventory search, Mr. Gause asked for a jacket out of the car;
6 correct?

7 A That is correct.

8 Q Okay. And you located, I'm sorry, you located a scale
9 inside that, that jacket?

10 A I did.

11 Q Okay. You asked him, as soon as, as soon as it came out
12 you asked him about the scale; correct?

13 A Yes, sir.

14 Q He told you that he uses it to weigh out oils and I
15 believe incense from -- in order to sell it; correct?

16 A He, he informed me that he sells oils.

17 Q Okay. All right. You put the, you put the scale on the
18 back of your car and then you began your search; correct?

19 A I continued with the inventory. Yes, sir.

20 Q Okay. All right. And first, first part of the vehicle
21 that you, that you came to was the, was the passenger side
22 front; correct?

23 A Correct.

24 Q Okay. And inside the, inside the glove box there you did
25 locate at least one bottle of oils?

1 A There was some type of fluid in a glass bottle. Yes,
2 sir.

3 Q Okay. All right. And just skipping ahead a little bit,
4 when you opened the, the driver's side front door inside the,
5 the front pocket there saw in the video as you were, as you
6 were pulling things out there was also a vape pen with liquid
7 in there; was there not?

8 A The object, I, I could never figure out what that object
9 was, the elongated object, if that's what you're asking about.
10 I looked at it, manipulated it. I couldn't determine what it
11 was. It did -- appeared nothing to be illegal or any kind of
12 contraband. So I placed it back.

13 Q Okay. All right. Now, when you, when you inventory a
14 vehicle are you required to, to keep track of what you locate
15 inside the vehicle?

16 A By policy, if it's anything of significant value,
17 anything that -- a firearm, anything to protect the Defendant
18 their interest that the stuff may be stolen by the tow truck
19 driver or anything like that.

20 Q Okay. And you didn't locate any weapons?

21 A No, sir.

22 Q You located nothing of, of what you say significant value
23 inside the car?

24 A No, sir.

25 Q Okay. Are you required to write down if there's, if

Brandon Rabon - Cross by Defense

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1 there's any damage or if there's anything structurally out of
2 place within the vehicle?

3 A No, sir.

4 Q You're not. Okay. So it's literally just for either
5 contraband or things of value?

6 A That's right.

7 Q Okay. All right. Now, once you, once you did your, your
8 inventory search, the last thing that you, that you searched
9 was underneath the, the driver's seat; correct?

10 A That is correct.

11 Q And that's where you located the salt shaker?

12 A That's correct.

13 Q All right. Now, you, you mentioned that the, that the
14 salt shaker had been fingerprinted; correct?

15 A Yes, sir.

16 Q And no, no results were found on that?

17 A This was explained to me.

18 Q Okay. And earlier you said that, that it was likely
19 because that had been under there and rolling around; correct?

20 A That is one possibility of many.

21 Q Okay. When you, when you pulled out the salt shaker,
22 were you wearing gloves?

23 A I was not.

24 Q Okay. So you were the last one to touch that salt shaker
25 then?

1 A Before it went into the evidence bag?

2 Q Yes.

3 A Yes, sir.

4 Q Okay. And were your fingerprints located on it?

5 A No, sir. They were not.

6 Q Okay. And did -- you, you didn't put it under, under a
7 seat, it didn't roll around in your car; did it?

8 A No, sir. It was in a bag.

9 Q Okay. Was just the, the cardboard, the outside like the
10 -- around the cylinder tested or did they also get that, that
11 top part and the, the middle part on the bottom?

12 A That -- I, I don't know how to answer that. I didn't
13 test it.

14 Q Okay. Who did test that?

15 A As I was informed it was SLED.

16 Q Okay. All right. And all they told you was they weren't
17 able to, to get a result?

18 A That's correct.

19 Q Okay. What about the -- what was located inside, the --
20 those wax slips? Do you know if any testing was done on those
21 apart from chemical testing to find out what was inside them?

22 A Not that I'm aware of.

23 Q Okay. So no, no fingerprinting was done on any of those
24 wax slips, anything like that?

25 A Not that I'm aware of.

Brandon Rabon - Cross by Defense

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1 Q Okay. So it would not be possible for us here today to
2 determine who was the last one to touch those; correct?

3 A I, I do not know how to answer that.

4 Q Okay. All right. Now, speaking of the, speaking of the
5 heroin that was located, you mentioned earlier that one of the
6 ways that you can, you can, I guess, take or ingest heroin is
7 intravenously?

8 A That's correct.

9 Q All right. What are the other ways?

10 A The only other way I'm familiar with people consuming
11 heroin would be intravenous and like orally through the nose,
12 snorting heroin.

13 Q Okay. And does that require any, any extra equipment or
14 paraphernalia to require you to do that?

15 A Typically a straw. Doesn't have to be.

16 Q Okay. So just like with something like cocaine you could
17 literally shake it out onto your hand and just snort it that
18 way?

19 A It is possible.

20 Q Okay. So and that wouldn't require any, anything extra
21 other than just what's there?

22 A That's correct.

23 Q Okay. All right. Now, with regards to, to Mr. Gause's
24 person, he was a -- I saw you patted him down right after you
25 got him out of the car; correct?

1 A That's correct.

2 Q And what was the reason for that?

3 A Like I said, I -- that was my assigned area. I've been
4 familiar with that area through training and field experience,
5 that is a high crime, it is a dangerous area. I've responded
6 to multiple shootings there myself. It was for my safety.

7 Q Okay. And that, that area in particular right where the,
8 where the stop happened and both sides of the street, nothing
9 but a, a grass field over here and a grass field over there;
10 correct?

11 A Correct.

12 Q Okay. All right. But you, you patted him down. Did you
13 find anything on him at that time?

14 A I felt no weapons.

15 Q Okay. So he had no weapon on him?

16 A None that I felt.

17 Q All right. Did he have any money on him?

18 A He did not.

19 Q Okay. All right. And no weapon or money was located in
20 the, in the vehicle either?

21 A No, sir.

22 Q Okay. All right. Now, you had, you had mentioned -- let
23 me back up. I apologize. After he was placed under arrest,
24 you had a, you had a conversation with, with Mr. Gause?

25 A I did.

Brandon Rabon - Cross by Defense

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1 Q And you had read him his Miranda warnings?

2 A I did.

3 Q Okay. During that conversation did he tell you that
4 other people are frequently using that vehicle?

5 A He did say other people drive his vehicle. Yes.

6 Q Okay. Did you, did you look into that at all?

7 A I did not. He told me his, his -- he has other people
8 driving the vehicle. He did not indulge any further
9 information on who they were.

10 Q Okay. Was one of the people that he told you about his
11 brother?

12 A That's how he referred to him as, "My brother", yes, sir.

13 Q Okay. All right. Are you aware that he has a brother?

14 A I'm not.

15 Q Okay. So then you're not aware that his brother has
16 prior arrests for drugs, including heroin?

17 A I am not.

18 Q Okay. All right. Just one last thing, if somebody gets
19 into a car that's used by three, four or even five other
20 people --

21 A Uh-huh.

22 Q -- is it at all possible that you could get in that car
23 and not know that something was in there?

24 A It is possible.

25 Q Okay. So if we would, you know, if I went out to the

Brandon Rabon - Redirect by State

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1 parking lot right now and someone say I have several people at
2 my household who use my vehicle, even, even if it's, even if
3 it's just your wife or a son or something like that, you have
4 other people that use the vehicle, if they leave something
5 inside the car is there a chance you can get inside that car
6 and not know what they had left in there?

7 A It is possible.

8 Q All right.

9 MR. STANKO: Your Honor, nothing further.

10 THE COURT: All right. Redirect.

11 MR. MARTIN: The Court's indulgence for a moment, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. MARTIN:

15 Q Officer Rabon, you briefly talked about money. Do
16 dealers always have money on them?

17 A No. They do not.

18 Q And why would that be?

19 A Some dealers, some more seasoned dealers are -- some
20 dealers that just know a lot about the game sometimes they
21 know that if they're found in possession with narcotics and a
22 certain amount of currency or any currency for that matter it
23 is seizable. Most guys not try to carry product and carry
24 money together to avoid that. Sometimes a dealer may have his
25 product and may have just started selling for the day and have

Brandon Rabon - Redirect by State

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1 not yet made the first sale.

2 Q He asked you about oils. You said you found, and correct
3 me if I'm wrong, is it correct that you found a glass bottle
4 in the glove box?

5 A Yes. A glass cylindrical object with fluid in it.

6 Q Any idea what that might have been?

7 A It was unlabeled.

8 Q Was there anything found in the car he could have used to
9 pour liquid into?

10 A No, sir.

11 Q In order to weigh it?

12 A No, sir.

13 Q I believe I asked you this on direct, but since that date
14 of arrest, has anyone come forward to claim the drugs that you
15 located in the car?

16 A Nobody.

17 Q We addressed this already as well, did you locate any
18 evidence to suggest that there were any other occupants or
19 drivers of that car?

20 A I did not.

21 Q No receipts or any receipts?

22 A Not that I'm aware of. There, there was paper in there.
23 Some paper I looked at, some paper I didn't but nothing
24 apparent.

25 Q Any credit cards?

1 A No.

2 Q No other merchandise with someone else's name on it?

3 A No.

4 Q He mentioned his wife, feminine products?

5 A Not that I recall.

6 Q Purse?

7 A No, sir.

8 Q Lady's clothing?

9 A Not that I recall.

10 Q Based off of your training and experience, any idea what
11 the approximate value of the drugs that you located would be
12 worth?

13 A The last time I was aware of current street value for
14 drugs I would say it was roughly around \$150 for what he had.

15 Q In your training and experience, would a user leave that
16 amount of drugs in that value unattended in a vehicle?

17 A No.

18 Q How about a dealer?

19 A No.

20 Q In the world of drugs and street crimes, is drugs just as
21 good as money?

22 A Yes.

23 MR. MARTIN: No further questions, Your Honor.

24 THE COURT: All right. You may step down.

25 All right. The State can call your next witness.

Ashley Hardee - Direct by State

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1 MR. MARTIN: Your Honor, the State calls Lieutenant
2 Ashley Hardee to the stand.

3 THE COURT: All right.

4 Whereupon, Ashley Hardee is called to the stand, duly
5 sworn by the clerk and testified as follows:

6 MR. HARDEE: Okay. My name is Lieutenant Ashley Hardee.
7 It's A-S-H-L-E-Y, last name H-A-R-D-E-E.

8 DIRECT EXAMINATION

9 BY MR. MARTIN:

10 Q Lieutenant Hardee, what is your occupation or profession?

11 A I'm a lieutenant with the Horry County Police Department.

12 Q How long have you been in law enforcement?

13 A Going on 21 years..

14 Q Where were you employed prior to or were you employed
15 anywhere prior to Horry County Police?

16 A I was North Myrtle Beach Department of Public Safety as a
17 dispatcher and two years, two and a half years as a police
18 officer with Conway Police Department.

19 Q So total you said 21 years in law enforcement?

20 A Yes, sir.

21 Q Did you do anything career-wise prior to law enforcement?

22 A I was in the United States Army.

23 Q What are your current duties today with the Horry County
24 Police?

25 A I'm a watch commander assigned to nighttime patrol.

Ashley Hardee - Direct by State

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1 Q Did you still have those same duties on March 28th, 2017?

2 A I did not. That was a sergeant with uniform patrol in
3 north precinct.

4 Q During your past 21 years of law enforcement, what
5 training and experience do you have during that period of
6 time?

7 A During my time with the Horry County Police Department I
8 was assigned to the detective division for a number of years
9 involving also with the narcotics unit from about 2006 to
10 2012, several narcotics courses, including DEA level one and
11 also clan lab operations and hazmat.

12 Q How many years would you have been involved with
13 narcotics specifically?

14 A About six and a half years.

15 Q And you had training and experience pertaining to drugs
16 during that time?

17 A Yes. I did.

18 Q What did you do specifically when you were a narcotics
19 detective?

20 A Purchased narcotics and take dealers off the street.

21 Q So is it safe to say that you've dealt with drug users
22 and drug addicts?

23 A Yes, sir.

24 Q Any idea how many?

25 A I can't count.

Ashley Hardee - Direct by State

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- 1 Q Would they have been heroin users and addicts?
- 2 A Yes.
- 3 Q How about drug dealers?
- 4 A Yes.
- 5 Q Any idea how many?
- 6 A Too many to count.
- 7 Q Heroin dealers?
- 8 A Yes, sir.
- 9 Q On March 28th of 2017, were you involved in any way in the
- 10 investigation or arrest of the Defendant, Mr. Abel Gause?
- 11 A I was not involved in the actual arrest, no, sir.
- 12 Q What was your role?
- 13 A My role was the next day as a daytime supervisor was to
- 14 take in the warrant presentation sheets, affidavits for the
- 15 previous shift to go obtain warrants at the judge's office.
- 16 Q And during your 21 years in law enforcement, have you
- 17 made arrests or obtained warrants for possession of drugs?
- 18 A Yes.
- 19 Q Doe that include heroin?
- 20 A Yes, sir.
- 21 Q Any idea how many?
- 22 A Too many to count, sir.
- 23 Q With regards to -- let me rephrase. Have you ever made
- 24 arrests or obtained warrants for possession with intent to
- 25 distribute drugs?

1 A Yes, sir.

2 Q And does that include heroin?

3 A Yes, sir.

4 Q In this case, could you explain to the jury how you
5 gather the information that you end up relaying to the judge
6 in order to obtain the arrest warrant?

7 A Yes, sir. The arresting officer will prepare a warrant
8 affidavit. They would then submit that into a folder for the
9 daytime supervisor to come in the next day to present that to
10 a judge. We provide that probable cause to the judge for the
11 arrest that took place and the judge issues a warrant for that
12 particular charge.

13 Q In your training and experience with the county and North
14 Myrtle Beach in 21 years, are you familiar with the concept of
15 possession?

16 A Yes, sir.

17 Q Here was the Defendant in possession of the drugs?

18 A He was in possession. Yes, sir.

19 MR. STANKO: Your Honor, I'm going to have to object to
20 that. He, he wasn't on scene. This is -- he's merely getting
21 this from another officer.

22 MR. MARTIN: Judge, that is simply his role. I mean, he
23 is one to obtain warrants. That is standard procedure. He's
24 testified to this. They gather that information, and he is
25 the one that gathered the arrest warrant for possession with

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1 intent to distribute. So he is, in fact, able to testify.

2 THE COURT: He can't testify as to personal knowledge as
3 to what happened at the arrest scene though if it's based
4 exclusively on the warrant.

5 MR. MARTIN: Yes, Your Honor.

6 THE COURT: So I sustain the objection.

7 MR. STANKO: Thank you, Your Honor.

8 BY MR. MARTIN:

9 Q You've told us previously about your training and
10 experience and involvement with drug users and dealers. We
11 just talked about that. How does an addict typically use
12 heroin?

13 A In my past experience, normally it's purchased and used
14 immediately after being purchased.

15 Q How does an addict or a user ingest that heroin?

16 A Noticed two ways in my career is through IV use and also
17 through snorting.

18 Q And what type of paraphernalia would typically be found
19 with someone who is a heroin user?

20 A We found needles, cotton balls, rubber bands, anything to
21 use as a tourniquet, belt, spoons, lighters.

22 Q What about physical characteristics? Would there be any
23 physical characteristics common to someone who is a heroin
24 user?

25 A We've noticed sores, injection sites, numerous areas to

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1 try to get different veins, numerous injection sites on parts
2 of the body.

3 Q What about paraphernalia typically found with a dealer?

4 A Scales, we found currency before, ways to package.

5 Q What would the scales be used for?

6 A That's to distribute to make sure they get the right
7 amount distributed out to each customer.

8 Q And based on your training and experience in narcotics,
9 how is heroin broken down or packaged for sale?

10 A It's actually in the little waxine or glassine packs
11 individual that's that considered as a dose unit.

12 Q That also commonly referred to as a slip of heroin?

13 A Yes.

14 Q How many slips would a person typically use at one time?

15 A Depending on what kind of heavy user they are, maybe at
16 the most two.

17 Q How many slips did the Defendant have on him?

18 A Fourteen.

19 Q Would a user typically have this much?

20 A No, sir.

21 Q And why is that?

22 A As I said before I've found in my past experience when
23 it's purchased it's used immediately.

24 Q Would it be more common for a dealer to have that much?

25 A Yes, sir.

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1 Q When you obtain warrants or a warrant for possession with
2 intent to distribute heroin you base your decision to charge
3 possession with intent to distribute on these kind of things?

4 A Yes, sir.

5 Q And based on your training and experience and information
6 you were given is it your opinion that the Defendant possessed
7 the drugs?

8 MR. STANKO: Objection, Your Honor. Again, he's just
9 asking for his opinion. It's a legal conclusion that he
10 wasn't there to make.

11 THE COURT: Sustained.

12 MR. MARTIN: Yes, Your Honor.

13 Q Based upon what you knew did you obtain a warrant for
14 possession with intent to distribute heroin?

15 A Yes... I did.

16 MR. MARTIN: No further questions, Your Honor.

17 THE COURT: All right. Cross examination.

18 MR. STANKO: Your Honor, I have nothing for this witness.

19 THE COURT: All right. You may step down.

20 A Thank you, sir.

21 THE COURT: All right. The State can call your next
22 witness.

23 MR. MARTIN: Your Honor, the State next calls Donna Bell.

24 THE COURT: All right.

25 Whereupon, Donna Bell is called to the stand, duly

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1 sworn by the clerk and testified as follows:

2 MS. BELL: My name is Donna Bell, D-O-N-N-A, B-E-L-L.

3 DIRECT EXAMINATION

4 BY MR. MARTIN:

5 Q Ms. Bell, where are you currently employed?

6 A I'm at Horry County Police Department in the evidence
7 division.

8 Q How long have you been there?

9 A I've been with the police department 12 and evidence
10 nine.

11 Q Were you employed in that same role on March 28th, 2017?

12 A Yes, sir.

13 Q You've been employed there up until today?

14 A Yes, sir.

15 Q What are your current duties?

16 A I key and release evidence that officers and detective
17 turns in.

18 Q I'm going to show you what's previously marked for
19 identification purposes as State's Exhibit Four.

20 A Okay.

21 Q Would you examine that for me and tell us whether you
22 recognize what you're looking at?

23 A Yes, sir. I, I recognize it.

24 Q What is it?

25 A It's what we call a BEST kit that officers and detectives

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1 puts their drugs in.

2 Q And where'd you get it from?

3 A I got it out of locker number six in the evidence
4 department.

5 Q And that would have been at the police department?

6 A Yes, sir.

7 Q And what date?

8 A I retrieved it on March the 29th, 2017.

9 Q And what did you do with it?

10 A I keyed it in and released it to our chemist.

11 Q And that is who?

12 A Courtney Johnson.

13 Q Did you examine the evidence for any tampering?

14 A Yes, sir. We always have to examine to make sure that
15 it's sealed properly and it's not tampered in no way.

16 Q If it were tampered with, would you notify your
17 superiors?

18 A Yes, sir.

19 Q While the drugs were in your care, custody and control,
20 did you alter them, substantially change them, mess with them
21 in any way?

22 A No, sir.

23 Q And did you maintain the integrity of the item?

24 A Yes, sir.

25 Q No further questions.

1 THE COURT: All right. Cross examination.

2 MR. STANKO: No questions for Ms. Bell, Your Honor.

3 THE COURT: All right. You may step down.

4 A Thank you.

5 THE COURT: All right. The State can call your next
6 witness.

7 MR. MARTIN: Your Honor, the State calls Courtney
8 Johnson.

9 THE COURT: All right.

10 Whereupon, Courtney Johnson was called to the stand, duly
11 sworn by the clerk and testified as follows:

12 MS. JOHNSON: My name is Courtney Johnson, C-O-U-R-T-N-E-
13 Y, J-O-H-N-S-O-N.

14 DIRECT EXAMINATION

15 BY MR. MARTIN:

16 Q Ms. Johnson, what is your occupation?

17 A I'm employed by the Horry County Police Department as
18 a forensic chemist assigned to the drug analysis department.

19 Q How long have you been there?

20 A Almost five years.

21 Q How long have you been employed in your occupation total?

22 A Five years.

23 Q What are your current duties with Horry County?

24 A My primary responsibility is to analyze and identify
25 controlled substances that are submitted to me.

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1 Q What type of training do you have that qualifies you for
2 your position?

3 A I received my bachelor's in chemistry from Southern
4 Wesleyan University, as well as my bachelor's in biology and
5 my bachelor's in forensic science from Southern Wesleyan
6 University. I've completed my training at the South Carolina
7 Law Enforcement Division in the analysis of controlled
8 substances. I've also attended the agilent gas chromatograph
9 mass spectrometer maintenance and troubleshooting training, as
10 well as the proficiency testing yearly with Collaborative
11 Testing Services.

12 Q During your past five years that you talked about working
13 with the county, in your training, education and experience,
14 have you chemically analyzed substances to determine if they
15 are or contain some type of narcotic or drug?

16 A Yes, sir.

17 Q How many times?

18 A Over 12,000.

19 Q How many times would you say in a given week?

20 A It just depends on the instruments. I would probably say
21 roughly 200 of the instruments are good.

22 Q You ever chemically analyzed a substance during that time
23 and determined it to be heroin?

24 A I have.

25 Q Any idea how many times?

1 A Over, over 4,500 times.

2 Q Do you make these analyses as a regular part of your
3 duties?

4 A Yes, sir. I do.

5 Q Have you ever testified as an expert witness in court
6 concerning drug identification, forensic chemistry and drug
7 analysis?

8 A Yes, sir. I have.

9 Q How many times?

10 A Eight times.

11 Q What courts?

12 A I've testified on both the federal and the state level.

13 MR. MARTIN: Your Honor, at this time the State would
14 move to qualify Ms. Johnson as an expert in the field of
15 forensic chemistry and drug analysis.

16 THE COURT: All right. Any questions or challenges from
17 the Defense?

18 MR. STANKO: None, Your Honor.

19 THE COURT: All right. I find this witness to be an
20 expert in the field of forensic chemistry.

21 All right. Now, ladies and gentlemen of the jury, I will
22 charge you when I charge you with the law on how you treat
23 expert testimony, but all you need to know for right now is
24 ordinarily a witness can only testify as to personal
25 knowledge, what they tasted, what they smelled, what they

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1 felt, what they saw. There is an exception for witnesses who
2 are qualified as experts, which means that in addition to the
3 expert's personal observation they can render an opinion in
4 the field in which they are qualified as an expert. All
5 right, sir. Go ahead.

6 MR. MARTIN: Thank you, Your Honor.

7 BY MR. MARTIN:

8 Q Ms. Johnson, I'm going to also show you what has been
9 marked for identification purposes as State's Exhibit Four.
10 Would you examine that for me?

11 A May I refer to my notes?

12 Q Sure. Are you able to identify it?

13 A Yes.

14 Q What is it?

15 A This outer bag that you see is what we refer to as a k-
16 pack bag, and then the inner bag that you see with the swirl
17 patterns down the outside that's what we refer to as a BEST
18 kit.

19 Q How are you able to identify it? Are there markings on
20 there?

21 A Yes. So I have two numbers that I look to identify.
22 There's a control number. It's H013392. That's printed in
23 the factory. It will not be used on another bag, and the --
24 my report reflects that control number as well as the lab
25 number that we assign in the lab, and it's C170354 and that's

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1 also what my report reflects. I also have my initials and the
2 date inside of the seal. After the analysis was performed, I
3 place the BEST kit in here along with all the drugs that you
4 see in the back in these Ziploc bags, and I seal it with the
5 date that I sealed it and my initials on the inside of the K-
6 pack bag so it can't be erased by anybody.

7 Q Also notice there's a -- some initials or some writing on
8 the outside. Could you identify what that is?

9 A This number is the lab number that I wrote on there.
10 This drug 3D is usually what the evidence ladies write when
11 they put it on a certain bay or a shelf in the locker or the
12 vault, and then there are -- there's another set of date and
13 initial here and that is from someone else who has performed
14 some type of analysis on something that was in this case.

15 Q Would that analysis have been done after you tested the
16 drugs?

17 A Yes.

18 Q Who did you receive that evidence from?

19 A I received it from Donna Bell.

20 Q When did you receive it?

21 A I received it on 3-29 of 17.

22 Q And where would that have been?

23 A At the window of the evidence department at the Horry
24 County Police Department.

25 Q When you received the package did it appear to be

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1 tampered with at all?

2 A No.

3 Q Was it sealed?

4 A Yes.

5 Q Would you have tested if it would -- if it would have
6 been tampered with?

7 A No. I check all of the tamper evidence markings that the
8 bag has with the swirl patterns on the outside. I check all
9 of those as well as the top seal to make sure that there's --
10 hasn't been any pulling or any tampering at all that has gone
11 on before it's accepted into the lab.

12 Q Now, while the drugs were in your care, custody and
13 control, other than testing them, did you in any way
14 substantially alter them or change them?

15 A No, sir.

16 Q And for what purpose did those drugs come into your
17 possession?

18 A For analysis.

19 Q When -- and on what date would you have made your
20 analysis?

21 A I performed analysis on 9-5, 2017.

22 Q What type of tests or type of examinations did you
23 perform?

24 A Well, after I receive the evidence I placed it in a
25 secure location inside of the lab until I was ready to begin

1 analysis. Once I was ready to begin analysis I took the BEST
2 kit which is inside -- what you see inside of here. I
3 rechecked all of the seals to make sure everything was intact.
4 Once I did that I opened up the BEST kit, separated all the
5 evidence, itemized it, checked for consistency. Once I
6 establish consistency and itemize the evidence, I obtained a
7 weight without packaging, performed a presumptive test, and
8 based on the results of my presumptive test I performed a base
9 methylene chloride extraction to prepare the item of evidence
10 for instrumental analysis, and after I prepared the item of
11 evidence I put it onto instrumentation and receive results.

12 Q Did you prepare a report?

13 A I did.

14 Q You mentioned that you weighed this. Did all 14 slips or
15 I think you called them packets, did they test positive for
16 heroin? Do you test all 14?

17 A No, sir. I did not test all 14.

18 Q Is it an acceptable practice to only test a certain
19 amount?

20 A Yes, sir. That practice that we use is what we were call
21 -- what we refer to as a weight threshold sampling plan and it
22 pretty much eliminates having to further test drugs that are
23 unnecessary. So if you reach a certain threshold of a -- for
24 a certain drug and testing all of the remaining drugs doesn't
25 bring you to your next threshold, then it would be pointless

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1 to continue to test when it's not going to change the
2 threshold that you reach.

3 Q From these tests, Ms. Johnson, as an expert in the field
4 of forensic chemistry and drug analysis, do you have an expert
5 opinion as to what this exhibit is or what it contains?

6 A Yes. I do.

7 Q And what would that be?

8 A May I refer to my report?

9 Q Please do.

10 A Item 1.1 was a salt shaker containing a rubber band
11 containing...no analysis performed. Item 1.1.1 13 glassine
12 packets containing powdered substance, the results, heroin
13 schedule one found with a combined weight of 0.144 grams,
14 2.222 grains. The maximum attainable statutory threshold has
15 been met for this item. The remaining gross weight including
16 the innermost packaging untested is 2.221 grams or 34.275
17 grains. Item 1.1.2, one torn glassine packet containing
18 powdered substance, results, heroin schedule I found, 0.027
19 grams or 0.416 grains.

20 Q Is it your expert opinion that this substance is heroin?

21 A Yes, sir. The ones that I tested.

22 MR. MARTIN: Your Honor, at this time the States moves to
23 introduce State's Exhibit Four into evidence.

24 THE COURT: Any objection?

25 MR. STANKO: Without objection.

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1 THE COURT: State's Exhibit Four admitted into evidence
2 without objection.

3 (State's Exhibit Number Four [BEST Bag] admitted into
4 evidence and appropriately marked.)

5 MR. MARTIN: Your Honor, may I, may I publish that to the
6 jury?

7 THE COURT: All right.

8 MR. MARTIN: The Court's indulgence, Your Honor.

9 THE COURT: All right.

10 MR. MARTIN: Your Honor, no further questions at this
11 time for this witness.

12 THE COURT: All right. Cross examination.

13 MR. STANKO: Your Honor, the Defense has nothing for this
14 witness.

15 THE COURT: All right. You may step down.

16 All right. The State can call your next witness.

17 MR. MARTIN: Your Honor, this jury's still examining
18 that, but we have no more witnesses at this time. The State
19 rests.

20 THE COURT: All right.

21 All right. Ladies and gentlemen, the State has rested
22 their case and now is the time of the trial where I have to
23 address some matters of law with the attorneys. So once you
24 finish viewing that exhibit I'm going to excuse you back to
25 the jury room for a few minutes while I address these matters

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1 of law, and I tell you why we excuse you to the jury room.
2 It's not that we're trying to hide you -- anything from you or
3 keep anything from you, but as I told you in your opening --
4 in my opening charges to you, you and you alone decide what
5 the facts of this case are, and you decide those facts based
6 upon the testimony of witnesses. Well, now is the time of the
7 trial where I have to discuss the law with the attorneys.
8 Oftentimes when we discuss the law it requires me and the
9 attorneys to reference factual matters. Well, what we say is
10 not evidence, and so we don't want you to be influenced by
11 something that I might say or the attorneys might say when we
12 reference these factual issues. We do not want that to
13 influence your decision on what the facts are in this case and
14 that's why we excuse you to the jury room, but in any event
15 we'll take a short break. It'll give you an opportunity to
16 stretch your legs, get something to drink, whatever the case
17 may be. Please leave your pads in the jury box. You'll
18 receive them back when you come back into the courtroom.
19 Don't take them with you. Do not discuss the case. It's
20 still too early for deliberations. So I'm going to excuse you
21 back to the jury room for just a few minutes, and we'll bring
22 you back out in just a second. Thank you very much.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Any motions?

1 MR. STANKO: Yes, Your Honor. We would move for a
2 directed verdict.

3 THE COURT: All right. I'm going to deny that. I think
4 they've presented enough to at least get it to the jury.
5 Anything else?

6 MR. STANKO: Your Honor, at this time I don't believe
7 anything has, has come up to, to indicate that we would need
8 further proceedings. So nothing further from the Defense.

9 THE COURT: Okay. Okay. Are you all going to present
10 anything?

11 MR. STANKO: No. It is --

12 THE COURT: All right.

13 MR. STANKO: -- it's my understanding Mr. Gause does not
14 wish to testify, and we're not going to be putting anybody
15 else up.

16 THE COURT: Well, let me do this. Let me question him
17 and advise him on his rights to testify. We'll take a short
18 break and then we'll come back. Okay? All right. Hold for
19 one second.

20 All right. Sir, if I could get you to raise your right
21 hand, please?

22 (Defendant sworn by the Court.)

23 THE COURT: All right. And sir, your name is Abel
24 Dewayne Gause?

25 MR. GAUSE: Yes, sir.

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1 THE COURT: All right. Mr. Gause, at this time I'm
2 going to explain to you certain rights that you have. If you
3 do not understand what I say, please let me know, and if you
4 want me to explain anything in more detail, please let me
5 know. Do you understand that?

6 MR. GAUSE: Yes, sir.

7 THE COURT: All right. We've now reached the stage of
8 the trial where you may present your defense. You have the
9 right to claim the protections given to you by the Fifth
10 Amendment to the United State Constitution which states in
11 part that no person shall be compelled in any criminal case to
12 be a witness against himself. This means that you cannot be
13 required to testify in this case. You have the right to
14 testify on your own behalf. However, no one can make you
15 testify. This is a personal right and no one can waive this
16 right except for you. If you decide to testify you will be
17 subject to the same rules that govern other witnesses, and you
18 may be examined and cross examined on any relevant issue in
19 this case. In addition, if you have any convictions involving
20 dishonesty or false statement or for crimes punishable by
21 imprisonment for more than one year and the Court determines
22 that the probative value of admitting the evidence outweighs
23 its prejudicial effect to you, the Solicitor will be able to
24 introduce your record to attack your credibility. Now, is
25 there any prior record that the State would use to impeach the

1 Defendant if he took the stand?

2 MR. MARTIN: Yes, Your Honor.

3 THE COURT: All right. What have we got?

4 MR. MARTIN: Regarding crimes of dishonesty, we've got a
5 -- in 2012 11 counts of worthless check on a closed account
6 and also obtaining property under false pretense. That's one
7 count for obtaining property by false pretense.

8 THE COURT: Anything else?

9 MR. MARTIN: No more crimes of dishonesty, Your Honor.

10 THE COURT: All right. So that's the only ones you would
11 use?

12 MR. MARTIN: Yes, Your Honor. Certainly there are, are
13 other convictions that might be relevant if the door were
14 opened.

15 THE COURT: Okay. All right. So in other words, they
16 would be able to use the 11 convictions for fraudulent checks
17 and the obtaining property under false pretenses, both of
18 those -- well, those are crimes of -- showing dishonesty. So
19 they could use that to attack your credibility. You
20 understand that?

21 MR. GAUSE: Yes, sir.

22 THE COURT: Okay. All right.

23 If you decide to testify the decision on your part must
24 be freely, voluntarily and intelligently made with knowledge
25 of the protections given to you by the Fifth Amendment of the

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1 United States Constitution and the consequences of your
2 decision to testify, testify. If you decide not to testify, I
3 will instruct the jurors that they cannot give the fact that
4 you did not testify any consideration whatsoever, and that
5 there is to be absolutely no prejudice to you because you did
6 not testify. It is left entirely up to you whether or not you
7 testify. You can talk with your attorney, your family and
8 friends or anyone else, but the final decision will be left
9 entirely up to you. Now, do you understand what I've
10 explained to you?

11 MR. GAUSE: Yes, sir.

12 THE COURT: Do you have any questions about what I've
13 explained to you?

14 MR. GAUSE: No, sir.

15 THE COURT: Okay. We're going to take a short break.
16 I'm going to let you talk to whoever you want to, and then
17 when we come back, I'm going to ask whether or not you wish to
18 testify in this case. Okay? All right. Thank you very much.
19 Let's take about a five-minute break. Okay?

20 MR. STANKO: Thank you, Your Honor.

21 OFF THE RECORD

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

24 THE COURT: All right. Mr. Gause, if I could get you to
25 stand, please.

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1 (Complies with request.)

2 THE COURT: You're still under oath. Do you recall your
3 rights under the Fifth Amendment to the United States
4 Constitution as we discussed before we took a break?

5 MR. GAUSE: Yes, sir.

6 THE COURT: All right. Have you had an ample opportunity
7 to discuss with your attorney, your family or whoever you want
8 to talk to about whether or not you're going to testify in
9 this case or your right to testify in this case?

10 MR. GAUSE: Yes, sir. I talked to them.

11 THE COURT: All right. And have you made a decision as
12 to whether or not you wish to testify in this case?

13 MR. GAUSE: No, sir. I'm --

14 THE COURT: You have --

15 MR. GAUSE: I'm not going to testify.

16 THE COURT: You're not going to testify?

17 MR. GAUSE: No, sir.

18 THE COURT: Okay. Is that your decision?

19 MR. GAUSE: Yes, sir.

20 THE COURT: All right. It's your decision and your
21 decision alone; is that --

22 MR. GAUSE: Yes, sir.

23 THE COURT: All right. Anything further you want placed
24 on the record in that regard, Mr. Stanko?

25 MR. STANKO: Nothing, Your Honor.

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1 THE COURT: Anything further from the State in that
2 regard?

3 MR. MARTIN: No, Your Honor.

4 THE COURT: All right. So as I understand what we'll do
5 we just have closing arguments, charges and deliberations; is
6 that correct?

7 MR. STANKO: That's correct. The Defense rests, sir.

8 THE COURT: Okay. What we'll do -- let me -- I've -- I'm
9 still preparing closing charges. So let me go back in the
10 office and finish that. I'll get you a copy of my proposed
11 charges, and I'll let you raise an objection two times.
12 Number one, I'll give you a written copy and look over it, and
13 if you have any objections I'll hear from you then and then
14 after I charge the jury I'll give you a second opportunity
15 because sometimes it does sound differently where you -- when
16 you hear the charge read to the jury rather than just reading
17 it on the paper. So I'll give you two opportunities. Now, as
18 far as my charges, I'm assuming PWID heroin, possession of
19 heroin, and not guilty; is that correct?

20 MR. STANKO: Correct, Your Honor.

21 THE COURT: All right.

22 MR. MARTIN: That's correct, Judge.

23 THE COURT: All right. All right. Let's stand in recess
24 while I finish up these charges and I'll get you a copy out
25 here in a minute. Now, what I generally do since there is a

1 lesser included offense, rather than sending the indictment,
2 I'll do a verdict form which will say guilty of PWID, guilty
3 of possession, not guilty. Usually if it's just a guilty or
4 not guilty I'll send the indictment, but when there's a lesser
5 included I'll usually do a verdict form; is that agreeable?

6 MR. STANKO: Yes, it is, Your Honor.

7 THE COURT: Is that agreeable with the State?

8 MR. MARTIN: Yes.

9 THE COURT: Okay. All right. Give me a little while.
10 I've been working on the charges up here, but I've still got a
11 little ways to go. I guess you can tell the jury it's going
12 to be a little bit longer break than what we anticipated and
13 we'll get with them as quickly as we can. Okay? All right.
14 We'll be in recess until I get these out here to you.

15 MR. MARTIN: Thank you.

16 MR. STANKO: Thank you, Your Honor.

17 THE COURT: Thank you.

18 OFF THE RECORD

19 (On the record. The following takes place outside the
20 presence of the jury.)

21 THE COURT: Gentlemen, I know we've kind of rushed, and
22 there's no need to be. We can certainly take as much time as
23 we need, but it is getting a little bit later in the day, and
24 I didn't know if we wanted to go forward on now. I'd kind of
25 like to go ahead now with closing arguments, charges and

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1 deliberations if we can. Have you had an opportunity to look
2 over the charges, and as I said you can raise any objections
3 now and again I'll give you another opportunity at the end of
4 the charging when I -- because you do -- does sound
5 differently when you hear it read versus when you read it.
6 Any at this time, any challenges or additional charges from
7 the State?

8 MR. MARTIN: No, Your Honor.

9 THE COURT: Any by the Defense?

10 MR. STANKO: None, Your Honor.

11 THE COURT: Okay. Is the verdict form okay with --

12 MR. MARTIN: Yes, Your Honor.

13 MR. STANKO: It is.

14 THE COURT: That -- okay. Anything from the State before
15 we bring the jury in?

16 MR. MARTIN: Not at this time.

17 THE COURT: Anything from the Defense?

18 MR. STANKO: No, Your Honor.

19 THE COURT: Okay. What we'll do is we'll just bring the
20 jury in. Mr. Stanko, you can go ahead, I'll ask is there any
21 defense. You can say that the Defense rests on the record and
22 then we'll go straight into closing arguments, charges and
23 deliberations. Okay?

24 MR. STANKO: Yes, sir.

25 THE COURT: All right. Let's go ahead and bring the jury

1 in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right. Ladies and gentlemen, welcome
5 back. I apologize for keeping you in the jury room for so
6 long, but we did have some matters we needed to address and
7 we're ready to proceed with the trial of the case. Make sure
8 you have your own notepads and do not have anyone else's
9 notepads.

10 All right. Mr. Stanko, anything from the Defense?

11 MR. STANKO: Your Honor, the Defense rests.

12 THE COURT: All right.

13 All right. Ladies and gentlemen, all of the evidence has
14 been presented to you in this case, and now is the time of the
15 trial where the attorneys will make their closings arguments.
16 Now, just like their opening statements these closing
17 arguments are not evidence in the case. It is simply the
18 attorneys' contention as to what they think the facts are and
19 the law to be applied in this case. If at any time an
20 attorney references a factual issue that is different from the
21 facts as you find them to be or references the law that is
22 different from the law as I will charge you at the end of
23 their arguments, then you're to disregard that portion of
24 their closing arguments because this is not evidence and it's
25 not a charge on the law. It's just their contention as to

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1 what they think the facts are, what the evidence has shown and
2 the law to be applied. All right.

3 You will close last? All right. The State can close.

4 MR. MARTIN: Who rides around in a car with tags
5 belonging to another vehicle, no driver's license, a scale, 14
6 slips of heroin inside of a salt shaker hidden underneath the
7 driver's seat that person occupied by themselves, Abel Gause.
8 You may remember when we first spoke at the beginning of this
9 trial much earlier today, I talked with you about opening
10 arguments, and I told you that was kind of a roadmap of where
11 we saw this trial going, and I would come back at the end of
12 the trial and be able to talk with you and that's what we're
13 doing in closing. We're going to talk about what we heard
14 from that witness stand and that witness stand alone and apply
15 it to the law that the Judge is going to read to you a little
16 bit later.

17 The first thing the Judge is going to address with you is
18 a concept known as reasonable doubt. The burden lies with us,
19 the State, to prove to you beyond a reasonable doubt Mr. Gause
20 possessed heroin, but also he possessed it with the intent to
21 distribute. Now, beyond all reasonable doubt doesn't mean
22 beyond all possible doubt. There are very few things in this
23 world that we know with absolute certainty. Reasonable doubt
24 is firmly convinced. You need to be firmly convinced that the
25 evidence in this case shows that he is guilty.

1 Secondly, the Judge is going to address with you the
2 different types of evidence that you can address and look at
3 to help convince you beyond a reasonable doubt, and evidence
4 is presented in two ways. It's direct evidence and it's
5 circumstantial evidence. Direct evidence is just like it
6 sounds. It is actual evidence, direct testimony, maybe a
7 video, maybe an eyewitness account. Circumstantial evidence
8 is much -- it's a lot more difficult oftentimes to put into
9 words. It is essentially like we used to say in law school,
10 it's connecting the dots. It's not always as easy as perhaps
11 looking at direct evidence. However, the Judge is also going
12 to remind you and read to you that there is no legal
13 difference between the two, you give both of them the same
14 amount of weight. It is still evidence.

15 One of the best ways that I always told myself to
16 remember circumstantial evidence was a childhood memory I
17 have. My mom used to always bake gingerbread cookies for
18 Christmas, and not only did I love the cookies, but I really
19 loved the cookie dough, but a big rule of hers was you can't
20 eat that because the raw eggs might make you sick. She walked
21 in the kitchen one day and noticed that, you know, she had
22 left the, the dough sitting out and the eggbeaters were gone
23 and the stirrer that she used. She looked in the sink and saw
24 that they were pretty clean and there was no paper towels
25 around that may have, you know, wiped it up. So she merely

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1 makes her way into my room and there I am, and I've got some
2 flour on this cheek and I've got some dough on this cheek, and
3 "George Henry, did you eat that cookie dough?" "No, ma'am."
4 She didn't see me do it, but she was able to connect the dots
5 and put two and two together and that is circumstantial
6 evidence. When you take reasonable doubt and circumstantial
7 evidence, you then apply all that to the law itself, and the
8 law that we are presented with here today is involving
9 possession with intent to distribute heroin. First and
10 foremost, you have to look at the concept of possession.
11 Possession can be either actual, and the Judge will tell you
12 this, or constructive. Actual possession is the cell phone in
13 your pocket. It's that pen in your hand. It's the dope in
14 your pocket.

15 Constructive possession, much like circumstantial
16 evidence, is a little harder to grasp at first, but when you
17 think about it it is really very much the same concept.
18 Constructive possession is often legally defined as the person
19 with the ability to exercise dominion and control over that
20 object. The Judge will read you that having an object found
21 on a piece of property that you own can be inferred to be
22 constructive possession, such as drugs found within your car.

23 Additionally, with constructive possession, you can think
24 of it as it's that laptop sitting on your desk in your house,
25 right? It's the cup of water that you left at your spot in

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1 the jury room. It's the umbrella in the trunk of your car.
2 It's the heroin inside a salt shaker underneath the seat of
3 your vehicle. When you apply the concept of possession to
4 this case don't get caught up in what may have been brought up
5 previously about the what-ifs. Focus on what we do know, what
6 we heard from that stand.

7 The Defendant's car, he said others may have driven it.
8 Did we find anything in that vehicle to show that someone else
9 had driven that vehicle, any receipts with someone else's name
10 on it, a credit card with someone else's name on it, a jacket,
11 his wife's purse, any of her clothes? Well, what did we find?
12 His jacket, his own statement on the video that he drives the
13 car, a scale that he said was his.

14 Moving on from that, the Judge is going to read you the
15 law on intent to distribute, and intent is a criminal concept
16 that you, again, have to kind of connect the dots and figure
17 out. Unfortunately, we don't have the ability to take Mr.
18 Gause, dissect his brain and go to that portion of the brain
19 where it tells you what he was thinking and what his intent
20 was. We have to use other evidence, often circumstantial, to
21 show, to connect the dots and show did he or did he not have
22 the intent to distribute that drug.

23 Now, you heard testimony from Officer Rabon and
24 Lieutenant Hardee talking about oftentimes what goes into
25 proving intent. You heard from an expert witness, Ms.

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1 Johnson, that the statutory threshold, which was met in this
2 case, is two grains of heroin can be inferred to be possession
3 with intent to distribute. Now, not just that, but we do have
4 a scale often used for, like they said, weighing your drugs.
5 Mr. Gause, I believe in Mr. Stanko's questioning today they
6 talked about fish oils. Were any fish oils found, and if so,
7 were there any measuring devices, any containers that you
8 could pour that oil into and then weigh it.

9 How about the amount, how about the amount of drugs that
10 were found? You heard testimony from that stand that one
11 slip, one packet, one high, one dosage unit maybe at most, if
12 you are a severe addict you'd have two, you'd use two. You
13 definitely don't carry around 14. Think of it, think of it
14 this way, how many of you maybe have been to Cookout at three
15 a.m. and you're real, real hungry, right, and you're going to
16 get you some cheeseburgers. Do you buy 14 of them? Maybe if,
17 if, you know, if you're feeding your family and your neighbor
18 down the street and your dog's hungry, but I don't think that
19 you're going to eat 14 yourself, and think about it another
20 way, 14 slips of heroin is enough to get each one of you high.

21 Like I said earlier, this isn't a, this isn't a sexy
22 case, like I said. It's, it's not a week-long with 20
23 witnesses. We've been very fortunate to be able to squeeze
24 this in to a day, but there's still a lot to think about, but
25 you've got to focus on what was on that stand, the evidence

1 that was presented to you, and after you do that I feel
2 confident that you're going to come back with a verdict that
3 Mr. Gause did possess that heroin, and additionally did it
4 with the intent to distribute.

5 THE COURT: Mr. Stanko.

6 MR. STANKO: Thank you, Your Honor.

7 In much the, much the same way as -- just give you a
8 recitation of what you, what we've heard today. Officer got
9 behind Mr. Gause, says he was following him for about two
10 miles. Didn't observe him involved in any drugs. Didn't
11 observe him outside of, arms in the car, nothing like that.
12 Pulled him over for a turn signal, swept out into the, into
13 the other lane. Now, when Mr. Gause pulled over, he didn't
14 run. He didn't try to speed up. He immediately pulled off to
15 the side. The officer goes up to the window. They have their
16 conversation. He gives him his real name. He gets out the
17 car when he's asked. Officer allows him to call his wife, try
18 to see if they can ascertain the insurance information on the
19 vehicle. The officer is standing in front of Mr. Gause's
20 vehicle as you saw on the video. Mr. Gause is a good 20, 25
21 feet away. At any point he could have taken off running.
22 Heck, the officer's vehicle was running. In theory he could
23 have jumped in there and taken off, never did. Mr. Gause did
24 not know there were any drugs in that car.

25 You heard the officer tell you absolutely possible

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1 somebody else could have put them there. Nobody gets in their
2 car, checks under the seat. Nobody does that, even if
3 everybody in your household uses that car. It's just -- it's
4 not practical, you know.

5 Focusing in on, on all the things that we, we did here,
6 certain things are missing. He told you they have to have the
7 intent to distribute. Let's start with you have to knowingly
8 possess. There's nothing that says Mr. Gause had it in his
9 hand beforehand, that he threw it under the seat immediately
10 when the officer showed up. The officer said he had a clear
11 view of him the whole time he was behind him, got a tracking
12 history on him, had it on his, on his in-car video. Mr. Gause
13 never ducks down to throw something under the seat. He never
14 reaches over, grabs anything. Sits in his -- sits right in
15 his chair, pulls over, does exactly as the officer asks him to
16 do.

17 Now, you heard about the salt shaker being fingerprinted.
18 Nothing came back on that, neither Mr. Gause nor Officer
19 Rabon. Came back as nothing. Now, the State would have had
20 the opportunity to test those wax slips. I would imagine a
21 fingerprint would show up a whole lot better on those wax
22 slips than on a, than on a cardboard salt shaker. They never
23 did that, didn't even bother sending it to SLED for analysis.
24 Simply left that part out. It's just several different things
25 that they left out.

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1 So let me put it to you this way. Think about what they
2 really proved. They proved that there was heroin in that car,
3 and they've proved that Mr. Gause was in that car. That's it.
4 The requirement for this charge is that he knowingly possessed
5 a drug, and he did not prove to you that he even knew it was
6 there, and if he didn't know it was there obviously he can't
7 have intended to distribute.

8 You'll hear the Judge say mere presence somewhere is not
9 enough for a charge like this, that you just happen to be in a
10 car, that mere presence doesn't meet the burden. He's told
11 you before, I've told you before, and you'll hear from the
12 Judge as well, the standard is beyond a reasonable doubt, it's
13 that level of doubt, that level of doubt that causes you to
14 hesitate to act, if you sit there and think there is a real
15 chance, a good chance somebody else put that there and it
16 simply wasn't him.

17 Ladies and gentlemen, again, based on everything you've
18 heard today I am confident you'll realize the State has not
19 met their burden and you'll find him not guilty.

20 THE COURT: All right. Ladies and gentlemen, all of the
21 evidence in this case has been presented to you. The
22 attorneys have made their closing argument, and now is the
23 time of the trial when I charge you with the law to be applied
24 in this case.

25 The indictment in this case charges the Defendant with

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1 possession with intent to distribute heroin. I remind you
2 that the fact that the Defendant was arrested, charged and
3 indicted in this case, is not evidence in this case and cannot
4 be considered by you as evidence of guilt in this case, nor
5 does the Defendant's arrest, charge and indictment create any
6 presumption or inference of guilt. The indictment is simply
7 the formal written instrument which contains the charge made
8 against the Defendant. It is the formal document by which
9 this case is brought into this court.

10 The Defendant pleads not guilty to this indictment, and
11 that plea puts the burden on the State to prove the Defendant
12 guilty. A person charged with committing a criminal offense
13 in South Carolina is never required to prove his innocence.

14 I charge you that an important rule of the law is that
15 the Defendant in a criminal trial, no matter what the
16 seriousness of the charge may be, will always be presumed to
17 be innocent of the crime for which the indictment was issued
18 unless guilt has been proven by evidence satisfying you of
19 that guilt beyond a reasonable doubt. This presumption of
20 innocence does not end when you begin your deliberations, but
21 it accompanies the Defendant throughout the trial unless and
22 until you reach a verdict of guilt based on evidence
23 satisfying you of that guilt beyond a reasonable doubt.
24 The presumption of innocence is like a robe of righteousness
25 placed about the shoulders of the Defendant which remains with

1 the Defendant until it has been stripped from the Defendant by
2 evidence satisfying you of the Defendant's guilt beyond a
3 reasonable doubt.

4 The presumption of innocence is not a mere legal theory.
5 It is not just a legal phrase. It is a substantial right to
6 which every Defendant is entitled unless you, the jury, are
7 satisfied from the evidence of the Defendant's guilt beyond a
8 reasonable doubt.

9 Now, what is a reasonable doubt in the law? A reasonable
10 doubt is the kind of doubt that would cause a reasonable
11 person to hesitate to act. Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the Defendant's
13 guilt. We know very few things in this world with absolute
14 certainty, and in criminal cases the law does not require
15 proof that overcomes every possible doubt. If, based on your
16 consideration of the evidence, you are firmly convinced that
17 the Defendant is guilty of the crime charged, you must find
18 the Defendant guilty. If on the other hand, you think a real
19 possibility exists that the Defendant is not guilty, you must
20 give the Defendant the benefit of that doubt and find him not
21 guilty.

22 I remind you that, during this trial, you and I have
23 certain duties to perform. As the trial judge, my
24 responsibility is to preside over the trial of this case. I
25 also have the duty to rule on the admissibility of the

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1 evidence offered during this trial. You are to consider only
2 the competent evidence before you. If any testimony was
3 ordered stricken from the record in this case during this
4 trial, you must disregard that testimony. You are to consider
5 only the testimony which has been presented from the witness
6 stand, any exhibits which have been made a part of the record
7 in this case, and any stipulations of counsel.

8 I have the additional duty to charge you the law
9 applicable to this case. As the presiding judge, I am the
10 sole judge of the law of this case. Your duty as jurors is to
11 accept and apply the law as I now state it to you. If you
12 have any idea as to what the law is or what the law ought to
13 be and your idea is different from what I now tell you the law
14 is, you must abandon your idea of what the law is or ought to
15 be because you are sworn to accept the law and apply the law
16 exactly as I state it to you.

17 In every case tried in this court before a jury, the jury
18 is the sole and exclusive judge of the facts in a case. A
19 trial judge cannot intimate, state, comment on, or make any
20 statement to a trial jury about the facts in a case. Since
21 you, the jury, are the sole judge of the facts in this case,
22 you are not to infer from what I have said during the progress
23 of this trial in ruling upon the admissibility of evidence, or
24 otherwise, or anything that I say now during the course of
25 this instruction to you, that I have any opinion about the

1 facts in this case. The law does not allow me to have an
2 opinion about the facts in this case. This is a matter solely
3 for you, the jury, to determine. As jurors, your duty is to
4 determine the effect, value, weight, and truth of the evidence
5 presented during this trial.

6 Now, two types of evidence are generally presented during
7 a trial, direct evidence and circumstantial evidence. Direct
8 evidence directly proves the existence of a fact and does not
9 require any deduction. It is testimony of a person who claims
10 to have actual knowledge of a fact, such as an eyewitness.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact.
13 The law makes absolutely no distinction between the weight or
14 value to be given to either direct or circumstantial evidence,
15 nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence. Crimes may
17 be proven by circumstantial evidence. However, to the extent
18 the State relies on circumstantial evidence, all of the
19 circumstances must be consistent with each other, and when
20 taken together, point conclusively to the guilt of the accused
21 beyond a reasonable doubt. If these circumstances merely
22 portray the Defendant's behavior as suspicious, the proof has
23 failed.

24 The State has the burden of proving the Defendant guilty
25 beyond a reasonable doubt. This burden rests with the State

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1 regardless of whether the State relies on direct evidence,
2 circumstantial evidence, or some combination of the two. You
3 should weigh all of the evidence in the case. After weighing
4 all of the evidence, if you are not convinced of the guilt of
5 the Defendant beyond a reasonable doubt, you must find the
6 Defendant not guilty.

7 Necessarily, you must determine the credibility of
8 witnesses who have testified in this case. Credibility simply
9 means believability. Your duty as jurors is to analyze and to
10 evaluate the evidence and determine which evidence convinces
11 you of its truth. In determining the believability of
12 witnesses who have testified in this case, you may believe one
13 witness over several witnesses or several witnesses over one
14 witness. You may believe a part of the testimony of a witness
15 and reject the remaining part of the testimony of that same
16 witness. You may believe the testimony of a witness in its
17 entirety or reject the testimony of a witness in its entirety.
18 You may consider whether any witness has exhibited to you any
19 interest, bias, prejudice, or other motive in this case. You
20 may also consider the appearance and manner of a witness while
21 on the witness stand.

22 The rules of evidence ordinarily do not permit witnesses
23 to testify to opinions or conclusions. An exception to this
24 rule exists for witnesses we call "expert witnesses". A
25 witness who, by education and experience, has become expert in

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1 some art, science, profession, or calling may state an opinion
2 as to the relevant and material matter in which the witness
3 claims to be an expert, and may also state the reasons for the
4 opinion. You should consider any expert opinion received in
5 evidence in this case and, like any other evidence, give it
6 the weight you think it deserves. If you decide that the
7 opinion of an expert witness is not based on sufficient
8 education and experience, or if you conclude that the reasons
9 given in support of the opinion are not sound, or that the
10 opinion is outweighed by other evidence, you may disregard the
11 opinion entirely. An expert witness' testimony is to be given
12 no greater weight than that of other witnesses simply because
13 the witness is an expert. Further, you're not required to
14 accept the expert's opinion, even though it is not
15 contradicted.

16 Now, I instruct you and emphasize that the fact the
17 Defendant did not testify is not a factor to be considered by
18 you in any way in your deliberation and in your consideration
19 on the question of the guilt or the innocence of the
20 Defendant. The Defendant's failure to testify must not be
21 considered by you in any manner whatsoever. A Defendant has
22 the constitutional right to remain silent, and the assertion
23 of this right must not be considered by you in your
24 deliberations. I repeat, under your oath, you are to draw no
25 conclusion whatsoever from the fact that the Defendant in this

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1 case did not testify. The fact that this Defendant did not
2 testify should not even be discussed in the jury room. The
3 burden of proof, as I have stated to you, is on the State.
4 The Defendant is not required to prove his innocence. The
5 burden of proof remains on the State to prove guilt beyond a
6 reasonable doubt.

7 Now, in order to establish criminal liability,
8 criminal intent is required. For example, the mental state
9 required to be proven by the State for a particular crime
10 might be purpose, intent, knowledge, recklessness, or criminal
11 negligence. Criminal intent must be proven by the State
12 beyond a reasonable doubt. Criminal intent is always a matter
13 that must be determined by the jury from the circumstances
14 surrounding the situation. Intent cannot be proven to a
15 mathematical certainty. Medical science cannot dissect a
16 person's brain and determine what the person had in mind. So
17 the law says that criminal intent may be inferred from the
18 circumstances shown to have existed. This is how you
19 determine whether or not the element requiring intent was
20 present. Intent does not have to be established by direct and
21 positive evidence, but intent may be established by inference
22 in the same way as any other fact, by taking into
23 consideration the acts of the parties and all the facts and
24 circumstances of the case. Criminal intent is a mental state,
25 a conscious wrongdoing. You must determine what the Defendant

1 intended to do based on the circumstances shown to have
2 existed.' Criminal intent can arise from an action or a
3 failure to act. It may arise from negligence, recklessness,
4 or an indifference to duty or to consequences that is
5 considered by the law to be the equivalent of criminal intent.

6 Now, the Defendant is charged with possession with intent
7 to distribute heroin. To convict the Defendant of this crime,
8 the State must prove beyond a reasonable doubt that the
9 Defendant possessed heroin with the intent to distribute it.
10 To prove possession, the State must prove beyond a reasonable
11 doubt that the Defendant had both the power and the intent to
12 control the disposition or use of the heroin. Possession may
13 be either actual or constructive. Actual possession means
14 that the heroin was in the actual physical custody of the
15 Defendant. Constructive possession means that the Defendant
16 had dominion and control, or the right to exercise dominion or
17 control, over either the heroin itself or the property on
18 which the heroin was found. Mere presence at the scene where
19 the drugs were found is not enough to prove possession. The
20 Defendant's knowledge and possession may be inferred when a
21 substance is found on the property under the Defendant's
22 control. However, this inference is simply an evidentiary
23 fact to be taken into consideration by you, along with the
24 other evidence in the case, and to be given the weight you
25 decide it should have.

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1 The State must also prove beyond a reasonable doubt that
2 the Defendant intended to distribute the heroin. Distribute
3 means to deliver, other than by administering or dispensing, a
4 drug. Intent may be shown by acts and conduct of the
5 Defendant and other circumstances from which you may naturally
6 and reasonably infer intent. In determining whether the
7 Defendant had the intent to distribute the heroin, you may
8 consider the circumstances surrounding the Defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed, the manner in which it was
11 allegedly possessed, the place where it was allegedly
12 possessed, and other factors which you consider to be
13 important. You must find that the Defendant did not intend to
14 have the heroin solely for his own use.

15 Possession of more than two grains of heroin creates an
16 inference that the Defendant possessed the heroin with intent
17 to distribute it. This inference does not relieve the State
18 from proving beyond a reasonable doubt that the Defendant had
19 the intent to distribute. It is simply an evidentiary fact to
20 be taken into consideration by you, along with the other
21 evidence in the case and to be given the weight you think it
22 should have.

23 If you find that the State has failed to prove beyond a
24 reasonable doubt that the Defendant is guilty of possession
25 with intent to distribute heroin, you may consider whether the

1 State has proved beyond a reasonable doubt that the Defendant
2 is guilty of simple possession of heroin. Simple possession
3 of heroin contains all of the elements of possession with
4 intent to distribute heroin except simple possession does not
5 require an intent to distribute the heroin. To convict the
6 Defendant of possession of heroin, the State must prove beyond
7 a reasonable doubt that the Defendant knowingly or
8 intentionally possessed heroin.

9 Knowingly means with knowledge, consciously, not
10 accidentally. Intentionally means willfully; intending the
11 result which actually occurs; not accidentally or
12 involuntarily. Intent may be shown by acts and conduct of the
13 Defendant and other circumstances which you may naturally and
14 reasonably infer intent. Again, to prove possession, the
15 State must prove beyond a reasonable doubt that the Defendant
16 had both the power and the intent to control the disposition
17 or use of the heroin. As I previously charged you, possession
18 may be either actual or constructive.

19 Now, there are three possible verdicts which you may find
20 in this case. No significance whatsoever is to be given to
21 the order in which I state these verdicts to you. I simply
22 have to state one first, one second and one third.
23 The possible verdicts in this case are we, the jury, find the
24 Defendant guilty of possession with intent to distribute
25 heroin; or the second possible verdict is we, the jury, find

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1 the Defendant guilty of possession of heroin; or the third
2 possible verdict is we, the jury, find the Defendant not
3 guilty.

4 Ladies and gentlemen, your verdict must be a unanimous
5 one. Mr. Davis, as foreperson, when the jury agrees on a
6 verdict, you will check the appropriate verdict on the verdict
7 form, and then sign your name as foreperson and then knock on
8 the door, let the bailiff know that the jury has reached a
9 verdict and we'll bring you back into the courtroom at that
10 time.

11 Now, you've been allowed to take notes during the trial
12 of this case and you can now take your note pads with you into
13 the jury room to deliberate. However, please remember that
14 some people are better note takers than others. Juror notes
15 should not be given any greater weight than the recollection
16 of other jurors. The recollections of individual jurors should
17 be considered as reliable as notes taken by any other jurors.

18 Now, I'm going to excuse you back to the jury room, but
19 I'm going to ask that you not begin your deliberations at this
20 point in time. I've got to discuss with the attorneys whether
21 or not they have any challenges to my charges or any
22 additional charges or corrections that need to be made. If
23 they do and I deem them appropriate I'll bring you back into
24 the courtroom and I'll make whatever additional charges or
25 corrections are needed. If not, then all of the exhibits and

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1 the verdict form will be brought back to you in the jury room
2 and the bailiff will instruct you to begin your deliberations,
3 but please do not begin your deliberations until you've been
4 instructed to do so by the bailiff. All right. Thank you
5 very much.

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

8 THE COURT: All right. Any exceptions or additional
9 charges from the State?

10 MR. MARTIN: No, Your Honor.

11 THE COURT: Any from the Defense?

12 MR. STANKO: None from Defense, Your Honor.

13 THE COURT: All right. Let's make sure we've got all the
14 exhibits here. Let me give you the verdict form.

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

17 THE COURT: All right. Let's take it back with the
18 verdict form. Tell them that they can go ahead and begin
19 their deliberations. Okay? All right. We'll stand in recess
20 until we get a verdict.

21 MR. STANKO: Or a question.

22 THE COURT: Yeah, or a question. Now that all the
23 evidence, charges and deliberations your client's going to
24 need to stay here. Okay? All right. Anything from the State
25 before we recess?

Question from Jury

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1 MR. MARTIN: Not at this time, Judge.

2 THE COURT: Anything from the Defense?

3 MR. STANKO: Nothing further, Your Honor.

4 THE COURT: All right. We'll stand in recess until we
5 get a verdict or a question. All right.

6 (Deliberations begin at 4:29 p.m.)

7 OFF THE RECORD

8 (On the record. The following takes place outside the
9 presence of the jury. Question from jury at 5:05 p.m.)

10 THE COURT: All right. We've got a question from the
11 jury. "Did Officer Rabon know the Defendant? Was it him in
12 the car followed before? Dipped out on", and then quotation
13 marks, "dipped out on me the other day." I think that's
14 talking about when he was talking to the other officer. Seems
15 like he did say "he dipped out on me the other day," and then
16 follow up, "was the Defendant a POI," I guess that's person of
17 interest, "for known activities." I'm just going to write on
18 here these are facts to be determined by the jury from the
19 evidence if possible. The Court cannot comment on facts.

20 MR. STANKO: Yeah. Keep, keep deliberations limited to
21 what came from the, from the trial itself.

22 THE COURT: Well, I'm just going to say that these are
23 facts that a jury -- this -- how about this, these are facts
24 for a jury to decide from the evidence if possible or let me
25 think, how do we want to --

1 MR. STANKO: The problem being if, if they're asking
2 about him being a person of interest that I don't want
3 something ambiguous to make them think, oh, he must have been.

4 THE COURT: Yeah. All right. How about if I just say
5 these are fact issues and the Court cannot comment on fact
6 issues.

7 MR. MARTIN: Mr. Caraker had a -- that would probably
8 work. Mr. Caraker said these are facts and inferences that
9 have to be drawn from the testimony.

10 THE COURT: But like he said, I want to put in there that
11 if there's -- I'm trying to decide how to artfully say if
12 there's evidence as to these facts it's up to you to decide.
13 If there is no evidence of these facts then you're not going
14 to be able to decide them, and I don't know --

15 MR. STANKO: You could say all that.

16 THE COURT: Huh?

17 MR. STANKO: You could just say that.

18 THE COURT: Well, somebody tell me how to put it more
19 artfully than that.

20 MR. CARAKER: As the jurors you're the sole decider of
21 the facts.

22 THE COURT: How about that, and let me just say these are
23 facts. As the jury you are the sole deciders of the facts.
24 Is that agreeable?

25 MR. MARTIN: Yes, Your Honor.

Question from Jury

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1 MR. STANKO: Yes.

2 THE COURT: Wait a minute. What did I just say? These
3 are --

4 THE CLERK: You said these are facts. You are the sole
5 decider of the facts.

6 THE COURT: Okay. But I don't want to say that this is a
7 fact, he was a person of interest.

8 MR. STANKO: Just, just scratch the first sentence. Just
9 say you are the sole arbiters or you are the sole deciders of
10 facts.

11 THE COURT: Or the -- I'm going to say these are issues
12 --

13 MR. STANKO: For you to determine.

14 MR. CARAKER: Preface it with you are the jury.
15 Therefore you are the ones that have to decide on these facts.

16 THE COURT: Yeah.

17 MR. STANKO: The Court cannot provide further facts
18 beyond what came through the witnesses.

19 THE COURT: How about this, these are factual issues. As
20 the jury you are the sole determiners of the facts based upon
21 the evidence.

22 MR. STANKO: Sounds good to me.

23 THE COURT: That agreeable?

24 MR. MARTIN: Sure.

25 MR. STANKO: Yes, Your Honor.

Question from Jury

144

1 THE COURT: All right. I just wrote it on here. All
2 right. Let's mark this as Court's Exhibit Two. You all want
3 to take a look at it before we send it back? I just read to
4 you verbatim what I said on it.

5 MR. MARTIN: No, Your Honor.

6 MR. STANKO: Then we don't need to see it. We trust you,
7 sir.

8 THE COURT: All right. Just take that back to them.
9 Yeah. Don't -- tell them -- yeah. Hang onto it.

10 All right. Anything from the State before we recess?

11 MR. MARTIN: No, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. STANKO: No, Your Honor.

14 THE COURT: All right. We'll stand in recess.

15 MR. STANKO: Yes, sir.

16 OFF THE RECORD

17 (On the record. The following takes place outside the
18 presence of the jury. Question from jury at 5:38 p.m.)

19 THE COURT: Thank you very much. Please be seated. All
20 right. We've got two requests. The jury is request AV system
21 for video. So I guess they just want to watch the video
22 again. I'm going to bring it in to show it to them again, and
23 then the other, they need the legal definition of possession
24 with intent and simple possession. So I guess I'll just
25 charge them again the definition of possession with intent and

Question from Jury

145

1 the definition of simple possession. Any objections?

2 MR. MARTIN: No, Your Honor.

3 MR. STANKO: No objection, sir.

4 THE COURT: All right. Anything from the State before we
5 bring the jury in?

6 MR. MARTIN: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. STANKO: None, Your Honor.

9 THE COURT: All right. Let's go ahead and bring the jury
10 in.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right. Ladies and gentlemen, I've got
14 your request. I understand that you want to watch the video
15 again; is that correct?

16 FOREPERSON: Yes, sir, Your Honor.

17 THE COURT: Okay. All right. The best way to do that is
18 to bring you back in here and let's show it since we've
19 already got the set up in here, and the second request is for
20 the legal definition of possession with intent and simple
21 possession; is that correct?

22 FOREPERSON: Yes, sir, Your Honor. Basically the same
23 thing that you -- the information that you gave us prior to
24 our departure, individuals would like to hear this again.

25 THE COURT: Okay.

Question from Jury

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1 FOREPERSON: So that they can vote appropriately.

2 THE COURT: Okay. Now, is there any order in which you
3 want to address these issues or does --

4 FOREPERSON: Your Honor, if we could watch the video
5 first.

6 THE COURT: Okay.

7 FOREPERSON: And then do just like we have before and
8 then go to the definitions and then we could --

9 THE COURT: Okay. That'll be good. All right. Are we
10 set up and can we go ahead and play the video? All right.

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

12 THE COURT: Yeah. That's fine. Thank you.

13 All right. Ladies and gentlemen, to convict the
14 Defendant of possession with intent to distribute heroin the
15 State must prove beyond a reasonable doubt that the Defendant
16 possessed heroin with the intent to distribute it. To prove
17 possession the State must prove beyond a reasonable doubt that
18 the Defendant had both the power and the intent to control the
19 disposition or use of the heroin. Possession may be either
20 actual or constructive.

21 Actual possession means that the heroin was in the actual
22 physical custody of the Defendant. Constructive possession
23 means that the Defendant had dominion and control or the right
24 to exercise dominion or control over either the heroin itself
25 or the property on which the heroin was found. Mere presence

Question from Jury

147

1 at the scene where the drugs were found is not enough to prove
2 possession. The Defendant's knowledge and possession may be
3 inferred when a substance is found on the property under the
4 Defendant's control. However, this inference is simply an
5 evidentiary fact to be taken into consideration by you along
6 with the other evidence in the case and to be given the weight
7 you decide it should have.

8 The State must also prove beyond a reasonable doubt that
9 the Defendant intended to distribute the heroin. Distribute
10 means to deliver other than by administering or dispensing a
11 drug. Intent may be shown by acts and conduct of the
12 Defendant and other circumstances from which you may naturally
13 and reasonably infer intent.

14 In determining whether the Defendant had the intent to
15 distribute the heroin you may consider the circumstances
16 surrounding the Defendant's alleged possession. You may
17 consider the amount of the substance alleged to have been
18 possessed, the manner in which it was allegedly possessed, the
19 place where it was allegedly possessed, and other factors
20 which you consider to be important. You must find that the
21 Defendant did not intend to have the heroin solely for his own
22 use. Possession of more than two grains of heroin creates an
23 inference that the Defendant possessed the heroin with the
24 intent to distribute it. This inference does not relieve the
25 State from proving beyond a reasonable doubt that the

1 Defendant had the intent to distribute. It is simply an
2 evidentiary fact to be taken into consideration by you, along
3 with the other evidence in the case and to be given the weight
4 you decide it should have.

5 Now, if you find that the State has failed to prove
6 beyond a reasonable doubt that the Defendant is guilty of
7 possession with intent to distribute heroin, you must consider
8 whether the State has proved beyond a reasonable doubt that
9 the Defendant is guilty of simple possession of heroin.
10 Simple possession of heroin contains all of the elements of
11 possession with intent to distribute heroin except simple
12 possession does not require an intent to distribute the
13 heroin. To convict the Defendant of possession of heroin the
14 State must prove beyond a reasonable doubt that the Defendant
15 knowingly or intentionally possessed heroin. Knowingly means
16 with knowledge, consciously, not accidentally. Intentionally
17 means willfully, intending the result which actually occurs,
18 not accidentally or involuntarily. Intent may be shown by
19 acts and conduct of the Defendant and other circumstances
20 which you may naturally and reasonably infer intent. Again,
21 to prove possession the State must prove beyond a reasonable
22 doubt that the Defendant had both the power and the intent to
23 control the disposition or use of the heroin, and as I
24 previously charged you this possession may be either actual or
25 constructive.

Verdict

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1 All right. I'm going to send you back to the jury room
2 and let you continue with your deliberations.

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

5 THE COURT: All right. On the request to review the
6 video we'll put that as Court's Exhibit what -- Three, and
7 then put the legal definitions of possession with intent and
8 simple possession that'll be Court's Exhibit Four. That's
9 Three and Four.

10 All right. Anything further from the State at this time?

11 MR. MARTIN: No, Judge.

12 THE COURT: Anything from the Defense?

13 MR. STANKO: Nothing, Your Honor.

14 THE COURT: All right. We'll stand in recess until we
15 get a verdict or another question or request.

16 MR. STANKO: Thank you, sir.

17 OFF THE RECORD

18 (On the record. The following takes place outside the
19 presence of the jury. Verdict reached at 6:48 p.m.)

20 THE COURT: Thank you very much. Please be seated.

21 All right. I understand the jury's got a verdict.
22 Anything from the State before we bring the jury in?

23 MR. MARTIN: No, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. STANKO: Nothing, Your Honor.

Verdict

150

1 THE COURT: All right. Let's go ahead and bring the jury
2 in.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

5 THE COURT: All right. Ladies and gentlemen, welcome
6 back. Mr. Davis, I understand the jury has reached a verdict.
7 Is that correct?

8 FOREPERSON: Your Honor, that is correct, sir.

9 THE COURT: All right. Have you completed the verdict
10 form?

11 FOREPERSON: Yes, sir. I have.

12 THE COURT: All right. If you would please hand it to
13 the bailiff.

14 (Complies with request and Court reviews.)

15 THE COURT: All right. I'd ask the Clerk of Court to
16 please publish the verdict.

17 THE CLERK: Court of General Sessions, 15th Judicial
18 Circuit, indictment number 2017-GS-26-3047, the State of South
19 Carolina, County of Horry versus Abel Dewayne Gause, we, the
20 jury, find the Defendant guilty of possession with intent to
21 distribute heroin, signed by Christopher Davis, foreperson,
22 dated July 18th, 2018. Ladies and gentlemen of the jury, if
23 this is your verdict so signify by raising your right hand.

24 (All jurors raise right hand.)

25 THE COURT: All right. Let the record reflect that all

Motions

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1 jurors raised their right hand. Any polling of the jury?

2 MR. STANKO: No, Your Honor.

3 THE COURT: All right.

4 (Jury released by Court.)

5 THE COURT: All right. I know the Rules of Criminal
6 Procedure give you time limits for post-trial motions. Any
7 motions to be made at this time?

8 MR. STANKO: Your Honor, we would obviously ask for a new
9 trial based on the, based on the verdict going against the,
10 the weight of the evidence.

11 THE COURT: All right.. I'm going to deny the motion. I
12 think there was evidence in there to support the jury verdict.
13 Anything else?

14 MR. STANKO: Nothing at this time, Your Honor.

15 THE COURT: All right. Any reason as to why we cannot go
16 ahead and impose the sentence at this time? Have we got a
17 sentencing sheet?

18 MR. MARTIN: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. MARTIN: May I approach with it?

21 THE COURT: Yes.

22 MR. MARTIN: And may Mr. Stanko and I approach?

23 THE COURT: Yeah.

24 (Whereupon, a bench conference is held.)

25 THE COURT: All right. Mr. Stanko, anything in

1 mitigation?

2 MR. STANKO: Your Honor, Mr., Mr. Gause is in his early
3 forties. He, he has family support. He -- his wife has been
4 here all day. Your Honor, we would just ask for any, any
5 mercy the, the Court is willing to offer Mr. Gause.

6 THE COURT: All right. Mr. Gause, anything you would
7 like to say?

8 MR. GAUSE: I'm going to say something. I don't know if
9 I should say this or not, Your Honor, I feel like I wasn't
10 judged right, but honest, to tell you the truth, I know Ms.
11 Nixon on that jury.

12 THE COURT: Okay.

13 MR. GAUSE: I feel as though, you know what I'm saying,
14 that played a part of my verdict. I don't -- I know her. I
15 didn't recognize her until the end. I know her. She know my
16 momma like, she know my momma real good.

17 THE COURT: All right.

18 MR. GAUSE: She know my momma.

19 THE COURT: Anything else?

20 MR. GAUSE: Huh-uh, no, sir, and I feel like, you know
21 what I'm saying, I feel like, I feel like I wasn't, I wasn't
22 did right. I really do feel like that.

23 THE COURT: Okay. All right. Prior record?

24 MR. MARTIN: Your Honor, in 1992, the Defendant had a
25 possession with intent to distribute cocaine and an unlawful

Sentencing

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1 carry of a pistol, two counts; in '93, a parole revocation; in
2 '95 trafficking crack, possession with intent to distribute
3 cocaine and failure to stop for a blue light; in 2005, a
4 parole revocation; in 2012 a city ordinance violation; in 2014
5 a domestic violence, first offense. That was in South
6 Carolina. In North Carolina in 2012 11 counts of a worthless
7 check on a closed account; 2012, as well, obtaining property
8 by false pretense; and 2013 probation violation and in 2013 a
9 probation violation.

10 Your Honor, additionally, for the Court's information,
11 the State does have a pending case for distribution of heroin
12 third against the Defendant. Additionally, SLED has an
13 ongoing investigation with ten cases against the Defendant for
14 distributing trafficking weight of heroin. Those would all be
15 third offenses, facing a mandatory minimum of 25 years.

16 THE COURT: Okay. All right. All right. And now, the
17 prior, the two prior drug possession charges, you said those
18 were distribution charges? What were they again?

19 MR. MARTIN: In 1992 it was a possession with intent to
20 distribute cocaine, two -- three years later there was a
21 trafficking cocaine base crack and also a possession with
22 intent to distribute cocaine. He was sentenced for 30 years
23 on that charge and that is what makes it -- this a third
24 offense.

25 THE COURT: Okay. So he's got four prior distributions?

1 MR. MARTIN: Your Honor, he has no prior distributions.
2 He has two prior possessions with intent to distribute and one
3 prior trafficking.

4 THE COURT: Okay. I got you.

5 MR. MARTIN: Yes, Your Honor. The --

6 THE COURT: All right. And what did he get for the
7 trafficking?

8 MR. MARTIN: He got 30 years for the trafficking, 30
9 years concurrent for the PWID coke and three years concurrent
10 for the failure to stop for blue light in 1995.

11 THE COURT: Okay. All right. Mr. Gause, you have been
12 found guilty of possession with intent to distribute heroin
13 third offense. The sentence of the Court is that you be
14 confined to the State Department of Corrections for 30 years
15 and pay a fine of \$50,000. You'll receive credit for any time
16 served thus far.

17 MR. GAUSE: I thought you said it wasn't to go over
18 third. You didn't tell me that. You told me the max was
19 ten, the max was 30 on the other one. You didn't tell me
20 that, Stanko. You didn't tell me that.

21 THE COURT: All right. Anything further from the State
22 at this time?

23 MR. MARTIN: No, Your Honor.

24 THE COURT: Anything further from the Defense?

25 MR. STANKO: Nothing, Your Honor.

Sentencing

155

1 THE COURT: All right.

2 (Adjourned.)

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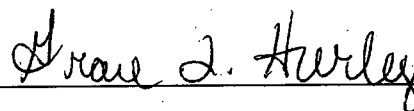
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of The State versus Abel Dewayne Gause, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on July 18, 2018.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

October 8, 2018.

WITNESSES

5
Ashley B Hardee Horry County Police Department

Jackie Witherspoon

ARREST WARRANT NUMBER

2017A2610200936

CDR: 0185 44-53-0370(b)(1)

DOA: 3/29/2017

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 22 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-26-03047

The State of South Carolina

County of Horry

George Henry Martin, III
17H02073

COURT OF GENERAL SESSIONS

June, 2017 TERM

THE STATE

vs.

Abel Dewayne Gause
B/M

ATTORNEY: James Stanko

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
HEROIN

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2017 JUN 23 PM 3:22

TERRE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

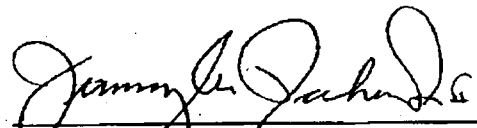
At a Court of General Sessions, convened on June 22, 2017, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

CDR: 0185 44-53-0370(b)(1)

That Abel Dewayne Gause did in Horry County on or about March 28, 2017, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(b)(1), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

0185
44-53-0370
b(1)

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of April, 2019.

RECEIVED
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SC Court of Appeals