

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM HOLMES,

APPELLANT.

APPELLATE CASE NO. 2018-001642

RECORD ON APPEAL – Volume 1

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,
DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

**SUPPRESSION HEARING
ORDER**

Arrest Warrant #2015A1010201114
Arrest Warrant #2015A1010201116
Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082
Indictment #2015-GS-10-06086
Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122
Arrest Warrant #2015A1010201123
Arrest Warrant #2015A1010201124
Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088
Indictment #2015-GS-10-06089
Indictment #2015-GS-10-06090
Indictment #2015-GS-10-06091

On November 30, 2017 this Court heard Defendant Holmes' and Defendant Boston's ("Defendants") Motion to Suppress Drug Evidence in the above captioned cases. The State was represented by Assistant Solicitor Nina Savas and Assistant Solicitor Truc Tran from the Ninth Circuit Solicitor's Office. Defendants were present for the hearing. Defendant Boston was represented by Taylor Seman and Theresa Norris and Defendant Holmes was represented by Ben Lewis and Nicholas Smit.

At the hearing, Sergeant Sherwood with the North Charleston Police Department testified that on March 6, 2015, he was patrolling the area around [REDACTED] which consisted of low income apartments. During that time period, there were complaints about ongoing drug

Red 1

activity at the complex and officers were assigned patrol of that area. On that date, Sergeant Sherwood noticed Defendants exiting a taxi and walking to Apartment 2. Sergeant Sherwood was familiar with Defendants through prior interactions involving drug activity. Sergeant Sherwood also knew the tenant, Denise Holman, as the sole occupant of the apartment and that she had a history of drug use. He was also aware of her vulnerable mental state. As such, he performed a knock and talk at Apartment 2. Denise Holman opened the door and gave officers consent to enter her apartment. Sergeant Sherwood testified that once inside, he observed in plain view clear plastic baggies on the kitchen counter containing cocaine residue. Officers performed a protective sweep of the apartment and found in plain view items used to manufacture crack cocaine and saw the Defendants actively manufacturing crack cocaine. Officers then executed a search warrant and collected the drug evidence.

Defendants assert that Sergeant Sherwood did not have reasonable suspicion to perform the knock and talk. Thus, Defendants argue that all evidence collected is inadmissible and should be suppressed. However, the State's position is that Defendants lack standing to contest the search because they do not have a reasonable expectation of privacy in a third person's home when conducting a drug transaction. Minnesota v. Carter, 525 U.S. 83 (1998). Even if there is standing, the State argues that Sergeant Sherwood's actions were lawful and were not violative of the Defendants' rights based on the United States Supreme Court ruling that a knock-and-talk is a constitutionally permissible investigative tactic. Florida v. Jardines, U.S. 133 S.Ct. 1409 (2013). Furthermore, the South Carolina Supreme Court articulated that knock and talks do not violate an individual's constitutional rights when law enforcement can articulate reasonable suspicion of illegal activity at the targeted residence. State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015).

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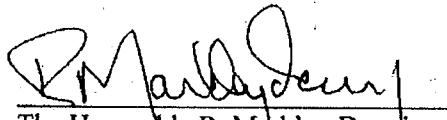
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After hearing testimony from witnesses, arguments, and reviewing case law, this Court finds that:

- (1) Pursuant to the S.C. Constitution, Defendants do have standing to contest the admissibility of any evidence collected by Sergeant Sherwood and the North Charleston Police Department.
- (2) Taking into consideration the totality of the circumstances, Sergeant Sherwood of the North Charleston Police Department had reasonable suspicion to conduct a knock and talk at the home of Denise Holman. Furthermore, Denise Holman, freely and voluntarily gave officers consent to enter her apartment and the officers' actions inside the apartment were lawful and not violative of the Defendants' rights.

As such, Defendants' Motion to Suppress Drug Evidence is DENIED.

IT IS SO ORDERED!


 The Honorable R. Markley Dennis
 Chief Administrative Judge, General Sessions
 Ninth Judicial Circuit Court

January 10, 2018
 Charleston, SC

Aug 3

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) Arrest Warrant # 2015A1010201122
) Arrest Warrant # 2015A1010201124
)

) Indictment # 2015-GS-10-06088
) Indictment # 2015-GS-10-06090
)

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

Defendant

ORDER

UPON MOTION of Benjamin Lewis, Attorney for the Defendant in the above-captioned matter, and after a hearing on October 1, 2018, the Defendant's Motion for a New Trial is DENIED and Defendant's Motion to Reconsider Sentence is DENIED.

AND IT IS SO ORDERED!

The Honorable R. Markley Dennis, Jr.
JUDGE, NINTH JUDICIAL CIRCUIT

Charleston, South Carolina

Dated: 10/2/18

FILED
2018 OCT -2 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY cc

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2015A1010201122

TRANSCRIPT OF RECORD

November 30, 2017

Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2015A1010201114

STATE OF SOUTH CAROLINA

vs.

DARELL O. BOSTON

Defendant

TRANSCRIPT OF RECORD

November 30, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

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DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>/</u>	<u>Admitted</u>
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State v Darell Boston, William Holmes
Proceedings
November 30, 2017

1 PROCEEDINGS

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

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

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

14 MR. LEWIS: Absolutely.

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

18 MR. LEWIS: It was not.

19 THE COURT: Thank you very much.

20 MS. SEMAN: Thank you.

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

22 THE COURT: Yes, ma'am.

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

State v Darell Boston, William Holmes
Proceedings
November 30, 2017

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

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

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

15 MR. LEWIS: Yes, Your Honor.

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

20 MR. LEWIS: That's correct.

21 THE COURT: Okay.

22 MS. WILSON: Thank you, Judge.

23 THE COURT: Thank you.
24
25

State v Darell Boston, William Holmes
Motion to Suppress
November 30, 2017

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

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

11 THE COURT: Thank you, Ms. Seman.

12 MR. LEWIS: The same.

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

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

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

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

State v Darell Boston, William Holmes
Motion to Suppress
November 30, 2017

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

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

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

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

7 THE COURT: Okay.

8 [Whereupon, Sergeant Sherwood comes forward]

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

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

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

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State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 JOSEPH SHERWOOD,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SAVAS:
6 Q. Sergeant Sherwood, where are you currently employed?
7 A. At the North Charleston City Police Department.
8 Q. And what is your current title?
9 A. Sergeant.
10 Q. And what are you sergeant over?
11 A. South evenings team one and the Swat team.
12 Q. And what are some other previous positions you've
13 held?
14 A. I did six years in a vice narcotics unit called the
15 sweet [phonetic] team, a year in narcotics, I did vice,
16 SRO school resource officer, patrol and that's about it.
17 Q. And how long have you been with the North Charleston
18 Police Department?
19 A. It will be eleven years in February.
20 Q. And do you have any additional training
21 certifications?
22 A. Yes. I have drug interdiction; several classes in
23 that, patrol interdictions, drug identification, gang
24 intervention; quite a bit, I'd have to look at all the
25 stuff.

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 Q. So you have served both on the drug narcotic unit
2 and have certifications and training in narcotics?

3 A. Correct. Yes, ma'am.

4 Q. And in your career how many drug cases would you say
5 you've dealt with over the eleven years?

6 A. A thousand.

7 Q. And how many cases specifically involving
8 manufacturing cocaine base or crack?

9 A. Easily a couple hundred.

10 Q. And have you been involved with search warrant cases
11 before?

12 A. Yes, several.

13 Q. And that's both narcotics search warrants and SWAT
14 search warrants?

15 A. Correct. And I've done personnel search warrants
16 and DNA search warrants.

17 Q. Okay. And back on March 6, 2015 at the time of this
18 incident what was your current title then?

19 A. Patrolman.

20 Q. And what area were you patrol over?

21 A. I was actually zone one officer which entitles our
22 Chicora Cherokee community.

23 Q. And what were some of your duties as a patrol
24 officer in that area?

25 A. To curb crime, to take calls for service, to try to

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

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

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

5 A. Yes ma'am, [REDACTED].

6 Q. Okay. You said [REDACTED]. Do you believe that may have
7 been [REDACTED]?

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

10 Q. And do you remember the apartment number?

11 A. Not off hand.

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

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

15 Q. That's okay.

16 MS. SAVAS: May I approach, Your Honor?

17 THE COURT: You may.

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

20 [Whereupon, the witness reviews document]

21 A. Apartment 2.

22 Q. And in which city is that in?

23 A. North Charleston.

24 Q. Okay. And do you know which county?

25 A. Charleston County.

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 Q. Okay. And was part of your duties to patrol that
2 area?

3 A. Yes.

4 Q. And what did you know about that area?

5 A. Since I've been working here in 2007 it's always
6 been a hot spot for narcotics activity. More
7 specifically recently before this incident we've had
8 several complaints about the drug activity, illegal
9 trespassing in the area quite often.

10 Q. And was there something significant about the
11 housing in those apartment complexes?

12 A. Yes. I spoke with the owner of the housing. He
13 said the people that live there, single occupants that
14 live in there and that they have well, not mentally
15 handicapped I'd say but they need to be assisted and
16 easily taken advantage of I guess is a better way of
17 saying it.

18 Q. And were there specific complaints about those
19 apartments themselves?

20 A. Yes, specifically those.

21 Q. And did North Charleston do anything in regards to
22 those complaints?

23 A. We tried to just step up patrols in the area and
24 swing throughs and try to stop out people -- and find out
25 who lives there. That's how I come to make contact with

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 people in the area who lives there.

2 Q. And on this day you were with other officers. Who
3 were those officers?

4 A. Officer -- and Hoose [phonetic].

5 THE COURT REPORTER: Give those names again please?

6 MS. SAVAS: Etninan, E-T-N-I-N-A-N.

7 Q. [Ms. Savas] Who was Officer Etninan at that time to
8 you?

9 A. I was training him. I'm also a field training
10 officer. That's just a sub duty of what I have and I was
11 training him.

12 Q. And in regards to this incident how did this sort of
13 come about? What were you doing there at that time?

14 A. I don't remember the call for service but we had a
15 dispatch call for service on Cody Street right there at
16 Clements.

17 And we were down there myself and both the other
18 officers and Sergeant Hoose [phonetic] and I were talking
19 and we were in the area kind of just keeping a presence
20 in there especially for the police.

21 Q. And Sergeant when you were in that area what did you
22 observe about this case? How did this case come about?

23 A. I saw a taxicab pull up. Actually prior to that I
24 knew -- like I said we help out people in the area. I
25 knew several people in there but I saw a taxicab pull up.

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 And I saw the defendants exit the vehicle and walk up to
2 apartment 2, which I know Ms. Denise she lives there from
3 prior knowledge of talking with her. And they entered
4 into the apartment and I found that odd just because of
5 where I knew them from. I knew they did not live there
6 and I knew Ms. Denise and her mental status.

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

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

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

14 A. Yes, I did.

15 Q. And how did you recognize them?

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

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

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

25 Q. And when you said you recognized them from that

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

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

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

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

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

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

11 A. Yes, ma'am.

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

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

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

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

21 Q. And what did she say?

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

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

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

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 Q. So she had opened the door all the way open ---

2 A. --- correct ---

3 Q. --- and you were standing at the front?

4 A. Yes, ma'am.

5 Q. And then you essentially performed a knock and talk?

6 A. Yes.

7 Q. Why do you perform those in law enforcement?

8 A. When he have the complaints that we were having and
9 the elements that we had at this residence we will knock
10 on the door to make sure that one, she is okay and two,
11 see if there is any possibly any crime or if she had any
12 information for us.

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

17 Q. So is it common practice for officers in that area
18 to perform knock and talks?

19 A. Absolutely.

20 Q. And when Ms. Denise had opened the door did she
21 resist in any way?

22 A. No, she actually opened up the door in an inviting
23 way. She opened the door all the way up and stepped
24 back. That's when I asked her and she almost made a
25 motion of come on in kind of thing. She moved out of the

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

1 way of the doorway itself as if to let somebody in.

2 Q. And was she in a friendly manner would you describe
3 that?

4 A. Oh, yes, absolutely.

5 Q. Did you address yourself as a law enforcement
6 officer?

7 A. Yes.

8 Q. And did she ever tell you not to come in at any
9 time?

10 A. No, not at all.

11 Q. Did you make any threats to her?

12 A. No.

13 Q. Did you force your way into the house?

14 A. No.

15 Q. Did you intimidate her into giving consent?

16 A. No, ma'am.

17 Q. At any time during the interaction with the tenant
18 did she ever appear to be uncooperative with you?

19 A. Not at all.

20 Q. Did she ever ask you to leave?

21 A. No.

22 Q. Did you consider her consent to be valid?

23 A. Yes.

24 MR. LEWIS: I'm sorry. I think we made a motion
25 previously that all these witnesses should have been

State v Darell Boston, William Holmes
Joseph Sherwood-Direct Examination by Ms. Savas
November 30, 2017

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

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

5 MR. LEWIS: Yes, Your Honor.

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

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

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

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

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

24 THE COURT: Yes.

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

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1 video walkthrough but nothing other than that.

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

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

8 THE COURT: Okay. He can be excused.

9 MR. LEWIS: Thank you, Your Honor.

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

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

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

15 [Whereupon, individuals exit the courtroom]

16 MS. SAVAS: Court's indulgence.

17 THE COURT: Certainly. Take your time.

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

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

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

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

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

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

25 THE COURT: You already have 1 through 9?

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

3 MS. SAVAS: 10 through 17?

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

7 MS. SAVAS: Thank you, Your Honor.

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

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

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

15 [Whereupon, the photograph is shown]

16 Q. And Sergeant Sherwood do you recognize this area?

17 A. Yes.

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

20 A. Just past that palm tree.

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

23 A. Right around here [indicates].

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

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1 A. Right here [indicates].

2 Q. Okay. And I'm going to show you State's exhibit
3 number 11.

4 [Whereupon, the photograph is shown]

5 THE COURT: Did I understand him to say he was
6 standing there?

7 MS. SAVAS: Yes, sir.

8 A. Outside my vehicle.

9 THE COURT: And your vehicle was parked near you?

10 A. Yes, sir. I'm sorry. My vehicle was parked right
11 there [indicates] and I was standing right next to the
12 vehicle.

13 THE COURT: Thank you.

14 Q. [Ms. Savas] And Sergeant Sherwood on this picture
15 which apartment did you go into?

16 A. This one [indicates].

17 Q. The green one?

18 A. Yes.

19 Q. Okay. And State's exhibit number 11. And on this
20 one could you please point to which unit it was?

21 A. [Indicates].

22 Q. That green one?

23 A. Yes.

24 Q. Okay. And Sergeant Sherwood you said that she had
25 given you consent to enter and y'all went inside the

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1 house. Did you observe anything upon entering the home?

2 A. I did.

3 Q. And what was that?

4 A. When she stepped out of the way and said that I
5 could come in I observed the defendants in the kitchen.

6 To the left of the kitchen there is kind of an open
7 doorway there and you could see them in the kitchen kind
8 of huddled around the microwave area.

9 Q. And did you notice any objects?

10 A. Yes. There were two plastic bags with white residue
11 on them.

12 Q. And what did you recognize that white residue to be?

13 A. Consistent with packaging of -- actually would be
14 the unpackaging of cocaine.

15 A. Of cocaine?

16 A. Yes, ma'am.

17 Q. And how big would you say this apartment is? Is it
18 large or is it small?

19 A. Maybe 400 square foot if not smaller.

20 Q. So if you're at the front door upon entering where
21 would I be if you're talking about the kitchen?

22 A. Right there [indicates].

23 Q. So this close is where you -- it's a very small
24 place.

25 A. Yes.

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1 Q. Was it a studio or a one bedroom?

2 A. It's a one bedroom studio I guess you would call it.

3 But through the doorway is a kitchen and a bathroom.

4 Q. Okay. Those are the only rooms. When you enter a
5 living room, a kitchen and then a bathroom?

6 A. Yes, ma'am.

7 Q. Okay. And Sergeant Sherwood I'm going to show you
8 what has been marked as State's exhibit number 12.

9 [Whereupon, the photograph is shown]

10 Q. Do you recognize this photo?

11 A. Yes ma'am, I do.

12 Q. And what is significant about this photo?

13 A. That was the packaging I observed.

14 Q. These two packages [indicates]?

15 A. Yes.

16 Q. So they were on the kitchen sink?

17 A. Yes, ma'am.

18 Q. Okay. And Sergeant Sherwood I'll show you what has
19 been marked as State's exhibit 17.

20 [Whereupon, the photograph is shown]

21 Q. Do you recognize this photo?

22 A. Yes, that is the microwave. That's what I saw after
23 they left from that so I could see.

24 Q. Okay. So if the microwave was on this side of the
25 sink which is the left in photo 12 where the baggies were

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1 where would that be in relation to the sink? The right?

2 A. To the right.

3 Q. Okay. And was that a clear view straight shot from
4 the front door to that counter?

5 A. Yes, as I walked in when she told me to that's when
6 I could see that.

7 Q. Okay. And you said that you noted the two
8 individuals in there?

9 A. Yes, ma'am.

10 Q. And are they present in the courtroom today?

11 A. Yes ma'am, they are.

12 Q. And would you be able to point them out?

13 A. Yes there [indicates] and there [indicates].

14 Q. The plaid shirt and the green shirt?

15 A. Yes.

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

19 THE COURT: So noted.

20 MS. SAVAS: Thank you, sir.

21 Q. [Ms. Savas] And so you said that you saw them at the
22 microwave in the kitchen. What happened next?

23 A. After she let me in I probably made a step or two in
24 there and that's when I started taking the scene in. At
25 that point they saw me. They turned around and they

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

6 Q. Okay.

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

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

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

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

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

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

23 A. Yes, I did.

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

25 A. A minute 54 I believe.

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1 Q. So that you would assume was in the middle of
2 cooking?

3 A. Yes, ma'am.

4 Q. Okay. And you had mentioned also a digital scale.
5 Is that in this photo?

6 A. Yes, you want me to circle it?

7 Q. Sure.

8 [Whereupon, the witness complies]

9 A. And then this [indicates] is the top to the digital
10 scale. That's actually what I saw first and then this
11 digital scale.

12 Q. Okay. And what is in this cabinet here [indicates]?

13 A. Baking soda is up top of that.

14 Q. Okay.

15 A. And then there is packaging.

16 Q. Okay.

17 A. And then I think that's where one of the whisks were
18 but it wasn't a used one.

19 Q. Before we jump into all the items that were found I
20 want to go back to when you had observed them running.
21 Was anything unusual about that?

22 A. It was. Usually when I go into a house or any
23 normal person goes in a house you kind of turn around and
24 say hi or what are you doing. It wasn't that. It was a
25 quick motion straight to the bathroom around the corner

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1 concealed themselves where I could not see them anymore.

2 Q. And when you said that someone was holding something
3 in their hand actually can you point to him in the
4 courtroom?

5 A. Yes ma'am, [indicates] the green shirt.

6 Q. The green shirt?

7 A. Yes, ma'am.

8 Q. But they had both ran into the bathroom together?

9 A. Yes, ma'am. They were both right there close
10 together. Just from the motion that they were both
11 making I could not see their hands but the way they kind
12 of ran off that's what concerned me.

13 The way they ran off they belayed their body
14 completely away from me to the point where like I said I
15 was getting worried at that point.

16 Q. And what happened after they had went into the
17 bathroom?

18 A. That's when I saw them run into the bathroom like I
19 said I got worried about weapons at that point because I
20 saw the -- there is obviously drug activity going on.

21 As I started to approach I told them to come out of
22 the bathroom which they both complied. They came right
23 out of the bathroom and came right into the main room
24 where Ms. Denise, Sergeant Hoose [phonetic] and I were.

25 Q. And what happened after that?

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

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

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

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

15 [Whereupon, the photograph is shown]

16 Q. Is that what you're talking about?

17 A. Yes, ma'am.

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

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

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

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

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

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

8 A. Absolutely, with the narcotics activity there.

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

11 A. Manufacturing crack cocaine.

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

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

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

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1 increments for distribution.

2 Q. Okay. And looking at State's exhibit 17 these were
3 the other items found. Are these all consistent with
4 manufacturing crack?

5 A. Yes.

6 Q. So they were literally caught in the act making
7 crack.

8 A. Correct. I've never seen that before.

9 Q. And about how long does it take to make crack?

10 A. As long as it takes to boil water.

11 Q. And once you performed the protective sweep and the
12 defendants were detained what did you do next?

13 A. After I saw what I saw I went and secured a search
14 warrant. We placed both the defendants in handcuffs just
15 pending our search warrant.

16 Q. And did you do anything to the microwave prior to
17 leaving for that warrant?

18 A. I did. I swabbed it.

19 Q. Let me show you State's exhibit number 14. It's a
20 photo of the microwave.

21 [Whereupon, the photograph is shown]

22 A. Yes, ma'am.

23 Q. And why did you swab the microwave?

24 A. Well, in the manufacturing of crack cocaine when it
25 steam boils it will actually boil over so it will leave a

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1 cocaine residue inside of it. So I took a cocaine swab
2 and I swabbed inside the microwave.
3 Q. And what does that cocaine swab show?
4 A. It shows it touched it for the presence of cocaine
5 in the microwave.
6 Q. And how do you know that?
7 A. It turns blue. It's a pink swab that will turn
8 blue.
9 Q. I'm showing you State's exhibit 16. Is this a photo
10 of that swab?
11 [Whereupon, the photograph is shown]
12 A. That's correct.
13 Q. It's a little bit of a glare but is that what you're
14 talking about, the blue?
15 A. Yes, ma'am.
16 Q. Okay. And State's exhibit 15, this is just a close
17 up of that swab?
18 [Whereupon, the photograph is shown]
19 A. Yes, ma'am.
20 Q. Okay. And so that microwave tested presumptive for
21 cocaine?
22 A. Correct.
23 Q. So then you went to write and execute a search
24 warrant?
25 A. Yes, ma'am.

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1 Q. Okay. Why did you get a search warrant when you had
2 already seen the manufacturing items and found drugs in
3 the house?

4 A. Through my experience I've found it's easier to keep
5 everything aligned. Once you have your probable cause
6 from something -- from a scene like this we would rather
7 go just and secure a search warrant and let the judge
8 make the ruling at that point if we had the probable
9 cause to actually search or not.

10 MS. SAVAS: Court's indulgence.

11 THE COURT: Yes, ma'am.

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

13 Q. And you do eventually get that search warrant signed
14 correct?

15 A. Yes, ma'am.

16 Q. And then what did you do once it was signed?

17 A. We executed it.

18 Q. Okay. And what does that entail?

19 A. A search of the residence.

20 Q. And then you had gathered the items of evidence?

21 A. Correct.

22 Q. Okay. And to the best of your knowledge all of
23 those items were properly sealed and taken into evidence?

24 A. Yes, ma'am.

25 Q. Okay.

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1 MS. SAVAS: Court's indulgence.

2 THE COURT: Okay.

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

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

6 A. Yes, ma'am.

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

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

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

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

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

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

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

8 A. Oh yes, absolutely.

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

11 A. No, not at all.

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

14 A. No, ma'am.

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

17 A. Absolutely.

18 Q. What would people typically do?

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

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

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

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

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. SAVAS: Court's indulgence.

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

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

11 THE COURT: Cross-examine, Ms. Seman?

12 MS. SEMAN: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MS. SEMAN:

3 Q. Good morning, Sergeant Sherwood.

4 A. How you doing?

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

8 A. Uh Huh.

9 THE COURT REPORTER: Is that yes?

10 A. Yes; I'm sorry.

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

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

15 Q. I'm sorry?

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

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

21 A. The whole apartment complex.

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

24 A. Yes, ma'am.

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

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- 1 at that apartment complex.
- 2 A. Correct.
- 3 Q. And that's why you say you were monitoring the area,
- 4 right?
- 5 A. Monitoring -- actually at the time at that moment we
- 6 were just sitting there talking until they pulled up.
- 7 Q. Right. But you testified with the Solicitor that you
- 8 had increased patrols in that area.
- 9 A. Our whole department has, yes ma'am.
- 10 Q. Yes, I didn't mean you specifically; I mean your
- 11 department.
- 12 A. Yes, ma'am.
- 13 Q. So your department increased patrols of the area.
- 14 A. Yes, ma'am.
- 15 Q. And there was a prior complaint made in February of
- 16 2015, right?
- 17 A. Yes, ma'am.
- 18 Q. And you were familiar with that complaint.
- 19 A. Yes, ma'am.
- 20 Q. And in fact you listed that complaint number in your
- 21 incident report for this case.
- 22 A. Correct.
- 23 Q. And the complaint in question was made by the
- 24 landlord.
- 25 A. Yes, ma'am.

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1 Q. And we know that because again the number matches
2 the complaint that you put in your incident report.

3 A. I didn't do the incident report. That wasn't my
4 report.

5 Q. You didn't write the incident report for this case?

6 A. I'm talking about the other cases you were referring
7 to.

8 Q. But you were familiar with the incident report,
9 right?

10 A. Yes, ma'am.

11 Q. And that was about a week earlier. That was
12 February 27th, 2015, right?

13 A. I'm assuming so. I don't have it in front of me.

14 Q. Would it help you to look at a copy of that report?

15 A. If you have it, absolutely.

16 Q. I do.

17 A. I just know it was written by an officer I work
18 with.

19 MS. SEMAN: May I approach?

20 THE COURT: You may.

21 [Whereupon, the witness is shown document]

22 Q. [Ms. Seman] So that is a copy of the report that
23 matches the number that you listed in your incident
24 report for this case, right?

25 A. Yes, ma'am.

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- 1 Q. And so that was on February 27th, 2015.
- 2 A. Yes, ma'am.
- 3 Q. And that complaint was made by the landlord.
- 4 A. Correct.
- 5 Q. Mr. Franklin.
- 6 A. Yes, ma'am.
- 7 Q. And in that complaint Mr. Franklin complained that
- 8 he had felt threatened by an individual that didn't live
- 9 there.
- 10 A. Yes, ma'am.
- 11 Q. By a non-resident that came out of apartment 13.
- 12 A. Yes, ma'am.
- 13 Q. Which is a different apartment than was at issue in
- 14 this case.
- 15 A. Yes, ma'am.
- 16 Q. Denise Holman lived in apartment 2.
- 17 A. Yes, ma'am.
- 18 Q. And in the complaint no one was identified by name
- 19 or nickname, right?
- 20 A. Not that I'm reading, no ma'am.
- 21 Q. Indeed it was a bare minimum description; a black
- 22 male with facial hair.
- 23 A. Yes, ma'am.
- 24 Q. That could fit a lot of people.
- 25 A. Correct.

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1 Q. When the Solicitor asked you questions you said that
2 when you came into Ms. Holman's apartment one or both
3 people had some items in their hands, right?

4 A. Like I said their bodies were belayed from me. It
5 appeared to me that they would have something in your
6 hands in the way that they were standing and the way they
7 ran off.

8 Q. Okay. So you didn't actually see their hands?

9 A. No, ma'am. That's why I was so worried at that
10 point about weapons.

11 Q. And you didn't mention anything about seeing
12 anything in their hands or believing that they had things
13 in their hands in your incident report for this case.

14 A. No.

15 Q. In fact you said that two men came out of the back
16 of the house, the kitchen area, right?

17 A. Yes, ma'am.

18 Q. And you also said that their hands were shaking?

19 A. Yes, ma'am.

20 Q. And their breathing was labored.

21 A. Yes, ma'am.

22 Q. But you said nothing about anything you thought was
23 in their hands, right?

24 A. Right --

25 Q. I'm sorry?

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1 A. It's not in the report, no ma'am; I didn't put it.

2 Q. And when the Solicitor asked you questions you said
3 that both people Mr. Holmes and Mr. Boston were standing
4 by the microwave.

5 A. Correct.

6 Q. And the microwave is really important because you
7 think that's what they were using to manufacture crack.

8 A. Correct.

9 Q. And you said the microwave was running in fact when
10 you walked in.

11 A. Yes, ma'am.

12 Q. So the microwave is a really important piece of
13 evidence.

14 A. Yes, ma'am.

15 Q. And the defendant standing next to it is an
16 important detail about that piece of evidence.

17 A. Yes, ma'am.

18 Q. In fact it's the most important detail because as
19 the Solicitor said you're literally thinking you caught
20 them in the act, right?

21 A. Yes, ma'am.

22 Q. But in your report though you didn't mention
23 anything about the defendant standing next to the
24 microwave.

25 A. Okay, yes.

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1 Q. Would you like to review a copy of your report?

2 A. Is it a question?

3 Q. Yes? It is correct that in your report you didn't
4 mention the defendant standing next to the microwave.

5 A. If I didn't put it in there, no ma'am I didn't
6 mention it in the report.

7 Q. Well, I'm happy to show you a copy if you'd like to
8 look at it?

9 A. I have it right here. I'll look at it.

10 Q. Okay.

11 THE COURT: Sergeant, put it on the side so when
12 you look and turn and when you speak so you can speak
13 towards the court reporter.

14 A. Oh, sorry.

15 [Whereupon, the witness reviews document]

16 A. No, I didn't put that in there.

17 Q. [Ms. Seman] And you're an experienced law
18 enforcement officer aren't you?

19 A. I'd like to think so, yes ma'am.

20 Q. You're a sergeant.

21 A. Yes, ma'am.

22 Q. And you've been at NCPD you say for 11 years?

23 A. Yes, ma'am.

24 Q. And you know the difference between actual
25 possession and constructive possession.

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

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

5 MS. SAVAS: Yes, Your Honor.

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

10 MS. SEMAN: Thank you, Your Honor.

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

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

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

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

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

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1 would you like me to move on?

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

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

7 THE COURT: That will be fine.

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

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

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

14 A. Oh, yes.

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

17 A. Uh Huh.

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

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

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

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1 A. --- most of the time yes, it would be a 99 percent
2 chance that it would probably be theirs so I would most
3 assume that yes, absolutely.

4 Q. And that's different than constructive possession.

5 A. Yes.

6 Q. And that's when people have control over an area,
7 right?

8 A. Yes.

9 MS. SAVAS: Objection, Your Honor. The detective
10 is not a lawyer to comment on the law.

11 THE COURT: I appreciate it. I've overruled it.
12 Move on please.

13 MS. SEMAN: Yes, Your Honor.

14 THE COURT: Thank you.

15 Q. [Ms. Seman] And Sergeant Sherwood you wrote the
16 search warrant in this case, didn't you?

17 A. Yes.

18 Q. And you had to write up an affidavit, right?

19 A. Yes.

20 MS. SAVAS: Objection, Your Honor. Respectfully
21 this is not a Franks hearing. I did not go into those or
22 admit that into evidence.

23 THE COURT: Well, you'll have a chance to ask
24 follow-up questions, Solicitor. Overruled. We're going
25 to have a hearing. Thank you, ma'am.

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1 MS. SAVAS: Yes, ma'am.

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

4 MS. SEMAN: Yes, Your Honor.

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

6 A. Yes.

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

8 A. Yes.

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

10 A. Yes.

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

12 A. Yes.

13 Q. And then you went back inside.

14 A. Yes.

15 Q. And you executed the search warrant.

16 A. Yes.

17 Q. And that took awhile.

18 A. Yes, ma'am.

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

21 A. Yes, ma'am.

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

23 A. Yes, ma'am.

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

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

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

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

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

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

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

17 A. I believe she did, yes.

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

20 A. Okay.

21 Q. Isn't it?

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

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

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

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

3 MS. SEMAN: Yes, Your Honor.

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

5 MS. SEMAN: Yes, Your Honor.

6 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

23 A. No, I did not.

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

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1 A. Correct.

2 Q. There were no drug complaints out of her apartment,
3 right?

4 A. Not specifically out of hers; it's the whole
5 complex. It's not a very big complex. It's like -- I
6 don't know how many off hand but it's not very many.

7 Q. There was no weapons complaint out of her apartment.

8 A. Not specifically out of hers, no.

9 Q. There was no complaint of a wanted person being at
10 her apartment.

11 A. No, ma'am.

12 Q. There was no complaint of someone armed and
13 dangerous being at her apartment.

14 A. No, ma'am.

15 Q. You saw Mr. Boston and Mr. Holmes go in, right?

16 A. Yes.

17 Q. But you didn't have any information that they were
18 committing a burglary or an armed robbery.

19 A. Not at all.

20 Q. And you were in the area for a traffic stop that day
21 weren't you?

22 A. I can't recall what reason I was on -- it could have
23 been a traffic stop or a call for service -- I can't
24 remember what that was.

25 Q. But you at least know it was for something

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1 unrelated.

2 A. Correct. It was completely unrelated. But
3 everything is related to a policeman when you're on the
4 job.

5 Q. And you saw Mr. Boston and Mr. Holmes get out of a
6 taxi together and that's when you decided to approach.

7 A. Not at first. I kind of let it sink in and
8 remembered who they were and where they were from and
9 remembered about Ms. Denise. It took a while before I
10 decided to actually act on it.

11 Q. So at that point you approached Ms. Holman's
12 apartment door, right?

13 A. Yes, ma'am.

14 Q. And you knocked on the door, right?

15 A. Yes, ma'am.

16 Q. And she opened the door?

17 A. Yes.

18 Q. You said she didn't resist.

19 A. No, not at all.

20 Q. And you did not tell her she could say no to you
21 coming into her apartment, right.

22 A. She could say no anytime she wanted.

23 Q. But you didn't make that clear to her is all I'm
24 saying. You didn't mention that fact.

25 A. It would be like anybody asked her if it was okay to

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1 come in and talk to her and she said that's fine.

2 Q. But she didn't give you permission to go into the
3 kitchen did she?

4 A. Excuse me?

5 Q. She did not give you permission to go into the
6 kitchen.

7 A. She said come inside.

8 Q. But she did not give you permission to go into the
9 kitchen.

10 A. She didn't specifically say kitchen, no.

11 Q. And she didn't sign any consent to search form or
12 anything like that.

13 A. No, ma'am.

14 Q. And you said on direct with the Solicitor that you
15 had met Ms. Holman once -- or you had met her before,
16 right?

17 A. Yes.

18 Q. More than once?

19 A. Yes -- no, I'm sorry; yes ma'am, I've met a couple
20 of times but specifically one time.

21 Q. One time that you remember at this point?

22 A. Yes. Like I said I'm out working and I see so many
23 people -- it's so hard to keep track of everybody..

24 Q. Sure. You had even searched her apartment before
25 though hadn't you?

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1 A. Not that I remember.

2 MS. SEMAN: May I approach, Your Honor?

3 THE COURT: Yes.

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

5 MS. SEMAN: Oh, I'm sorry.

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

7 MS. SAVAS: Your Honor, the State would object to

8 this line of questioning. This is about a different

9 resident at a different location not relevant to this

10 case.

11 THE COURT: I appreciate that, Solicitor. You

12 don't get to make that determination. You can object all

13 you want. The objection is noted. Go ahead and

14 continue your examination. Thank you, sir.

15 MS. SEMAN: May I approach, Your Honor?

16 THE COURT: Thank you.

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

18 [Whereupon, the witness is shown document]

19 A. It's an incident report.

20 Q. And your name is at the bottom of that incident

21 report isn't it?

22 A. Yes, ma'am.

23 Q. I'll give you a chance to look over it so you can

24 refresh your memory.

25 [Whereupon, the witness reviews document]

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1 A. I forgot all about this.

2 Q. I'm sorry?

3 A. I forgot all about this.

4 Q. Okay.

5 A. Like I said it's hard to keep track of everything
6 I've done. It's like asking you do you remember that
7 guy.

8 Q. Absolutely. I totally understand.

9 THE COURT: Would somebody tell me what this
10 document is that you just handed him so I can make a
11 determination as to whether it is relevant or not.

12 MS. SEMAN: Yes, Your Honor.

13 THE COURT: I mean y'all -- please do have some
14 modicum of movement in this. Y'all are having a
15 conversation. I can't -- that doesn't help me.

16 MS. SEMAN: Yes, Your Honor. I have shown Sergeant
17 Sherwood an incident report from ---

18 THE COURT: --- from when and what?

19 MS. SEMAN: March of 2014.

20 THE COURT: All right.

21 MS. SEMAN: In that incident report he searched Ms.
22 Holman's apartment.

23 THE COURT: I just need to know what it is. It's
24 about this apartment.

25 MS. SEMAN: It's a different apartment but it's the

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1 same person.

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

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

5 THE COURT: So what? I appreciate that.

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

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

9 MS. SEMAN: Okay. Thank you.

10 THE COURT: Thank you.

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

13 A. Yes.

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

15 A. Directly in front of it.

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

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

19 Q. Okay. How would you explain it?

20 A. It was directly in front of me.

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

23 A. Yes, ma'am.

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

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

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- 1 Q. And you didn't see any paraphernalia.
- 2 A. Scales, yes ma'am.
- 3 Q. And because of that no one was under arrest yet.
- 4 A. No, ma'am.
- 5 Q. Mr. Holmes wasn't under arrest.
- 6 A. No, ma'am.
- 7 Q. Mr. Boston wasn't under arrest.
- 8 A. No, ma'am.
- 9 Q. And Ms. Holman wasn't under arrest.
- 10 A. No, ma'am.
- 11 Q. They were all detained, right?
- 12 A. At that point, yes ma'am.
- 13 Q. And then you performed the protective sweep.
- 14 A. No.
- 15 Q. Okay. You didn't perform a protective sweep?
- 16 A. I did perform a protective sweep. After they
- 17 removed themselves from the bathroom and came out they
- 18 sat down on the couch after I believe it was Sergeant
- 19 Hoose [phonetic] who checked the cushions to make sure
- 20 there was no weapon there either and they sat down.
- 21 That's when I did a protective sweep. It's a very
- 22 small room, very quickly done. It's not very much room
- 23 for other people or weapons to be stored. That's where
- 24 the Pyrex --
- 25 THE COURT REPORTER: That's where what?

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- 1 A. The Pyrex cup, it's a brand of measuring cup.
- 2 Q. [Ms. Seman] And again Sergeant Sherwood you wrote
- 3 the affidavit for the search warrant, right?
- 4 A. Yes, ma'am.
- 5 Q. You went before the Magistrate.
- 6 A. Yes, ma'am.
- 7 Q. In person.
- 8 A. Yes, ma'am.
- 9 Q. You swore an oath.
- 10 A. Yes, ma'am.
- 11 Q. Just like the oath you swore today.
- 12 A. Yes, ma'am.
- 13 Q. And in that affidavit you wrote that you approached
- 14 that apartment because of drug deals didn't you?
- 15 A. Yes, ma'am.
- 16 Q. And as you mentioned before the reason that you
- 17 approached the apartment was because of that landlord's
- 18 complaint, right?
- 19 A. That and other complaints, yes.
- 20 Q. But you didn't mention any other complaints in your
- 21 incident report.
- 22 A. No, ma'am.
- 23 Q. And the landlord's complaint didn't involve any
- 24 drugs.
- 25 A. Not in that incident report no ma'am. He's

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1 complained before.

2 MS. SEMAN: Court's indulgence.

3 THE COURT: Certainly.

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

5 MS. SEMAN: No further questions, Your Honor.

6 THE COURT: Okay. Mr. Lewis.

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

10 THE COURT: Yes, you do.

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

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

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

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

21 THE COURT: Yes.

22

23

24

25

26

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1 CROSS-EXAMINATION

2 BY MR. LEWIS:

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

5 [Whereupon, the photograph is shown]

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

8 A. Yes. That's the same layout.

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

12 A. Yes, sir.

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

16 A. Yes, sir.

17 Q. From here?

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

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

22 A. Approximately, yes.

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

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1 A. Yes, sir.

2 Q. That you were shown. Is there anything at all in
3 those?

4 A. There's a residue in them.

5 Q. Okay. So a white residue in a kitchen.

6 A. Yes, sir.

7 Q. And you immediately knew that to be cocaine. No
8 question in your mind, no other possible substance.

9 A. It was packing narcotics doing a cut or for cooking.

10 Q. Well, is cut illegal?

11 A. An action of cooking, yes.

12 Q. If it's not packaged with cocaine is that illegal?

13 A. It depends on what it is. Cooking is a lot of
14 things.

15 Q. Is baking soda illegal?

16 A. If baking soda is used then, no sir.

17 Q. Okay. Is flour illegal?

18 A. No.

19 Q. Is salt illegal?

20 A. No.

21 Q. Is sugar illegal?

22 A. No.

23 Q. Is cream of tartar illegal?

24 A. No.

25 Q. Or any other number of white powders in a kitchen

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1 illegal?

2 A. No, sir.

3 Q. But from this distance you were able to immediately
4 see that and using your eyes determine the chemical
5 makeup of that substance at some point?

6 A. I mean no. I'm not a scientist so I can't ---

7 Q. --- exactly. But based on that you felt you had the
8 ability then to conduct a protective sweep. Drug
9 activity, right?

10 A. It was actually when they ran away from the
11 microwave so it -- so to me at that point about weapons.

12 Q. Let's get back to that.

13 MR. LEWIS: And I'll try to be faster, Judge. I
14 apologize.

15 THE COURT: Take your time. There's no problem.

16 MR. LEWIS: Ms. Seman was much more thorough than I
17 normally am.

18 Q. [Mr. Lewis] In this you did a two page report in
19 this case, right?

20 A. Yes.

21 Q. You did not mention that you saw someone slamming
22 the door while manufacturing crack cocaine, did you?

23 A. No, it's not ---

24 Q. --- that would be a pretty big fact wouldn't it?

25 A. I mean maybe -- yes.

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- 1 Q. Maybe?
- 2 A. Yes.
- 3 Q. Okay. But you didn't meet with them. You met with
- 4 Ms. Savas at least three times.
- 5 A. Yes.
- 6 Q. Did you ever tell her that they slammed the door?
- 7 A. Yes.
- 8 Q. You did? When did you tell her that?
- 9 A. I don't know because you've asked me dates three
- 10 different times. This is from 2015; I'm not 100 percent
- 11 on what time and when.
- 12 Q. Sure. You met with her at least three times.
- 13 A. Okay.
- 14 Q. Was it the first time you met with her?
- 15 A. I have no idea.
- 16 Q. Okay. But you did definitely tell her that?
- 17 A. Yes.
- 18 Q. That they slammed the microwave?
- 19 A. Slammed, closed.
- 20 Q. Closed the microwave door.
- 21 A. That's fine.
- 22 Q. You told her that.
- 23 A. Yes.
- 24 Q. Okay. Do you acknowledge that in your incident
- 25 report you did not say that anyone had anything in their

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1 hands?
2 A. I think I said something -- no I did not put it.
3 Q. Right. But you did comment on their hands and how
4 they appeared.
5 A. Yes.
6 Q. That they were visibly shaking.
7 A. Yes.
8 Q. You didn't put that when they came out you said as
9 soon as you saw them their hands were visibly shaking.
10 You can read your report.
11 A. Yes.
12 Q. And then after meeting with Ms. Savas you said that
13 both parties had something in their hands. Not maybe,
14 not their bodies were belayed; they did have something in
15 their hands both of them, right? You told her that.
16 A. Are you telling me that's what I told her or asking
17 me ---
18 Q. --- I'm asking you if you told her that. Yes, sure;
19 did you tell her that?
20 A. I believed they had something in their hands they
21 way they belayed their bodies.
22 Q. No, not believed. You definitely told her that they
23 had things, each of them, in their hands.
24 A. I'm telling you what I said. I don't know what
25 you're...

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1 THE COURT: He's asking you did tell them that they
2 both had something in their hands; that's the question.

3 A. I believe -- I'm telling you what I said. I
4 believed they had something in their hands.

5 THE COURT: You can answer yes or no and you can
6 explain it. Or you can explain it if you want to.

7 A. Yes, sir.

8 THE COURT: Thank you.

9 Q. [Mr. Lewis] So yes?

10 A. Yes.

11 Q. So you did tell her that they both definitely had
12 something in their hands?

13 A. Not definitely. I mean...

14 Q. So if she sent us that information that they did
15 that was a misrepresentation of what you told her?

16 A. I'm sorry, say it again.

17 Q. If she sent us an email saying that they both had
18 something in their hands ---

19 MS. SAVAS: --- objection, Your Honor. The
20 sergeant has no foundational knowledge of what emails I
21 sent to defense. It's not relevant to this ---

22 THE COURT: --- he didn't ask -- he asked him a
23 hypothetical, Solicitor. He said if she said it then
24 would that be an incorrect statement. He's not saying
25 that you sent something. He said if you did. Overruled.

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1 Thank you.

2 MS. SAVAS: Thank you.

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

7 A. Possibly.

8 THE COURT: He's answered your question.

9 MR. LEWIS: Thank you, Judge.

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

12 A. I could have.

13 Q. Did you or did you not?

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

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

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

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

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

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

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

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

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

9 MS. SAVAS: Yes, sir.

10 A. So?

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

14 A. Possibly.

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

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

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

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1 A. Well, we were talking so.

2 Q. So the gentlemen, these two guys that you have
3 identified had already gone into the house and had been
4 inside for 15 minutes or so.

5 A. Approximately.

6 Q. Did you hear any screams?

7 A. No, sir.

8 Q. Did you see them carrying any firearms or any
9 contraband as they approached the residence?

10 A. Not that I observed, no.

11 Q. Okay. So at the time you approached to conduct the
12 knock and talk you saw nothing that suggested someone was
13 committing a crime.

14 A. No, sir.

15 Q. Nothing?

16 A. No, sir.

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

21 THE COURT: You can.

22 MR. LEWIS: Okay.

23 THE COURT: It's not admitted ---

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

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

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1 not taken on the day of the...

2 MR. LEWIS: That's correct.

3 [Whereupon, the video plays]

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

5 A. Yes, sir.

6 [Whereupon, the video ends]

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

9 A. Yes.

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

12 A. Yes.

13 Q. But that would fairly and accurately from your
14 experience represent the layout of apartment 2?

15 A. That is apartment 2.

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

20 A. Yes.

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

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1 A. --- I saw steam coming -- you mean from the touch or
2 from?

3 Q. Touch.

4 A. Initially when I saw it I used the back of my hand
5 to see if it was at all warm but I could see that it was
6 warm either way with the steam coming off of it.

7 Q. Okay.

8 A. So it was more of -- at that point that would be
9 more of a figure of speech. It's obviously hot to the
10 touch because of steam coming off of it.

11 Q. Okay. You also asked all three parties or at least
12 Mr. Holmes and Mr. Boston if they would claim ownership
13 of the drugs?

14 A. Yes.

15 Q. And no one claimed ownership of it?

16 A. No, sir.

17 Q. But what you testified to today is that you actively
18 saw them basically whisking it up and then ran to the
19 bathroom.

20 A. Yes, sir.

21 Q. But you asked them anyway?

22 A. Sir?

23 Q. You asked them anyway if that's what they were
24 doing.

25 A. I'm going to just as out of an interview stance if

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

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

3 MR. LEWIS: But Mr. Boston ---

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

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

9 A. The gentleman on the left.

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

12 A. His last name is Holmes.

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

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

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

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

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1 exact same thing.

2 MR. LEWIS: One moment, Judge.

3 THE COURT: Certainly.

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

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

7 A. You mean like DNA or fingerprints?

8 Q. Yes?

9 A. No.

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

12 A. Yes, those things get hot.

13 Q. No gloves on for you?

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

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

18 A. No, sir.

19 Q. But their hands were visibly shaking?

20 A. When they came out, yes sir.

21 Q. Didn't find any gloves?

22 A. No, sir.

23 Q. Okay. Thank you.

24 THE COURT: Now Solicitor you may redirect.

25 MS. SAVAS: Thank you, Your Honor.

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REDIRECT EXAMINATION

BY MS. SAVAS:

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

A. No.

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

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

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

A. Yes, absolutely.

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

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

Q. Okay.

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

Q. About the search warrant Sergeant just briefly one

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1 quick line.

2 MS. SAVAS: May I approach, Your Honor?

3 THE COURT: You may.

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

6 [Whereupon, the witness is shown document]

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

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

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

13 A. Oh, sorry.

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

15 A. You want me to do it again?

16 Q. Yes, please.

17 A. That on March 6, 2015 at approximately 5:25 p.m.
18 members of the North Charleston Police Department went to
19 [REDACTED], apartment 2.

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

21 A. Apartment 2 in reference to a complaint about drug
22 deals using the apartments for drug sales --

23 Q. So apartments, correct?

24 A. Yes.

25 Q. And you meant the apartment complex?

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1 A. Yes, ma'am.

2 Q. Which were you reasons for the area patrols and the
3 crime that you say there were numerous complaints in that
4 area?

5 A. Yes, ma'am.

6 Q. Okay. Also, just one more line, in your affidavit
7 regarding the premises to be searched can you please what
8 you wrote about that location specifically?

9 A. The location has been identified as the place where
10 illegal narcotics are used, sold, or stored.

11 Q. Okay. And you're talking about that apartment
12 complex, correct?

13 A. Yes, ma'am.

14 Q. Okay. Just to clarify Sergeant just briefly about
15 Ms. Denise's capacity you're not a doctor?

16 A. No, I'm not.

17 Q. When you meant -- when Ms. Seman had asked you
18 regarding her competency you told her that you do not
19 think she had the capacity to say no to those defendants
20 about entering her apartment.

21 Do you mean that they were threatening and
22 intimidating her like to stand up to her or she doesn't
23 understand how to say yes or no?

24 A. No, she possibly is intimidated by them.

25 Q. Okay. So you believe this is a case of

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1 intimidation?

2 A. Yes.

3 Q. And at that time you believe she understood giving
4 you consent to enter?

5 A. Oh yes, absolutely.

6 Q. Sergeant Sherwood, in common practice of knock and
7 talks when you approached you don't need to know that a
8 crime is actually occurring; it's an investigative
9 technique, correct?

10 A. Yes, ma'am.

11 Q. Okay. And you felt you had enough information to
12 approach the door?

13 A. Yes, ma'am.

14 Q. Okay. Sergeant Sherwood, Mr. Lewis alluded to
15 baking flour cook ingredients. Did you see any other
16 food items in that home?

17 A. No, I don't think there was anything food wise
18 inside that home.

19 Q. There weren't bags of flour lying around?

20 A. No, there was nothing like that.

21 Q. They weren't baking a cake?

22 A. No. No cake baking.

23 Q. And why then did you think and believe that what you
24 saw in residue was cocaine residue instead of like flour?

25 A. The way the bags were torn and sitting out on the

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

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

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

5 Q. The same type of baggies.

6 A. Yes.

7 Q. The top open, residue?

8 A. Yes.

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

11 A. Yes, ma'am.

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

16 A. Yes, ma'am.

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

18 A. No, ma'am.

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

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

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- 1 Q. Okay. Just briefly, just real quick.
2 [Whereupon, the photograph is shown]
3 Q. So in this photo that they had shown you this
4 [indicates] seems to be the doorframe, correct?
5 A. Yes, ma'am.
6 Q. This [indicates] is the bottom of the door.
7 A. Yes, ma'am.
8 Q. So you were already in here [indicates].
9 A. Yes. That bed [indicates] wasn't there.
10 Q. Okay. But you were already in this room looking at
11 that counter [indicates].
12 A. Yes, ma'am.
13 Q. Okay. And so just to kind of get me straight where
14 you were standing when you entered the home how far is
15 that kitchen because this picture looks kind of strange.
16 A. Oh, it's really close.
17 Q. So to me ---
18 A. --- if you look at that bed there [indicates] they
19 probably can't even open that closet.
20 Q. If I'm the kitchen counter where would you want to
21 put me, here [indicates], here [indicates]?
22 A. A little bit further. Yes, right about there
23 [indicates].
24 Q. So you can see that microphone right there
25 [indicates]?

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1 A. Yes, ma'am.

2 Q. Okay. Officer Sherwood, quickly, we met probably
3 several times the past couple of years, correct?

4 A. Yes, ma'am.

5 Q. Okay. And with each conversation did I ask you
6 different questions sort of to get a picture of this ---

7 A. --- yes, yes.

8 Q. Okay. And Sergeant Sherwood, are you giving more
9 details even today on the stand with the questions from
10 both defense and the State than what was in your initial
11 incident report?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. SAVAS: Court's indulgence.

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

16 MS. SAVAS: Nothing further.

17 THE COURT: Recross, Ms. Seman?

18 MS. SEMAN: Very briefly, Your Honor.

19 THE COURT: Take as much time as you need.

20 MS. SEMAN: Thank you.

21

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Joseph Sherwood-Recross-Examination by Ms. Seman
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1 RECROSS-EXAMINATION

2 | BY MS. SEMAN:

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

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

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

9 A. Yes, ma'am.

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

11 A. Yes, ma'am.

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

15 A. Yes, ma'am.

16 Q. Not the individual apartment.

17 A. Yes, ma'am.

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

20 A. Yes, ma'am.

21 Q. Because she was intimidated, right?

22 A. Yes, ma'am.

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

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

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1 THE COURT REPORTER: I'm sorry?

2 A. I wasn't intimidating her.

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

6 A. Yes, ma'am.

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

10 A.. Yes.

11 MS. SEMAN: Court's indulgence.

12 THE COURT: Certainly.

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

14 MS. SEMAN: Nothing further, Your Honor.

15 THE COURT: Okay. Mr. Lewis, recross?

16 MR. LEWIS: Very briefly, Judge.

17

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2 BY MR. LEWIS:

6 A. Yes.

9 [Whereupon, the photograph is shown]

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

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

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

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

5 A. There are two walls there.

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

7 A. No.

8 MR. LEWIS: Nothing further.

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

14 THE WITNESS: From the bed.

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

16 THE WITNESS: The bed was not there.

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

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

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

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

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

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1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Thank you.

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

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

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

7 MR. LEWIS: Sorry, Judge.

8 THE COURT: I can see it myself.

9 MR. LEWIS: Sorry, Judge.

10 THE COURT: Thank you. He can say what he wants.

11 That's why I asked the question. Thank you. You may
12 come down.

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

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

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

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

21 MS. SAVAS: Thank you, Judge.

22 [Whereupon, court is in recess from 11:50 until
23 11:57]

24

25

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

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

5 [Whereupon, Ms. Holman comes forward]

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

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

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

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State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
November 30, 2017

1 DENISE HOLMAN,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MS. SAVAS:
6 Q. Good morning, Ms. Denise.
7 A. Good morning.
8 Q. Ms. Denise, how old are you?
9 A. 52.
10 Q. And how far did you go in school?
11 A. I went all the way to the 12th grade and got my GED.
12 Q. You have your GED?
13 A. Uh Huh.
14 Q. Ms. Denise, we're going to talk about some things
15 that happened a few years ago. Do you remember living at
16 that apartment [REDACTED] number 2?
17 A. Yes.
18 Q. Ms. Denise, I'm going to show you a picture. This
19 is State's exhibit number 11.
20 [Whereupon, the photograph is shown]
21 Q. Ms. Denise, is this your apartment that you used to
22 live in?
23 A. Yes, ma'am.
24 Q. Ms. Denise, you don't live there anymore, do you?
25 A. No, ma'am.

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- 1 Q. Okay. And were you living alone at that time?
- 2 A. Yes.
- 3 Q. And how long did you live in that apartment?
- 4 A. Just -- years.
- 5 Q. Okay.
- 6 THE COURT REPORTER: How many years?
- 7 A. I don't remember.
- 8 THE COURT: A few years I think she said.
- 9 Q. [Ms. Savas] Some years?
- 10 A. Yes.
- 11 Q. And how long did you used to live in North
- 12 Charleston?
- 13 A. Since I moved here. I had my kids here; about 30
- 14 something years.
- 15 Q. Okay. And how many kids do you have?
- 16 A. I have two, a boy and a girl.
- 17 Q. And are they grown children.
- 18 A. Yes, they grown.
- 19 Q. Okay. Where are you originally from?
- 20 A. New York.
- 21 Q. So Ms. Denise, I'm going to be frank. And I don't
- 22 mean to embarrass you. Back then did you used to do
- 23 drugs?
- 24 A. Yes.
- 25 Q. What kind of drugs did you used to use?

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- 1 A. I used crack cocaine.
- 2 Q. Okay. That the one you used the most?
- 3 A. Yes.
- 4 Q. Are you using today?
- 5 A. No. Now I'm clean and sober.
- 6 Q. How long have you been clean?
- 7 A. About four months now.
- 8 Q. And were you part of a program to get clean?
- 9 A. Yes, I was.
- 10 Q. And did you just have something big happen
- 11 yesterday?
- 12 A. Yes, I graduated --
- 13 Q. You graduated?
- 14 A. Yes, ma'am.
- 15 Q. I'm proud of you, Ms. Denise. So back then though
- 16 you said you used to use crack.
- 17 A. Yes.
- 18 Q. And do you remember them [indicates] coming in your
- 19 apartment to make crack?
- 20 A. Yes.
- 21 Q. And when they would come in and make the crack what
- 22 would happen? Why did you let them in?
- 23 A. I've been knowing them from a while because I used
- 24 to buy from them.
- 25 Q. You used to buy from them?

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- 1 A. Yes.
- 2 Q. What would you used to buy from them?
- 3 A. Crack.
- 4 Q. Crack? So they would sell you drugs?
- 5 A. Yes.
- 6 Q. Did that happen a lot?
- 7 A. As much as I had money I guess.
- 8 Q. They were kind of your dealers?
- 9 A. If that's what you call them, yes.
- 10 Q. Okay. And when they came in to use your apartment
- 11 what did they do in there?
- 12 A. Basically I guess they would cook it up.
- 13 Q. They would cook up the crack?
- 14 A. Yes.
- 15 Q. Would they give you any after?
- 16 A. What?
- 17 Q. Would they give you any after?
- 18 A. I was hoping for it.
- 19 Q. And that's why you let them in.
- 20 A. Yes.
- 21 Q. So it was kind of an agreement y'all had that they
- 22 could come in and cook the crack and they would leave you
- 23 a piece.
- 24 A. Uh Huh.
- 25 THE COURT: Is that a yes, ma'am?

State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
November 30, 2017

- 1 A. Yes, ma'am. Sorry.
- 2 Q. She is writing down everything you say so you need
3 to say yes or no; that's why he asked.
- 4 A. Okay.
- 5 Q. You're doing good. Ms. Denise, on this day did you
6 invite them over or would they kind of show up whenever?
- 7 A. It was a show up.
- 8 Q. So sort of a routine that they would show up?
- 9 A. Yes.
- 10 Q. Okay. And you let them in your door?
- 11 A. Yes.
- 12 Q. And what were you doing while they are cooking all
13 the crack?
- 14 A. I was playing on my game. I play videos on my
15 phone.
- 16 Q. Okay.
- 17 A. So I was sitting in the living room playing my
18 videos.
- 19 Q. So you were in your living room and they were in the
20 kitchen?
- 21 A. Huh?
- 22 Q. They were in the kitchen?
- 23 A. Yes, ma'am.
- 24 Q. And did they usually bring the drugs to make in
25 there or did you have it in your apartment already?

State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
November 30, 2017

- 1 A. No, they usually bring it.
- 2 Q. They bring it, okay. So you would let them use your
3 microwave?
- 4 A. Yes, ma'am.
- 5 Q. And you had -- I'm going to show you some pictures,
6 Ms. Denise. I'm going to show you State's exhibit 17.
- 7 [Whereupon, the photograph is shown]
- 8 Q. Ms. Denise, is this your kitchen back then?
- 9 A. Yes, it is.
- 10 Q. And that was your microwave?
- 11 A. Yes.
- 12 Q. And that was all that baking soda up there
13 [indicates]?
- 14 A. Yes.
- 15 Q. And that's where they were cooking it?
- 16 A. Yes, ma'am.
- 17 Q. You didn't have any food or anything up there.
- 18 A. No.
- 19 Q. You couldn't afford food?
- 20 A. No, not really.
- 21 Q. So when you were sitting on your couch playing games
22 the police came and knocked on your door. Did you let
23 them inside?
- 24 A. Yes, I did.
- 25 Q. And they asked to come inside?

State v Darell Boston, William Holmes
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- 1 A. Yes, they did.
- 2 Q. And on your own you said yes, they can come in.
- 3 A. Yes.
- 4 Q. You didn't tell them no?
- 5 A. No, I didn't.
- 6 Q. Did they threaten you?
- 7 A. No.
- 8 Q. Did they push you aside to walk in there?
- 9 A. No, they didn't do that.
- 10 Q. Did they yell at you?
- 11 A. No.
- 12 Q. And you remember they had their police uniform on?
- 13 A. Yes, ma'am.
- 14 Q. And did they say that they were the police?
- 15 A. Yes.
- 16 Q. And they asked for permission?
- 17 A. Yes, they did.
- 18 Q. And you said okay?
- 19 A. Yes, because I wasn't expecting nothing to go on.
- 20 Q. Right.
- 21 THE COURT: I'm sorry, what did you say?
- 22 A. I wasn't expecting nothing to be going on.
- 23 THE COURT: I see. Okay.
- 24 Q. [Ms. Savas] And do you remember where the police
- 25 found the drugs?

State v Darell Boston, William Holmes
Denise Holman-Direct Examination by Ms. Savas
November 30, 2017

1 A. No, I was in the living room part.

2 Q. Okay. So you stayed in the living room this whole
3 time?

4 A. Yes.

5 Q. Okay.

6 MS. SAVAS: Court's indulgence.

7 THE COURT: Okay.

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

9 Q. [Ms. Savas] So Ms. Denise, just to clarify you
10 recall this from March 6th, 2015, the day that they came
11 in that house?

12 A. Okay.

13 Q. Okay.

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

16 THE COURT: Cross-examine, Ms. Seman?

17 MS. SEMAN: Thank you, Your Honor.

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State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

1 CROSS-EXAMINATION

2 BY MS. SEMAN:

3 Q. Hi, Ms. Holman.

4 A. Hello.

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

7 A. Yes.

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

9 A. Yes, ma'am.

10 Q. And a stroke?

11 A. Yes.

12 Q. Those are pretty serious aren't they?

13 A. Yes.

14 Q. And recovery from that was a long process.

15 A. Yes, it is.

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

17 A. Yes.

18 Q. But you're doing better now.

19 A. Much better.

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

22 A. Slightly, not much.

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

25 A. All I know is by his street name.

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Denise Holman-Cross-Examination by Ms. Seman
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- 1 Q. Okay. But you don't -- you do know his street name?
- 2 A. Yes, Bubba --
- 3 THE COURT REPORTER: --- what's his name again?
- 4 A. Bubba [phonetic].
- 5 Q. [Ms. Seman] And what about the guy in the green
- 6 shirt over there [indicates].
- 7 A. Street name.
- 8 Q. Okay. And what's that?
- 9 A. D.
- 10 Q. In fact you even had trouble remembering when
- 11 exactly this happened though haven't you?
- 12 A. The date?
- 13 Q. Sure or even just the general timeframe?
- 14 A. Yes.
- 15 Q. On March 6th, 2015 the day we're talking about today
- 16 you were at home.
- 17 A. Yes.
- 18 Q. And you knew the guy in the black shirt and the guy
- 19 in the green shirt.
- 20 A. Yes.
- 21 Q. And they came over to your house.
- 22 A. Not together.
- 23 Q. Okay. They came over separately?
- 24 A. Yes.
- 25 Q. But when they came over you didn't ask them to

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

- 1 leave?
- 2 A. No.
- 3 Q. You let them into your house.
- 4 A. Yes.
- 5 Q. They had permission from you to be there.
- 6 A. Yes.
- 7 Q. When the officers knocked on your door you opened
- 8 the door.
- 9 A. Yes.
- 10 Q. And they asked you if they could come inside.
- 11 A. Uh Huh.
- 12 Q. And they didn't tell you that you could say no,
- 13 though.
- 14 A. No.
- 15 Q. They didn't say anything about the fact that you
- 16 could say no; that you could tell them no they can't come
- 17 in.
- 18 A. I didn't say nothing like that, no.
- 19 Q. So you let them in.
- 20 A. Yes.
- 21 Q. And in your house on [REDACTED] when you walk
- 22 in the front door you're in your living room, right?
- 23 A. Yes.
- 24 Q. And the kitchen was next to the living room.
- 25 A. Yes.

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Ms. Seman
November 30, 2017

1 Q. It was separated by a door. There was a doorway
2 there.

3 A. Yes.

4 Q. And there was a curtain in that doorway wasn't
5 there?

6 A. Yes.

7 Q. The curtain separating the living room and the
8 kitchen.

9 A. Yes.

10 MS. SEMAN: Court's indulgence.

11 THE COURT: Certainly.

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

13 MS. SEMAN: Nothing further, Your Honor.

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

15 MR. LEWIS: Very briefly.

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State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Mr. Lewis
November 30, 2017

1 CROSS-EXAMINATION

2 BY MR. LEWIS:

3 Q. Good morning.

4 A. Good morning.

5 Q. When you let them inside did they ask if they could

6 look through your stuff?

7 A. Something like that. Well, when you say look

8 through your stuff.

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

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

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

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

13 Q. Did you sign anything saying they had permission to

14 search your house?

15 A. After the fact I did.

16 Q. You did? Tell me about that curtain. How did you

17 have it set up?

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

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

20 [Whereupon, the photograph is shown]

21 Q. And ma'am I know this is going to look different

22 than when you saw it. Can you tell me -- this is court's

23 exhibit 2. Do you recognize that, ma'am?

24 A. Yes, sir.

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

State v Darell Boston, William Holmes
Denise Holman-Cross-Examination by Mr. Lewis
November 30, 2017

1 curtain would have been.

2 A. Right here [indicates].

3 Q. Go ahead and mark it.

4 A. Right there [indicates].

5 Q. So what would the curtain have covered?

6 A. The doorway.

7 Q. Can you see through it?

8 A. No.

9 Q. Okay.

10 MR. LEWIS: Nothing further, Your Honor.

11 THE COURT: That will be defendant's exhibit 2 for
12 purposes of this proceeding.

13 [Whereupon, defendant's exhibit number 2 is marked
14 by the court reporter]

15 [Whereupon, defendant's exhibit number 2 is entered
16 into evidence by the court]

17 MR. LEWIS: Yes, Your Honor.

18 THE COURT: Recross [sic]

19 MS. SAVAS: Thank you, Your Honor.
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State v Darell Boston, William Holmes
Denise Holman-Redirect Examination by Ms. Savas
November 30, 2017

1 REDIRECT EXAMINATION

2 BY MS. SAVAS:

3 Q. Ms. Denise, just one question about that curtain.

4 On the day they came in do you remember if it was down or

5 pulled aside or not there at all?

6 [Whereupon, the photograph is shown]

7 Q. Now, this picture is not from that day. So in your

8 head do you remember exactly how that curtain was?

9 A. Not exactly.

10 Q. Okay. That's okay.

11 MS. SAVAS: Nothing further from the State.

12 THE COURT: Recross?

13 MS. SEMAN: None, Your Honor.

14 THE COURT: Recross?

15 MR. LEWIS: No, Your Honor.

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

17 Holman.

18 MS. SAVAS: Your Honor, may I ask if this witness

19 be excused?

20 THE COURT: Any objection?

21 MS. SEMAN: No, Your Honor.

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

23 [Whereupon, the witness is excused and exits the

24 witness stand]

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

State v Darell Boston, William Holmes
Denise Holman-Redirect Examination by Ms. Savas
November 30, 2017

1 of testimony?

2 MS. SAVAS: Your Honor, no further witnesses.

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

5 MS. SEMAN: We do, Your Honor.

6 THE COURT: Very well. You may proceed.

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State v Darell Boston, William Holmes
Darell Boston-Direct Examination by Ms. Seman
November 30, 2017

1 MS. SEMAN: The defense calls Darell Boston.
2 [Whereupon, Mr. Boston comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

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

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

8

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9

DARELL BOSTON,

10

Having been first duly sworn,

11

Was examined and testified as follows:

12

DIRECT EXAMINATION

13

BY MS. SEMAN:

14

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

15

A. About 15 years.

16

Q. Where did you meet here?

17

A. In the neighborhood.

18

Q. And how did you meet her?

19

A. In the neighborhood.

20

Q. Do you have a nickname for her?

21

A. D.C.

22

Q. Have you been to her home before?

23

A. Yes. Not -- that was the first time I actually went
24 to her [REDACTED] address but I've been to her other

25

houses -- other apartments like the one on [REDACTED]

State v Darell Boston, William Holmes
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1 [phonetic]. My home boy used to live downstairs. But
2 she always got -- yes.

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

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

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

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

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

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

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

17 A. No.

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

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

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

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

State v Darell Boston, William Holmes
Darell Boston-Direct Examination by Ms. Seman
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1 Q. And you had permission to be there.

2 A. Yes.

3 Q. And your reason for going to her house that day was
4 what?

5 A. Uploading music on my cell phone. I just got out of
6 prison and didn't know what was going on with what and I
7 wanted some music on my phone.

8 Q. And where were you in the apartment when the police
9 arrived?

10 A. Right there in the doorframe.

11 Q. And Mr. Boston I have to ask you this. Were you
12 there to manufacture crack cocaine?

13 A. No.

14 MS. SEMAN: Court's indulgence.

15 THE COURT: Okay.

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

17 MS. SEMAN: Nothing further, Your Honor.

18 THE COURT: Do you wish to ask any questions, Mr.
19 Lewis?

20 MR. LEWIS: No, Your Honor.

21 THE COURT: Ms. Savas?

22 MS. SAVAS: Thank you, Your Honor.

23

24

25

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

CROSS-EXAMINATION

1 BY MS. SAVAS:

2 Q. Good morning, Mr. Boston.

3 A. Good morning.

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

6 A. Yes, ma'am.

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

10 A. Yes.

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

13 A. Yes, [REDACTED] [phonetic] [REDACTED] And she used to
14 live in front of my cousin on Dorchester Road before
15 that.

16 Q. Okay. And you knew she uses right?

17 A. Yes.

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

21 A. Right. Not only her; she has company and stuff over
22 but she at her [REDACTED] [phonetic] address she had a back
23 room. We used to just sit in her back room and get high
24 in peace.
25

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

- 1 Q. Right.
- 2 A. Without being out in public.
- 3 Q. Right. Without being afraid you're going to get in
4 trouble.
- 5 A. Right, Right.
- 6 Q. Okay. And you just said you went over there this
7 time because you just got out of prison?
- 8 A. No, not just got out of prison. But I didn't know
9 anything about these phones and stuff, these smart phones
10 but they did.
- 11 Q. And you were in prison for trafficking crack,
12 weren't you?
- 13 A. Crack and cocaine.
- 14 Q. And cocaine. How many years did you serve?
- 15 A. Four.
- 16 Q. And you had ten over your head but you got out on
17 four?
- 18 A. Yes.
- 19 Q. You got a history too, right? You got a history of
20 cocaine charges?
- 21 A. No, one, two; two charges, two prior charges.
- 22 Q. So 2003, twice in 2009, and this was 2010 you were
23 serving a trafficking charges so four years. That was
24 '14 and this happened in March of '15. So just got done?
- 25 A. Correct.

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

- 1 Q. Okay. So you're pretty knowledgeable about crack
2 and coke; that's kind of your thing?
- 3 A. No.
- 4 Q. What's your thing?
- 5 A. What's my thing like how?
- 6 Q. Like what's the one you most frequently use? Your
7 charges are consistently cocaine and crack.
- 8 A. Which one I frequently use?
- 9 Q. Right.
- 10 A. None of those. I'm a weed smoker.
- 11 Q. Okay, you smoke weed. You just deal the cocaine and
12 crack?
- 13 A. No, used to.
- 14 Q. Used too. I mean not right now. I'm saying back
15 then you used to.
- 16 A. Yes.
- 17 Q. That's why you got those convictions.
- 18 A. Yes. That's why I pled guilty to those convictions.
- 19 Q. I understand. So in dealing that did you make it
20 yourself or did you get it from other people?
- 21 A. No.
- 22 Q. So you got it from other people and then you would
23 sell it.
- 24 A. Yes.
- 25 Q. And you would sell it to Denise.

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

1 A. I have sold her some.

2 Q. Okay. And you sold her crack before or just
3 cocaine?

4 A. Crack.

5 Q. That's what she likes?

6 A. Well; actually I didn't even sell it to her. I gave
7 it to her.

8 Q. Oh, that's nice. And you would give it to her how
9 many times do you think?

10 A. Not very often. You can't make money if you give
11 away your product.

12 Q. True. Good point. So when you would give it to
13 her you would come over and use it together or you would
14 just have her come pick it up from you?

15 A. I don't smoke crack.

16 Q. So would you come to her and give it to her or would
17 she come to you?

18 A. If she needed something she -- we had each other's
19 phone number.

20 Q. Right.

21 A. If she needed something if I had it she could get
22 it. But I'm not even going to make excuses for being a
23 drug dealer.

24 Q. You don't have to.

25 A. So that was past ---

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
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- 1 Q. --- right.
- 2 A. This is present and we ain't even going to go
3 through it. But if you want to we could but that's all
4 irrelevant.
- 5 Q. Go through what?
- 6 A. My history.
- 7 Q. Well, we just talked about it a little bit.
- 8 A. I know. That's all irrelevant though.
- 9 THE COURT: Mr. Boston, you're here to testify so
10 not to have a conversation. You're here to answer
11 questions.
- 12 THE WITNESS: Yes, sir.
- 13 THE COURT: Thank you, sir.
- 14 Q. [Ms. Savas] So on this day on March 6th you went to
15 Ms. Denise's home, correct?
- 16 A. Correct.
- 17 Q. And you said that you called her up?
- 18 A. Prior to that, yes.
- 19 Q. Okay. And you knew that she lived at that new
20 place?
- 21 A. On Cody [phonetic], yes.
- 22 Q. So y'all got in a taxi and you came over to that
23 Clements Avenue place?
- 24 A. Yes.
- 25 Q. And when you got that taxi did you have them come

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Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

1 back or how were you getting home after that? Did you
2 have your car there?

3 A. Call the cab back.

4 Q. You were going to call the cab back?

5 A. Yes.

6 Q. And how long were you about to stay over there for?

7 A. As long as it took me to smoke my blunt and upload
8 that music.

9 Q. I hear you. So not too long, just enough to get
10 that done?

11 A. Yes.

12 Q. Did you call the cab ahead of time to let them know
13 to come back or did you have his number? Do you have
14 like you favorite cabbie?

15 A. A local cab driver?

16 Q. Yes?

17 A. He lives in the neighborhood.

18 Q. Okay. And did you tell him when you got into the
19 apartment to come back to pick you up or were you going
20 to call him when you were done?

21 A. I was going to call him to come back and pick me up.

22 Q. Okay. And on this day y'all were using Ms. Denise's
23 kitchen, right?

24 A. No. I was using Ms. Denise's laptop.

25 Q. Okay. Were you ever in the kitchen?

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

- 1 A. No.
- 2 Q. So you never stepped inside her kitchen the whole
3 time you were in there?
- 4 A. No. I stepped in the living room. The edge of the
5 couch is right there at the doorframe to the kitchen.
- 6 Q. Sure, okay. You remember the police coming in,
7 right?
- 8 A. I looked right at them.
- 9 Q. It's a small place and you can see them pretty
10 clear, huh? Were you sort of surprised that Ms. Denise
11 let them in?
- 12 A. No.
- 13 Q. Why weren't you surprised?
- 14 A. Because I watched her open the door.
- 15 Q. And she didn't fight them or anything?
- 16 A. No.
- 17 Q. She just straight opened the door.
- 18 A. Yes.
- 19 Q. They didn't push her down or yell at her?
- 20 A. No.
- 21 Q. None of that? So when the officers walked in were
22 you standing in the kitchen, right?
- 23 A. Sitting on the couch at the edge of the couch.
- 24 Q. On the couch, okay.
- 25 A. I stood up and my phone fell off my lap.

State v Darell Boston, William Holmes
Darell Boston-Cross-Examination by Ms. Savas
November 30, 2017

1 Q. Okay.

2 MS. SAVAS: Court's indulgence.

3 THE COURT: Okay.

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

5 MS. SAVAS: Nothing further, Your Honor.

6 THE COURT: Okay. Redirect?

7 MS. SEMAN: Thank you, Your Honor.

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State v Darell Boston, William Holmes
Darell Boston-Redirect Examination by Ms. Seman
November 30, 2017

1 REDIRECT EXAMINATION

2 BY MS. SEMAN:

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

5 A. Yes.

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

8 A. Yes.

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

10 A. No.

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

13 A. Yes.

14 Q. Right?

15 A. Yes.

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

18 A. No.

19 MS. SEMAN: Court's indulgence.

20 THE COURT: Yes, ma'am.

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

22 MS. SEMAN: Nothing further, Your Honor.

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

State v Darell Boston, William Holmes
Darell Boston-Redirect Examination by Ms. Seman
November 30, 2017

1 MR. LEWIS: I'm still good.

2 THE COURT: Any follow-up, recross?

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

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

5 Boston.

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

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

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

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

13 MS. SEMAN: Is that all right with you?

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

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State v Darell Boston, William Holmes
William Holmes-Direct Examination by Mr. Lewis
November 30, 2017

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

3 [Whereupon, Mr. Holmes comes forward]

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

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

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

9

10 WILLIAM HOLMES,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEWIS:

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

17 THE COURT: Pull up closer to the mic too.

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

21 A. Yes, sir.

22 Q. How do you know her?

23 A. From out the neighborhood.

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

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

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1 was in the neighborhood as long as I can remember.

2 Q. Is she -- what is the nature of your relationship
3 with her?

4 A. I'm just friends with her from out the neighborhood.

5 Q. Is she just a customer of yours?

6 A. I'm a dealer.

7 Q. Have you ever been to her home?

8 A. Yes, sir.

9 Q. You know why we're here. You know the case we're
10 talking about. Were you at her home that day?

11 A. Yes, sir.

12 Q. What was your purpose of being at her home that day?

13 A. I was chilling and cooling out with Boston. We was
14 going to get some music and get high.

15 Q. Okay. So for people who aren't as cool as you are
16 excluding me what does chilling out cooling mean?

17 A. We just hanging.

18 Q. Socializing?

19 A. Socializing.

20 Q. Were you there for commercial purposes?

21 A. No, sir. Just to get high and party.

22 Q. Were you there to cook up crack?

23 A. No, sir.

24 Q. You got to be honest about something though did you
25 have drugs on you?

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- 1 A. Yes, sir. I had cocaine and marijuana.
- 2 Q. What was that for?
- 3 A. That's what we was getting high off.
- 4 Q. Okay. And did you posses that?
- 5 A. In my pocket, yes sir.
- 6 Q. Okay. And when the police came in and did what they
- 7 did, did they ask you if they could search you?
- 8 A. Yes, sir.
- 9 Q. And what did you say?
- 10 A. Yes, sir.
- 11 Q. And you let them know you had it on you.
- 12 A. It was in my pocket.
- 13 Q. Okay. When you were in her home did you feel safe?
- 14 A. Yes, sir.
- 15 Q. Did you think that someone was staring at you?
- 16 A. No, sir.
- 17 Q. Or listening to you?
- 18 A. No, sir.
- 19 Q. Were you there to be in a private place?
- 20 A. What do you mean?
- 21 Q. Were you out in public?
- 22 A. No.
- 23 Q. Or were you in private?
- 24 A. Private.
- 25 Q. Okay. Did you think that someone would harass you

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- 1 while you were visiting with Denise?
- 2 A. No, sir.
- 3 Q. Did you feel comfortable there?
- 4 A. Yes. I knew her for a good bit of years.
- 5 Q. Have you ever done anything around her house or done
- 6 anything with her?
- 7 A. Probably helped her clean house after we eat --
- 8 Q. Did you ever see her kids?
- 9 A. I can't recall.
- 10 Q. But she did have kids that you knew about?
- 11 A. [Indicates]
- 12 THE COURT REPORTER: Is that yes?
- 13 Q. [Mr. Lewis] You got to answer verbally so that she
- 14 can write it down.
- 15 A. Yes, sir.
- 16 Q. Again, just to sum it up did you view her as a
- 17 friend or as a customer of yours?
- 18 A. Friend.
- 19 MR. LEWIS: Thank you, Judge.
- 20 THE COURT: Cross-examine, Ms. Seman?
- 21 MS. SEMAN: No, Your Honor.
- 22 THE COURT: Ms. Savas?
- 23 MS. SAVAS: Briefly, Your Honor.
- 24
- 25

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William Holmes-Cross-Examination by Ms. Savas
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1 CROSS-EXAMINATION

2 BY MS. SAVAS:

3 Q. Mr. Holmes?

4 A. Yes, ma'am.

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

7 A. Yes, ma'am.

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

9 A. Yes, ma'am.

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

11 A. I said I'm a dealer?

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

14 A. I said I don't deal.

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

17 A. Yes, ma'am.

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

19 A. Yes, ma'am.

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

22 A. Yes, ma'am.

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

25 A. Yes, ma'am.

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- 1 Q. Okay.
- 2 A. That's how it come --
- 3 Q. I'm sorry?
- 4 A. It came in a little baggie.
- 5 Q. It came in a little baggie when you got it?
- 6 A. The same way they find it in my pocket.
- 7 Q. So you bought it with a little baggie?
- 8 A. Yes.
- 9 Q. So that's how it was dealt to you?
- 10 A. Yes, ma'am.
- 11 Q. I hear you. And you used to do drugs with Ms.
- 12 Denise at her house?
- 13 A. I just get high. I never get high with her.
- 14 Q. Okay. And you brought that cocaine over for her or
- 15 for you?
- 16 A. For me.
- 17 Q. For your own personal use?
- 18 A. Yes, ma'am.
- 19 Q. Okay. And because you use too, right?
- 20 A. Yes, ma'am.
- 21 Q. But you even got some convictions for trafficking
- 22 and some distributions in your past, right?
- 23 A. When I was -- yes, ma'am.
- 24 Q. Of crack?
- 25 A. Yes, ma'am.

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1 Q. Okay. So you've been around it and you know it,
2 right?

3 A. Yes, ma'am. That was when I was younger --

4 Q. Okay.

5 THE COURT REPORTER: What was the last thing you
6 said when you were younger?

7 A. When I was younger 17 or 18.

8 Q. [Ms. Savas] And at this time you just had in -- this
9 is 2015, in 2013 you had possession charges for crack and
10 cocaine, right?

11 A. [Nods affirmatively]

12 THE COURT: Was that yes?

13 A. Yes ma'am; sorry.

14 Q. [Ms. Savas] And in the early 2000 late 90's that's
15 when you had your trafficking crack charges and your
16 distributions?

17 A. Yes, ma'am.

18 Q. And do you -- were you on the lease with Ms. Holman?

19 A. No, ma'am. Lease?

20 Q. Right. She was the renter on the apartment. You
21 didn't pay any of her bills for her?

22 A. No, ma'am.

23 Q. Did you bring over any food or anything like that?
24 Her cabinets were pretty empty.

25 Q. No, she asked if I could give her something to eat

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1 like that but I don't bring no groceries.

2 Q. Okay. Y'all don't really hang out outside her
3 place?

4 A. If I see in the street we'll sit and talk.

5 Q. Because you recognize her.

6 A. Yes.

7 Q. Okay. And you consented to the officers searching
8 your person, right?

9 A. Yes, ma'am.

10 Q. And you saw Ms. Denise open the door for the
11 officer, right?

12 A. Yes, ma'am. I was right there.

13 Q. You were right there. And you were standing in the
14 kitchen, right?

15 A. No, ma'am. I was by -- like when you came in I was
16 as soon as they walk in I was like right here
17 [indicates]. I been the first one he grabbed.

18 Q. Okay. But you know that she had opened that door
19 for the officers.

20 A. Yes.

21 Q. And they asked to come in ---

22 A. --- you can hear when --

23 Q. I'm sorry?

24 A. I hear when they say it was North Charleston.

25 Q. Oh you heard ---

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1 A. --- I hear it when they knocked.
2 Q. Okay. And you've seen Sergeant Sherwood before
3 right?
4 A. Yes, ma'am.
5 Q. And y'all actually saw him last night when they did
6 a search warrant on your house.
7 A. Yes, ma'am.
8 Q. Which they found drugs there too last night, right?
9 A. Yes, ma'am.
10 Q. Some more cocaine?
11 A. They find -- I going to get high.
12 Q. Right.
13 A. It ain't been nothing major.
14 Q. And that's at your new place over on [REDACTED]
15 [phonetic] right?
16 A. Yes, ma'am.
17 Q. Where they found all those drugs over there, okay.
18 MS. SAVAS: Nothing further, Your Honor.
19 THE COURT: Okay. Redirect?
20 MR. LEWIS: I always like to find out new
21 information when we're in here.
22
23
24
25

State v Darell Boston, William Holmes
William Holmes-Redirect Examination by Mr. Lewis
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1 REDIRECT EXAMINATION

2 BY MR. LEWIS:

3 Q. I assume you didn't get arrested?

4 A. No.

5 Q. All right.

6 A. No sir, I didn't.

7 MR. LEWIS: That's all.

8 THE COURT: Any questions?

9 MS. SEMAN: No, Your Honor.

10 THE COURT: Anything further?

11 MS. SAVAS: No, Your Honor.

12 THE COURT: Thank you. You may step down.

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

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1 THE COURT: Any additional witnesses?

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

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

18 MR. LEWIS: Yes, Your Honor.

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

24 MS. SAVAS: Thank you, Your Honor.
25

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

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

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

16 MS. SEMAN: I'm sorry?

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

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

23 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MS. SEMAN: After.

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1 THE COURT: After.

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

4 THE COURT: That's fine.

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

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

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

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

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

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

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

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

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

21 THE COURT: --- I did ---

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

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

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

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

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

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

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

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

20 THE COURT: If the curtain was down.

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

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

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

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

6 THE COURT: Thank you so much.

7 THE COURT: Mr. Lewis?

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State v Darell Boston, William Holmes
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1 MR. LEWIS: Thank you, Judge. I just had a phrase
2 I needed to use that is fun that you don't ever get to
3 argue to a jury but reasonable articulable suspicion is
4 more than a reason.

5 THE COURT: Oh, I agree with that.

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

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

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

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

10 THE COURT: Oh, I agree.

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

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

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

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1 THE COURT: Ms. Savas?

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

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

7 THE COURT: Thank you.

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

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

21 MS. SAVAS: Right, well ---

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

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

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

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

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

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

10 THE COURT: --- smoke a blunt.

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

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

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

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

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

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

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

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

13 THE COURT: Precisely.

14 MS. SAVAS: Yes, sir in State v Counts. And they
15 did say though that this is permissible to not hamper law
16 enforcement investigative techniques. Sergeant Sherwood
17 testified this is an investigative technique commonly
18 used at the North Charleston Police Department and in law
19 enforcement. You do not need to prove you are committing
20 a crime. They don't need to be running free with guns
21 and weapons flying through the air; just that there is
22 reasonable suspicion. In this case, Your Honor ---

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

24 MS. SAVAS: No.

25 THE COURT: Okay, thank you.

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

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

11 MS. SAVAS: Yes, sir.

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

18 MS. SAVAS: Absolutely not, Your Honor.

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

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

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1 Here there was sufficient ---

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

4 MS. SAVAS: Yes, sir.

5 THE COURT: Okay.

6 MS. SAVAS: That was in the State v Counts case.

7 In this case they had known that there were drug issues.

8 There were numerous complaints. So Your Honor as written

9 in the brief and supplemented with his testimony today

10 the State respectfully requests that you deny this motion

11 as there was a lawful knock and talk performed as the

12 investigative strategy technique at that point in time.

13 That then leads to the consent, Your Honor. I don't ---

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

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

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

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

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State v Darell Boston, William Holmes
Closing Arguments-Response by Ms. Seman
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1 MS. SEMAN: Yes, Your Honor, very briefly. As far
2 -- of course I disagree with some of the
3 characterizations of some of the facts ---

4 THE COURT: --- of course ---

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

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

20 However, one thing that the Solicitor mentioned does
21 I think bear on that. And she said in general knock and
22 talks don't implicate the 4th Amendment, which means I'm
23 not even sure they need to have standing to challenge the
24 constitutionality of the knock and talk according to the
25 4th Amendment. I haven't been able to find a good answer

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1 to that question, Your Honor.

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

7 MS. SEMAN: Yes, Your Honor.

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

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

23 THE COURT: It did.

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

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

4 THE COURT: Thank you. Mr. Lewis?

5 MR. LEWIS: I join.

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

14 MS. SEMAN: Thank you, Your Honor.

15 MR. LEWIS: Thank you, Your Honor.

16 MS. SAVAS: Thank you, Your Honor.

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

20 SERGEANT SHERWOOD: I appreciate it, Your Honor.

21 *****END OF TRANSCRIPT OF RECORD*****
22
23
24
25

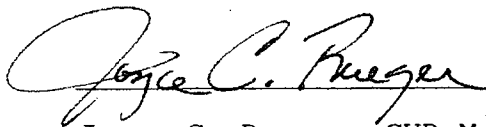
State v Darell Boston, William Holmes
Certificate of the Court Reporter
November 30, 2017

C E R T I F I C A T E

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

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

December 8, 2017



Joyce C. Rueger, CVR-M

Court Reporter

Certified Transcript provided to Benjamin Lewis, Esq.

Certification reference # 120817 (Original)

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
 2 COUNTY OF CHARLESTON CASE NO. 2015-GS-10-06088
 3 CASE NO. 2015-GS-10-06090
 4
 5
 6

7 STATE OF SOUTH)
 8 CAROLINA,)
 9 PLAINTIFF,) TRANSCRIPT OF RECORD
 10 vs.)
 11 WILLIAM HOLMES,) FEBRUARY 5-7, 2018
 12 DEFENDANT.) CHARLESTON, SC

13 B E F O R E:
 14

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

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

17 NINA SAVAS, ESQUIRE
 18 TRUC TRAN, ESQUIRE
 Attorneys for the State

19 TAYLOR SEMAN, ESQUIRE
 20 PETE SHAHID, ESQUIRE
 Attorneys for the Defendant Boston

21 BENJAMIN LEWIS, ESQUIRE
 22 NICK SMIT, ESQUIRE
 Attorneys for the Defendant Holmes

23 * * * * *

24
 25 Ruth C. Weese, RDR
 Official Court Reporter
 Ninth Judicial Circuit

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VOIR DIRE

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

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

9 THE COURT: What's the basis?

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

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

1 critical he be here?

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

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

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

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

11 MR. LEWIS: Yes, Your Honor.

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

14 MR. LEWIS: Thank you, Judge.

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

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

20 THE COURT: Before we pick a jury?

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

24 THE COURT: Timing of what?

25 MS. SAVAS: Just want to confirm, Your

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

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

17 (The Defendant stood.)

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

24 (No response from the jurors.)

25 Thank you. There appear to be none.

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

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

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

13 (No response from the jurors.)

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

23 (No response from the jurors.)

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

1 identify yourself and anybody that will assist you.

2 MR. LEWIS: Good morning. My name is
3 Ben Lewis from the public defender's office.
4 Trying the case with me is Mr. Nick Smit.

5 THE COURT: Thank you very much. Are
6 there any members of the jury panel related by
7 blood or marriage, have any business dealings with,
8 socially or casually acquainted with, ever been
9 represented by Mr. Lewis or Mr. Smit? If so,
10 please stand.

11 (No response from the jurors.)

12 Thank you. There appear to be none.
13 Are there any members of the jury panel related by
14 blood or marriage, have any business dealings with,
15 socially or casually acquainted with or ever been
16 represented by Mr. Ashley Pennington who is the
17 public defender for the Ninth Judicial Circuit? If
18 so, please stand.

19 (No response from the jurors.)

20 Thank you. There appear to be none.
21 Mr. Pennington has offices in Berkeley and in
22 Charleston County. If any member of the jury panel
23 is related by blood or marriage, has any business
24 dealings with, socially or casually acquainted
25 with, anyone employed with the public defender's

1 office whether it's Berkeley or Charleston County,
2 please stand.

3 (No response from the jurors.)

4 Thank you. There appear to be none.
5 The State of South Carolina is represented in this
6 county and in this circuit by a solicitor.
7 Solicitors, of course, are selected or elected in
8 each county. Ms. Scarlett Wilson is the solicitor
9 for the Ninth Judicial Circuit. Any members of the
10 jury panel related by blood or marriage, have any
11 business dealings with, social or casually
12 acquainted with, ever been represented by Ms.
13 Wilson? If so, please stand.

14 (No response from the jurors.)

15 Thank you. There appear to be none.
16 Ms. Wilson has a number of assistants that work in
17 Charleston and in Berkeley County. We have some
18 who are representing the State here today. Ms.
19 Savas is one of those. If you would identify
20 yourself and anyone that will be assisting you.

21 MS. SAVAS: Thank you, Your Honor.

22 Good morning. I am Nina Savas, an assistant
23 solicitor here in Charleston County. Assisting me
24 is another assistant solicitor, Ms. Truc Tran, and
25 we have our investigator Erin Meyer that is also

1 present and assisting in the trial.

2 THE COURT: Thank you. Are there any
3 members of the jury panel related by blood or
4 marriage, have any business dealings with, socially
5 or casually acquainted with, ever been represented
6 by Ms. Savas or Ms. Tran or have any dealings with
7 Ms. Meyer? If so, please stand.

8 (No response from the jurors.)

9 Thank you. There appear to be none.
10 Are there any members of the jury panel that are
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted with
13 anybody employed with the solicitor's office, and
14 as I stated she has offices in Berkeley and in
15 Charleston County. If so, please stand.

16 (No response from the jurors.)

17 Thank you. There appear to be none. I
18 am going to name a number of persons, ladies and
19 gentlemen. If you are related by blood or marriage
20 or business dealings with any of these persons,
21 have any connection at all you need to stand and
22 share that information, please, with the Court.
23 First I will identify from the North Charleston
24 Police Department Karen Cordray, Joseph Sherwood,
25 Kyle Rough, Fred Hoose, Paia Etminan, Shanta

1 Middleton, Danielle Smoak. Ms. Middleton and Ms.
2 Smoak and Ms. Hearn are formerly with North
3 Charleston, that would be Cindy Hearn, formerly
4 with North Charleston Police Department. Justin
5 Newcomb, Kevan Sherbine, that's ACDC?

6 MS. SAVAS: Al Cannon Detention Center.

7 THE COURT: Justin Newcomb and Sherbine
8 work for the Al Cannon Detention Center. The
9 following persons are from SLED, South Carolina Law
10 Enforcement Division: Shana Sorrells, Doris
11 Yarbrough, Jackie Davis, and Erin Meyer who is the
12 investigator with the solicitor's office. Does
13 anyone know of any those persons? If so, please
14 stand..

15 (No response from jurors.)

16 Thank you. There appear to be none. I
17 am going to share with you what's alleged, ladies
18 and gentlemen. It is obviously not evidence. It's
19 taken from the documents that I am holding in my
20 hand and they are what appear to you to be pieces
21 of paper. The technical name for them is
22 indictment. It is just formal accusing documents
23 that brings the parties here. Again, it is not
24 evidence, but I need to share with you what's being
25 alleged so that you can answer certain questions.

1 As I mentioned to you, they are
2 accused, the crimes are manufacturing of crack
3 cocaine, possession with intent to distribute crack
4 cocaine and possession of crack cocaine. It's
5 alleged that these parties, as I mentioned Mr.
6 Holmes in addition to the manufacture and being in
7 possession with intent to distribute is accused of
8 having and possessing crack cocaine, but it's
9 alleged that on March the 6th, 2015, in Charleston
10 County did have in their possession or manufacture
11 as stated a drug known as crack cocaine which is
12 alleged to be in violation of the laws that I
13 discussed.

14 I share that with you to find out if
15 any member of the jury panel has heard anything,
16 read anything, you have any prior knowledge of this
17 dispute. If so, please stand.

18 (No response from jurors.)

19 Thank you. There appear to be none.
20 Is there anything about the nature of the dispute,
21 that is, someone being accused of having in their
22 possession a quantity, having in their possession a
23 quantity with the intent to distribute or the
24 manufacturing of crack cocaine that you because of
25 some strong feelings you have, some personal

1 philosophy you have, something that may have
2 happened to you or family member or close personal
3 friend that would affect in any way your ability to
4 be a fair and impartial trier in this case, that is
5 the judge of the facts, and if so, please stand.

6 (No response from jurors.)

7 Thank you. There appear to be none.
8 Any there any members of the jury panel that have
9 ever been involved with the criminal system in any
10 fashion? Either you were accused of something or
11 you accused someone, you were a witness for either
12 side, you had any involvement or you have been the
13 subject of any crime, that is the person offended,
14 that you were the offended person by the crime? If
15 so, please stand. I'm going to ask you all to come
16 forward and we will take you one at a time here.

17 (Following proceedings were held at the
18 bench.)

19 THE BAILIFF: Juror No. 31.

20 THE COURT: What's your situation?

21 JUROR NO. 31: I was a witness to a DUI
22 hit and run. They ended up pleading so I never
23 actually was in the courtroom.

24 THE COURT: Was it handled by this
25 solicitor's office?

1 JUROR NO. 31: Charleston solicitor.

2 THE COURT: How long ago was that?

3 JUROR NO. 31: I showed up and waited.

4 It was last year.

5 THE COURT: Have you talked with anyone
6 in the solicitor's office specifically?

7 JUROR NO. 31: I can't remember his
8 name.

9 THE COURT: Would that affect or
10 influence you in anyway?

11 JUROR NO. 31: I don't think so, sir.

12 THE COURT: I appreciate that answer,
13 but can you promise both sides that you will not be
14 influenced and that you will decide the case based
15 on the evidence and the law in this case?

16 JUROR NO. 31: Yes, sir.

17 THE COURT: Your name and number?

18 JUROR NO. 31: Juror No, 31. Jason
19 Blackburn.

20 THE COURT: Juror No. 31 will remain.
21 Thank you, sir. You may take your seat.

22 (Juror 31 left the bench.)

23 THE BAILIFF: Juror No. 68.

24 JUROR NO. 68: This was what I spoke
25 with you about earlier. About 14 years ago I had a

1 bad check, a hundred dollars. I don't know if it
2 is able to be expunged and have it taken care of.

3 THE COURT: Would that affect you in
4 any way?

5 JUROR NO. 68: No.

6 THE COURT: Will you be fair and base
7 your decision on the evidence and the law?

8 JUROR NO. 68: Yes, sir.

9 THE COURT: Were you prosecuted by
10 local office here?

11 JUROR NO. 68: No, sir. I found out
12 about it and went to the station, paid and took
13 care of it.

14 THE COURT: Thank you, sir. 68 will
15 remain.

16 (Juror 68 left the bench.)

17 THE BAILIFF: Juror No. 54.

18 JUROR NO. 54: I had a contempt of
19 court.

20 THE COURT: Would that affect you in
21 any way?

22 JUROR NO. 54: No.

23 THE COURT: Can you decide this case
24 based on the evidence and the law?

25 JUROR NO. 54: Yes.

1 THE COURT: And be fair to both sides?

2 JUROR NO. 54: Yes.

3 THE COURT: No. 54 will remain.

4 (Juror 54 left the bench.)

5 THE BAILIFF: Juror No. 124.

6 JUROR NO. 124: Simple possession.

7 THE COURT: Was it prosecuted by this
8 office?

9 JUROR NO. 124: No.

10 THE COURT: Would that impact your
11 ability to decide the case based on the evidence
12 and the law and will you be fair to both sides?

13 JUROR NO. 124: No.

14 THE COURT: No. 124 will remain.

15 (Juror 124 left the bench.)

16 THE BAILIFF: No. 225.

17 JUROR NO. 225: I was involved with a
18 family Ponzi scheme. I was the victim and I have a
19 family member currently serving time in prison for
20 that.

21 THE COURT: Would that affect you in
22 any way?

23 JUROR NO. 225: No, sir.

24 THE COURT: Can you base your decision
25 in this case on the evidence and the law and be

1 fair to both sides?

2 JUROR NO. 225: Yes, sir.

3 THE COURT: Thank you. 225 will
4 remain.

5 (Juror 225 left the bench.)

6 THE BAILIFF: Juror No. 38.

7 JUROR NO. 38: My neighbor was in and
8 out of trouble, broke into my vehicle and ended up
9 going to prison. Having to have him there kind of
10 a drag on me.

11 THE COURT: I understand that. Do you
12 think that would affect you?

13 JUROR NO. 38: Maybe probably just from
14 having to live next to it.

15 THE COURT: I appreciate your honesty.
16 As I told you, there is nothing wrong with you
17 giving us that answer. That's why I believe so
18 strongly in this system. I'm going to avoid that
19 problem for you. Sorry you had to experience that.
20 38 will be excused from participating in this
21 dispute. Does he need to go back downstairs or do
22 they have another pool?

23 THE CLERK: They already have a pool.

24 THE COURT: Just call that number after
25 six tonight and follow that instruction. Have a

1 good day, sir.

2 (Juror 38 left the bench.)

3 THE BAILIFF: Juror No. 280.

4 THE COURT: What's your situation?

5 JUROR NO. 280: I just wanted to know,
6 you were asking if I have been arrested or --

7 THE COURT: Either way, any
8 involvement?

9 JUROR NO. 280: I have been arrested,
10 but it's off my record.

11 THE COURT: Was it a local agency here?

12 JUROR NO. 280: No.

13 THE COURT: Would that affect you in
14 any way?

15 JUROR NO. 280: No.

16 THE COURT: Would you base your
17 decision on the evidence and the law and be fair to
18 both sides?

19 JUROR NO. 280: Yes.

20 THE COURT: Okay. No. 280 will remain.

21 (Juror 280 left the bench.)

22 THE BAILIFF: Juror No. 293.

23 JUROR NO. 293: I have been convicted
24 of DUI.

25 THE COURT: Would that affect you?

1 JUROR NO. 293: No, sir.

2 THE COURT: Was it our agency who
3 prosecuted? Was it local here?

4 JUROR NO. 293: It was Johns Island.

5 THE COURT: How long ago?

6 JUROR NO. 293: Two years ago.

7 THE COURT: Would that affect your
8 ability to base your decision on the evidence and
9 the law?

10 JUROR NO. 293: No, sir.

11 THE COURT: Would you be fair to both
12 sides?

13 JUROR NO. 293: Yes, sir.

14 THE COURT: No. 293 will remain. Thank
15 you.

16 (Juror 293 left the bench.)

17 THE COURT: Thank you all.

18 (End of bench conference.)

19 THE COURT: Are there any members of
20 the jury panel who support in any fashion
21 organizations that are focused on crime such as
22 Citizens Against Violent Crime known as CAVV,
23 Mothers Against Drunk Driving known as MADD or
24 similar organizations? If so, please stand.

25 (No response from the jurors.)

1 Thank you. There appear to be none.
2 Are there any members of the jury panel or a member
3 of your family involved with any organization that
4 supports law enforcement? If so, please stand.
5 Yes, sir?

6 JUROR NO. 68: Juror No. 68, Michael
7 Coker. The museum that I work at just had a big
8 exhibit with Berkeley County Sheriff's Office so I
9 have been involved with the sheriff's office
10 setting up various things from that service.

11 THE COURT: Would that affect you?

12 JUROR NO. 68: No, sir.

13 THE COURT: You could be fair to both
14 sides and base your decision on the evidence and
15 the law?

16 JUROR NO. 68: Yes, sir.

17 THE COURT: Thank you. You may be
18 seated.

19 JUROR NO. 137: I have a brother and
20 sister-in-law who work for the Charleston County
21 Sheriff's Office.

22 THE COURT: Would that affect you?

23 JUROR NO. 137: I believe it would.

24 THE COURT: Thank you, sir. And your
25 number, please?

1 JUROR NO. 137: 137.

2 THE COURT: 137 will be excused. Call
3 the number after six tonight, please. Thank you.

4 JUROR NO. 126: I have a niece that's
5 with the police in Washington DC.

6 THE COURT: Would that influence you in
7 any way?

8 JUROR NO. 126: I don't think it would.

9 THE COURT: Well, I appreciate that
10 answer. That's very a normal answer. The question
11 is can you make the promise to both sides that your
12 decision will not be influenced in any fashion by
13 that relationship?

14 JUROR NO. 126: It might.

15 THE COURT: It might influence?

16 JUROR NO. 126: Yes.

17 THE COURT: All right. I appreciate
18 the honesty. I told somebody that doesn't mean you
19 are bad. That means you are an example of why I
20 believe so strongly in this process. Your number,
21 please?

22 JUROR NO. 126: 126.

23 THE COURT: Juror 126 will be excused
24 from participating in this proceeding. Call the
25 number after 6:00 tonight. Thank you.

1 JUROR NO. 311: My grandmother is a
2 retired judge in Moncks Corner.

3 THE COURT: Would that affect or
4 influence you?

5 JUROR NO. 311: No.

6 THE COURT: Can you base your decision
7 on the evidence and the law and be fair to both
8 sides?

9 JUROR NO. 311: Yes.

10 THE COURT: Thank you. Any others?
11 What was your number?

12 JUROR NO. 311: 311.

13 THE COURT: Thank you. Are there any
14 members of the jury panel that are related by blood
15 or marriage or have -- with anyone employed with
16 law enforcement? If so, please stand. That
17 haven't already announced that.

18 JUROR NO. 21: My wife's nephew is a
19 police officer up in North Carolina.

20 THE COURT: Would that influence you?

21 JUROR NO. 21: No.

22 THE COURT: Thank you, sir.

23 JUROR NO. 174: My grandfather is a
24 police officer.

25 THE COURT: Would that influence you?

1 JUROR NO. 174: No, sir.

2 THE COURT: Your number, please?

3 JUROR NO. 174: 174.

4 THE COURT: Thank you.

5 JUROR NO. 256: My father used to work
6 part time for the Jasper County Sheriff's
7 Department.

8 THE COURT: Would that affect or
9 influence you?

10 JUROR NO. 256: No, sir.

11 THE COURT: Your number, please?

12 JUROR NO. 256: 256.

13 THE COURT: Thank you.

14 JUROR NO. 128: I have a nephew that is
15 a judge in Charleston.

16 THE COURT: Would that affect you, sir?

17 JUROR NO. 128: I'm not sure.

18 THE COURT: Thank you, sir. Appreciate
19 it. That is something I found over the years if
20 somebody pauses that's a good indicator, so your
21 number, please?

22 JUROR NO. 128: 128.

23 THE COURT: No. 128 will be excused
24 from participation in this dispute. Thank you,
25 sir. You are free to leave. Call the number after

1 6:00. Anyone else? Thank you. There appear to be
2 none.

3 Are there any members of the jury panel
4 whose family have lived near or in the vicinity of
5 1819 Clements Avenue or Military Magnet School at
6 2650 Carner Avenue in North Charleston? If so,
7 please stand.

8 (No response from the jurors.)

9 Thank you. There appear to be none.
10 Are there any members of the jury panel that have
11 ever had any disputes with any law enforcement
12 agency? If so, please stand.

13 (No response from the jurors.)

14 Thank you. There are none. Any member
15 of the jury panel had any disputes with North
16 Charleston law enforcement, have any strong
17 opinions or feelings about North Charleston? If
18 so, please stand.

19 (No response from the jurors.)

20 Thank you. There appear to be none.
21 Is there any member of the jury panel, member of
22 your immediate family who are part of any anti-law
23 enforcement groups or any civil action groups such
24 as NAN or Black Lives Matters? If so, please
25 stand.

1 (No response from the jurors.)

2 Thank you. There appear to be none.

3 Are there any members of the jury panel been
4 involved with anyone that has an addiction to any
5 substance that feels that that would affect or
6 influence you in any way in this matter? If you
7 have any concern just please stand and we will ask
8 you to come forward.

9 THE BAILIFF: No. 114.

10 (Following proceedings were held at the
11 bench.)

12 JUROR NO. 114: I have two brothers
13 battling addiction that are waiting for court now.
14 One was currently beat up real bad which I think
15 wasn't right.

16 THE COURT: You think it would affect
17 you?

18 JUROR NO. 114: Yes.

19 THE COURT: Thank you, ma'am. I
20 appreciate your honesty and candor. I hope things
21 go well for you. No. 114 will be excused from
22 participation in this dispute. Just call the
23 number after six tonight.

24 (Juror 114 left the bench.)

25 THE BAILIFF: Juror No. 124.

1 JUROR NO. 124: I am 19 years sober and
2 November 13th will be my 20th anniversary.

3 THE COURT: Would that affect you?

4 JUROR NO. 124: No.

5 THE COURT: Can you decide the case
6 based on the evidence?

7 JUROR NO. 124: Of course.

8 THE COURT: Thank you. Day to day.

9 JUROR NO. 124: Yes.

10 THE COURT: Thank you. 124 will
11 remain. Thank you.

12 (Juror 124 left the bench.)

13 THE BAILIFF: The juror's name is
14 Whitney Windham.

15 JUROR NO. 342: I don't know my number.
16 I'm currently a psychologist. On Tuesdays and
17 Thursdays I work with people who have addictions.
18 So I think -- I don't think I could be unbiased.

19 THE COURT: You think it would affect
20 you? And what's her number? Do you have it?

21 THE CLERK: 342.

22 THE COURT: 342 will be excused from
23 participating in this dispute. Call the number
24 after six. Thank you for your service. Are there
25 others? Thank you.

(End of bench conference.)

THE COURT: The last question I have for you, you have heard what this dispute is about and one of the -- of course one of the things that we have to do is keep that separation. And one question that I have always asked in a criminal dispute, it is the law of this state and the law in every state in the United States as far as I know, persons accused of committing criminal offenses are never required to prove anything or disprove anything. This burden is upon the agency that makes the accusation to prove this case. And is there anything about your beliefs or strong beliefs that you would be influenced or affected and wouldn't be able to follow that instruction of the law? If you feel that you would have difficulty doing that, as I stated earlier there's no shame in your sharing that with me. If so, please stand.

And in addition if the State satisfies you beyond a reasonable doubt and proves each element of the crime to that standard, and I will explain that standard to you, then the instruction will be you must return a verdict of guilty. Is there anything about your strong feelings about that that would give you any concern about

1 following that if you were -- if everybody agreed
2 the State met its burden of proof then you would
3 return a verdict of guilty as instructed. If you
4 feel you would have difficulty in doing that
5 because of any strong feelings, please stand.

6 (No response from the jurors.)

7 Thank you. There are none. And I
8 guess as I told you, the last question I typically
9 ask, it is probably the essence of everything that
10 we have talked about thus far, is there anything
11 that you have heard about this dispute that would
12 give you any concern about your ability at the
13 appropriate time to apply your common sense, your
14 sense of logic and reason, analyzing the evidence
15 which consists of the testimony of witnesses and
16 exhibits that might be introduced through their
17 testimony, decide what you believe to be the true
18 facts and then decide those facts taking the law as
19 I will give it to you and applying that law fairly
20 and impartially so that your decision will be fair
21 to both sides? If you feel you would have
22 difficulty in doing that for any reason, please
23 stand. Thank you very much. Any questions from
24 the State?

25 MS. SAVAS: Nothing from the State.

1 THE COURT: Any additional questions
2 from Mr. Boston?

3 MS. SEMAN: No.

4 THE COURT: From Mr. Holmes?

5 MR. LEWIS: No, Your Honor.

6 THE COURT: Thank you all. Appreciate
7 it. You have now been qualified for this. Now
8 from this body we will select our -- why don't we
9 get 12 and then two alternates. One gets two, I
10 think. So the State would get -- would have two
11 also. We will have to announce Holmes using or
12 Boston using so we keep that up because it is five
13 and five. As you know State gets equal.

14 But we will go through the process and
15 what we talked about, there is something called
16 peremptory challenges. A party can excuse someone
17 for whatever reason they want, for a legitimate
18 reason that they have or it's their belief which
19 they have that the rules apply.

20 So what you will be asked, you will be
21 called to come forward and we ask you to stand
22 about right here, you will stand facing your fellow
23 jurors and facing the parties and the attorneys.
24 And then first the State will say excuse the juror,
25 seat the juror, swear the juror, then we will go in

1 the order that you are seated, Mr. Boston, then Mr.
2 Holmes. And we will go through the process until
3 we have seated 12 jurors and two alternates. If
4 someone excuses you don't take any offense to that.
5 That's just part of the process. Don't get
6 offended by that. If you are excused just go take
7 a seat and we will call the next person. I'm going
8 to turn it over to -- Mr. Urichio, you going to
9 perform that?

10 THE CLERK: Yes, Your Honor. When I
11 call your name grab your belongings, walk to the
12 front, stand in front of the attorneys' tables and
13 if you are selected for the jury have a seat in the
14 jury box. If you not selected for the jury you
15 will have a seat back in the audience. You will
16 get it after a couple of people do it. Juror
17 No. 326, Adam Vittum. Please come forward. What
18 say you for the State?

19 MS. SAVAS: Please excuse this juror.

20 THE CLERK: You have been excused from
21 service. Please have a seat back in the audience,
22 sir. Juror No. 293, Thomas Sibbald, please come
23 forward. What say you for the State?

24 MS. SAVAS: Please excuse the juror.

25 THE CLERK: You have been excused from

1 service. Please have a seat back in the audience.
2 State has used two strikes, three remaining. Eight
3 remaining, excuse me. Juror No. 174, Erin
4 Lattimore, please come forward. What say you for
5 the State?

6 MS. SAVAS: Please seat the juror.

7 THE CLERK: What say you for the
8 Defendant Boston?

9 MS. SEMAN: Excuse this juror.

10 THE CLERK: You have been excused from
11 service. Please have a seat in the audience,
12 ma'am. Juror No. 212, Patricia Moran, please come
13 forward. What say you for the State?

14 MS. SAVAS: Please seat this juror.

15 THE CLERK: What say you for Defendant
16 Boston?

17 MS. SEMAN: Please seat the juror.

18 THE CLERK: What say you for the
19 Defendant Holmes?

20 MR. LEWIS: Please seat the juror.

21 THE CLERK: You have been selected for
22 service. Please have a seat in the jury box,
23 ma'am. Juror No. 136, Tonya Hanchon, please come
24 forward. What say you for the State?

25 MS. SAVAS: Please seat the juror.

1 THE CLERK: What say you for the
2 Defendant Boston?

3 MS. SEMAN: Please seat the juror.

4 THE CLERK: What say you for Defendant
5 Holmes?

6 MR. LEWIS: Please excuse the juror.

7 THE CLERK: You have been excused from
8 service. Please have a seat back in the audience,
9 ma'am.

10 MR. LEWIS: Excused by Defendant
11 Holmes.

12 THE CLERK: Juror No. 261, Wendell
13 Reid, please come forward. What say you for the
14 State?

15 MS. SAVAS: Please excuse the juror.

16 THE CLERK: You have been excused from
17 service. Please have a seat back in the audience,
18 sir. Juror No. 256, Megan Redfern, please come
19 forward. What say you for the State?

20 MS. SAVAS: Please seat the juror.

21 THE CLERK: What say you for Defendant
22 Boston?

23 MS. SEMAN: Please excuse this juror.

24 THE CLERK: You have been excused.
25 Please have a seat back in the audience. Defendant

1 Boston has used two strikes, three remaining.

2 Juror No. 87, Sharon Dickson, please come forward.

3 What say you for the State?

4 MS. SAVAS: Please excuse the juror.

5 THE CLERK: You have been excused from
6 service. Please have a seat back in the audience,
7 ma'am. Juror No. 86, Lamar Deveau, please come
8 forward. What say you for the State?

9 MS. SAVAS: Please seat the juror.

10 THE CLERK: For Defendant Boston?

11 MS. SEMAN: Please seat the juror.

12 THE CLERK: For Defendant Holmes?

13 MR. LEWIS: Please seat the juror.

14 THE CLERK: You have been selected for
15 service. Please have a seat in the jury box, sir.
16 Juror No. 278, Rhiannon Scarpa, please come
17 forward. What say you for the State?

18 MS. SAVAS: Please seat the juror.

19 THE CLERK: For Defendant Boston?

20 MS. SEMAN: Please seat the juror.

21 THE CLERK: For Defendant Holmes?

22 MR. LEWIS: Please seat the juror.

23 THE CLERK: You have been selected.

24 Please have a seat in the jury box, ma'am. Juror
25 No. 260, Jayna Reid, please come forward. What say

1 you for the State?

2 MS. SAVAS: Please seat the juror.

3 THE CLERK: For Defendant Boston?

4 MS. SEMAN: Please seat the juror.

5 THE CLERK: For Defendant Holmes?

6 MR. LEWIS: Please seat the juror.

7 THE CLERK: You have been selected for
8 service. Please have a seat in the jury box,
9 ma'am. Juror No. 131, Jonathan Grubb, please come
10 forward. What say you for the State?

11 MS. SAVAS: Please seat the juror.

12 THE CLERK: For Defendant Boston?

13 MS. SEMAN: Please seat the juror.

14 THE CLERK: For Defendant Holmes?

15 MR. LEWIS: Please seat the juror.

16 THE CLERK: You have been selected for
17 service. Please have a seat in the jury box.
18 Juror No. 60, Michael Carnette, please come
19 forward. What say you for the State?

20 MS. SAVAS: Please seat the juror.

21 THE CLERK: For Defendant Boston?

22 MS. SEMAN: Please seat the juror.

23 THE CLERK: For Defendant Holmes.

24 MR. LEWIS: Please seat the juror.

25 THE CLERK: You have been selected for

1 service. Please have a seat in the jury box.
2 Juror No. 54, Annette Calhoun, please come forward.
3 What say you for the State?

4 MS. SAVAS: Please seat the juror.

5 THE CLERK: For Defendant Boston?

6 MS. SEMAN: Please seat the juror.

7 THE CLERK: For Defendant Holmes?

8 MR. LEWIS: Please seat the juror.

9 THE CLERK: You have been selected.

10 Please have a seat in the jury box, ma'am. Juror
11 No. 205, Shannoah Michel. What say you for the
12 State?

13 MS. SAVAS: Please excuse the juror.

14 THE CLERK: You have been excused from
15 service. Please have a seat in the audience.

16 State has exhausted five strikes, five remaining.

17 Juror No. 310, Carlton Stoney. What say you for
18 the State?

19 MS. SAVAS: Please seat the juror.

20 THE CLERK: For Defendant Boston?

21 MS. SEMAN: Please seat the juror.

22 THE CLERK: For Defendant Holmes.

23 MR. LEWIS: Please seat the juror.

24 THE CLERK: You have you been selected

25 for service. Please have a seat in the jury box,

1 sir. Juror No. 129, Douglas Gray. Please come
2 forward. What say you for the State?

3 MS. SAVAS: Please seat the juror.

4 THE CLERK: For Defendant Boston?

5 MS. SEMAN: Please seat the juror.

6 THE CLERK: For Defendant Holmes?

7 MR. LEWIS: Please excuse the juror.

8 THE CLERK: You have been excused from
9 service. Please have a seat in the audience.

10 Defendant Holmes has exhausted two strikes, three
11 remaining. Juror No. 47, Mary Burkard, please come
12 forward. What say you for the State?

13 MS. SAVAS: Please seat the juror.

14 THE CLERK: What say you for Defendant
15 Boston?

16 MS. SEMAN: Please seat the juror.

17 THE CLERK: What say you for Defendant
18 Holmes?

19 MR. LEWIS: Please seat the juror.

20 THE CLERK: You have been selected for
21 service. Please have a seat in the jury box,
22 ma'am. Juror No. 68, Michael Coker, please come
23 forward. What say you for the State?

24 MS. SAVAS: Please seat the juror.

25 THE CLERK: What say you for Defendant

1 Boston?

2 MS. SEMAN: Please excuse the juror.

3 THE CLERK: You have been excused from
4 service. Please have a seat back in the audience.
5 Defendant Boston has used three strikes, two
6 remaining. Juror No. 117, Kristen Gause, please
7 come forward. What say you for the State?

8 MS. SAVAS: Please seat the juror.

9 THE CLERK: What say you for Defendant
10 Boston?

11 MS. SEMAN: Please seat the juror.

12 THE CLERK: What say you for Defendant
13 Holmes?

14 MR. LEWIS: Please seat the juror.

15 THE CLERK: You have been selected for
16 service. Please have a seat in the jury box.
17 Juror No. 138, Roberta Harley, please come forward.
18 What say you for the State?

19 MS. SAVAS: Please seat the juror.

20 THE CLERK: What say you for Defendant
21 Boston?

22 MS. SEMAN: Please seat the juror.

23 THE CLERK: What say you for Defendant
24 Holmes?

25 MR. LEWIS: Please seat the juror.

1 THE CLERK: You have been selected for
2 service. Please have a seat in the jury box,
3 ma'am. Juror No. 124, Edward Goss, please come
4 forward. What say you for the State?

5 MS. SAVAS: Please excuse the juror.

6 THE CLERK: You have been excused from
7 service. Please have a seat back in the audience,
8 sir. Juror No. 21, Kurt Baum, please come forward.
9 What say you for the State?

10 MS. SAVAS: Please seat the juror.

11 THE CLERK: What say you for Defendant
12 Boston?

13 MS. SEMAN: Please excuse the juror.

14 THE CLERK: You have been excused from
15 service. Please have a seat back in the audience.
16 Defendant Boston has used four strikes, one
17 remaining. Juror No. 280, Amy Schnarr, please come
18 forward. What say you for the State?

19 MS. SAVAS: Please seat the juror.

20 THE CLERK: What say you for Defendant
21 Boston?

22 MS. SEMAN: Please seat the juror.

23 THE CLERK: What say you for Defendant
24 Holmes?

25 MR. LEWIS: Please seat the juror.

1 THE CLERK: You have been selected for
2 service. Please have a seat. Your Honor, that
3 makes 12. Now selecting for the first alternate.
4 Strikes will be 2, 1, 1, correct?

5 THE COURT: Correct.

6 THE CLERK: Juror No --

7 THE COURT: Well, it will be 1 and 2.
8 2 and 2, 2, 2, 2.

9 THE CLERK: Juror No. 281, Marie
10 Schultz, please come forward. What say you for the
11 State?

12 MS. SAVAS: Please seat the juror.

13 THE CLERK: What say you for Defendant
14 Boston?

15 MS. SEMAN: Please seat the juror.

16 THE CLERK: What say you for Defendant
17 Holmes?

18 MR. LEWIS: Please excuse the juror.

19 THE CLERK: You have been excused.
20 Please have a seat back in the audience. Defendant
21 Holmes has used one strike on the alternate. Juror
22 No. 81, Eleanor Daly, please come forward. What
23 say you for the State?

24 MS. SAVAS: Please seat the juror.

25 THE CLERK: What say you for Defendant

1 Boston?

2 MS. SEMAN: Please seat the juror.

3 THE CLERK: What say you for Defendant
4 Holmes?

5 MR. LEWIS: Please seat the juror.

6 THE CLERK: You have been selected for
7 service. Please have a seat in the jury box. Now
8 selecting the second alternate. Juror No. 270,
9 Shane Robinson. What say you for the State?

10 MS. SAVAS: Please seat the juror.

11 THE CLERK: What say you for Defendant
12 Boston?

13 MS. SEMAN: Please seat the juror.

14 THE CLERK: What say you for Defendant
15 Holmes?

16 MR. LEWIS: Please seat the juror.

17 THE CLERK: You have been selected for
18 service. Please have a seat in the jury box. Your
19 Honor, that makes 14. We have our jury.

20 THE COURT: Thank you. Any motions
21 from the State regarding the selection process?

22 MS. SAVAS: No, Your Honor.

23 THE COURT: Any motions from Mr.
24 Boston?

25 MS. SEMAN: No, Your Honor.

1 THE COURT: Any motions from Mr.
2 Holmes?

3 MR. LEWIS: No, Your Honor.

4 THE COURT: Ladies and gentlemen, those
5 of you that were not selected thank you so much for
6 your assistance and your participation. You're
7 free now to leave. Please call that number after
8 six tonight and follow that instruction. Probably
9 -- you never know, but probably the message will be
10 call back tomorrow after six. If that be the case
11 tomorrow will be your day. If for some reason one
12 of these cases we feel will resolve we will let you
13 know what time. But generally we will try to give
14 you about three hours notice when you need, for
15 instance if it's call at 11:00 or 12:00 or you come
16 in about 2:00 or 2:33 so you can plan accordingly.
17 Thank you very much. Have a good day. You are
18 free to leave.

19 (Remaining jurors left the courtroom.)

20 THE COURT: Ladies and gentlemen, those
21 of you that were selected, thank you very much as
22 well. And we have reached a good stopping point.
23 This is about the time we will typically -- during
24 the day we will stop about 12:00, between 12:00 and
25 1:00 typically to take our lunch break. Generally

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

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

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

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

3 MS. SEMAN: I believe so.

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

6 MR. LEWIS: I think more than enough.

7 THE COURT: Sir?

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

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

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

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

20 (A luncheon recess transpired.)

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

25 MS. SEMAN: Your Honor, I did not make

1 the motion. I believe that counsel for --

2 THE COURT: Mr. Lewis, you did.

3 MR. LEWIS: I mentioned it in chambers.

4 Having reviewed it --

5 THE COURT: You decided not to?

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

8 THE COURT: I figured.

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

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

17 MR. LEWIS: Yes.

18 MS. SEMAN: I would agree with that.

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

25 MS. SAVAS: Your Honor, for the record,

1 I did submit that brief on Friday regarding that.

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

4 MS. SAVAS: Thank you, sir.

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

7 MS. SEMAN: Normal sequestration.

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

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

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

16 MS. SAVAS: Nine or ten, Your Honor.

17 THE COURT: Okay.

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

1 into that line of questioning.

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

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

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

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

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

22 MS. SAVAS: Thank you, Your Honor.

23 THE COURT: All right. Anything else
24 in limine?

25 MS. SAVAS: Yes, Your Honor. Just also

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

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

11 MR. LEWIS: I definitely don't either.

12 MS. SEMAN: Nor do I.

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

15 THE COURT: All right.

16 MS. SAVAS: Right.

17 MR. LEWIS: And the --

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

23 MS. SAVAS: Absolutely, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

14 JOSEPH SHERWOOD
15 having been duly sworn, testifies as follows:

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

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

20 DIRECT EXAMINATION

21 BY MS. SAVAS:

22 Q. Good afternoon, Sergeant Sherwood.

23 A. Good afternoon.

24 Q. Where are you currently employed?

25 A. North Charleston Police Department.

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

3 A. I was just promoted to sergeant.

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

6 A. Eleven years.

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

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

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

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

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

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

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

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

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

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

10 Q. How many cases specifically involving
11 cocaine or crack?

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

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

16 A. Good half of them were.

17 Q. So a few hundred?

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

20 Q. How many cases involving manufacturing
21 crack?

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

25 Q. And you have been involved in search

1 warrant cases?

2 A. Correct.

3 Q. And specifically narcotics search
4 warrant cases?

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

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

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

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

16 A. I don't recall why we were in the area,
17 but we were there for an unrelated call in the
18 Clements Avenue, we call it Clements and Cody, kind
19 of one of our problem areas. I was in that area
20 for a call. Myself and another officer were
21 speaking out front, my training course that was in
22 my car. While we were out there I noticed a
23 taxicab pull up and saw the Defendants exit out of
24 the taxicab. I watched them walk up to Apartment 2
25 which I do know Ms. Denise, I have had several

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

3 MR. LEWIS: Objection, Your Honor.

4 THE COURT: Basis?

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

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

9 BY MS. SAVAS:

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

13 A. Yes.

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

16 A. 1819 Clements Avenue, Apartment 2.

17 Q. And in which city was that in?

18 A. North Charleston, County of Charleston.

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

21 MS. SEMAN: Objection.

22 THE COURT: What's the basis?

23 MS. SEMAN: Calls for speculation, Your
24 Honor.

25 THE COURT: She asked what did he know.

1 I will allow him to answer the question.

2 Overruled.

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

11 MR. LEWIS: Objection.

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

14 BY MS. SAVAS:

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

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

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

1 What do you do next?

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

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

12 MR. LEWIS: Objection.

13 MS. SEMAN: Objection.

14 MR. LEWIS: Hearsay.

15 THE COURT: Let her finish the
16 question, please. Don't answer the question,
17 Sergeant Sherwood, until I hear the full question.
18 BY MS. SAVAS:

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

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

24 THE WITNESS: They are single
25 occupancy.

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

3 THE WITNESS: Yes, I did.

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

7 BY MS. SAVAS:

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

10 A. Yes, I did.

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

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

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

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

25 MS. SEMAN: Same objection for Mr.

1 Boston.

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

4 BY MS. SAVAS:

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

7 A. Yes.

8 Q. Did she give you that consent?

9 A. Yes, she did.

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

12 A. Yes, I did.

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

15 A. Yes, I did.

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

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

21 MR. LEWIS: Objection.

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

1 foundation if you want.

2 BY MS. SAVAS:

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

7 A. Yes.

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

10 A. Yes.

11 Q. At this time, Your Honor, the State
12 would seek to admit State's Exhibit 19 and 20.

13 THE COURT: Okay. Any objection?

14 MR. LEWIS: No objection.

15 MS. SEMAN: No objection.

16 THE COURT: Very well. Without
17 objection State's 19 and 20 will be admitted. You
18 may publish.

19 (STATE'S EXH. 19 and 20 in evidence.)

20 BY MS. SAVAS:

21 Q. Sergeant Sherwood, are these the
22 apartments from that day?

23 A. Correct.

24 Q. And on your screen, you can touch it.
25 Can you point to which apartment you approached

1 that was Ms. Denise No. 2?

2 A. Hard to see, it's blurry. This one.

3 Q. I am showing you State's Exhibit No.
4 20. And whereabouts were y'all standing when you
5 had observed the taxicab pull up?

6 A. Right about here (indicating).

7 Q. So you were literally right out front
8 of the apartment?

9 A. Yes.

10 Q. What happened when Ms. Denise gave you
11 that lawful consent?

12 A. I went inside with her.

13 Q. And what did you notice upon entering?

14 A. The two Defendants standing in the
15 kitchen area. I immediately saw them.

16 Q. And did you notice anything in view in
17 the kitchen?

18 A. Yes, I took note of two plastic bags
19 that appeared to have residue on them.

20 Q. Ms. Denise --

21 MR. LEWIS: Same objection from
22 previously.

23 MS. SEMAN: Yes, Your Honor. Same for
24 Mr. Boston.

25 THE COURT: Those objections have been

1 addressed. I will allow it. What are the exhibit
2 numbers?

3 MS. SAVAS: No. 1, Your Honor, and
4 Exhibit No. 7.

5 THE COURT: 1 and 7 are admitted
6 subject to objection of counsel previously argued.

7 (STATE'S EXH. 1 and 7 in evidence.)

8 MS. SAVAS: Your Honor, the State would
9 request to publish to the jury.

10 THE COURT: You may.

11 BY MS. SAVAS:

12 Q. I am showing you State's Exhibit No. 1.
13 What is this a photo of?

14 A. That's the bag I saw on the counter.

15 Q. And who took these photos?

16 A. Me.

17 Q. You did?

18 A. Yes.

19 Q. Okay. And, Sergeant Sherwood, I'm
20 going to hand you State's Exhibit No. 7.

21 A. That's the bag that has the residue in
22 it.

23 Q. So these are the clear plastic baggies
24 that you had found that day in the kitchen?

25 A. Yes, ma'am. They were more puffy and

1 pulled apart, but --

2 Q. They are kind compressed from being
3 collected?

4 A. Yes.

5 Q. Sergeant Sherwood, I am also going to
6 show you State's Exhibit 2, 3, 4, 5, and 6. Do you
7 recognize these?

8 A. Yes.

9 Q. And do those accurately reflect what's
10 depicted in those photos?

11 A. Yes.

12 MS. SAVAS: At this time, Your Honor,
13 the State would seek to admit evidence items 2,
14 through 6 and publish to the jury.

15 MR. LEWIS: I need to see what those
16 specific ones are, Judge.

17 MS. SAVAS: (Handing.)

18 MR. LEWIS: Judge, I have specific
19 objections in regards to 3, 4 and 5 that are in
20 addition to the previous objection. It may be a
21 matter of law.

22 THE COURT: All right. What's the
23 basis of the objection just without arguing?

24 MR. LEWIS: It would be speculation and
25 not qualified as an expert to render an opinion.

1 THE COURT: Well, I haven't heard what
2 he's going to testify to, but as to whether -- that
3 doesn't go to the picture -- the pictures are the
4 pictures. Go to the testimony concerning that. So
5 I don't understand that -- subject to that
6 objection I will allow it, but I don't think that's
7 pertinent as to the admissibility of the
8 photograph. The photograph is a photograph. What
9 he can testify about it, that's a different story.

10 MR. LEWIS: Yes, Your Honor.

11 THE COURT: Subject to the objection of
12 counsel State's Exhibits 2, 3, 4, 5 and 6 are
13 admitted. We will argue further on the record if
14 necessary.

15 (STATE'S EXH. 2-6 in evidence.)

16 BY MS. SAVAS:

17 Q. Thank you, Your Honor. So Sergeant
18 Sherwood, just to recap, you entered the apartment
19 and you saw the plastic baggies and the two men at
20 the microwave. Then what happened next?

21 A. They turned around and looked at me.
22 And then that's when I heard, you know, the
23 shuffling over there by where the microwave was
24 located. You could hear the microwave open, close
25 really quickly and they -- I guess I'd describe it

1 as a football handoff, both of them ducked down and
2 went around the corner which I later found to be a
3 bathroom. I wasn't too familiar with the inside of
4 those homes at the time, but there was a bathroom
5 right there.

6 Q. And when they went into the bathroom
7 what did you do next?

8 A. I asked them to come back out because
9 it scared me. I took it that as possibly a weapon
10 being involved. Was really small kind of area,
11 really -- I was pretty on edge at that point. Just
12 the way, the demeanor as a possible weapon
13 involved.

14 Q. And what did you do once you had called
15 them into the living room?

16 A. As they came in the living room the
17 other officer, he patted them down. I went back
18 there to make sure there was no weapons or anybody
19 else back there because I only saw those two
20 gentlemen at the time. I just wanted to go back
21 and make sure there was no one else in there.
22 That's when I went into the bathroom and I saw that
23 there was a Pyrex measuring glass cup and it had
24 steam actually coming out of it and the crack
25 sitting in it. How it is made is called cooking at

1 that point. But it's a round shape of a cookie
2 sitting in the glass or along with the whisk with
3 some tape around it. It was sitting next to it on
4 the edge of the bathtub.

5 Q. And after finding those drugs what did
6 you do next?

7 A. When I came back in I told everybody to
8 detain everybody which we do that by placing them
9 in handcuffs.

10 Q. And what happened once they were
11 detained?

12 A. That's when -- prior to that Sergeant
13 Hoose -- I don't know if I can talk about -- prior
14 to that Sergeant Hoose, he requested consent and
15 gained that and located some narcotics on Mr.
16 Holmes and then that's when he started putting
17 handcuffs is when I came back out and said cuff
18 him, everybody was put in handcuffs.

19 Q. Once these items were found what was
20 your next step in the investigation?

21 A. We removed them from inside of the
22 apartment to keep the integrity of it. I went and
23 typed up a search warrant and I had a judge sign it
24 to just make sure we had a search warrant, our I's
25 dotted and T's crossed at that point.

1 Q. And did you end up executing that
2 search warrant?

3 A. Yes.

4 Q. Did you collect that evidence?

5 A. Yes, I did.

6 Q. And, Sergeant Sherwood, I am showing
7 you State's Exhibit No. 2. And, Sergeant Sherwood,
8 would you please describe what we see in the
9 picture? What is the significance to you?

10 A. Like I said, this is the microwave they
11 were standing in front of. When they left from it
12 this is -- other than the microwave wasn't open.
13 It was open at the time. I can circle? There is a
14 scale sitting right here and then the top of the
15 scale is sitting right here. Very common scale
16 that's used. You see right here that's the box for
17 old different type of scale. And back here that's
18 more bags back there and then up here is the baking
19 soda which is the cup that they used for
20 manufacturing crack cocaine. It's 50 percent
21 cocaine and 50 percent of a cut which in this case
22 was baking soda. They use other things also at
23 times. The other part I took note of was that the
24 timer on the microwave is at a minute 54 so they
25 never actually finished cooking it all the way.

1 They had a minute 54 I guess left on the microwave.

2 Q. So the microwave was in use upon your
3 entry of the apartment?

4 A. Yes.

5 Q. And as -- given your training and
6 experience in narcotics can you simply explain to
7 the jury how you actually manufacture crack?

8 A. Yes. So normally what happens is
9 you'll combine your -- you boil the water in a
10 Pyrex cup, Pyrex being easier to measure the water
11 out. Put the water in there. Certain part, they
12 will put an amount of cocaine in it and an amount
13 of baking soda in it. Boil the water. It will
14 actually start to boil out of the Pyrex cup into
15 the microwave. And they use the whisk, they call
16 whip it, and it takes all the air bubbles out and
17 turns to a hard rock. That's why it's called crack
18 cocaine, a lot of people call it rock because it's
19 a rock form.

20 Q. And, Sergeant Sherwood, I'm going to
21 show you what's been premarked for identification
22 as State's Exhibit No. 8.

23 MR. LEWIS: Same objection.

24 THE COURT: Same objection as

25 previously argued? Subject to the arguments of

1 counsel that's been previously argued in this
2 matter it is admitted.

3 (STATE'S EXH. 8 in evidence.)

4 MS. SAVAS: State requests to publish.

5 THE COURT: You may.

6 BY MS. SAVAS:

7 Q. Sergeant Sherwood, could you please
8 describe what that is?

9 A. It's an AWS scale.

10 Q. And is that the scale that was found on
11 the kitchen counter near the microwave that day?

12 A. Yes.

13 Q. So what does someone in your experience
14 and training use a scale for?

15 MR. LEWIS: Objection, Your Honor.

16 THE COURT: Sustained. Doesn't matter
17 what they can use the scale for. He can only
18 confine it to testimony he found the scale. Thank
19 you.

20 THE WITNESS: I can tell that you the
21 scale --

22 THE COURT: No, sir. You can't answer
23 the question until it is asked, sir.

24 BY MS. SAVAS:

25 Q. So this scale was found on the scene?

1 A. Um-hmm.

2 THE COURT: Is that a yes?

3 THE WITNESS: Yes.

4 BY MS. SAVAS:

5 Q. And, Sergeant Sherwood, I'm going to
6 show you State's Exhibit No. 9.

7 MR. LEWIS: Same objection.

8 MS. SEMAN: Same objection.

9 THE COURT: Subject to the previous
10 objection argued on the record State's 9 is
11 admitted.

12 (STATE'S EXH. 9 in evidence.)

13 BY MS. SAVAS:

14 Q. State requests to publish to the jury.
15 Sergeant Sherwood, is this the Pyrex cup found in
16 that kitchen cabinet that day from the photo?

17 A. Yes.

18 Q. And, Sergeant Sherwood, I'm going to
19 show you what's been premarked as State's Exhibit
20 No. 10.

21 MR. LEWIS: Same objection.

22 MS. SEMAN: Same objection.

23 THE COURT: Subject to the previous
24 objections argued State's 10 is admitted.

25 MR. LEWIS: Both Defendants.

1 THE COURT: Both of them. Unless I
2 state otherwise it will be continuous for both
3 Defendants.

4 MR. LEWIS: Thank you.

5 (STATE'S EXH. 10 in evidence.)

6 MS. SAVAS: State requests to publish
7 to the jury.

8 THE COURT: You may.

9 BY MS. SAVAS:

10 Q. Sergeant Sherwood, this is No. 10. Is
11 that the Pyrex you collected from the bathroom?

12 A. Yes, that's it.

13 Q. And how do you recognize that as being
14 the one in the bathroom?

15 A. If you look at it you will see a ring
16 around it. Not all of the cocaine or the baking
17 soda will actually adhere to the cooking and when
18 you're making it it will go on the edges so this
19 actually right here has cocaine in it still.

20 Q. So you had mentioned this was the one
21 that was --

22 MR. LEWIS: Objection, Judge, in
23 regards to the labeling of the substance itself.

24 THE COURT: Overruled.

25 BY MS. SAVAS:

1 Q. This is the one you had mentioned that
2 was found bubbling in the bathroom?

3 A. Yes.

4 Q. Sergeant Sherwood, what happened to the
5 substance inside here?

6 A. I took it out, we put it into a BEST
7 kit to be sent off to a lab to be analyzed.

8 Q. And just briefly, what's a BEST kit?

9 A. It's -- I am sorry. South Carolina Law
10 Enforcement Division, it's the state law
11 enforcement, they have a lab there. And we will
12 package it into a BEST kit, just a manila envelope
13 with some paperwork and plastic bag in it. And we
14 will ship it off to SLED and let SLED test it
15 because we don't have the funds at all to be able
16 to test that kind of stuff.

17 Q. I will show you what has been marked as
18 State's Exhibit No. 11.

19 MR. LEWIS: Same objection.

20 MS. SEMAN: Same, Your Honor.

21 THE COURT: Subject to the objection
22 previously argued as to both Defendants admitted.

23 MS. SAVAS: The State seeks to publish
24 to the jury.

25 THE COURT: You may.

1 (STATE'S EXH. 11 in evidence.)

2 BY MS. SAVAS:

3 Q. Sergeant Sherwood, is this that --

4 A. Yes, ma'am.

5 Q. -- baking soda from the kitchen
6 cabinet?

7 A. Yes.

8 Q. You had mentioned -- how is this used
9 to manufacture crack?

10 A. They will usually half it with the
11 cocaine. Like I said, they will dilute it with the
12 cocaine in order to make it a rock form.

13 Q. Sergeant Sherwood, I'm going to show
14 you what's been premarked as State's Exhibit
15 No. 12.

16 MS. SEMAN: Same.

17 THE COURT: Subject to the objection
18 previously argued and ruled upon as to both
19 Defendants it is admitted.

20 (STATE'S EXH. 12 in evidence.)

21 MS. SAVAS: The State seeks to publish
22 to the jury.

23 THE COURT: You may.

24 BY MS. SAVAS:

25 Q. And, Sergeant Sherwood, is that the

1 whisk from that picture, looks like a little red is
2 over it?

3 A. Yes.

4 Q. So you had located this in the kitchen
5 cabinet?

6 A. Yes.

7 Q. And again in the manufacturing of crack
8 what would this be used for?

9 A. To mix it into a paste so it can let it
10 dry into a rock.

11 Q. Sergeant Sherwood, I'm going to show
12 you what's been premarked for identification as
13 State's Exhibit No. 13.

14 MR. LEWIS: Same, Your Honor.

15 THE COURT: Subject to the objection
16 previously argued and ruled upon it is admitted.

17 (STATE'S EXH. 13 in evidence.)

18 MS. SAVAS: The State seeks to publish
19 to the jury.

20 THE COURT: You may.

21 BY MS. SAVAS:

22 Q. Thank you. Sergeant Sherwood, what is
23 that?

24 A. That's another whisk. This is the one
25 that was next to the Pyrex with the crack cocaine

1 in it and you can look at it and there is still
2 residue on the whisk itself.

3 Q. So this was -- you found this on the
4 bathtub?

5 A. Yes.

6 Q. Why is that significant?

7 A. That's how you mix it. That's the one
8 that they were physically using to mix it up with.

9 Q. Sergeant Sherwood, I am going to show
10 you State's Exhibit No. 14.

11 THE COURT: Subject to the objection of
12 counsel for both Defendants as previously argued it
13 is admitted.

14 MS. SAVAS: The State seeks to publish
15 to the jury.

16 THE COURT: You may.

17 (STATE'S EXH. 14 in evidence.)

18 BY MS. SAVAS:

19 Q. And, Sergeant Sherwood, is this the
20 other item obtained from Defendant Holmes?

21 A. Yes.

22 Q. What is this?

23 A. Digital scale.

24 Q. Was this a result of Sergeant Hoose's
25 consent to search of his person?

1 A. Yes, ma'am.

2 Q. This was found in his pocket?

3 A. Yes, ma'am.

4 Q. And, Sergeant Sherwood, I'm going to
5 show you what's been marked for identification
6 purposes State's Exhibit No. 15. And do you
7 recognize this?

8 A. Yes.

9 Q. Okay.

10 THE COURT: What is it?

11 THE WITNESS: Crack cocaine.

12 THE COURT: It's a substance?

13 THE WITNESS: Yes, sir.

14 BY MS. SAVAS:

15 Q. Sergeant Sherwood, I'm going to show
16 you for identification purposes only State's
17 Exhibit No. 16. Do you recognize the item 1.1 in
18 there?

19 A. Yes. It's a substance. Crack cocaine.

20 THE COURT: It's -- I assume it is a
21 container containing a substance.

22 MS. SAVAS: Yes, sir.

23 THE WITNESS: It's a baggie.

24 THE COURT: Let him identify it in that
25 fashion so we know what it looks like.

1 MS. SAVAS: Yes, sir.

2 BY MS. SAVAS:

3 Q. And do you recall where the 1.1 was --
4 where you had obtained that from, put it in that
5 BEST kit?

6 A. This was the one from Mr. Holmes.

7 Q. And do you recall who gave you that?
8 Was that Officer Etminan during the collection?

9 A. Yes.

10 Q. And 1.12, there's another small baggie.
11 Do you recognize that?

12 A. Yes. That was the one taken from the
13 jail.

14 Q. Okay. And do you recall who had given
15 that to you?

16 A. A deputy at the jail. They do a strip
17 search and they recovered that. Officer Smoak
18 recovered that.

19 Q. And, Sergeant Sherwood, just to briefly
20 go over it, you had then combined these into those
21 BEST kits for testing?

22 A. Yes.

23 Q. And everything was properly sealed to
24 the best of your knowledge?

25 A. Yes, ma'am.

1 Q. And, Sergeant Sherwood, do you recall
2 what you did with the BEST kits and who collected
3 this evidence to put it into evidence?

4 A. As in who physically put it into
5 evidence? Myself and my trainee.

6 Q. And who was your trainee?

7 A. Pai Etminan. We call him Pai. He has
8 a hard last name.

9 Q. And, Sergeant Sherwood, through your
10 training and experience how long does it actually
11 take to cook crack?

12 A. About as long as it takes to boil
13 water, maybe a little longer. And then just let it
14 sit and harden up and cool off and it will turn
15 hard. Not very long.

16 Q. And was it enough time from the time
17 that you had seen them go into the door from when
18 you made entry?

19 A. Oh, yes.

20 Q. Okay. Showing you what's been admitted
21 as State's Exhibit No. 6. And what is that a
22 picture of?

23 A. That's what I saw when I went to the
24 bathroom. That's a picture of crack cocaine in the
25 Pyrex cup and the whisk sitting right next to it.

1 Q. So that's what the Pyrex looked like
2 prior to you removing the crack from it?

3 A. Yes. That's -- and you can actually
4 see a nice little circle like that.

5 Q. So it was these items that you had
6 collected?

7 A. Yes.

8 Q. And you could just see them on the
9 bathtub sitting there?

10 A. Yes.

11 Q. And who had brought those items into
12 the bathtub?

13 A. Mr. Boston.

14 MR. LEWIS: Objection.

15 THE COURT: Sustained unless you can
16 lay a foundation for that.

17 BY MS. SAVAS:

18 Q. Sergeant Sherwood, when you had seen
19 the Defendants in the kitchen did you see them run
20 into the bathroom?

21 A. Yes.

22 Q. And you had seen them immediately open
23 the microwave?

24 A. Yes.

25 Q. And what is your understanding as to

1 what they were doing?

2 MR. LEWIS: Objection.

3 THE COURT: Speculation, solicitor. I
4 won't allow that. Thank you.

5 BY MS. SAVAS:

6 Q. Sergeant Sherwood, when you approached
7 the microwave did you do anything specific to that
8 microwave?

9 A. We field tested it. We have a --

10 MS. SEMAN: Objection.

11 THE COURT: What's the basis of the
12 objection?

13 MR. LEWIS: In regards to any
14 conclusions drawn.

15 THE COURT: What do you usually do. I
16 think he said field tested. That's fine.

17 BY MS. SAVAS:

18 Q. Just for the jury's understanding what
19 is a field test?

20 A. Ours I have -- can I show you? Just a
21 swab. You can swab cocaine with it and it has
22 cocaine in it and it turns blue.

23 Q. And so --

24 MR. LEWIS: Objection to the science
25 behind it, Judge.

1 THE COURT: He's testifying to a swab.
2 He hasn't testified to the validity or anything.
3 Overruled. Thank you. Allow the testimony what a
4 field test is.

5 BY MS. SAVAS:

6 Q. Sergeant Sherwood, showing you State's
7 Exhibit No. 3. Is that that cocaine swab you were
8 discussing?

9 A. Yes.

10 Q. And it's a little blurry, but if I zoom
11 in, can you please explain what that is?

12 A. So this is the cocaine swab that our
13 department has on it -- has for us. What I did was
14 I opened it up and I wiped the inside of the
15 microwave on the plate area right there where I
16 could see residue at and when I did that it turned
17 blue as you can see a circle right here.

18 Q. What does the blue signify?

19 A. That it's testing presumptive --

20 MR. LEWIS: Objection.

21 THE COURT: I will allow you to
22 cross-examine. Subject to objection of counsel I
23 will overrule the objection. You may answer the
24 question.

25 BY MS. SAVAS:

1 Q. What does the blue signify?

2 A. That it's testing presumptive for the
3 presence of cocaine.

4 Q. And showing you what's been admitted as
5 State's Exhibit No. 4, is that just a close-up of
6 your swab?

7 A. It is. I just didn't have a good
8 camera so the flash kind of --

9 Q. The lighting may have --

10 A. Flash kind of dimmed all out.

11 Q. And showing you State's Exhibit No. 5.
12 And what is significant in this photo?

13 A. I took this prior to swabbing. So if
14 you look at right around here, you can see that's
15 the residue that comes off from when you are
16 cooking it.

17 Q. And was there anything significant in
18 the microwave then that you had found?

19 A. Not at this point.

20 Q. And given your training and experience
21 in the field testing what was your determination
22 about that microwave?

23 A. It's been used in the cooking of crack
24 cocaine.

25 Q. And, Sergeant Sherwood, in

1 manufacturing crack you typically use a microwave
2 to heat it up and boil the water like you had said?

3 A. Yes.

4 Q. Were there any other food items that
5 you had located in that kitchen?

6 A. No, ma'am.

7 Q. So this is the picture of her kitchen?
8 There was nothing else used for food?

9 A. No, ma'am. It was -- didn't have -- it
10 was kind of -- was pretty empty.

11 Q. So there was no other items that you
12 could possibly be baking with, no flour?

13 A. No.

14 Q. Sugar, cookies?

15 A. No.

16 Q. Okay. And, Sergeant Sherwood, did you
17 ever see that taxicab again?

18 A. I did.

19 Q. You did?

20 A. I did.

21 Q. And when did you see it?

22 A. We were outside dealing with our
23 paperwork we have to do when you arrest somebody.
24 We were outside and the taxicab driver that
25 originally dropped them off came to pick them up.

1 Q. Okay. Beg the Court's indulgence.

2 THE COURT: Okay.

3 (Off-the-record conference.)

4 MR. LEWIS: Judge, I need to object to
5 that last statement as hearsay.

6 THE COURT: Thank you. Saw the
7 taxicab?

8 MR. LEWIS: The reason that it was
9 there.

10 THE COURT: The question has been asked
11 and answered without objection.

12 (Off-the-record conference.)

13 BY MS. SAVAS:

14 Q. And, Sergeant Sherwood, do you see --
15 do you recognize anyone in the courtroom today as
16 one of the Defendants from that day?

17 A. Yes, ma'am.

18 Q. And can you please point him out to me?

19 A. Right there (indicating).

20 Q. In the white shirt?

21 A. Yes, ma'am.

22 Q. Let the record reflect that Sergeant
23 Sherwood has identified the Defendant Darell Boston
24 in this case.

25 THE COURT: It will so reflect.

1 BY MS. SAVAS:

2 Q. And, Sergeant Sherwood, sort of explain
3 briefly again the size of the apartment, how big --
4 would you say it would be about this blue carpeted
5 area or a little bigger or smaller?

6 A. Probably a little smaller if you are
7 talking from the table to here, probably about
8 that. A little differently shaped, but yes, about
9 that.

10 Q. And, Sergeant Sherwood, did you have a
11 clear view once you entered that apartment of what
12 was going on?

13 A. Yes, I did.

14 Q. Okay.

15 MS. SAVAS: Nothing further from the
16 State. Please answer any questions the defense
17 will have.

18 THE COURT: Ms. Seman.

19 MS. SEMAN: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. SEMAN:

22 Q. Good afternoon, Sergeant. I want to
23 talk to you a little bit about your investigation.
24 As part of any investigation you gather
25 information, right?

1 A. Yes, ma'am.

2 Q. You respond to a call and immediately
3 you begin to collect information, right?

4 A. Yes, I guess.

5 Q. You look around for things that might
6 be important, don't you?

7 A. All the time, yes, ma'am.

8 Q. You talk to people?

9 A. Yes, ma'am.

10 Q. Potential witnesses?

11 A. Yes, ma'am.

12 Q. And you take notes about these things
13 and these people?

14 A. Mentally usually, yes.

15 Q. At some point you decide to write down
16 those mental notes, right?

17 A. Are you talking about this or in
18 general?

19 Q. In a report?

20 A. Talking about a report? Yes, I take
21 reports, yes, ma'am.

22 Q. And you have to be careful to record
23 what you saw and what you heard, right?

24 A. Correct.

25 Q. You may ask witnesses to give some

1 written statements, right?

2 A. At times, yes, ma'am.

3 Q. To record what they saw or heard?

4 A. Yes, ma'am.

5 Q. But first, though, you look around and
6 you listen, right?

7 A. In general or are you talking about --

8 Q. When you arrive at a call?

9 A. Every call is different. Yes, I guess,
10 yes, ma'am.

11 Q. And then at some point you write down
12 what you saw and what you heard?

13 A. If that scene calls for an incident
14 report. We don't take reports for everything.

15 Q. But you do have a standard form
16 official report that your office uses, don't you?

17 A. Yes.

18 Q. And your job when you write a report is
19 to make sure that everything in the report has been
20 written down accurately?

21 A. Best as I can, yes, ma'am.

22 Q. And that's a standard police practice,
23 right?

24 A. Yes, ma'am.

25 Q. Here in Charleston and probably just

1 about everywhere else?

2 A. Yes, ma'am.

3 Q. And when you go to the academy you
4 learn that practice of writing reports, don't you?

5 A. Not necessarily, no.

6 Q. You don't learn how to write a report?

7 A. That's done with your department, yes,
8 ma'am.

9 Q. You were trained in how to write a
10 report?

11 A. Correct, yes, ma'am.

12 Q. And everybody already knows how to
13 write a report when they start on the job, right?
14 They know how to write, not write a report, but
15 they know how to write?

16 A. I hope so, yes, ma'am.

17 Q. I would think so. But everyone still
18 has to learn how to write a report, right?

19 A. For the most part. Sometimes we get
20 lucky and get people from other agencies.

21 Q. But report writing is special?

22 A. Yes, ma'am.

23 Q. It's different, it serves a purpose,
24 right?

25 A. Yes, ma'am.

1 Q. Because documenting your investigation
2 is very, very important?

3 A. Yes, ma'am.

4 Q. It helps your memory?

5 A. Correct.

6 Q. Because there is often a lot of time
7 between when you write an arrest report and between
8 when you come to court like today, right?

9 A. Yes, ma'am.

10 Q. For example, here this was almost three
11 years ago, wasn't it?

12 A. Yes, ma'am, almost.

13 Q. And it would be difficult for anyone to
14 remember a lot of details from something that
15 happened three years ago?

16 A. It could be, yes, ma'am.

17 Q. Especially someone like yourself,
18 right? Who sees a lot of cases and meets a lot of
19 people every day?

20 A. No, I remember this one. This is kind
21 of a special case.

22 Q. Okay. But anyway, you write down the
23 important stuff in a report, right?

24 A. Yes, ma'am.

25 Q. And you work on more than one case at a

1 time, don't you?

2 A. Yes, ma'am.

3 Q. Cases that start on different dates,
4 start at different times and have different
5 witnesses?

6 A. Yes, ma'am.

7 Q. And it might be difficult to keep all
8 the facts straight?

9 A. No, ma'am. I'm a professional. I have
10 pride in my work.

11 Q. That's why you write a report?

12 A. Yes, ma'am.

13 Q. To help you remember?

14 A. Part of it, yes, ma'am.

15 Q. And you review that report before you
16 come into court and you testify, don't you?

17 A. Yes, ma'am, a lot of times I will read
18 them.

19 Q. Just like you did before you came in to
20 testify today?

21 A. Yes, ma'am.

22 Q. And you have been cross-examined
23 before, haven't you?

24 A. In the court? Or for this case in
25 general?

1 Q. In general.

2 A. Yes, ma'am.

3 Q. You have been in court before, haven't
4 you?

5 A. Yes, ma'am.

6 Q. Testified before in other cases?

7 A. Yes, ma'am.

8 Q. And when you testify in court you want
9 to be truthful, right?

10 A. Yes, ma'am.

11 Q. And because you rely on your report
12 when you testify that report needs to be truthful,
13 right?

14 A. Report has to be truthful, yes, ma'am.

15 Q. It would be silly to write down
16 anything false?

17 A. Right.

18 Q. The report needs to be accurate, right?

19 A. Yes.

20 Q. Meaning precise and detailed?

21 A. Best we can. We are not -- we're
22 police officers so...

23 Q. But sometimes the details are
24 important?

25 A. Correct.

1 Q. And it's not always easy to remember,
2 right?

3 A. Right.

4 Q. Your report also needs to be complete
5 meaning that it has to have everything that you
6 know in it, doesn't it?

7 A. Best as I can.

8 Q. Because the truth if given in parts can
9 be misleading?

10 MS. SAVAS: Objection, Your Honor. I
11 am not sure of the line of questioning.

12 THE COURT: Overruled. It's
13 cross-examination.

14 THE WITNESS: I said that would be a
15 lie then. If you don't tell the truth it's still a
16 lie.

17 BY MS. SEMAN:

18 Q. You took an oath to tell the whole
19 truth?

20 A. Yes, ma'am.

21 Q. So your report needs to be true, needs
22 to be accurate and needs to be complete, right?

23 A. Yes, ma'am.

24 THE COURT: Let's confine it to
25 questions and not argumentative.

1 MS. SEMAN: Yes, Your Honor.

2 THE COURT: Thank you. You made your
3 point. Move on, please.

4 BY MS. SEMAN:

5 Q. So let's talk about your report in this
6 case. In this case you told the solicitor during
7 your questioning that you approached Ms. Holman's
8 apartment to check on her, right?

9 A. Yes, ma'am.

10 Q. But in your incident report you said
11 that you approached her apartment for drug
12 complaints, right?

13 A. Yes, ma'am.

14 Q. And in your report you even listed
15 another case number, didn't you?

16 A. Yes, ma'am.

17 Q. A case number that referred to a report
18 that another officer wrote?

19 A. Yes, ma'am.

20 Q. And you're familiar with that report?

21 A. Yes, ma'am.

22 Q. It was about something else that
23 happened at the apartments, right?

24 A. Right.

25 Q. The report involved a complaint that

1 happened a week earlier when the landlord felt
2 threatened by a non-resident?

3 A. That's part of it, yes, ma'am.

4 Q. Involved Apartment 13, right?

5 A. Yes, ma'am.

6 Q. And Denise Holman lived in Apartment 2?

7 A. Yes, ma'am.

8 Q. And it definitely did not involve
9 drugs?

10 A. The complaint?

11 Q. Correct.

12 A. Yes, ma'am.

13 Q. So to the extent that your report says
14 you were responding for drug complaints under case
15 No. 2015006889, meaning that other case, your
16 report was wrong?

17 A. No. We have a plan of the day we go
18 off a lot of times and that's where it's at our
19 squad briefing that we go over where the specific
20 complaints are. One complaint is trespassing,
21 another would be drug activity. We have several
22 different complaints from that area. To this day
23 we still have them.

24 Q. But in this case your report says that
25 you responded for a drug complaint under case

1 number 2015006889, right?

2 A. Yes, ma'am.

3 Q. But that complaint didn't involve a
4 drug complaint?

5 A. I would have to look at the report. I
6 don't recall offhand.

7 Q. I beg the Court's indulgence.

8 THE COURT: Sure.

9 MS. SEMAN: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 BY MS. SEMAN:

13 Q. Let the record reflect that I am
14 showing Mr. Sherwood an incident report, the
15 incident report that he mentioned in his --

16 THE COURT: Let's have it marked for
17 identification.

18 MS. SEMAN: Yes, sir.

19 THE COURT: Defendant's 1. ID only.

20 (DFT. EXH. 1, report, was marked for
21 identification.)

22 BY MS. SEMAN:

23 Q. Officer -- Sergeant Sherwood, have you
24 had time to refresh your memory on that?

25 A. Yes, ma'am.

1 Q. And this report definitely doesn't
2 involve drugs?

3 A. No, it didn't say anything about drugs
4 in there.

5 Q. You were in the area for a traffic
6 stop, right?

7 A. Like I said, I'm sorry, I didn't
8 recall. I'm sure that's what it was.

9 Q. At least something unrelated?

10 A. Yes. Completely unrelated.

11 Q. And you saw the Defendants get out of
12 the taxi, right?

13 A. Yes.

14 Q. Together?

15 A. Yes.

16 Q. They didn't have anything out of the
17 ordinary?

18 A. I just paid attention to their faces.
19 I didn't continue to look at them.

20 Q. Didn't see a weapon?

21 A. No.

22 Q. Didn't see any contraband?

23 A. No, ma'am.

24 Q. Because if you had you would have
25 stopped them?

1 A. Correct.

2 Q. And you didn't. Instead you sat for
3 15 minutes, didn't you?

4 A. Yes, ma'am.

5 Q. And you watched the apartment?

6 A. I didn't watch it, kind of stayed there
7 in the area, but --

8 Q. That's when you decided to approach?

9 A. Yes, ma'am.

10 Q. Right? To see if a crime is being
11 committed?

12 A. I mean that and to check on Ms. Denise,
13 yes, ma'am.

14 Q. When you spoke with Ms. Savas you said
15 when you came into Ms. Holman's apartment Mr.
16 Boston and Mr. Holmes were at the microwave cooking
17 crack?

18 A. Correct.

19 Q. You had a direct view to the kitchen?

20 A. Yes, ma'am.

21 Q. Nothing was in your way?

22 A. No, ma'am.

23 Q. And they were at the microwave?

24 A. Yes.

25 Q. That microwave is an important detail?

1 A. Yes.

2 Q. Important because you think it was used
3 to manufacture crack?

4 A. Yes.

5 Q. So it's important evidence?

6 A. Yes.

7 Q. You say that the microwave was on?

8 A. Yes, ma'am.

9 Q. You say that something was inside?

10 A. I didn't say anything was inside. I
11 never said that.

12 Q. But you say that the Defendants were
13 actively manufacturing?

14 A. Yes, ma'am.

15 Q. And you say you know what was inside?

16 A. Yes, ma'am.

17 Q. You say it's a Pyrex?

18 A. Yes, ma'am.

19 Q. That Pyrex is important because you
20 found crack inside of it?

21 A. Yes, ma'am.

22 Q. And you say it's that Pyrex you seized
23 from that microwave?

24 A. Yes, ma'am.

25 Q. And that Pyrex is very important

1 evidence because you say that the Defendants were
2 caught in the act?

3 A. Correct.

4 Q. The act being making crack?

5 A. Yes, ma'am.

6 Q. And catching somebody in the act is an
7 important detail?

8 A. Yes, ma'am.

9 Q. The most important detail?

10 A. Right.

11 Q. Would make the whole case a slam dunk?

12 A. Yes, ma'am.

13 Q. Because you say you caught them in the
14 act?

15 A. Yes, ma'am, I did.

16 Q. These are all incredibly important
17 details and you would have written them down?

18 A. Yes, ma'am.

19 Q. And you wrote a report after this,
20 didn't you?

21 A. Yes, ma'am.

22 Q. In the report, though, you don't say
23 anything about this most important detail?

24 A. I would have to check, but, yes, ma'am.

25 Q. Would you like to refresh your

1 recollection?

2 A. No, I'm good.

3 Q. In your report you don't say anything
4 about this?

5 A. I'm sorry?

6 Q. About the Defendants being at the
7 microwave cooking crack?

8 A. Okay.

9 Q. You don't say they were standing at the
10 microwave?

11 A. Yes.

12 Q. Would you like to see a copy of your
13 report? I am happy to show it to you.

14 A. I'm fine. I believe you. I don't need
15 to see a copy of it.

16 Q. You don't say in your report that the
17 microwave was on when you came inside the
18 apartment?

19 A. No, ma'am.

20 Q. You don't say something was inside the
21 microwave?

22 A. No.

23 Q. You don't say that there was time
24 remaining on the microwave?

25 A. No, ma'am.

1 Q. You don't say you saw them close the
2 door, do you?

3 A. No, ma'am.

4 Q. You don't say that you learned what was
5 inside the microwave at that time, do you?

6 A. No, ma'am.

7 Q. You don't say that anyone carried
8 anything?

9 A. No, ma'am.

10 Q. And you definitely don't say that
11 anyone had that Pyrex?

12 A. No, ma'am.

13 Q. You don't say anything about anything
14 in anyone's hand in your report, do you?

15 A. No, ma'am.

16 Q. And you've said different things about
17 who had what in their hands, haven't you?

18 A. No.

19 Q. Previously you have said that my
20 client, Mr. Boston, had something in his hand,
21 didn't you?

22 A. I said he tried to hide it from me. He
23 concealed himself. I would assume that there would
24 be something in his hand.

25 Q. Previously you also said on the record

1 that Mr. Holmes had something in his hand, didn't
2 you?

3 A. Again the same thing. When you display
4 yourself like that as if you were taking a football
5 handoff I would assume you have something in your
6 hands.

7 Q. And today you're saying you didn't see
8 them, but they both had something in their hands?

9 A. Yes.

10 Q. Right? In your report you do say that
11 two men came out of the back of the house, don't
12 you?

13 A. The bathroom.

14 Q. And more than that you describe those
15 men?

16 A. Yes, ma'am.

17 Q. You describe where they came from like
18 you just said?

19 A. Yes, ma'am.

20 Q. You say their hands were shaking and
21 their breath was labored?

22 A. Yes.

23 Q. Nothing about items in hands?

24 A. Huh-uh.

25 Q. Nothing about standing there by a

1 microwave?

2 A. No, ma'am.

3 Q. Right? Meaning that the most important
4 detail was left out of your report?

5 A. It's an opinion.

6 Q. So your report was incomplete?

7 A. I mean if that's an opinion, but I
8 guess.

9 Q. You never amended it?

10 A. No, we don't. We are not going to
11 amend a report.

12 Q. You never filed anything like a
13 supplemental report?

14 A. Huh-uh.

15 THE COURT: No?

16 THE WITNESS: No.

17 BY MS. SEMAN:

18 Q. And that's a report that you might file
19 afterwards to correct or to add any details, isn't
20 it?

21 A. A supplemental? At times. Like I
22 said, I remembered this from -- pretty good.

23 Q. And you also asked everyone who the
24 drugs belonged, didn't you?

25 A. Yes.

1 Q. That was important enough for you to
2 write down?

3 A. Yes, ma'am.

4 Q. The drugs in this case were found in a
5 Pyrex measuring cup, right?

6 A. Yes, ma'am.

7 Q. You recovered that cup?

8 A. Right.

9 Q. And you see it on the evidence table
10 right now?

11 A. Right. The one that was steaming.

12 Q. And you put that into evidence?

13 A. Yes, ma'am.

14 Q. And you sent off the drugs and that
15 BEST kit that you talked about with Ms. Savas?

16 A. Yes, ma'am.

17 Q. And SLED sent you back a report on
18 those drugs, right?

19 A. Yes.

20 Q. And told you what they were and what
21 they weigh?

22 A. Yes, ma'am.

23 Q. And that Pyrex is still in evidence,
24 isn't it?

25 A. Right here.

1 Q. You all kept it for the trial and it's
2 here on this table?

3 A. Right.

4 Q. But you didn't test it for fingerprints
5 or for DNA, did you?

6 A. No, ma'am. DNA, we can't test for DNA.
7 It's too extensive and takes too long.

8 Q. So you can't tell us whose fingerprints
9 or DNA might have been on that Pyrex?

10 A. No.

11 Q. Also the baggies. You say those
12 baggies are what alerted you to the criminal
13 activity in the first place, didn't you?

14 A. Yes, ma'am.

15 Q. Plastic bag in the kitchen with the
16 residue?

17 A. Yes, ma'am.

18 Q. You kept those?

19 A. Yes, ma'am.

20 Q. They are here in court on that table.
21 But you didn't test those, right?

22 A. No, ma'am.

23 Q. Didn't send those to SLED, did you?

24 A. The bags? No. It's a residue.

25 Q. There were no fingerprints, no DNA?

1 A. Can't take fingerprints off bags.

2 Q. We don't have a lab report saying there
3 was anything illegal in those baggies?

4 A. No, ma'am.

5 Q. You also seized other items like the
6 whisk and scales, didn't you?

7 A. Yes, ma'am.

8 Q. You all kept those for testing or for
9 trial, excuse me? Kept those for trial?

10 A. Yes, ma'am.

11 Q. But again no testing, right?

12 A. No, ma'am.

13 Q. No fingerprints, no DNA?

14 A. No.

15 Q. You said earlier that y'all did not
16 arrest Denise Holman, right?

17 A. Yes, ma'am.

18 Q. Because you didn't think she was a
19 participant?

20 A. No, ma'am.

21 Q. But she was there?

22 A. She was there, yes.

23 Q. She would have been a witness to what
24 happened?

25 A. Yes.

1 Q. You didn't take a statement from her,
2 did you?

3 A. Verbally.

4 Q. But you routinely take written
5 statements from witnesses, don't you?

6 A. No. That's not the routine. Depending
7 on what it is.

8 Q. I beg the Court's indulgence.

9 THE COURT: Certainly.

10 (Off-the-record conference.)

11 BY MS. SEMAN:

12 Q. And you have talked with other officers
13 involved in this case, haven't you?

14 A. Yes, ma'am, I work with them.

15 Q. You have talked about this case
16 specifically?

17 A. Yes, ma'am.

18 Q. And you talked with Ms. Savas before
19 you came to court today, right?

20 A. Yes.

21 Q. You met with her in her office?

22 A. Not today.

23 Q. But before coming to court today?

24 A. Yes.

25 Q. Meaning at some point in time in the

1 past?

2 A. Yes.

3 Q. I apologize. And you have met with her
4 several times?

5 A. Correct.

6 Q. At least three times?

7 A. Probably.

8 Q. Maybe even more?

9 A. Um-hmm.

10 Q. You reviewed your report and earlier
11 statements, right?

12 A. Yes.

13 Q. And you talked about what you would say
14 in court today?

15 A. Yes, ma'am.

16 Q. She asked you questions, right?

17 A. Correct.

18 Q. And she helped you remember some
19 things?

20 A. Yes, ma'am.

21 Q. Because this happened a while ago?

22 A. Yes.

23 Q. Almost three years ago?

24 A. Yes, ma'am.

25 Q. Hard to remember what happened years

1 ago, though, right?

2 A. No. I mean depends. It's an opinion.

3 Q. You wrote a report and you talked with
4 the solicitor?

5 A. Yes.

6 MS. SEMAN: No further questions, Your
7 Honor.

8 THE COURT: Cross-examination, Mr.
9 Lewis.

10 CROSS-EXAMINATION

11 BY MR. LEWIS:

12 Q. Good afternoon, sir.

13 A. Good afternoon, sir.

14 Q. I apologize ahead of time if this
15 sounds cumulative; there is two of us working on
16 it. I want to talk to you again about that
17 original response. You said that you responded
18 because of a callout board, something like
19 trespassing or something like that?

20 A. I am confused.

21 Q. In your incident report? Why did you
22 respond that day?

23 A. To that house?

24 Q. Yes.

25 A. We were in the area. Like I said then,

1 we had reports, we actually knew what those houses
2 were used for, they were used for less fortunate
3 people.

4 Q. We don't need to go into that. I think
5 you're going beyond the question I asked you. I am
6 not asking you who told you something about those
7 houses. What I am saying is you gave an
8 explanation as to why you were there that day. And
9 that explanation was wrong, right?

10 A. For the traffic stop?

11 Q. No. For the drug complaint at the
12 location under 2015006889 that Ms. Seman asked you
13 about?

14 A. Right.

15 Q. Doesn't have anything to do with drugs?

16 A. Well, trespassing and drugs, we always
17 look at go hand in hand.

18 Q. There is trespassing and drugs.

19 A. Drug dealers usually trespass.

20 Q. I'm not trying -- this is not a trick
21 question. If I have drugs on me does that mean I
22 have to be trespassing?

23 A. Not necessarily.

24 Q. If I am trespassing does it mean I have
25 to have drugs on me?

1 A. No.

2 Q. Okay. So when you said you responded
3 there for a drug complaint, that was not true, was
4 it?

5 A. Not at the moment. We have had tons of
6 complaints.

7 Q. Like you said, when you put something
8 in there that's inaccurate that's a lie, right?

9 A. Okay.

10 Q. Right?

11 A. That's an opinion.

12 Q. If it's true is it -- if it is not true
13 is it a lie?

14 A. Yes.

15 Q. Okay. You claimed you were responding
16 for a drug complaint. But that was not true, was
17 it?

18 A. We were there for drug complaints. I
19 have several complaints on that.

20 Q. Under what reference number?

21 A. Just have to have the reference number
22 for a complaint whether it's trespassing or drugs.

23 Q. So the one that you provided has
24 nothing to do with drug?

25 A. It was trespassing. That's what it was

1 in reference to.

2 Q. Nothing having to do with Mr. Holmes or
3 Mr. Boston?

4 A. Not that I know of.

5 Q. Nothing having to do with Apartment 2
6 where Ms. Holman lives?

7 A. No, not necessarily, just the whole
8 entity itself.

9 Q. Apartment 13 is a specific apartment,
10 right, just like Apartment 2 would be?

11 A. Right.

12 Q. That was the other end of the complex?

13 A. That guy made his specific complaint to
14 the officer that took that report. But he also
15 relayed other things that we didn't document.

16 Q. That no one documented?

17 A. People in the area don't want things
18 documented because they are scared of repercussions
19 of drug dealers.

20 Q. I am not asking you to speculate about
21 what other people do. What I am saying is you
22 didn't jot anything about that down?

23 A. No, sir.

24 Q. I want to talk to you about what you
25 said you were able to see in plain view today. You

1 said as soon as you came into the apartment you
2 were able to see these baggies that were published
3 to you contained cocaine?

4 A. I didn't say cocaine. I said residue,
5 cooking residue.

6 Q. You knew they were manufacturing
7 because you could see these?

8 A. Um-hmm.

9 Q. Right.

10 THE COURT: Was that a yes?

11 A. Yes.

12 Q. How far were you? About right here?

13 A. That's about right.

14 Q. So about right here you can tell what
15 is in there?

16 A. Yeah. I mean you can see it's a bag.

17 Q. Looking into a kitchen you can see
18 baggies and tell what is in them at that distance?

19 A. I have a lot of training, sir.

20 Q. They look empty to me.

21 A. They are empty. It's a cloudy residue
22 that's inside. If you get a regular plastic bag
23 you can see it.

24 Q. You can see it from 15 feet?

25 A. Give or take, yes.

1 Q. This distance. So I'm that distance
2 from the jury and you were about that far away,
3 right? You can see?

4 A. Yes.

5 Q. And you knew that this white powder, I
6 know you said you searched through and couldn't
7 find any other powder. You did find baking soda,
8 right?

9 A. I did what?

10 Q. You found baking soda, right?

11 A. Yes.

12 Q. How did you know that wasn't baking
13 soda?

14 A. Possibility of it being baking soda,
15 could be a cup in the assisting of the cooking of
16 the crack cocaine.

17 Q. That means you can't say what it was
18 even though you claimed at that distance you could
19 tell exactly what it was?

20 A. It's packaging for narcotics, yes,
21 that's what I call it.

22 Q. Again, this is not a trick question.
23 If you don't know what the white powder is you
24 can't say what it is, right?

25 A. Again, I mean it wasn't powder. It was

1 residue is what I am saying. It's using my words
2 differently.

3 Q. Okay. If you can't tell what the
4 residue is you can't label it as cocaine or flour
5 or baking soda or baking powder or any other white
6 substance, can you?

7 A. Correct.

8 Q. Without a chemical analysis?

9 A. Right.

10 Q. You didn't test it?

11 A. I didn't test it.

12 Q. But you made that conclusion? You said
13 that you saw two males -- in your original incident
14 report, not what you testified to today -- that you
15 saw two males come out of the bathroom and kitchen
16 area? Their hands were visibly shaking?

17 A. Yes.

18 Q. And as Ms. Seman asked you, they were
19 not holding anything in their hands?

20 A. Right.

21 Q. If they are visibly shaking there is
22 nothing in their hands?

23 A. Right. There's nothing in their hands.

24 Q. But you have met with the solicitor
25 three different times at least and we will get to

1 the different days, I know you have trouble with
2 the days, but around the right time, and you told
3 her different accounts on those days, different
4 details were added; is that fair?

5 A. Yes, sir.

6 Q. But never in any of those meetings with
7 her did you tell her that they opened an operating
8 microwave, right? Never told her that the
9 microwave was on?

10 A. Before?

11 Q. Ever?

12 A. Ever tell her that?

13 Q. Have you ever told her that?

14 A. I mean depends when.

15 Q. Ever?

16 A. Yes.

17 Q. When?

18 A. I just said. I was telling you about
19 it.

20 Q. When did you tell her?

21 A. I don't know dates. You said you have
22 it on paper.

23 Q. I don't have on paper any time you told
24 her that.

25 THE COURT: Hold on a second. Talk one

1 at a time, please. Don't talk when he is asking
2 the question. When you ask the questions allow him
3 to answer it, please.

4 BY MR. LEWIS:

5 Q. Yes, Your Honor. It is your testimony
6 today that before this trial you told her that that
7 microwave was on?

8 A. Correct.

9 Q. And that they opened it and closed it?

10 A. I could hear it opening and close, yes.

11 Q. When did you tell her that?

12 A. I don't remember.

13 Q. Ballpark. It's been three years.

14 A. Within the three-year period. I don't
15 know.

16 Q. Three years ago, was it two years ago?

17 THE COURT: He said he doesn't know.

18 He would be speculating now. Move on.

19 BY MR. LEWIS:

20 Q. I want to talk about the search warrant
21 that you prepared in this case.

22 A. Yes, sir.

23 MS. SAVAS: Objection, Your Honor.

24 It's a matter of law previously handled.

25 THE COURT: I don't know what the

1 question is.

2 MS. SAVAS: Yes, sir.

3 BY MR. LEWIS:

4 Q. You go and you prepare an application?
5 You ask a judge to sign it, right?

6 A. Yes, sir.

7 Q. You are supposed to tell the truth in
8 that because you swear under oath for that as well?

9 A. Yes.

10 Q. And in that you say drug dealers using
11 the apartment for drug sales, that's why you were
12 there?

13 A. Um-hmm.

14 Q. That's not true?

15 THE COURT: Was that a yes?

16 THE WITNESS: Yes.

17 THE COURT: Sergeant, we can't take
18 huh-uh. You need to use the words, please, so the
19 court reporter can be sure what your response is.

20 THE WITNESS: Yes, sir. Trying to
21 correct myself. I am sorry. Can you say it again?

22 BY MR. LEWIS:

23 Q. In that application you said that you
24 responded to Apartment 2?

25 A. Yes.

1 Q. For a complaint about drug deals. I
2 assume you meant drug dealers, using the apartments
3 for drug sales?

4 A. Yes, the apartments.

5 Q. Nothing having to do with Apartment 2?

6 A. I said plural apartments.

7 Q. Nothing having to do Apartment 2?

8 MS. SAVAS: Objection, Your Honor.

9 THE COURT: That's argumentative.

10 Thank you.

11 BY MR. LEWIS:

12 Q. Did you have any distributions or other
13 drug complaints out of Apartment 2?

14 A. I haven't outlined the whole area. I'm
15 not -- I don't have a written down complaint from
16 specifically Apartment 2, no.

17 Q. Is that a no you did not have any out
18 of Apartment 2?

19 A. That I know of, no.

20 Q. But you swore to that under oath?

21 A. I said apartments.

22 Q. Just like you are doing today,
23 testifying under oath?

24 A. Correct.

25 Q. You met with the solicitor around

1 November 16th, 2016, to discuss this case?

2 A. Yes.

3 Q. And at that time you explained that
4 there were no narcotic complaints associated with
5 the residence, the reason you were there was
6 because of that other complaint at the other end?
7 Apartment 13.

8 A. The area is really small. There is
9 only four apartments. It's a very small area so
10 it's all used for the same reason. The whole
11 general complaint is about the whole apartment
12 complex.

13 Q. But different people obviously live?

14 A. Yes, absolutely, yes.

15 Q. So if one person calls for service you
16 are not going to respond to all of them, you are
17 going to respond to that person?

18 A. Depends if it's on the complex or on
19 the specifics, the apartment.

20 Q. When you met with Ms. Savas around
21 November --

22 MS. SAVAS: Objection, Your Honor. I
23 believe this falls under a 404 question, Your
24 Honor.

25 THE COURT: I don't know what the

1 question is.

2 MS. SAVAS: Regarding prior statements,
3 Your Honor.

4 THE COURT: Ms. Savas, I don't know
5 what the question is.

6 MS. SAVAS: Yes, sir.

7 THE COURT: Thank you. Allow him to
8 ask the question. Don't answer until he completes
9 the question.

10 BY MR. LEWIS:

11 Q. So that was around 620 days after the
12 incident, that meeting?

13 A. I believe. I don't recall.

14 Q. At that meeting you never pointed out
15 that either Mr. Holmes or Mr. Boston had any items
16 whatsoever in their hands at all?

17 A. Yes, you know.

18 Q. I do.

19 A. You are asking me a question you know.

20 Q. Okay. And you met with her again
21 around January 23rd of this year, sorry, last year
22 2017, that would have been 689 days?

23 MS. SAVAS: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MS. SAVAS: I believe this falls under

1 Rule 613(b) and it's attempting to bring in prior
2 statements. There is no statements that are made.

3 THE COURT: I don't know anything about
4 the statement, Ms. Savas. The question is meeting,
5 that's all it is saying. Thank you. Your
6 objection is noted and overruled. Thank you. Ask
7 the question, please.

8 BY MR. LEWIS:

9 Q. This time you claim that they did have
10 items in their hands during this second meeting?

11 A. Okay.

12 Q. So first meeting no items. Second
13 meeting items?

14 MS. SAVAS: Objection, Your Honor.
15 These statements and questions are improper.

16 MR. LEWIS: That is inconsistent.

17 THE COURT: Ms. Savas, we are talking
18 about the statement of him. He is entitled to ask
19 those. Overruled. Thank you.

20 MS. SAVAS: Yes, sir.

21 BY MR. LEWIS:

22 Q. First statement nothing in their hands,
23 right? Second statement they have items in their
24 hands. Those are not consistent with one another,
25 are they?

1 A. No.

2 Q. Okay. So only one of those could be
3 true?

4 A. Yes.

5 Q. In this statement now you specifically
6 say they were at the microwave?

7 A. Yes, sir.

8 Q. So you hadn't said it in your incident
9 report, right?

10 A. Yes.

11 Q. You hadn't said it in the first time
12 you met with her 600 and something days after the
13 arrest, right?

14 A. Right.

15 Q. Not until the second time that you met
16 with her did you say they were at the microwave?

17 A. Correct. I'm pretty sure I did before
18 say they were at the microwave, but --

19 Q. If it's in your report please show me.
20 Show me where it is.

21 A. You are talking statements, not
22 reports.

23 Q. Right. But remember big important
24 detail, right, in a manufacturing case, would be I
25 saw somebody manufacturing drugs, right?

1 A. Yes.

2 Q. So you wrote that down, didn't you?
3 Show me where did you write that down in your
4 report.

5 A. That's what I am saying.

6 Q. That you didn't?

7 A. Misstatement. I did not write it down
8 in my report.

9 Q. You didn't wear a body cam?

10 A. Our department does not issue -- was
11 not issuing body cameras at that time.

12 Q. You didn't record it on your phone,
13 right? I'm sure you have got a smart phone to take
14 pictures?

15 A. Not using my phone for work purposes,
16 no.

17 Q. But you had one, you could have?

18 A. Not going to do that, no. It's turned
19 into evidence and I might need my phone.

20 Q. The camera is not in evidence, right?
21 The one that you used to take those pictures?

22 A. No, it is not in evidence. That's
23 department.

24 Q. You could have done the same thing?

25 A. That's the department's.

1 Q. Not documented anywhere until two years
2 later you got to meet with her a few times, right?

3 A. Met with her a lot of times, yes.

4 THE COURT: Speak up, please.

5 THE WITNESS: I am trying to lean
6 forward.

7 THE COURT: Do what you can, sir. I am
8 having trouble hearing you.

9 BY MR. LEWIS:

10 Q. Then you met with her again February
11 8th, 2017, 705 days after the original incident.
12 Now you remember that only Mr. Boston was trying to
13 the conceal items in his hands, not both of them,
14 right?

15 A. I didn't say only.

16 Q. You didn't say it was Boston?

17 A. I did not say only. The question was
18 they both did.

19 Q. So on that date, February 8th, 2017,
20 you told her they both did, not just Mr. Boston?

21 A. I believe we were discussing Mr.
22 Boston.

23 Q. Okay. Now you remember the order that
24 they ran in, but you have never documented that any
25 time before, whether it was Boston or Holmes in

1 front? Your memory has gotten better after three
2 years, right?

3 A. It's an opinion I guess.

4 Q. Had you documented that anywhere
5 previously?

6 A. Not in any incident report, no.

7 Q. Anywhere on a supplemental?

8 A. No.

9 Q. E-mail to the solicitor maybe?

10 A. No.

11 Q. Anywhere?

12 A. No.

13 Q. Okay. So you would agree with me most
14 people's memory doesn't get better over time?

15 A. I mean that's where I am getting at is
16 that's not true, no.

17 Q. Memory does or does not?

18 A. That's an opinion. I'm not a doctor.
19 I don't know.

20 Q. Does your memory get better over time?

21 A. Possibly certain things, yeah. It's
22 not about getting better, it's remembering the
23 situations that were handled, things get tunnel
24 vision.

25 Q. Tunnel vision?

1 A. Tunnel vision, that has happened to
2 people.

3 Q. You are talking about like Slager now?

4 A. What? No.

5 MS. SAVAS: Objection, Your Honor.

6 THE COURT: That's argumentative.
7 Let's refrain from that kind of talk.

8 BY MR. LEWIS:

9 Q. Are you testifying you had tunnel
10 vision that day?

11 A. No, what I am saying is that it
12 happens. You are talking in general.

13 Q. I am talking about you.

14 A. You are talking in general.

15 THE COURT: Move on, please. You made
16 the point. Let's move on to something else.

17 BY MR. LEWIS:

18 Q. They give you a note pad, right, so you
19 can write this stuff down, right?

20 A. Write down the incident report?

21 Q. No, what you see. People's
22 information, things that you don't forget. You
23 often keep it right here, note pad?

24 A. Right here.

25 Q. So you have it on you?

1 A. Got it.

2 Q. So you can write down something if it
3 was important?

4 A. It's for notes. It's hard for us.
5 There's a lot to take in on the scene when we are
6 out there. There is a lot to take in. And in
7 order to sit here and write accurate reports, I
8 write my reports as accurately as possible. I
9 pride myself on that. If there's been an
10 inconsistency you feel, I don't see that.

11 Q. Did you put that you saw people
12 manufacturing crack cocaine in your incident
13 report? This is as basic as it gets.

14 A. I did not put the exact words in there.

15 Q. Or that they opened and closed the
16 microwave?

17 A. No. I thought common sense would see
18 if you have steam coming out.

19 Q. Did you document steam with your
20 camera? Is there a picture that shows steam?

21 A. I didn't do anything until I got a
22 search warrant, no.

23 Q. So you didn't document steam?

24 A. No. It is steam.

25 Q. Camera was in your car to take the

1 pictures?

2 A. Yes.

3 Q. Now, after meeting several times with
4 the State your memory has gotten clearer, you have
5 gotten more details?

6 MS. SAVAS: Objection, argumentative,
7 asked and answered.

8 THE COURT: You are cumulative now.
9 Move on, please.

10 BY MR. LEWIS:

11 Q. You now remember the most damaging
12 information?

13 MS. SAVAS: Objection.

14 THE COURT: Again, Mr. Lewis, you are
15 being argumentative under 611(a). Move on, sir.

16 BY MR. LEWIS:

17 Q. I want to talk to you about the
18 forensic aspect of it. You said that's too
19 expensive for us to do any testing, right? You
20 can't do DNA, it's too expensive?

21 A. Yes.

22 Q. Okay.

23 A. They are not going to do DNA.

24 Q. You got to try if you want it to be
25 analyzed, you have to do a swab?

1 A. Right. They have certain cases that
2 that precedence over it which is usually burglaries
3 and crimes of violence.

4 Q. You have crime scene people who work
5 with you and you chose not to call them out to even
6 take pictures of this scene?

7 A. They don't come out to scenes like
8 that.

9 Q. Did you try?

10 A. For a crime scene, no. I am just as
11 capable of documenting the scene.

12 Q. Did you take a picture of the front
13 door leading in to show what it looked like when
14 you were able to see them manufacturing?

15 A. I can't do that. They weren't there.

16 Q. I don't mean the person. I mean the
17 layout of the room. Did you take a picture of the
18 room itself where they were supposedly
19 manufacturing crack?

20 A. Y'all did.

21 Q. Did you?

22 A. Like I said --

23 Q. I'm a public defender. Did you as a
24 law enforcement officer?

25 A. Documented the crime. The crime is on

1 the front door.

2 Q. So you didn't take any pictures of the
3 whole layout to what it looked like in there?

4 A. No, sir.

5 Q. To show what somebody could have seen
6 when they came in --

7 A. No.

8 Q. -- the front door. You said that it is
9 too expensive to do DNA analysis. What about
10 fingerprinting? That's not too expensive, right?

11 A. Fingerprints aren't.

12 Q. You didn't have these items that you
13 put into evidence, none of these items were
14 fingerprinted, right?

15 A. No, sir.

16 Q. Not the scale, not either of these
17 Pyrexes, not the box of the baking soda, not the
18 whisk, nothing?

19 A. Correct.

20 Q. You had nothing checked to see hey,
21 this guy was actually holding an item, right?

22 A. Correct.

23 Q. But you did ask hey, whose drugs are
24 these?

25 A. Yes.

1 Q. Which you wouldn't have needed to ask
2 had you seen whose drugs those were?

3 A. Okay. It's a statement. I'm not sure
4 what your question is.

5 Q. Did you process the microwave for
6 forensics to see if someone had touched those
7 buttons and actually cooked this crack, to see if
8 Denise did it?

9 A. Denise wasn't near it.

10 Q. I thought she was in the living room.

11 A. Yes. The microwave was in the kitchen.

12 Q. Okay. Did you test it to see who had
13 done it?

14 A. Fingerprints aren't that solid. It's
15 not real. CSI is not how the world works
16 unfortunately.

17 Q. Is the answer no?

18 A. We did not process it for fingerprints,
19 no.

20 Q. Not the microwave, not any of that
21 evidence?

22 MS. SAVAS: Objection, asked and
23 answered. They didn't process.

24 THE COURT: Answer that question, then
25 move on.

1 THE WITNESS: It was not processed for
2 fingerprints. None of it was processed for
3 fingerprints.

4 BY MR. LEWIS:

5 Q. You didn't arrest the homeowner that
6 day, Ms. Holman?

7 A. No, I did not.

8 Q. But it was clearly her microwave that
9 was being used?

10 A. It's her house, yes.

11 Q. You didn't see Mr. Holmes or Mr. Boston
12 bringing in a microwave?

13 A. No. It's her house.

14 Q. But she was not arrested?

15 A. No, she was not.

16 Q. Had she claimed the drugs you would
17 have arrested her, right?

18 A. She was nowhere near it. There's no
19 way.

20 Q. So if she had said they were my drugs
21 you wouldn't have arrested her?

22 A. It depends -- that's an opinion. I'm
23 not there. That didn't happen so I can't answer
24 that question.

25 Q. But you're claiming today that you did

1 see those two men manufacturing?

2 A. Correct.

3 Q. Never made that claim before?

4 A. That I have never made the claim
5 before?

6 MS. SAVAS: Objection,
7 mischaracterization of statements.

8 THE COURT: You will have a chance to
9 redirect. Thank you.

10 THE WITNESS: I charged them with that.
11 BY MR. LEWIS:

12 Q. You never wrote it down anywhere?

13 A. On the incident report, no.

14 MR. LEWIS: One moment, Your Honor.
15 Nothing further.

16 THE COURT: Do you have redirect?

17 MS. SAVAS: Yes, Your Honor.

18 THE COURT: We will take a break at
19 this point, ladies and gentlemen, let you go to
20 your jury room. Do not begin to deliberate, don't
21 discuss the case. We will be with you in about ten
22 minutes. Thank you.

23 (Thereupon, the jury exited the
24 courtroom at 4:01 p.m.)

25 THE COURT: Anything from the State

1 before we recess?

2 MS. SAVAS: No, Your Honor.

3 THE COURT: From either Defendant?

4 MS. SEMAN: No.

5 MR. LEWIS: No.

6 THE COURT: We will be at ease. Sir,
7 you can step down, but do not have any conversation
8 with anyone.

9 (A recess transpired.)

10 THE COURT: State ready for the jury?

11 MS. SAVAS: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MS. SEMAN: Yes, Your Honor.

14 MR. LEWIS: Yes, Your Honor.

15 THE COURT: Let the record reflect that
16 Mr. Boston is present. Let's bring in our jury,
17 please.

18 (Whereupon the jury entered the
19 courtroom at 4:28 p.m.)

20 THE COURT: Thank you, ladies and
21 gentlemen. We are ready to continue. Solicitor,
22 you may redirect.

23 REDIRECT EXAMINATION

24 BY MS. SAVAS:

25 Q. Sergeant Sherwood, I just want to clear

1 up the confusion. Do you write everything that
2 ever happens on every single scene in your incident
3 report?

4 A. No, it's really hard to do that.
5 That's what I was trying to tell him.

6 Q. And do you write what is sufficient to
7 make the arrest?

8 A. I try to do better, but sometimes you
9 don't.

10 Q. And you went the extra step in this
11 case and actually took photos, didn't you?

12 A. Yes.

13 Q. And regarding the microwave that was
14 open or on, you did not -- may not have
15 specifically wrote that in your incident report,
16 but you took a picture of the microwave, right?

17 A. Correct.

18 Q. Picture is worth a thousand words,
19 ain't it? And you pointed to that is the time it
20 was in use?

21 A. Yes, ma'am.

22 Q. You testified today they literally
23 opened it and ran away?

24 A. Correct.

25 Q. And we have met a lot about this case?

1 A. Yes, we have.

2 Q. And do I ask you the same questions
3 every single time?

4 A. No.

5 Q. And when I phrase questions differently
6 do you give me different answers?

7 A. Yes, they are different.

8 Q. Okay. But you have always remained
9 consistent that they were both standing at the
10 microwave, correct?

11 A. Yes.

12 Q. And they both ran to the bathroom,
13 correct?

14 A. Yes.

15 Q. And they both came out of the bathroom?

16 A. Yes, ma'am.

17 Q. Was there anyone else in the kitchen or
18 bathroom with them?

19 A. No, just those two.

20 Q. So where was Denise at this time?

21 A. She stood up front right by the door.
22 She didn't move at all, stood right there.

23 Q. And if I asked you a certain question

24 at a certain point you did say Mr. Holmes was at

25 the microwave and ran to the bathroom and attempted

1 to conceal, correct?

2 A. Yes.

3 Q. And then you say Mr. Boston did the
4 same thing, right?

5 A. Right, they were both right there.

6 Q. Okay. They did this together?

7 A. Correct.

8 Q. And about the specific words of
9 manufacturing crack, what did you arrest them for?

10 A. Manufacturing crack.

11 Q. And did you write an arrest warrant?

12 A. Yes, I did.

13 Q. And did that arrest warrant state that
14 they were manufacturing crack?

15 A. Yes, it did.

16 Q. And the two-page incident report that
17 you took detailed notes on and listed items found,
18 were those items found when manufacturing crack?

19 A. Yes.

20 Q. What were they doing that day when you
21 walked in the door?

22 A. They were manufacturing crack.

23 Q. Okay. Also I want to talk about your
24 memory. Have you ever walked in on someone in the
25 middle of making crack or cooking crack?

1 A. No, never.

2 Q. So was this a really rare case?

3 A. Yes. Actually we use it for training
4 scenarios now.

5 Q. You use this exact case for training.
6 Why?

7 A. Yes. Sorry. Because it's --

8 MR. LEWIS: Objection, relevance.

9 THE COURT: Overruled.

10 THE WITNESS: It's a good case and I
11 have remembered it for so long so I use it for the
12 new guys coming in, letting them know how to
13 further their investigations into drugs and
14 narcotics.

15 BY MS. SAVAS:

16 Q. And we have literally discussed this
17 probably every month in preparation for trial,
18 right?

19 A. Yes, ma'am.

20 Q. Okay. Probably sick of me. I want to
21 quickly just touch on the forensic issues. You did
22 field test the microwave, correct?

23 A. I did.

24 Q. So that was the testing you do in a
25 specific narcotics case, correct?

1 A. Yes.

2 Q. Specifically making crack?

3 A. Yes.

4 Q. Okay. And you testified that the Pryex
5 was super hot to the touch and it was steaming,
6 right? In your report?

7 A. That's why I knew I was 100 percent
8 correct.

9 Q. So I know you are not crime scene, but
10 in your overall police experience and training if
11 something is so hot and steaming you are not really
12 going to get any DNA prints, right?

13 MR. LEWIS: Objection, Your Honor.

14 MS. SEMAN: Objection.

15 THE COURT: Sustained. Lay a
16 foundation how he can know that.

17 BY MS. SAVAS:

18 Q. Do you make the assessment on the call
19 whether to call crime scene out?

20 A. I do.

21 Q. Okay. And so why didn't you call crime
22 scene out in this case?

23 A. It was sterilized.

24 MR. LEWIS: Objection.

25 MS. SEMAN: Objection.

1 THE WITNESS: It is boiled.

2 THE COURT: Sustain the objection. He
3 can't lay that -- the jury will disregard his
4 response. Solicitor, if you are going to ask for
5 opinions you got to lay the foundation and lay it
6 completely. He has not been declared an expert.
7 Thank you.

8 BY MS. SAVAS:

9 Q. Right, Your Honor. Sergeant Sherwood,
10 why did you not take fingerprints?

11 A. I don't know how to answer it.

12 Q. Sergeant Sherwood, if you literally saw
13 someone in the act of doing something do you need
14 further affirmation that they were the ones
15 standing there that you saw them?

16 A. No.

17 Q. So do you trust your own two eyes?

18 A. Yes.

19 Q. Is that sufficient?

20 A. Yes.

21 Q. And that was sufficient to draw out the
22 arrest warrants?

23 A. Yes. It's not common practice for us
24 to call in crime scene for every scene or we would
25 be -- the crime scene guys are already busy enough

1 doing a lot of stuff.

2 Q. Especially when you literally walk into
3 the room where they are committing the crime, right?

4 A. Correct.

5 Q. Also I want to talk about these little
6 baggies. Is there a crime of residue?

7 A. There is a charge of paraphernalia.
8 That's about it.

9 Q. So in your experience in these cases
10 you chose not to send this to the SLED. Why did
11 you not send this to SLED?

12 A. It wasn't nothing -- it's hard to test
13 stuff like that.

14 Q. So what happened to the cocaine inside
15 this?

16 A. It got --

17 MR. LEWIS: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MS. SAVAS:

20 Q. And, Sergeant Sherwood, in your
21 training and experience in narcotics, okay, in your
22 11 years of doing this, thousands of cases, why are
23 these baggies specifically significant to you? Why
24 did --

25 MR. LEWIS: Objection.

1 THE COURT: Ask the question.

2 BY MS. SAVAS:

3 Q. Why did it raise your suspicion to
4 think there was cocaine inside?

5 THE COURT: Overruled. I will allow
6 it.

7 THE WITNESS: I can answer? Those are
8 commonly used to package narcotics. Most of the
9 time you come across narcotics that's packaged in
10 that kind of packaging.

11 BY MS. SAVAS:

12 Q. The packaging are these little baggies?

13 A. Yes, sandwich, they are actually the
14 sandwich bag, not the zip lock ones, they use the
15 fold over.

16 Q. And were these the same plastic
17 baggies, the ones found in Mr. Holmes's pocket
18 actually containing cocaine?

19 A. The same type, yes.

20 Q. Okay. I'm going to briefly talk about
21 this issue of another incident report and cases.
22 Sergeant Sherwood, you said that this is a -- y'all
23 do proactive patrol for the crime incidents in that
24 area, right?

25 A. Right.

1 Q. And in this case you did reference
2 another case number. Is that common to sort of
3 keep everything together?

4 A. Yes, that would be.

5 Q. And you're not saying you never did and
6 you haven't said that you were at Denise's door
7 specifically for that complaint, did you?

8 A. No.

9 Q. So also, Sergeant Sherwood, you don't
10 need a specific complaint to perform a knock and
11 talk, do you?

12 A. No, not necessarily.

13 Q. And a lawful knock and talk, is that
14 just a basic investigative technique?

15 A. It's how we talk to people. We do that
16 daily.

17 Q. And why do you do that? Why do you
18 take the effort to go talk to people?

19 A. In that community we are instructed a
20 lot of times to actually make contact with people
21 on our own especially if there is burglaries, drug
22 activity in the neighboring houses. Knock on the
23 door, notify them of the crimes and a lot of times
24 we solve being able to go back and talk with the
25 people because they are not very forthcoming with,

1 you know, with information unless we are actually
2 physically standing there.

3 Q. And you had mentioned that you had
4 approached the door because you knew Ms. Denise.
5 Were you concerned for her?

6 A. Yes.

7 Q. Why were you concerned for Denise?

8 A. I spoke with her in the past and just
9 she seemed like she's a little off. She was enough
10 for me to pay attention to her a little more, talk
11 with her.

12 Q. And why was it concerning that they
13 approached the door to her? Is this something that
14 usually happened in apartment complexes?

15 MR. LEWIS: Objection.

16 MS. SEMAN: Objection.

17 THE COURT: Sustained.

18 BY MS. SAVAS:

19 Q. In your several complaints the defense
20 has alluded to those are narcotics complaints. Are
21 there narcotic complaints?

22 A. Yes, there is a lot of narcotic
23 complaints. I have spoken to Ms. Denise in the
24 past about that.

25 Q. And generally what do those complaints

1 entail?

2 A. Drug abuse, manufacturing, and once
3 again the trespassing, they let the drug dealers on
4 the property.

5 Q. So that apartment complex is known for
6 having drug dealers?

7 A. Oh, yes. It's probably one of the most
8 dangerous areas.

9 Q. And do they do it out in public or how
10 does that work?

11 A. For the sales a lot of times --

12 MR. LEWIS: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. LEWIS: Relevance and speculation.

15 THE COURT: I will sustain the
16 objection. We have already established. Let's
17 move on, Solicitor. This is not necessary.

18 BY MS. SAVAS:

19 Q. And, Sergeant Sherwood, why didn't you
20 arrest Denise?

21 A. Ms. Denise was standing in the front
22 and she was nowhere near where they were actually
23 manufacturing. If she was standing with them I
24 would have arrested her, but she wasn't there. Ms.
25 Denise, she knew it was going on, but she didn't

1 have any part in it.

2 MR. LEWIS: Objection, speculation.

3 THE COURT: Overruled.

4 BY MS. SAVAS:

5 Q. And, Sergeant Sherwood, you said that
6 she knew what was going on. Do you think she was
7 an active role in it?

8 A. No, she's a user. I have dealt with
9 her in the past. I have stopped her in the past.
10 One time she had a stem, crack pipe, but she's just
11 a user or was.

12 Q. And, Sergeant Sherwood, when you
13 approached the door you didn't approach the door as
14 defense said simply because there were two black
15 men, did you?

16 A. No.

17 Q. You had other reasons?

18 A. Yes.

19 Q. What were those reasons?

20 A. I knew the Defendants from the other
21 side of the neighborhood.

22 MR. LEWIS: Objection.

23 MS. SEMAN: Objection.

24 THE COURT: Sustained.

25 MS. SAVAS: He opened the door.

1 THE COURT: No, he did not. No, ma'am.
2 I will sustain the objection.

3 MS. SAVAS: Yes, sir.

4 MR. LEWIS: Your Honor, may we
5 approach?

6 THE COURT: Ladies and gentlemen, I
7 will let you go to your jury room. Do not begin
8 your deliberations. There is a matter of law that
9 I need to take up.

10 (Thereupon, the jury exited the
11 courtroom at 4:42 p.m.)

12 THE COURT: All right. Mr. Lewis.

13 MR. LEWIS: Judge, I have to move for a
14 mistrial. This is the heart of the issue. She has
15 declared that they are prior bad actors in front of
16 the presence of the jury. It wasn't relevant to
17 start with. Propensity wouldn't come in anyway.
18 We can't unring this bell.

19 THE COURT: What's the State's
20 position?

21 MS. SAVAS: Your Honor, with all due
22 respect and understanding that, I did not ask those
23 questions on direct examination. I asked them on
24 cross because they had made mention, specifically
25 said two black males, alluded to the fact that this

1 officer is racist. They --

2 THE COURT: That's baloney.

3 MS. SAVAS: -- spent 30 minutes --

4 THE COURT: Ms. Savas, that's baloney.

5 I don't know where you got that from frankly. At
6 all. That's just nuts. No suggestion that he is a
7 racist. From the standpoint of what and why in the
8 world you went back on something I already ruled
9 on. This jury does not have a thing in the world
10 to do as to why you went there. You spent all that
11 time for nothing as far as the Court is concerned
12 and created some problems.

13 From the standpoint of why he was there
14 I agree they opened the door. From the standpoint
15 of him having previous calls for problems, but not
16 specifically as to these two people.

17 Now you have framed it in their -- you
18 have made the problem. And the reason being that
19 we know we can't because he has had prior dealings
20 with them and a drug part and that came out I think
21 in the hearing we had on the knock and talk. But
22 why in the world you went there is just absurd.

23 MS. SAVAS: Yes, Your Honor. And I
24 respectfully understand your position.

25 THE COURT: Well, I respectfully

1 understand you're an advocate, but I respectfully
2 remind you that you need to pick your battles. You
3 were battling something that you didn't need to
4 fight in the first place to be honest with you.
5 But now how do I unring the bell?

6 MS. SAVAS: Your Honor, I believe there
7 are curative instructions. However, in this
8 position --

9 THE COURT: What? Disregard that there
10 has been testimony about their being prior drug
11 deals or drug involvement?

12 MS. SAVAS: Your Honor, I think it
13 creates an incomplete picture and incomplete --

14 THE COURT: Precisely the point. Good
15 point. An incomplete picture.

16 MS. SAVAS: Yes, sir. When they
17 questioned this officer for nearly an hour on why
18 he approached the door, there's significant reasons
19 and when we had brushed it over on direct they went
20 back and question after question, Your Honor, about
21 why he did that and not to put that picture in I
22 understand, I agree, Your Honor, on direct it was
23 not the appropriate time.

24 THE COURT: Ms. Savas, you failed --
25 you keep going back to I want to win the war and

1 defending something that you have been accused of
2 and it's been clearly obvious throughout your
3 objections and everything else. You didn't need to
4 defend a thing. Lawyers talk to clients all the
5 time. He is your client. He is part of the state.
6 He's your -- of course you are going to talk to
7 him. The bottom line is they asked him all of the
8 questions that dealt with inconsistencies in his
9 recollection. Not yours. Not whether something
10 should or shouldn't. It's just something for the
11 last 24 years, doesn't surprise me. I hear that
12 all the time. I am sure the sergeant has heard
13 that all the time. That's not in your report. Of
14 course it is not in my report. I don't write down
15 every single thing said. What in the world were
16 you doing arguing that except to defend your
17 position? And the trouble is it showed up. You
18 got angry. Your questions were angry. I am sorry.
19 They were. You were going to get something and
20 prove that you were doing something that he had a
21 right to do. And he had a right. He's already
22 testified to that. I have already ruled on that.
23 Again your focus -- I don't know what -- I kept
24 telling you. I said in my ruling if that's wrong
25 it's wrong. It's preserved. Once he got in the

1 door I said everything that he saw legitimized what
2 he did. But you have defended and continued to
3 defend why he went up there in the first place.

4 The jury is not going to be able to
5 deal with that at all. So all you have done is
6 focus the focal point on something else which is
7 what? You were right. It's an incomplete story.
8 Why would he be focused on those two persons other
9 than the fact that they were -- they had prior drug
10 involvement? And now you asked him the question,
11 haven't you?

12 MS. SAVAS: Your Honor, with respect, I
13 did not ask him if they had prior drug involvement
14 and I believe his answer was he knew them from the
15 neighborhood, the neighborhood that is already --

16 THE COURT: He answered that on direct.
17 There's no question about that. He knew them.
18 Let's find out what the -- could you tell me what
19 -- Ms. Weese, what the question was and what
20 specifically was said?

21 (The Court Reporter played the question
22 commencing on page 178 line 4 and the answer
23 concluding on page 178 line 12.)

24 THE COURT: Opened the door. I will
25 agree that's a term of art. Opened what door? I

1 don't know that necessarily goes where you wanted
2 it to go. So I think we stop it. I will give a
3 curative instruction concerning disregarding that
4 generally that's not a matter for their
5 consideration. I have ruled as a matter of law and
6 that I think will protect that.

7 MS. SEMAN: Your Honor, I just want to
8 make clear that I do join in Mr. Lewis's motion as
9 well and we would -- we believe that a curative
10 instruction is not enough. Of course understanding
11 your ruling, I wanted it to be clear for the
12 record.

13 THE COURT: I will be happy not to give
14 any curative instruction.

15 MR. LEWIS: If you remember, it puts us
16 in that weird posture where if we don't object to
17 your curative we have screwed up our record as
18 well.

19 THE COURT: I understand. I don't have
20 any problem, but --

21 MR. LEWIS: We need you to give one,
22 but then object to it.

23 THE COURT: No, I hate to do this to
24 you. That's been done on -- you are going to -- we
25 agree and this what I am going to tell them to

1 disregard and if you want me to tell them more,
2 fine. Because you are going to make this call
3 because that's typically what I do. I will say
4 nothing which I think is probably the best thing to
5 do. But if you want me to tell them what we ruled,
6 they are to disregard it, I will be happy to do
7 that, but it emphasizes it.

8 MR. LEWIS: I can't speak for her,
9 obviously for --

10 THE COURT: My feeling is it is to do
11 exactly what you said. What happened is perfectly
12 normal. It is not -- nothing is wrong, that's what
13 -- how we are supposed to do it. Sometimes we can
14 deal with objections without them leaving,
15 sometimes we have to. That's why they left is what
16 I intend to tell them. But when I rule I will tell
17 them that I'm going to tell them in my charge, but
18 they are not to raise any or draw any inference
19 from the objection in my ruling or not to consider
20 that at all. That would be invading my province
21 and vice versa. I will give them my typical
22 statements I give in my jury charge concerning
23 those issues. But that's what I propose to do, but
24 if you don't want me to do anything then fine or
25 you want to give more, tell me more.

1 MR. LEWIS: I would just ask that you
2 ask the last series of questions be disregarded and
3 allow her to begin on some new theme.

4 THE COURT: That's fine.

5 MS. SEMAN: I'm fine with that, Your
6 Honor, as well.

7 THE COURT: All right. All right.
8 Solicitor, anything else you want to -- let's go on
9 to something else.

10 MS. SAVAS: Yes, sir. I would conclude
11 my --

12 THE COURT: You may want -- if you want
13 to ask a question, I won't make you stop, but don't
14 go any more into that area. Sergeant, thank you
15 very much. You just listen to the question and
16 answer it, okay?

17 THE WITNESS: Got you, sir.

18 THE COURT: If you will bring them
19 back.

20 THE CLERK: Your Honor, here is a juror
21 note. One of the jurors has to make a phone call
22 for child care.

23 THE COURT: All right. Let them use
24 the phone, but be present. Juror 60. We will make
25 that Court's Exhibit 1.

1 (COURT'S EXH. 1 marked for
2 identification.)

3 (Whereupon the jury entered the
4 courtroom at 4:54 p.m.)

5 THE COURT: Thank you, ladies and
6 gentlemen. Thank you for your patience. I told
7 you the process has a method to it and one of the
8 things that we do and you have seen objections made
9 and rulings and no argument or you have heard me
10 say I have ruled on that previously.

11 Typically it's not uncommon for jurors
12 to have to leave, I try to minimize that as much as
13 I can. But sometimes it becomes necessary to place
14 the reasons for the objection and argue them on the
15 record. That's what just happened. The fact that
16 an attorney makes an objection, that's exactly what
17 they are supposed to do. There are matters of
18 evidence dealing with rules of evidence typically.
19 And I have to make those rulings. And the fact
20 that my rulings on them, that's not for your
21 consideration. You are the judge of the facts.
22 You don't have anything to do with the legal part
23 and if you infer anything from what an attorney
24 objects to or the fact that I restrict a witness
25 from answering the questions or allowing them to

1 answer the question, don't -- if I allow it don't
2 say well, I guess I have to believe, I have to
3 accept that because the judge permitted that. If
4 you think that way then you have let me step into
5 your area of responsibility. Quite honestly it
6 probably is the greatest example of how I can
7 illustrate to you how we work together. If I ruled
8 and excluded it don't place any emphasis because
9 that's my job, to exclude that. That was what I
10 believe the rules require me to do.

11 But if I have allowed it it now shifts
12 to you. And you have to decide whether or not you
13 believe it or not and, if so, how strongly you
14 believe it. So you focus on what the testimony you
15 have, not that part that's been excluded. I am
16 going to instruct you that the objection was made.
17 I have ruled and sustained the objection. You are
18 to disregard the last question and the response
19 given.

20 So that's a matter of law that I have
21 taken care of and now we are going forward and,
22 Solicitor, you may ask your next question. Thank
23 you.

24 MS. SAVAS: Thank you, Your Honor.

25 BY MS. SAVAS:

1 Q. Sergeant Sherwood, just to clarify, is
2 baking soda typically found in orange boxes or in
3 little baggies?

4 A. Either way.

5 Q. Do they sell them in these baggies or
6 in a box?

7 A. In a box, yes, ma'am.

8 Q. And were there any other ingredients or
9 food or possibilities they were making anything
10 other than crack that day?

11 A. No, ma'am, not that I thought.

12 Q. And, Sergeant Sherwood, were they both
13 standing in the kitchen making crack when you
14 walked in?

15 A. Yes.

16 MS. SAVAS: Nothing further from the
17 State.

18 THE COURT: Thank you. Redirect?

19 MS. SEMAN: No recross.

20 THE COURT: Excuse me. Recross?

21 RECROSS-EXAMINATION

22 BY MR. LEWIS:

23 Q. Just from me, Judge, very briefly. The
24 solicitor asked you, I believe you agreed, you said
25 it was super hot to the touch, right, when it came

1 out of the microwave it had been boiling?

2 A. I didn't say super hot. I said
3 steaming. Later on it was hot, that's what I said.

4 Q. Okay. I think she said super hot and I
5 thought you agreed?

6 A. I didn't hear super hot, sorry.

7 Q. Hot to the touch?

8 A. Yes.

9 Q. Boiling?

10 A. Yes.

11 Q. That's how you make crack?

12 A. Right.

13 Q. And you said it was right in the
14 process of being made?

15 A. Correct.

16 Q. Still being cooked, got to be really
17 hot?

18 A. Yes.

19 Q. Did Mr. Holmes or Mr. Boston have on a
20 pair of gloves when they were supposedly doing
21 this?

22 A. Not that I saw.

23 Q. You arrested them. You searched them.
24 Did you find any gloves on them?

25 A. No.

1 Q. So they were carrying this boiling
2 crack. Did they spill any on them, did you see
3 any?

4 A. I didn't check, no.

5 Q. You didn't see any like discolorations
6 on their shirt, any burn mark on their hands?

7 A. Not that I saw, no.

8 Q. You would have to get them treatment if
9 they were injured, right?

10 A. Right.

11 Q. You didn't see anything or document
12 anything like that?

13 A. No.

14 Q. I also want to direct your attention
15 back to three things that you said. You said this
16 was very rare to walk in on someone manufacturing,
17 right?

18 A. Yes.

19 Q. You trained on this?

20 A. Yes.

21 Q. And you've never seen it before like
22 actively walking in?

23 A. Not in person, no. Never seen. Only
24 in training, only in different training that I have
25 taken.

1 Q. But it's that rare and you still didn't
2 write it down?

3 A. I guess not.

4 Q. All right.

5 MR. LEWIS: Nothing further, Judge.

6 THE COURT: Thank you. Sergeant, you
7 may step down. Thank you.

8 THE WITNESS: Thank you, sir.
9 Appreciate it.

10 THE COURT: Ladies and gentlemen, at
11 this point we are going to take our recess for the
12 evening. Please remember that you are not at
13 liberty to talk about the case among yourselves.
14 You are not liberty to talk with anybody outside
15 the courtroom about this case. And typically when
16 you go home tonight and there is somebody there I
17 imagine the first question is going to be what are
18 you doing and what's going on. And natural
19 tendency would be to talk about it. If you do,
20 then you will have started your deliberations.
21 Just tell them no, judge won't let me talk to you
22 about it until we finish and you will be finished
23 this week. I promise you that. So talk about
24 something else. But don't discuss this case or any
25 part of it.

1 I'm going to let you come back a little
2 later tomorrow because I have a matter that's
3 already been scheduled for 9:00 not related to this
4 case. So we will start back on this case. Be in
5 the jury room, please, by 10:00. Also please
6 remember something else. And I'm not -- don't know
7 that you will. I have had jurors do this and the
8 chief justice several years ago admonished all the
9 trial judges to be sure we mention this. Having
10 raised three children and now six grandchildren
11 helping raise I am always reluctant to tell my
12 child don't do something because I don't know about
13 y'all, maybe my child was more disobedient, but
14 that's the first thing they wanted to do is when
15 you tell them not to. So I had that hesitancy, but
16 we are not children.

17 But one of the things that you can't
18 do, we have tremendous access to resources, Google,
19 all these sorts of things. After this case is over
20 if you want to look at the law please feel free to
21 do so. But while we are trying it you cannot do
22 that either.

23 And let me give you a specific example
24 of the dangers of doing that. I had a case when I
25 was asked to administer an oath to an elected

1 official and I have done it several times. And I
2 had a copy of the oath in my office. But I was
3 going to meet him before going to my office and I
4 thought well, wait a minute. That's out of the
5 code. I will look at the code. I got the code
6 section and looked at it and I thought wow, I don't
7 remember asking him this provision that I thought
8 good gracious, I have done this several times. I
9 guess I messed up. The next morning I did run by
10 and I grabbed the code section and I opened it and
11 our code has a supplement and the supplement
12 contains any changes that have been made since they
13 printed the volume. Well, lo and behold I hadn't
14 asked it because it had been repealed and it was no
15 longer the law. So that's what Google had. And if
16 I had just relied on that I would have made a
17 mistake.

18 So please I share that with you just to
19 again reemphasize don't do any independent research
20 about it. After it is over please feel free to do
21 that. But until then just refrain from that.
22 Don't discuss anything with anyone or allow anyone
23 to talk to you. I doubt there will be any news
24 accounts, but if you happen to turn it on and they
25 talk about a trial going on, turn it, flip the

1 channel. Do something else. Have a good evening.
2 Thank you so much for your work today and we will
3 see you tomorrow at 10:00.

4 (Thereupon, the jury exited the
5 courtroom at 5:04 p.m.)

6 THE COURT: All right. Anything else
7 from the State?

8 MS. SAVAS: No, Your Honor.

9 THE COURT: Defense?

10 MS. SEMAN: No.

11 MR. LEWIS: No, Your Honor.

12 THE COURT: Now, with respect to the
13 curative instruction, any additions that you want
14 to or exceptions that you want to make specifically
15 to the curative instruction? Other than you think
16 I should have granted a mistrial.

17 MR. LEWIS: Yes, Your Honor. I have
18 been instructed by appellate defense to better do
19 my job effectively that I have to get a curative
20 instruction and object to it since I should have
21 got the mistrial. Take that for what it's worth.

22 THE COURT: I understand.

23 MS. SEMAN: Same, Your Honor.

24 THE COURT: That's fine. Yours is you
25 can't unring the bell.

1 MR. LEWIS: Yes.

2 MS. SEMAN: Yes.

3 THE COURT: My feeling is the bell was
4 not rung for the reasons I stated. I think to open
5 the door, is that opens the door, opens a Pandora's
6 box, what door was opened. It could have been
7 anything under the sun. So that's the reason --
8 that's one of the reasons in addition after hearing
9 it I didn't find it to be that egregious warranting
10 a mistrial. And I think that it was dealt with.
11 It was handled with respect to telling them that
12 would be improper for them to consider that which
13 we ruled inadmissible. So I did that in a generic
14 fashion.

15 MR. LEWIS: Thank you, Your Honor.

16 THE COURT: Thank you very much.

17 (These proceedings were adjourned
18 at 5:06 p.m., February 5, 2018, Charleston County,
19 South Carolina.)

20 (The following proceedings were held
21 February 6, 2018, Charleston County, South
22 Carolina, @ 10:02 a.m.)

23 THE COURT: Let the record reflect Mr.
24 Boston is present. Mr. Holmes is still not
25 present.

1 MS. SAVAS: Your Honor, we would like a
2 motion to excuse Juror No. 138 and seat an
3 alternate. I know we had briefly discussed this
4 yesterday; however, after further looking into it,
5 there are new -- there's a lot of new information
6 that would have given rise to a peremptory strike
7 and it turns out, Your Honor, in fact the juror's
8 son, you did not sentence him. Judge Harrington
9 had sentenced him to PWID marijuana, possession of
10 crack and a possession of MDMA in 2016. In 2017
11 you did issue a bench warrant for him. But it was
12 later rescinded once he obtained counsel. He
13 currently -- this is the issue -- has pending
14 charges with our office for PWID cocaine and a
15 possession of crack offense.

16 And through our extensive voir dire,
17 there were numerous questions asked regarding
18 addiction, family members, family members being
19 prosecuted by this office and things of that
20 nature. And we have done some research and we find
21 the case law supports that regardless whether it
22 was an intentional or unintentional concealment
23 from the voir dire as well as her statement made to
24 the Court about you sentencing her son, perhaps she
25 just didn't know the disposition. There is case

1 law in 2014, State v. Coke from the Supreme Court
2 of South Carolina and which cites your case that
3 you had referred to State v. Stone and it says
4 paralleling the inquiry in cases of intentional
5 concealment, the trial court in the unintentional
6 concealment situation must determine whether the
7 information concealed would have supported a
8 challenge for cause or would have been a material
9 factor in a party's exercise for its peremptory
10 challenges.

11 And yesterday the State had only used
12 six out of their ten strikes. And this would be an
13 exact situation if that information was disclosed
14 at that time and while the jury has been under oath
15 that the State would have most certainly used a
16 peremptory challenge and strike given the very
17 similar nature in cases and the tie to this office.

18 THE COURT: You wish to be heard?

19 MS. SEMAN: Yes, Your Honor. Given the
20 note that was sent to Your Honor yesterday we would
21 argue there was no concealment. Simply because the
22 juror doesn't know the exact nature of her son's
23 pending charges does not mean that she was
24 concealing intentionally or unintentionally
25 anything from this court.

1 Your Honor, we would also argue that
2 this is information that the State had reasonable
3 access to before the jury was seated. We are not
4 opposed to this juror remaining on the panel. Of
5 course we will defer to your judgment. Thank you.

6 MR. LEWIS: Judge, all I would add is
7 you asked her at the bench if she could be fair and
8 impartial to both sides and she said she could. If
9 the Court needs to voir dire her further on that
10 issue, so be it, but I will join in the motion.

11 THE COURT: The problem I have is this:
12 Stone case talked about -- and I failed to make a
13 determination that it was voluntary or involuntary.
14 There was nothing to indicate she had tried to hide
15 anything. That's -- I took it to heart to
16 understand that. But the problem I have is this:
17 It doesn't delve so much into the question of
18 whether or not she would be prejudiced by the fact
19 that what she disclosed that I sentenced which was
20 apparently incorrect. I issued a bench warrant.
21 Judge Harrington sentenced. There were several
22 questions asked of a very general fashion, family
23 members being involved in drugs, any connection
24 with any prosecution. Her son has been prosecuted.
25 She's didn't disclose that. That gives me great

1 concern and if it was just one little situation,
2 but it wasn't. There were numerous mentions, any
3 involvement with the solicitor's office, so clearly
4 those are things.

5 But this, oddly enough, I guess you
6 learn a lot when you have and I guess they quit
7 assigning death penalty cases to old judges because
8 I haven't had one since Dickerson, hopefully I
9 don't have another one in my lifetime.

10 But Judge John who was then assistant
11 counsel to Maureen West in the Titus Huggins death
12 penalty case made a similar motion. After the
13 guilt phase we were going to start the penalty
14 phase. And I come back ready to start it and he
15 said judge, we have a problem. I said what's the
16 problem. He said well, Mr. Huggins's sister was in
17 the courtroom during the closing arguments and she
18 noticed one of the jurors she went to high school
19 with. And he was representing Mr. Huggins. Mr.
20 John, Judge John now. And he said if we had known
21 that we would have used a peremptory challenge and
22 excused her.

23 I said you would excuse somebody that's
24 familiar with? He said yes, sir, absolutely. And
25 the reason he said that is just why the solicitor

1 just said that. They would -- if they had that and
2 they had that knowledge and it wasn't disclosed and
3 they having known that they would have a peremptory
4 challenge, we exhausted, I think it would be safe,
5 but that case gave me concern then and I assure you
6 after spending a week getting a jury and trying one
7 every time I see Steve I talk to him about doing
8 that.

9 Because we had to retry it, but I think
10 the solicitor -- I'm not doing it because of -- I
11 don't think she intentionally did this. I am doing
12 it based on the case that says that she had known
13 that and there was ample opportunity for that to
14 have been disclosed and it wasn't. I'm not going
15 to go -- I'm not sure I have to go that far to
16 infer that she is intentionally hiding it. But
17 clearly there were questions asked that would have
18 disclosed. I don't quarrel -- for the sake of the
19 record, I agree they had ample opportunity to have
20 that, they had that information available to them,
21 but when you go so far as to have a question and
22 they asked a specific question about trouble, any
23 problems with the solicitor's office, any other
24 cases, I didn't ask it verbatim as they requested.
25 I asked it in the generic fashion.

1 And I think it would be unfair to not
2 grant them that motion based on the fact that had
3 they known it that I'm sure they would have, there
4 is no question they would have. It is obvious any
5 lawyer would have done that. That would have been
6 a slam dunk. I used -- we used to use X's. I
7 don't know what you all do. Six X's was absolutely
8 you had to go and you would start putting down and
9 that one would have been six X for me for sure if I
10 had been prosecuting it. So for that reason I
11 grant the motion. That's juror number?

12 MS. SAVAS: 138.

13 THE COURT: Is Ms. Harley here?

14 THE BAILIFF: I'm sure she is.

15 THE COURT: If you would ask her to
16 come in, please.

17 THE BAILIFF: Yes, sir.

18 THE COURT: While we are doing that, in
19 this one we draw unless you all want to use the
20 first alternate. I defer to you. The typical way
21 is to draw out of a hat or we can go with the first
22 alternate selected. What is your pleasure?

23 MS. SEMAN: Either one is fine.

24 THE COURT: Do you have a preference?

25 MS. SAVAS: No, Your Honor. Whatever

1 you see fit.

2 THE COURT: Let's get the first
3 alternate. Mr. Lewis, I see you looking.

4 MR. LEWIS: I was going to defer to my
5 second chair. I'm going to sit down and let you do
6 what you want to do. Whatever the Court prefers.

7 THE COURT: Understand. I acknowledge
8 typically and customarily we draw. In the civil
9 side it's the first alternate selected moves up
10 which makes sense to me. I don't know why we don't
11 do it that way anyway.

12 But being that, if you don't have any
13 objection I'm going to make the first alternate
14 selected move on to the jury. Any objection from
15 the State?

16 MS. SAVAS: No, Your Honor.

17 THE COURT: Any objection from either
18 Mr. Boston or Mr. Holmes?

19 MS. SEMAN: No.

20 MR. LEWIS: No, Your Honor.

21 THE COURT: Thank you. Okay.

22 (Juror 138 brought to courtroom.)

23 THE COURT: Good morning, Ms. Harley.
24 Ms. Harley, thank for your conversation yesterday.
25 We have had some further discussion about it and

1 out of an abundance of caution because of your
2 son's involvement and apparently your son also has
3 a pending case now that is handled by this
4 solicitor's office; is that correct?

5 JUROR NO. 138: Yes, sir.

6 THE COURT: Why was that not disclosed
7 to me, ma'am, when I asked you if you had any
8 involvement with the solicitor's office? You just
9 didn't hear it or you didn't understand it?

10 JUROR NO. 138: I just didn't
11 understand it.

12 THE COURT: That's fine and I
13 understand that. I appreciate that. But out of an
14 abundance of caution I'm going to go ahead and
15 excuse you from participation in this dispute. You
16 are free to leave. If you will call the number
17 after six tonight and just follow that instruction
18 with regard to the remaining panel and have a nice
19 day. Thank you so much.

20 (Juror 138 left the courtroom.)

21 THE COURT: Any exception or additions
22 from the State regarding my conversation with Ms.
23 Harley?

24 MS. SAVAS: No, Your Honor.

25 THE COURT: Any additions or exceptions

1 from Mr. Boston?

2 MS. SEMAN: No, Your Honor.

3 THE COURT: Mr. Holmes?

4 MR. LEWIS: No additional.

5 THE COURT: Thank you very much.

6 Appreciate that. Thank you all.

7 THE CLERK: Your Honor, for the record
8 Juror 81 will replace.

9 THE COURT: That's correct. I agree.
10 Anything else from the State?

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

13 THE COURT: Anything from Mr. Boston?

14 MS. SEMAN: No, Your Honor.

15 THE COURT: Anything from Mr. Holmes?

16 MR. LEWIS: No, Your Honor.

17 THE COURT: Let's bring them in. Thank
18 you all.

19 (Whereupon the jury entered the
20 courtroom at 10:13 a.m.)

21 THE COURT: Ms. Daly, you may now
22 assume the seat on the panel right there. Thank
23 you. As we told you, from time to time we have to
24 use an alternate and that has come up this time and
25 so, please, you're not to infer anything from that.

1 That is normal. That's nothing unusual. And
2 that's why we have alternates, and Ms. Daly, you
3 are now part of the panel. Okay?

4 Now you can't sit on the back row any
5 more. And I hope that, Mr. Robinson, you're okay.
6 If you feel lonely just let me know; we will let
7 you sit down there. Thank you so much, ladies and
8 gentlemen, I hope you had a good evening. We are
9 ready to continue in this matter and I ask you now
10 to give your attention to the next witness.

11 Solicitor, good morning. You may call
12 your next witness.

13 MS. SAVAS: Thank you. The State calls
14 Ms. Denise Holman.

15 DENISE HOLMAN

16 having been duly sworn, testifies as follows:

17 THE CLERK: Please state your full
18 name and spell your last name.

19 THE WITNESS: Denise Holman,
20 H-O-L-M-A-N.

21 DIRECT EXAMINATION

22 BY MS. SAVAS:

23 Q. Thank you. Good morning, Ms. Denise.

24 A. Good morning.

25 Q. Ms. Denise, I want to start with some

1 background questions. How old are you?

2 A. Fifty-two.

3 Q. And how far did you go in school?

4 A. I went to the 11th grade and got some
5 GED so I got about a year and-a-half of GED.

6 Q. Okay. Good. And, Ms. Denise, did you
7 used to live at 1819 Clements Avenue Apartment
8 No. 2 back on March 6th, 2015?

9 A. Yes, ma'am.

10 Q. And, Ms. Denise, I'm going to show you
11 a photo, State's Exhibit No. 19. Is that your old
12 apartment, that green one?

13 A. Yes, it is.

14 Q. And how long did you live there?

15 A. I think about like two or three years.

16 Q. Okay. And where did you live before
17 that?

18 A. Okay. I kind of have memory problems
19 so before that I live -- let's see.

20 Q. Did you live in North Charleston
21 before?

22 A. Yes, I did.

23 Q. Where are you from originally?

24 A. Originally from New York.

25 Q. And when did you come down to South

1 Carolina?

2 A. My mom retired and she moved to Aiken
3 and I went to Columbia to go to college and got my
4 GED in Columbia.

5 Q. And do you have any children?

6 A. Yes. That's where I lived with my
7 children's father, in Columbia.

8 Q. How many children do you have?

9 A. I have two, a boy and a girl.

10 Q. And are they adult children now?

11 A. Yes, ma'am.

12 Q. What do they do for a living?

13 A. My daughter, she is a designer and my
14 son, he's in the military.

15 Q. And, Ms. Denise, I don't mean to
16 embarrass you. We talked about this. We need to
17 be honest. Back in 2015 did you use drugs?

18 A. I did.

19 Q. And what was your drug of choice?

20 A. Crack cocaine.

21 Q. Okay. Would you say you were addicted
22 at that time?

23 A. Yeah. I was really addicted.

24 Q. And how long were you using crack for?

25 How did that start?

1 A. It started I would say about like
2 13 years ago.

3 Q. So for about 13 years?

4 A. Yeah.

5 Q. And, Ms. Denise, would you buy the
6 drugs or how did you get crack?

7 A. I would buy them. Sometimes I would
8 turn what they call tricks. So yeah.

9 Q. And, Ms. Denise, do you use drugs now?

10 A. Thank the Lord no, I don't.

11 Q. You are clean?

12 A. Yes, I am.

13 Q. How long have you been clean?

14 A. Okay. So far I have been clean a
15 little over seven months.

16 Q. Congratulations. And what did you do
17 to take those steps to stay clean?

18 A. I go to drug classes. One of my main
19 things why I am clean is that I had an aneurysm and
20 it was because of what they told me some bad drugs.
21 I don't remember. But I am doing much better now.

22 Q. And did you graduate from any classes?

23 A. Yes. I just got to graduate from IOP,
24 called intensive outpatient unit. It's a drug
25 program and now I am in Stage 2 of it.

1 Q. Good. And what is Stage 2? What do
2 you do for that?

3 A. Okay. In the regular IOP you go four
4 days a week. Okay. And now when you graduate I go
5 once a week.

6 Q. So you are currently going once a week
7 for drug classes?

8 A. Yes, ma'am.

9 Q. Good for you, Ms. Denise. And did you
10 -- have you since moved from that apartment?

11 A. Oh, yeah, I had to leave that area.

12 Q. Why did you leave the leave?

13 A. Not by choice. Well, was my idea if I
14 get away from the drugs and drug people I will do
15 better. I moved up there with my son. My son
16 lives up there.

17 Q. And, Ms. Denise, back on this day on
18 March 6th when you were in your apartment what was
19 going on that day?

20 A. Well, what was going on with me?

21 Q. Yes, ma'am. Inside your apartment.

22 A. Okay. On that day I had got a call
23 saying they wanted to come to my house.

24 Q. Who called you?

25 A. Bubba, his name.

1 Q. Bubba?

2 A. That's his street name.

3 Q. And did someone else call and say they
4 were coming over?

5 A. Yeah.

6 Q. Yes? Who was that?

7 A. Yes, ma'am. I don't remember.

8 Q. Ms. Denise, do you recognize anyone in
9 the courtroom today that was in your apartment that
10 day?

11 A. Yes.

12 Q. And who do you recognize?

13 A. The one we call Bubba.

14 Q. And is he in the black shirt?

15 A. Yes, ma'am.

16 Q. Let the record reflect that the witness
17 has identified the Defendant, Mr. Boston, in this
18 case.

19 THE COURT: It will so reflect.

20 BY MS. SAVAS:

21 Q. And, Ms. Denise, what did Bubba call
22 you for? What was he coming over to do?

23 A. From my understanding he wanted to use
24 my kitchen.

25 Q. He wanted to use your kitchen?

1 A. Yes, ma'am.

2 Q. What did he want to use it for?

3 A. I don't get into their business so I
4 just said sure.

5 Q. So he called you and said he's going to
6 come use your kitchen?

7 A. Yes.

8 Q. And when they came over that day did
9 they go into your kitchen?

10 A. Yes, ma'am.

11 Q. What were they doing in there?

12 A. Well, I don't know exactly. I assume
13 that's what they were there to cook.

14 MR. LEWIS: Objection.

15 MS. SEMAN: Objection.

16 THE COURT: Sustained. She said she
17 didn't know exactly.

18 BY MS. SAVAS:

19 Q. That's okay. And, Ms. Denise, I'm
20 going to be quite frank with you. Did you have
21 drugs in your apartment that day?

22 A. I didn't bring them. I mean I didn't
23 buy none.

24 Q. Who brought them?

25 A. I guess when they came.

1 MS. SEMAN: Objection.

2 MR. LEWIS: Objection.

3 THE COURT: I will allow that.

4 BY MS. SAVAS:

5 Q. And, Ms. Denise, do you remember the
6 police coming in that day?

7 A. Yeah.

8 Q. And do you remember them knocking on
9 your door and you opened your door for them?

10 A. Yes, I do.

11 Q. And did you allow them to come inside?

12 A. Yes, I did.

13 Q. They didn't threaten or push you down
14 or anything like that?

15 A. No. They were pretty okay with it.
16 They was nice about it.

17 Q. And, Ms. Denise, when they came in your
18 apartment where were you when they knocked on the
19 door; do you remember what you were doing?

20 A. Actually I had a video game in my hand
21 and I was playing my video game on my foldout
22 couch.

23 Q. And was your couch in your living room?

24 A. Yes. That was my bedroom.

25 Q. Were you in the kitchen with Bubba and

1 the other man?

2 A. No, ma'am.

3 Q. Were you ever in the kitchen with them?

4 A. No.

5 Q. And, Ms. Denise, were they using your
6 microwave in your kitchen?

7 A. I think so, yes.

8 MR. LEWIS: Objection.

9 MS. SEMAN: Objection.

10 THE COURT: Sustain the objection.

11 Speculation.

12 BY MS. SAVAS:

13 Q. Ms. Denise -- beg the Court's
14 indulgence?

15 THE COURT: Certainly.

16 (Off-the-record conference.)

17 BY MS. SAVAS:

18 Q. Ms. Denise, when Bubba and his friend
19 came over were you hoping to get something from
20 them?

21 MR. LEWIS: Objection.

22 MS. SEMAN: Objection, leading.

23 THE COURT: I will allow the question.

24 It is not leading.

25 BY MS. SAVAS:

1 Q. You can answer.

2 A. Being that I was an addict normally
3 that would be the pay and they give me some of what
4 they were doing.

5 MR. LEWIS: Objection.

6 MS. SEMAN: Objection.

7 MR. LEWIS: 404(b).

8 THE COURT: Ladies and gentlemen, I am
9 going to let you go to your jury room. I have a
10 matter of law that I need to take up outside your
11 presence. Do not begin your deliberations, please.

12 (Thereupon, the jury exited the
13 courtroom at 10:26 a.m.)

14 THE COURT: Objection on 404(b) is
15 basically other crimes. That's not other crimes.
16 This is the crime.

17 MR. LEWIS: She is talking about prior
18 distribution.

19 THE COURT: No, she's not. She said
20 what did you expect to get out of this meaning this
21 particular visit is the question I heard. I don't
22 think it's a 404(b) situation. If you want her to
23 reask the question that would be fine. We can
24 rephrase. But clearly it is not -- does not in my
25 opinion invoke or ingest any other drug use of

1 these people. Her, yes, she has already testified
2 to that. But furthermore, based on your
3 cross-examination, you have -- why didn't you
4 charge her? So I mean this clearly is knowledge
5 that you and everybody expected she was involved in
6 that from the questions of the officer. And his
7 statement was I think as I recall, may be
8 misquoting it to some extent, she was using it.
9 That was basically it.

10 And so there's a basis for the question
11 that does not take it out beyond the purview of
12 this particular setting. So that's not a 404(b) in
13 my opinion.

14 MS. SEMAN: I also think it is
15 speculation, Your Honor.

16 THE COURT: What, that she was going to
17 get something out of this?

18 MS. SEMAN: Yes, Your Honor.

19 THE COURT: Folks, I don't know -- she
20 already testified one time that she was. So I
21 don't know where the question is going, but I know
22 that that be the case. She has already testified
23 to how she got her drugs. She didn't elaborate
24 about tricks. I assume I know what trick means to
25 me. I don't know what it means in her vernacular,

1 but if you want her to rephrase the question so it
2 is clarified, I don't think it implicates anything
3 outside of this setting. So but --

4 MR. LEWIS: Judge, maybe it is my fault
5 for getting a little bit ahead. I just want to
6 make sure that we head this off at the pass,
7 especially in light of yesterday.

8 THE COURT: I understand that, Mr.
9 Lewis, but again, I can't rule on questions that
10 might come up. I can rule on the question that
11 comes up. And this question doesn't hit 404(b) and
12 that's why I pulled 404(b.) I thought I don't think
13 so, but I read it again and I just -- you and I may
14 agree to disagree, but I don't think it is 404. I
15 don't think it's that situation.

16 MR. LEWIS: I agree for this situation
17 it would not be. I think if she says they had done
18 it before.

19 THE COURT: I concur in that.
20 Solicitor, be careful of that given the previous
21 ruling and the request for a mistrial.

22 MS. SAVAS: Your Honor, if you might
23 instruct Ms. Denise.

24 THE COURT: I cannot instruct anybody.
25 That puts me in a practice of law. Thank you very

1 much. You prepare your witnesses and I understand
2 your situation. Regardless of the facts. Ready
3 for the jury?

4 MS. SAVAS: Yes.

5 THE COURT: I will overrule the
6 objection based on the reasons stated. Thank you.
7 Bring them back in. Ms. Holman, just listen to
8 your lawyer's questions and the other lawyer's
9 question and answer that question, please, ma'am,
10 okay? Thank you.

11 (Whereupon the jury entered the
12 courtroom at 10:31 a.m.)

13 THE COURT: Thank you very much. Thank
14 you, ladies and gentlemen. We are ready to
15 continue. Solicitor, you may resume your
16 examination.

17 MS. SAVAS: Thank you, Your Honor.

18 BY MS. SAVAS:

19 Q. So, Ms. Denise, specifically that day
20 what were you expecting to get from them?

21 A. To be honest with you, at that time I
22 was hoping there would be some drugs.

23 Q. And what kind of drugs?

24 A. Crack cocaine.

25 Q. Okay. And, Ms. Denise, did you have

1 any other food or anything like that in your
2 cupboards or in your pantry at that time?

3 A. Not -- I had plates.

4 Q. Okay. Thank you. No further
5 questions. Please answer questions defense is
6 going to ask, okay?

7 A. Yes, ma'am.

8 THE COURT: Ms. Seman, you may
9 cross-examine.

10 MS. SEMAN: Thank you.

11 CROSS-EXAMINATION

12 BY MS. SEMAN:

13 Q. Good morning, Ms. Holman.

14 A. Good morning.

15 Q. When you spoke with the solicitor you
16 talked about your drug problem, right?

17 A. Yes.

18 Q. You are addicted to drugs?

19 A. I was.

20 Q. Specifically crack cocaine?

21 A. Yes.

22 Q. Right?

23 A. Yes.

24 Q. And you were addicted to crack cocaine
25 when all this happened, right?

1 A. Yes.

2 Q. You were using crack when all this
3 happened, right?

4 A. Yes.

5 Q. And you had even turned in your crack
6 pipe to Sergeant Sherwood the week before this
7 happened?

8 A. I don't remember.

9 Q. Because crack use makes it hard to
10 remember things sometimes, right?

11 A. True.

12 Q. Especially things that happened when
13 you were using, right?

14 A. Well, in my case I had an aneurysm so a
15 lot of my memory have left.

16 Q. And in your house on Clements Avenue,
17 the front door opened to your living room, right?

18 A. Yes.

19 Q. That was the first room?

20 A. Yes.

21 Q. And the kitchen was next to the living
22 room?

23 A. Yes.

24 Q. Separated by a doorway?

25 A. Yes.

1 Q. There was a curtain in the doorway?

2 A. Yes.

3 Q. A curtain separating the living room
4 and the kitchen?

5 A. Yes.

6 Q. A curtain that would block the view of
7 the kitchen?

8 A. Yes. I also kept it to keep the heat
9 in the living room.

10 Q. Keep the heat in the living room?

11 A. Yes.

12 Q. On that day when police came to your
13 house you let them in?

14 A. Yes.

15 Q. They talked to you, right?

16 A. Yes.

17 Q. But they never asked you to write down
18 what happened, did they?

19 A. No.

20 Q. So you didn't?

21 A. No.

22 Q. I beg the Court's indulgence.

23 THE COURT: Certainly.

24 (Off-the-record conference.)

25 BY MS. SEMAN:

1 Q. And, Ms. Holman, you mentioned an
2 aneurysm, right, having an aneurysm?

3 A. Yes.

4 Q. And that happened after this happened,
5 right?

6 A. Yes, yes.

7 Q. So you didn't have the aneurysm before
8 all of this happened?

9 A. No.

10 Q. Ms. Holman, you talked with Ms. Savas
11 before you came to court today, right, this lady
12 right here?

13 A. Yes, ma'am.

14 Q. And you met with her in her office,
15 right?

16 A. Yes, ma'am.

17 Q. And you talked about what you would say
18 today in court, didn't you?

19 A. Basically, yes.

20 Q. And she asked you questions about what
21 happened?

22 A. Yes.

23 Q. And her questions helped you remember
24 some things, right?

25 A. Yes.

1 Q. And it happened a while ago?

2 A. Um-hmm.

3 Q. More than almost three years ago?

4 A. Yes.

5 MS. SEMAN: No further questions, Your
6 Honor.

7 THE COURT: Very well. Mr. Lewis.

8 CROSS-EXAMINATION

9 BY MR. LEWIS:

10 Q. Thank you, Judge. Good morning, Ms.
11 Holman.

12 A. Good morning.

13 Q. You testified that you have been clean
14 for about seven months now?

15 A. Yes, sir.

16 Q. So after those events back in 2015 you
17 continued to use for several years?

18 A. I did.

19 Q. But you finally started to get clean,
20 right?

21 A. Under the circumstances when I got the
22 aneurysm is when I got clean.

23 Q. Yes, ma'am. And I know we have talked
24 some about your house back there at Apartment 2?

25 A. Um-hmm.

1 Q. You had a microwave, right?

2 A. Yes, ma'am.

3 Q. That was your microwave?

4 A. Yes, sir.

5 Q. You had some Pyrex and baking soda and
6 whisks and things like that in your house?

7 A. Yes, ma'am.

8 Q. Those were yours?

9 A. Yes, sir.

10 Q. So the items that were in that house
11 that you have said today they were using, those
12 were yours?

13 A. Eventually they became mine. They left
14 them there and eventually I just started owning
15 them.

16 Q. During all this you were never charged?

17 A. Huh-uh.

18 Q. You were never charged with
19 manufacturing crack?

20 A. No, sir.

21 Q. Even though it was your house that was
22 supposedly being used, right?

23 A. Correct.

24 Q. Your microwave, right?

25 A. Correct.

1 Q. Your Pyrex, your whisks, all those
2 items were yours?

3 A. Okay. The fellows who come there, they
4 bought them with their own money. They just left
5 them there so when they be there they have
6 something to use.

7 Q. On that day, you said you were
8 expecting to get something in return for this?

9 A. Yes.

10 Q. You were never charged by that? They
11 never brought a case against you, did they?

12 A. No.

13 Q. So you avoided that punishment for that
14 activity, right?

15 A. I guess.

16 Q. Thank you.

17 THE COURT: Redirect, solicitor? Any
18 questions?

19 MS. SAVAS: Beg the Court's
20 indulgence.

21 (Off-the-record conference.)

22 REDIRECT EXAMINATION

23 BY MS. SAVAS:

24 Q. Ms. Denise, I just have one question.

25 A. Yes, ma'am.

1 Q. I didn't make promises to you or
2 anything about you coming in to testify, did I?

3 A. You? No, ma'am.

4 Q. Thank you, Ms. Denise. Nothing
5 further.

6 THE COURT: Okay.

7 THE COURT: Recross?

8 MS. SEMAN: No, Your Honor.

9 MR. LEWIS: No, Your Honor.

10 THE COURT: You may step, Ms. Holman.
11 Thank you very much. You wish the witness to be
12 excused?

13 MS. SAVAS: Yes, Your Honor.

14 THE COURT: Any objection to Ms.
15 Holman leaving?

16 MS. SEMAN: No, Your Honor.

17 THE COURT: Ms. Holman, you are free to
18 leave. Thank you, ma'am. Call your next witness,
19 please.

20 MS. SAVAS: Thank you, Your Honor. The
21 State calls Sergeant Hoose.

22 FRED HOOSE

23 having been duly sworn, testifies as follows:

24 THE CLERK: Please state your full name
25 and spell your last name for the record.

1 THE WITNESS: My name is sergeant Fred
2 Hoose, H-O-O-S-E, and I am with the North
3 Charleston Police Department.

4 DIRECT EXAMINATION

5 BY MS. SAVAS:

6 Q. Good morning, Sergeant.

7 A. Good morning.

8 Q. Sergeant, you stated you're with the
9 North Charleston Police Department. What is your
10 position there?

11 A. I currently work in the office of
12 professional standards.

13 Q. And what does that entail for you?

14 A. We normally -- it's referred normally
15 as internal affairs and we investigate policy
16 violations and police misconduct.

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

18 A. Since July of last year.

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

21 A. Probably 19 years.

22 Q. And before you were sergeant with
23 internal affairs what were you doing before?

24 A. I was a supervisor, a sergeant still of
25 the Speed Team which is a uniformed street crimes

1 unit. We handle street level narcotics and
2 prostitution and other things as well.

3 Q. And about how long were you the
4 sergeant over at Speed Team?

5 A. Two years.

6 Q. And what was your position before that?

7 A. I was the Sergeant of South Evenings
8 Team One. And that's just a patrol team that works
9 the area that we call the south bureau of the City
10 of North Charleston.

11 Q. And what kind of neighborhoods does
12 that entail in North Charleston, kind of get a
13 view, which locations?

14 A. They are like Chicora, Union Heights,
15 Chicora-Cherokee, it's kind of two neighborhoods in
16 one. There is Dorchester Waylyn, Dorchester
17 Terrace, if you are familiar with Spruill Avenue,
18 below Park Circle, we kind of go from like Park
19 Circle down to like the very edge of the City of
20 Charleston's northern jurisdiction.

21 Q. And prior to being sergeant for the
22 patrol what was your duties before that?

23 A. I was a patrolman on the PACE Team.
24 It's an acronym. I wouldn't be able to tell you
25 what that meant, but basically it was a street

1 level saturation unit that was assigned to the
2 patrol division and we just worked in -- we have
3 comstat areas. There was a statistical analysis
4 put into where the high crime areas are and patrol
5 units are assigned to those areas and they change
6 all the time. We were mainly assigned to the areas
7 that were not comstat areas.

8 Q. Okay. And before that? I know I am
9 making you think back.

10 A. Before that I worked in patrol, just a
11 patrol unit, did various shifts.

12 Q. And what was your background prior to
13 joining North Charleston Police Department?

14 A. Well, I have been a police officer for
15 25 years. Simultaneously with my law enforcement
16 career I have been in the Army Reserves. I am
17 currently not in the Reserves anymore, but I was a
18 commissioned officer in the Army Reserves in
19 logistics.

20 Q. And with the North Charleston Police
21 Department have you had any specialized training?

22 A. Yes. I have had training in
23 investigations, crime scene for investigators,
24 domestic violence investigations, forensic -- I
25 used to work at Mt. Pleasant. I had forensic

1 pathology training. Drug -- I took a drug unit
2 commander course. It was basically how to manage
3 drug units, develop operational plans, informant
4 management. I have taken deescalation training.

5 Q. And so you have had significant
6 narcotics training?

7 A. I would say so. I had basically drug
8 level recognition a long time ago and at one point
9 when I first started at North Charleston I worked
10 in an undercover capacity for probably like three
11 or four months.

12 Q. Okay. And back on March 6th, 2015, of
13 this incident what was your position then?

14 A. I was the supervisor of the South
15 Evenings Team One.

16 Q. And were you Sergeant Sherwood's
17 supervisor at that time?

18 A. I was.

19 Q. And I'm going to show you State's
20 Exhibit No. 19. Sergeant Hoose, were you also at
21 this location that day?

22 A. That's correct.

23 Q. Okay. Was that second unit?

24 A. It was.

25 Q. And, Sergeant Hoose, how were you

1 involved in this case?

2 A. Being the supervisor I kind of go
3 around to where my officers are and I believe
4 Officer Sherwood was -- I think it was a traffic
5 stop or another call. I can't remember. But we
6 were sitting there talking and after he was
7 finished with his business and he observed some
8 activity that kind of he thought we should check
9 into.

10 Q. And did you go with and approach the
11 Apartment No. 2?

12 A. I did.

13 Q. And what happened when he had knocked
14 on the door?

15 A. The door opened and a lady by the name
16 of Denise Holman answered the door. And he asked
17 for permission to enter in the apartment.

18 Q. And she gave that lawful consent?

19 A. She did.

20 Q. And what did you notice when you
21 entered the apartment?

22 A. Well, at first I was kind of a little
23 -- I didn't have a direct view inside the
24 apartment, but when I went in I noticed some
25 individuals exiting. I didn't know it was a

1 bathroom at the time, but apparently a bathroom
2 attached to the kitchen.

3 Q. And do you see one of those individuals
4 today?

5 A. I do.

6 Q. Can you please point to him?

7 A. He's right there in the khaki pants and
8 black shirt.

9 Q. Let the record reflect the witness has
10 identified the Defendant in the case, Mr. Boston.

11 THE COURT: Okay.

12 BY MS. SAVAS:

13 Q. And, Sergeant Hoose, what happened
14 after they had run out from the bathroom?

15 A. Well, they didn't really run out. They
16 kind of like -- were kind of it was almost like
17 they didn't know what to do and Sergeant Sherwood
18 called him -- called them out. I kind of stayed --
19 it's a really small apartment so I was not in the
20 kitchen. I was kind of more to the living room.
21 And they kind of were called out to where I was.

22 Q. And what happened once they came into
23 the living room by you?

24 A. I conducted a Terry frisk I believe. I
25 know I conducted a Terry frisk of Mr. Holmes, but I

1 believe I also conducted a Terry frisk of Mr.
2 Boston because Sergeant Sherwood was still in the
3 kitchen.

4 Q. And what was a Terry frisk? What's the
5 purpose for it?

6 A. The purpose is it's when you have like
7 criminal activity that may be going on or just
8 occurred if you have reason to believe that someone
9 may be armed, that gives you the legal permission
10 to do an outer patdown of clothing, not going in
11 pockets or anything like that to search for
12 weapons.

13 Q. And why did you find that necessary at
14 that point in time?

15 A. Well, just based on all the facts at
16 the time. It was location, this apartment complex
17 for lack of a better term is known for drug
18 activity. And I believe Sergeant Sherwood was
19 suspicious there might be drug activity going on.
20 When they went they were kind of like hiding out in
21 the bathroom and coming out. So I felt like with
22 the drugs and guns go hand in hand, plus we have a
23 lot of violent crime in the area I thought was best
24 to pat him down.

25 Q. But ultimately they did not have

1 weapons --

2 A. They did not.

3 Q. -- on them. And that's pretty much for
4 safety purposes of everyone involved?

5 A. It is, mainly for safety.

6 Q. And did Mr. Holmes in this case give
7 you consent to search his person?

8 A. He did.

9 Q. And, Sergeant Hoose, what did you end
10 up finding on his person at that time?

11 A. It's a small baggie of I want to say it
12 was crack, but cocaine in his -- it was in one of
13 his right pockets. I think he was wearing a
14 jacket. I can't remember if it was the jacket
15 pocket or pants pocket. And also a small digital
16 scale.

17 Q. In your training and experience what
18 are digital scales typically used for?

19 MR. SMIT: Objection.

20 THE COURT: What's the basis?

21 MR. SMIT: Speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Digital scales are used
24 in drug transactions. They are used to weigh out
25 the amount of drugs that you're going to give

1 somebody or take.

2 BY MS. SAVAS:

3 Q. Sergeant Hoose, I'm going to show you
4 what's been admitted as State's Exhibit No. 14. Is
5 this that digital scale from his pocket?

6 A. It appears so.

7 Q. Okay. And, Sergeant Hoose, I'm going
8 to show you just for identification purposes what's
9 been premarked for ID State's Exhibit No. 16 and
10 inside is 1.1. Do you recognize that item?

11 A. Yes. That's off white -- the off-white
12 substance that was in his pocket.

13 Q. And when you recovered that and the
14 scale what did you do with them?

15 A. I gave it to Officer Pai.

16 Q. And what was he going to do with them?

17 A. He was going to take care of the
18 evidence process.

19 Q. And at that time was any of the
20 evidence tampered with in any way?

21 A. No.

22 Q. And was that substance correctly
23 procured and secured in evidence?

24 A. It was.

25 Q. Beg the Court's indulgence.

1 (Off-the-record conference.)

2 MS. SAVAS: Nothing further from the
3 State. Please answer questions from the defense.

4 THE COURT: Ms. Seman first. We will
5 do Mr. Boston first.

6 MR. SHAHID: May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. SHAHID:

9 Q. Good morning.

10 A. Good morning.

11 Q. Still sergeant?

12 A. It is.

13 Q. Okay. This incident occurred on
14 March 6th, 2015?

15 A. That's correct.

16 Q. At that time you were still a sergeant?

17 A. I was.

18 Q. At that time you were Speed Team,
19 correct?

20 A. No, I was supervising the patrol unit
21 down there evening shifts.

22 Q. You mentioned on direct that you were
23 Sergeant Sherwood's ranking officer at that time?

24 A. That's correct.

25 Q. At that time Sergeant Sherwood was

1 training, you guys call him Officer Pai?

2 A. It's Officer Pai. It's a -- his last
3 name is hard to pronounce. And first name is
4 really long and starts with Pai, so he prefers to
5 be called Officer Pai.

6 Q. For purposes of this proceeding would
7 you mind if we call him by his last name?

8 A. That's fine. I will butcher it for
9 sure.

10 Q. I will too so don't worry. It's
11 Etminan?

12 A. That's correct.

13 Q. So Officer Sherwood was training
14 Officer Etminan?

15 A. That's correct.

16 Q. All right. Let's just say given your
17 rank at the time you were kind of training Officer
18 Etminan too?

19 A. In a way.

20 Q. In a way. Before going in 1918
21 Clements Avenue you were there with Officer
22 Sherwood for something completely unrelated?

23 A. That's correct.

24 Q. You are with Officer Sherwood and you
25 see two black men got out of a taxicab, correct?

1 A. That's correct.

2 Q. One of those men is Mr. Boston?

3 A. Um-hmm, that's correct.

4 Q. When you guys see them get of the
5 taxicab you don't see anything in their hands,
6 right?

7 A. No.

8 Q. Okay. No Pyrex in their hands?

9 A. That's correct.

10 Q. No whisk in their hands?

11 A. No, sir.

12 Q. No backpack on them?

13 A. No, sir.

14 Q. No bag of any kind with them?

15 A. No, sir.

16 Q. All right. Just two guys exiting a cab
17 going into an apartment?

18 A. That's correct.

19 Q. You would say this was an observed
20 activity?

21 A. That's correct.

22 Q. You said before going up to No. 2 you
23 and Officer Sherwood waited a couple of minutes?

24 A. That's correct.

25 Q. And you knocked on the door?

1 A. Yes, sir.

2 Q. Apartment No. 2. Based off no prior
3 drug complaint there?

4 A. That's not totally true.

5 Q. Well, that's correct. There was a
6 complaint about another complaint in that area,
7 correct?

8 A. That's correct. There have been
9 several.

10 Q. Several. But specifically there was
11 complaints about the landlord being threatened?

12 A. That's correct.

13 Q. All right. But there was no recent
14 complaint written at least that involved a drug
15 complaint at Apartment No. 2?

16 A. Yes, sir, that's correct, other
17 apartments, not Apartment 2.

18 Q. But not Apartment 2. All right. There
19 was no complaints of specifically listing Darell
20 Boston?

21 A. That's correct.

22 Q. There was no complaints specifically
23 listing William Holmes?

24 A. Not that I know of.

25 Q. All right. So Sherwood goes up and he

1 knocks on the door?

2 A. Yes, sir.

3 Q. You mentioned on direct examination you
4 had -- you didn't really have a clear view; is that
5 right?

6 A. That's correct.

7 Q. Were you standing behind Officer
8 Sherwood?

9 A. Kind of behind and off to the side.
10 It's basically a -- when you approach a door you
11 don't really want -- if you can help it you don't
12 want to be in what they call the fatal funnel. You
13 don't want to be in front of the main part of the
14 door. Sometimes it can't be avoided. Sherwood
15 wasn't able to avoid that because the stoop is so
16 small. So I kind of stood off a little canted
17 behind to the side still on the stoop.

18 Q. You were not the one making the
19 original investigation, it's him?

20 A. He's the contact officer, yes, sir.

21 Q. So he knocks on the door. The door
22 opens. Denise Holman. He speaks to Denise?

23 A. Yes, sir.

24 Q. And you can see in the apartment with
25 still an obstructed view?

1 A. Well, I can -- the door opens, I think
2 if you are facing it, the door opens to the inside
3 towards the wall. I guess to the right, to my
4 right. So I can see just a little bit. There's
5 like a little wall there. And then I can see a
6 little bit into there, but I don't have a clear
7 view straight through the kitchen.

8 Q. Once he goes in?

9 A. I am following him, yes.

10 Q. So you follow, you go inside. You see
11 there's a curtain between the kitchen and the main
12 room?

13 A. There was a curtain, but it was pretty
14 -- you could see through to where they were.

15 Q. Okay. And you didn't take any pictures
16 when you walked in, did you?

17 A. No, sir.

18 Q. Okay. Officer Sherwood you said goes
19 in the bathroom. But you stay in the living room?

20 A. I do.

21 Q. And Officer Etminan is with you?

22 A. He's kind of behind me. I am not
23 really aware of where he is, but he's not with
24 Sherwood. He's probably behind me.

25 Q. Let's say about a couple seconds pass

1 and Officer Sherwood brings out Mr. Holmes and Mr.
2 Boston; is that right?

3 A. Probably less than a couple seconds.
4 So it's not like he pulled them. Like they kind of
5 come out on their own and he kind of directed them
6 to the living room.

7 Q. And we are talking about Mr. Holmes
8 first and then I will ask you another series of
9 questions and come back to Mr. Boston if that's all
10 right with you. Some sort of search is conducted
11 on Mr. Holmes at this time?

12 A. That's correct.

13 Q. And you find a scale and some off-white
14 substance?

15 A. That's correct.

16 Q. While that's going on you hold Ms.
17 Holman, Mr. Boston, Mr. Holmes and you are kind
18 waiting around while Officer Sherwood goes and gets
19 the search warrant?

20 A. That's correct.

21 Q. Ms. Holman is there too. You were
22 there when they were read their rights, Mr. Boston?

23 A. I don't believe they were read their
24 rights in the apartment. I think it was after they
25 got outside somewhere.

1 Q. But Officer Sherwood comes back and
2 executes the search warrant at the house?

3 A. That's correct.

4 Q. And then Mr. Boston is then arrested
5 with Mr. Holmes?

6 A. I believe they were both in handcuffs
7 at the time.

8 Q. They were officially charged?

9 A. Officially charged and all that after.

10 Q. But Ms. Holman is released?

11 A. Yes, sir.

12 Q. This was her apartment?

13 A. It was.

14 Q. She is a known drug user?

15 A. I didn't know her at the time, but I
16 would say, yes, that's probably a correct
17 assessment at the time.

18 Q. And she has had interaction with your
19 agency before?

20 A. I don't have any specific knowledge of
21 that.

22 MS. SAVAS: Objection.

23 THE COURT: Basis?

24 MS. SAVAS: He answered the question.

25 THE COURT: Thank you. Withdrawn.

1 BY MR. SHAHID:

2 Q. What I am going to do now, Sergeant
3 Hoose, is going back originally. So you also
4 searched Mr. Boston, correct?

5 A. I don't recall searching him. I
6 believe I did a patdown, but he may have been
7 searched by Officer Sherwood.

8 Q. During the course of your patdown you
9 didn't find any cocaine on him?

10 A. No, there was no contraband on Mr.
11 Boston.

12 Q. No marijuana on him?

13 A. No, sir.

14 Q. No crack pipe on him?

15 A. No, sir.

16 Q. No scales on him?

17 A. No, sir.

18 Q. Nothing that would indicate on his
19 person at least that he had comitted a crime?

20 A. That's correct.

21 Q. Okay. Sergeant, you said you're
22 currently in internal affairs?

23 A. I am, yes, sir.

24 Q. And part of your job in internal
25 affairs is to investigate misconduct in the police

1 force?

2 A. That's correct.

3 Q. So you kind of know -- and being in
4 internal affairs you have to know what a good
5 officer looks like?

6 A. Yes, sir.

7 Q. You didn't write a report in this case,
8 did you?

9 A. I didn't.

10 Q. You didn't take any notes in this case?

11 A. No, I did not.

12 Q. But you keep a little note pad on your
13 person?

14 A. No, sir.

15 Q. You don't? Okay. You are trained as
16 an officer to normally make reports though?

17 A. I should have made a supplemental
18 report. Yes, sir, I should have.

19 Q. But you didn't in this case?

20 A. I did not.

21 Q. And you should have made one because
22 they -- reports help refresh your memory?

23 A. That's correct.

24 Q. You have got thousands of cases?

25 A. Well, not thousands, but quite a few

1 cases.

2 Q. It has been about three years since
3 this arrest?

4 A. Yes, sir.

5 Q. You did review at least something
6 before testifying?

7 A. I did.

8 Q. That was a report written by somebody
9 else?

10 A. Yes, sir.

11 MR. SHAHID: No further questions.

12 THE COURT: Mr. Smit.

13 CROSS-EXAMINATION

14 BY MR. SMIT:

15 Q. Sergeant Hoose, a handful of questions
16 for you. As you stated already you were the senior
17 most officer there?

18 A. That's correct.

19 Q. And, again, certainly you would say
20 Sergeant Sherwood, Officer Etminan would have been
21 looking to you for instruction?

22 A. I would say so.

23 Q. And, again, had you seen anything going
24 wrong in the course of the investigation you
25 certainly would have stepped in and said something?

1 A. That's correct.

2 Q. And, again, had you -- again, you were
3 the approving officer on the report that was
4 ultimately submitted?

5 A. Yes, sir.

6 Q. So as approving officer your job is to
7 look at the report and review that report?

8 A. Yes, sir.

9 Q. And, again, had you seen anything in
10 that report that stood out to you as being
11 incorrect you certainly would have said something?

12 A. Yes.

13 Q. Now, again, as Mr. Shahid was asking a
14 moment ago, you stated you should have filled out a
15 supplemental report?

16 A. Yes.

17 Q. That's --

18 A. Fair.

19 Q. That's common for officers to do?
20 Officers that are involved in a case to fill out a
21 supplemental?

22 A. That's correct.

23 Q. Because officers are potentially in
24 different positions and have different perspectives
25 in what they see?

1 A. Yes.

2 Q. Again, you would agree your job is a
3 job of details?

4 A. Yes. No doubt about that.

5 Q. Exactly. And every little detail as
6 you're seeing is important to ultimately make a
7 case, correct?

8 A. Yes.

9 Q. And, again, that's why it is important
10 to write these details down, because when you're
11 there on March 6th, 2015, you don't ultimately know
12 how the case is going to resolve?

13 A. That's right.

14 Q. You don't know if this is ultimately
15 going to go to trial?

16 A. Correct.

17 Q. And, again, we're roughly almost three
18 years removed from the day that you were?

19 A. That's correct.

20 Q. In that house. Again, because you did
21 not fill out a report you're simply trying to rely
22 on your recollection when testifying here?

23 A. Yes.

24 Q. And, again, since March 6, 2015, you
25 have had handled roughly 100 cases or so?

1 A. Several hundred probably.

2 Q. Several hundred probably. All with
3 incredibly important details?

4 A. That's correct.

5 Q. Now, as you stated on the day of this
6 incident you all were responding to an unrelated
7 call?

8 A. Well, he was already doing -- finishing
9 up -- I think it was a traffic stop. It might have
10 been another call.

11 Q. You don't remember the specifics of
12 that incident?

13 A. No, sir.

14 Q. Because you didn't write a report?

15 A. Well, I don't think I would have
16 normally put that in a report, but that's a fair
17 assessment.

18 Q. And, again, you all saw a taxicab pull
19 up. Two black men get out and go into the house?

20 A. That's correct.

21 Q. There was no issue of them getting into
22 the house?

23 A. No, they went in the house unimpeded.
24 They were invited in the house.

25 Q. There was nothing inherently suspicious

1 about seeing them walk into that house?

2 A. With other facts I guess. With other
3 facts I guess, yes.

4 Q. Again, looking at them as they walked
5 into that house there were nothing inherently
6 suspicious about how these two men went up and went
7 into the house?

8 A. Right. So how they got out of the cab
9 and went into the house, no, sir.

10 Q. As you stated, you were directly behind
11 officer -- Sergeant Sherwood as he entered into the
12 house?

13 A. Right. He kind of entered first. I
14 went right behind him.

15 Q. You are immediately behind him. Again,
16 as you are initially coming into that doorway you
17 couldn't see all the way into the house?

18 A. Well, I could see straight through to
19 where the bathroom was and the kitchen.

20 Q. Okay. You said just a moment ago as
21 you entered into the house literally within seconds
22 Mr. Holmes and Mr. Boston came out from the
23 bathroom into that --

24 A. It was almost kind of simultaneous. As
25 Sergeant Sherwood reached that area they kind of

1 popped out and he kind of directed them out. If I
2 could back up one time. So once I got in the house
3 I can see back into the kitchen. When I was
4 outside I couldn't.

5 Q. And it was almost simultaneous that you
6 all were entering into the house that Mr. Holmes
7 and Mr. Boston come from out of that bathroom?

8 A. Right.

9 Q. And I believe you stated on direct that
10 they didn't run from the bathroom, they more came
11 out and looked like they didn't know what to do?

12 A. Kind of startled, you know, right,
13 exactly.

14 Q. So you didn't see anything as you are
15 going in the house of hearing a microwave slam
16 shut?

17 A. No, sir.

18 Q. Had you heard something like that that
19 would have been something important to put in a
20 report?

21 A. Oh, correct.

22 Q. You didn't see any type of football
23 handoff and these two men running into the
24 bathroom?

25 A. No, sir.

1 Q. Again, had you seen something like that
2 that's an important detail?

3 A. It is.

4 Q. That's an incredibly important detail
5 because that would be in a report?

6 A. It should be, yes.

7 Q. It should be. Now, as Mr. Holmes and
8 Mr. Boston are there you essentially detain them
9 immediately, correct?

10 A. Little patdown first.

11 Q. And Officer Sherwood performed --

12 A. Right, protective sweep.

13 Q. And then, again, ultimately you asked
14 for consent to search both men, correct?

15 A. I would say that I definitely asked
16 consent to search Mr. Holmes. I cannot recall --

17 Q. You asked consent to search Mr. Holmes
18 and he gave you that?

19 A. He did.

20 Q. And upon searching him he had a small
21 amount of cocaine on his person?

22 A. And a scale, yes, sir.

23 Q. Now, again, ultimately you were again
24 as I stated the approving officer and reviewed the
25 report?

1 A. Yes, sir.

2 Q. Reviewed the evidence that was
3 ultimately collected?

4 A. Yes, sir.

5 Q. And, again, ultimately collected there
6 was 7.2 grams of off-white rock like substance that
7 was collected in the house, correct?

8 A. Yes, sir.

9 Q. Brief moment, Your Honor.

10 THE COURT: Certainly.

11 (Off-the-record conference.)

12 MR. SMIT: Nothing further at this
13 time, Your Honor.

14 THE COURT: Redirect?

15 MS. SAVAS: Your Honor, I believe we
16 have a matter of law.

17 THE COURT: Approach, please. Ladies
18 and gentlemen, what we are doing here is having a
19 bench conference for purposes of talking about this
20 issue to see if it might can be done at a later
21 point. It is perfectly normal and the conversation
22 will be not within your hearing. So that's by
23 design.

24 (Off-the-record conference.)

25 THE COURT: We have had a bench

1 conference concerning the matter and I have
2 indicated we will afford the opportunity to place
3 it fully on the record, Solicitor, when we take our
4 break. Thank you so much.

5 MS. SAVAS: Thank you, Judge.

6 THE COURT: Any questions on redirect?

7 MS. SAVAS: Yes, Your Honor. Just
8 briefly.

9 REDIRECT EXAMINATION

10 BY MS. SAVAS:

11 Q./ Sergeant Sherwood -- Sergeant Hoose,
12 sorry, just to clarify, you mentioned that you had
13 seen them exiting the bathroom. You didn't have a
14 view of inside the apartment prior to your
15 entering, did you?

16 A. No. Just that small bit as the door is
17 opened where there's a wall.

18 MS. SAVAS: Thank you. No further
19 questions.

20 THE COURT: Recross?

21 MR. SHAHID: No.

22 MR. SMIT: No recross, Your Honor.

23 THE COURT: You may step down. You
24 wish this witness to be excused?

25 MS. SAVAS: Yes, Your Honor.

1 THE COURT: Any objection?

2 MS. SEMAN: No, Your Honor.

3 MR. SMIT: No.

4 THE COURT: You are free to leave.

5 Ladies and gentlemen, at this point you heard there

6 is a matter I need to put on the record. We will

7 use that as an opportunity to take our break.

8 Typically I try to go about an hour and-a-half. We

9 have been not quite that, but we will use this for

10 our morning break. Do not begin your deliberations

11 and don't discuss the case. We will be with you in

12 about 10 or 15 minutes. Thank you.

13 (Thereupon, the jury exited the

14 courtroom at 11:08 a.m.)

15 THE COURT: Solicitor, you brought to

16 my attention that you believe some of the

17 questioning in cross-examination of Sergeant Hoose

18 opened the door to allow you to bring in evidence

19 of the prior drug usage so I will be happy to hear

20 from you now.

21 MS. SAVAS: Thank you, Your Honor. May

22 it please the Court, in the cross-examination of

23 Sergeant Hoose by Mr. Shahid he had asked

24 specifically, he began the questioning of specific

25 drug complaints as they did with Sergeant Sherwood

1 in that specific apartment unit and the complex and
2 then he specifically asked were there any drug
3 complaints regarding the Defendants.

4 That I believe is opening the door and
5 Sergeant Hoose to the best of his knowledge has
6 answered that question; however, there are
7 significant factors in questioning Ms. Denise and
8 prior interactions with Sergeant Sherwood that we
9 have avoided according to your ruling.

10 Later Mr. Smit had cross-examined
11 Sergeant Hoose and specifically said twice they
12 were inherently -- whether they were inherently
13 suspicious walking into the house. Once again,
14 with the description of being two black males and
15 he didn't allow Sergeant Hoose to fully answer that
16 very, very specific question he asked twice.

17 And because of that, Your Honor, we
18 then believe under Rule 404(b) it would be
19 admissible evidence to show their knowledge of
20 manufacturing crack because it shows that there's a
21 common scheme or plan and that motive there and why
22 they were there that day as Ms. Denise has
23 testified to and they had asked her on
24 cross-examination as well about the items, whether
25 they brought them or not.

1 So, Your Honor, we think there has been
2 sufficient statements made by defense in their
3 questioning that would allow the State to enter
4 that further explanation.

5 THE COURT: Please tell me here because
6 I don't have to make this point -- I don't have to
7 do this. In what way do you think that prior
8 making of crack cocaine has more probative value
9 than to outweigh the prejudice of some prior drug
10 use? How is that more probative than what you have
11 already in this case?

12 MS. SAVAS: Yes, Your Honor. I think
13 it not only paints a clear picture, but it shows
14 that they knew how to make it. Their intending
15 strategy is that it was Ms. Denise, it was her
16 house. It was her items. She was the one that was
17 making --

18 THE COURT: Solicitor, let me just stop
19 you. Because that's just absolutely what I said up
20 here. I appreciate you and I just have to agree to
21 disagree. I think that would do nothing but taint
22 the record in this case dramatically when it is
23 totally not necessary for these reasons.

24 Number one, you have a call person
25 identified can I come to your apartment. There is

1 nothing to suggest, there's no food there, there is
2 nothing there. The witnesses testified yep, they
3 came. You had testimony from your witness, I guess
4 you are not comfortable with that. He said I saw
5 him making crack cocaine. I found them in the
6 process of making crack cocaine.

7 I think the testimony is it's the first
8 time in my career I have ever seen somebody
9 actually making crack cocaine. But now we need
10 some additional evidence to say that they know what
11 they are doing? That doesn't make any sense.
12 That's no probative value. All that does is create
13 something that's not necessary in this case and
14 first of all, the prior drug use has all been in
15 the generic. You know, really I want this on the
16 record too because this is precisely one of my
17 concerns about the knock and talk. I know what you
18 are trying to do. You are trying to create the
19 knowledge that he had and that's what led them to
20 go up there and so everybody that has a prior drug
21 use under that theory under the knock and talk, get
22 ready to have them walk up and knock on your door
23 every day. I don't think Supreme Court went that
24 far, but that's the way it is structured.

25 So I want the record to be clear that

1 bothered me in my ruling. It bothers me now that
2 we are constantly trying to say just because these
3 gentlemen have used drugs in the past we got the
4 right to go wherever they go any time. And I
5 understand that dissent. I understand the Supreme
6 Court said nothing more than any citizen walking up
7 and knocking on a door. And that's the way I have
8 couched this. I want it to be framed so the
9 Supreme Court if they have to address this can at
10 least answer that question.

11 So thank you very much. I put that on
12 the record for a specific reason. Hopefully it
13 will be of some benefit. Anything else?

14 MR. SMIT: Nothing from us.

15 MR. SHAHID: Nothing from Mr. Holmes,
16 Your Honor.

17 THE COURT: Thank you. We will be at
18 ease. Appreciate it. We will take about a
19 ten-minute break.

20 (A recess transpired.)

21 THE COURT: Let the record reflect Mr.
22 Boston is present. Mr. Holmes is not. Are you all
23 ready?

24 MS. SAVAS: Yes.

25 MR. LEWIS: Yes.

1 THE COURT: All right. Let's bring in
2 our jury.

3 (Whereupon the jury entered the
4 courtroom at 11:30 a.m.)

5 THE COURT: Ms. Reed, I have seen you
6 sitting in that chair from the start. Have they
7 selected you as the presiding juror?

8 THE JUROR: I don't know. I like the
9 chair. I guess.

10 THE COURT: It's unanimous. That's
11 fine. Thank you very much, ladies and gentlemen, I
12 appreciate you doing that. And it's interesting
13 how that is accomplished from time to time. But
14 you have done a good job of doing that role thus
15 far so you are the presiding juror. Thank you so
16 much and that will be your seat for the balance of
17 the trial. Thank you very much.

18 Ladies and gentlemen, give your
19 attention to the next witness, please. Solicitor,
20 you may call your next witness.

21 MS. SAVAS: Thank you, Your Honor. The
22 State calls officer Pia Etminan.

23 PAIAM ETMINAN

24 having been duly sworn, testifies as follows:

25 THE CLERK: Please state your full name

1 and spell your last name.

2 THE WITNESS: Paiam Etminan, last name
3 is E-T-M-I-N-A-N.

4 DIRECT EXAMINATION

5 BY MS. SAVAS:

6 Q. Good afternoon. And what agency do you
7 work for?

8 A. North Charleston Police Department.

9 Q. And how long have you worked with them?

10 A. I have worked with them since June of
11 2013.

12 Q. And what is your current position?

13 A. I'm a neighborhood resource officer.

14 Q. And what does that entail?

15 A. I'm basically the liaison for a
16 specific community in the community to the police
17 department so I problem solve for the communities
18 and handle issues within the communities.

19 Q. And which area are you the neighborhood
20 resource officer?

21 A. Wando Woods in the south bureau.

22 Q. And how long have you been the NRO over
23 there?

24 A. It will be about six months now.

25 Q. And what was your job before that?

1 A. Before that I was a patrolman on night
2 shift.

3 Q. And what area were you patrolman?

4 A. South bureau.

5 Q. And in March of 2015 what was your
6 position then?

7 A. March 2015 I was in training.

8 Q. And who was your field training
9 officer?

10 A. Sergeant Sherwood.

11 Q. And have you gone through training with
12 the North Charleston Police Department, extra
13 training certifications?

14 A. No.

15 Q. You have been trained through the
16 academy?

17 A. Trained through the academy and then
18 field training with Officer Sherwood.

19 Q. Okay. And how are you involved in the
20 case?

21 A. Mostly just observing and following the
22 direction of my field training officer.

23 Q. Okay. So when you are a trainee is
24 that typical? What's that like being a trainee?

25 A. Well, you're at the direction of your

1 field training officer so you are mostly observing
2 and you do what they tell you to do unless
3 otherwise stated.

4 Q. Chain of command?

5 A. Yes.

6 Q. And do you recall going to the
7 apartment in this case?

8 A. I do.

9 Q. And showing you State's Exhibit 19, is
10 that the apartment?

11 A. Yes.

12 Q. And can you tell us a little bit about
13 that when y'all approached? Did you -- where were
14 you when Sergeant Sherwood knocked on the door?

15 A. I was following him up to the door. I
16 was behind him.

17 Q. Okay. And what happened when you
18 knocked on the door?

19 A. I believe when he knocked on the door
20 -- I don't recall actually. I don't recall.

21 Q. Do you recall someone answering the
22 door?

23 A. Yes, someone did answer the door. I
24 don't know who answered the door though.

25 Q. Do you know if it was male or female?

1 A. No.

2 Q. Okay. Were you just not in the view
3 for that?

4 A. I was not in view.

5 Q. So looking at the stoop where were you
6 positioned and you can kind of put a little mark on
7 your computer there.

8 A. So Officer Sherwood was here. And I
9 was coming up behind him.

10 Q. Okay. So you are pretty much on that
11 sidewalk?

12 A. Yes.

13 Q. And once y'all entered the apartment
14 what did you observe?

15 A. I observed two males and a female
16 Denise and the -- it was a living room, then a
17 kitchen in the back and that's all I could see.

18 Q. Okay. And where was everybody
19 positioned when you walked in the apartment?

20 A. So I was at the door most of the time
21 just standing at the door. And so Denise -- it's a
22 square room. Denise was to my right, Sergeant
23 Hoose and Sherwood were to my left and the two
24 Defendants.

25 Q. Okay. And what were you tasked with

1 doing in this case?

2 A. I was evidence. I helped -- I assisted
3 with collecting evidence.

4 Q. Okay. And, Officer Etminan, I'm going
5 to show you what's been marked for identification
6 only -- what's been premarked as State's Exhibit
7 No. 15. And can you just actually describe what
8 the collection process is of the evidence?

9 A. Well, there's a return form and as
10 you're gathering the evidence you have to mark down
11 specifically describing on the return form quantity
12 and so on.

13 Q. Does it also describe the location of
14 the items found?

15 A. Yes.

16 Q. Okay. And, Sergeant Sherwood, showing
17 you what's been identified as State's Exhibit No.
18 15, do you recognize this?

19 A. Yes.

20 Q. And how do you recognize that?

21 A. That was found on one of the Defendants
22 in the apartment.

23 Q. I just want to clarify for you
24 though -- one second. Officer, was there also
25 another substance taken from that apartment that

1 day?

2 A. From the apartment?

3 Q. Yes, besides what was on someone's
4 person?

5 A. There was several items.

6 Q. As far as a white substance?

7 A. That I don't recall.

8 Q. Okay. Officer, would it help if I show
9 you the chain of custody form?

10 A. Yes.

11 Q. Would you explain what a chain of
12 custody is?

13 A. It's basically when you transfer
14 evidence from one person to the other you have to
15 document who is getting it, who is receiving it and
16 who is transferring it.

17 THE COURT: Have it marked for
18 identification, please.

19 MS. SAVAS: Yes, Your Honor.

20 (STATE'S EXH. 21 was marked for
21 identification.)

22 BY MS. SAVAS:

23 Q. And, Officer Etminan, I'm going to --
24 can you explain -- did you ever recover any of
25 these substances at that time as collected in the

1 evidence?

2 A. No.

3 Q. And put them in BEST kits?

4 A. I did put them in BEST kits, yes. That
5 was after we collected everything on the return.

6 Q. Okay. And, Officer Etminan, is that
7 your signature on this BEST kit?

8 A. Yes.

9 Q. Okay. And in the BEST kits is
10 everything given a specific number?

11 A. It is.

12 Q. Okay. And in this one showing you what
13 has been premarked for ID as State's Exhibit
14 No. 21. Does the chain of custody help determine
15 the location that it was found? Does that -- do
16 you recall that substance being collected at the
17 scene?

18 A. Yes.

19 Q. Okay. And based on that what did you
20 do with that substance?

21 A. This was sealed in the bag and turned
22 into evidence.

23 Q. Okay. And do you recall who received
24 it from the evidence?

25 A. Cindy Hearn.

1 Q. Okay. And, Officer Etminan, I am going
2 to show you what's been premarked for
3 identification purposes as State's Exhibit 16. Do
4 you recognize this BEST kit as well?

5 A. Yes, I do.

6 Q. How do you recognize that?

7 A. This was the substance that was found
8 at the jail during the strip search of one of the
9 suspects.

10 Q. Did that come into your possession?

11 A. Yes.

12 Q. Where did you get that from?

13 A. It was received from Officer Sherwood.

14 Q. You said you received it from the jail.
15 Would that come from a deputy at the jail?

16 A. Yes, it came from the deputy at the
17 jail who conducted the strip search.

18 Q. And there's two baggies in there,
19 correct?

20 A. Yes.

21 Q. Okay. And so once you obtained this
22 evidence you also -- did you sign that BEST kit as
23 well?

24 A. I did.

25 Q. Okay. And in that second baggie in

1 there do you recall Sergeant Hoose performing a
2 consent search?

3 A. Yes.

4 Q. Okay. And did you also place baggies
5 into the same BEST kit?

6 A. I did.

7 Q. Do you recall them coming from
8 Defendant Holmes?

9 A. Yes.

10 Q. And do these appear to be tampered in
11 any way?

12 A. No. No, they've just been removed from
13 the original bags by SLED for testing and placed
14 back in the bag.

15 Q. And has it been preserved to the best
16 of your knowledge?

17 A. Yes.

18 Q. Officer Etminan, did you also Mirandize
19 the Defendants in this case?

20 A. I did.

21 Q. And did they speak to you specifically?

22 A. They did not speak.

23 MR. SMIT: Objection.

24 THE COURT: What's the basis of the
25 objection?

1 MR. LEWIS: Your Honor, we discussed
2 it.

3 THE COURT: I understand that. I don't
4 know what the relevance is given the pretrial
5 discussions. If you lay a foundation where you're
6 going with that. I don't know what they talked
7 about here. I will allow that question. Whether
8 they talked with him or not. I will allow you to
9 answer the question. Did you talk with them?

10 THE WITNESS: They did not speak.

11 BY MS. SAVAS:

12 Q. Okay. And, Officer Etminan, after you
13 had collected the evidence you had completed the
14 lawful search warrant return?

15 A. Yes.

16 Q. Okay. Beg the Court's indulgence.

17 (Off-the-record conference.)

18 BY MS. SAVAS:

19 Q. Officer Etminan, when you say you
20 submitted the evidence at North Charleston, what is
21 that procedure? Is this a secured facility?

22 A. Yes, it's a secured facility. You have
23 to use an access card that North Charleston gives
24 to you to get into it and then you have to fill out
25 a sign in form, state what you're placing into

1 evidence, where you are placing it because there's
2 lockers or there's a drop box for different items.

3 Q. And what happens with the drugs when
4 they need to be tested? What is your procedure for
5 that?

6 A. When they need to be?

7 Q. Tested and sent to SLED?

8 A. They are put into the BEST kit.
9 They're turned into evidence and evidence has a
10 procedure for turning it over to SLED.

11 Q. Okay. And you completed those
12 procedures in this case?

13 A. Yes.

14 Q. Okay.

15 MS. SAVAS: Nothing further from the
16 State.

17 THE COURT: Cross-examination, Mr.
18 Shahid.

19 CROSS-EXAMINATION

20 BY MR. SHAHID:

21 Q. It's Etminan, correct?

22 A. Yes, sir.

23 Q. So you weren't in here, but I butchered
24 it earlier. I hope you weren't offended.

25 A. No, not at all.

1 Q. Officer Etminan, you mentioned on
2 direct on March 6th, 2015, you were observing and
3 following Officer Sherwood, correct?

4 A. Yes, sir.

5 Q. He was your field training officer at
6 that time?

7 A. Yes, sir.

8 Q. And observing and following he was
9 tasked with giving you certain things to do at a
10 crime scene?

11 A. Um-hmm.

12 THE COURT: Is that a yes?

13 A. Yes.

14 Q. Because he wanted you to take the
15 skills you learned at the academy and bring them
16 down to the real world level?

17 A. Yes.

18 Q. That's fair to say?

19 A. Yes.

20 Q. Okay. He can tell you to put handcuffs
21 on someone?

22 A. Yes.

23 Q. He could tell you to search somebody?

24 A. Yes.

25 Q. Read someone Miranda warnings?

1 A. Yes.

2 Q. To write a report?

3 A. Yes.

4 Q. Write a supplemental report?

5 A. Yes.

6 Q. On March 6th at 1819 Clements Avenue he
7 only told you to do one of those things, right?

8 A. Yes.

9 Q. He didn't tell you to search anyone?

10 A. No.

11 Q. You didn't put handcuffs on anyone?

12 A. No.

13 Q. He didn't tell you to write a report?

14 A. No.

15 Q. He just had you read Mr. Boston and Mr.
16 Holmes their rights in Officer Smoak's car?

17 A. Yes.

18 Q. He could have told you to write a
19 report, couldn't he have?

20 A. Yes.

21 Q. And you could have written one to add
22 to the file at any time?

23 A. Yes.

24 Q. Okay. You did also collect some items
25 from the home or apartment I should say?

1 A. Yes.

2 Q. Included in those items were some items
3 from Ms. Holman's cabinet?

4 A. Yes.

5 Q. In the kitchen?

6 A. Yes.

7 Q. That was the Arm & Hammer baking soda
8 and the whisk?

9 A. Yes.

10 Q. And you collected some items found next
11 to the bathtub?

12 A. Yes.

13 Q. One of those was the off-white rock
14 like substance?

15 A. Yes, sir.

16 Q. And that was sent to SLED, wasn't it?

17 A. Yes, sir.

18 Q. Prior to it being sent to SLED you
19 weighed it?

20 A. Yes.

21 Q. Would you agree it weighed about 7.2
22 grams?

23 A. Yes.

24 Q. Okay. Officer Etminan, you did come
25 prepared to testify today, didn't you?

1 A. I did.

2 Q. And reviewed the case for trial?

3 A. I did.

4 Q. And the reports?

5 A. Yes.

6 Q. Those were prepared by somebody else?

7 A. Yes.

8 Q. They were?

9 A. As far as the incident report?

10 Q. Yes, sir.

11 A. Yes. The incident report was done by
12 Officer Sherwood.

13 Q. One final question, Officer. We are
14 going to step back in time a little bit and I know
15 chronologically this question isn't nice and
16 pretty. But when you originally approached the
17 house, you're standing kind of far behind Officer
18 -- Sergeant Hoose and Officer Sherwood at that
19 time?

20 A. Yes.

21 Q. You eventually make your way inside of
22 the house?

23 A. I wasn't into the house until we
24 collected the evidence. I was at the door.

25 Q. When you go in the house you're in the

1 main living area?

2 A. Yes.

3 Q. And you see a curtain that separates
4 the kitchen and the living room?

5 A. That I don't recall.

6 MR. SHAHID: No further questions, Your
7 Honor.

8 THE COURT: Very well. Mr. Smit, any
9 questions?

10 MR. SMIT: Brief moment, Your Honor.

11 (Off-the-record conference.)

12 MR. SMIT: No questions.

13 THE COURT: Redirect, solicitor?

14 MS. SAVAS: Nothing from the State.

15 THE COURT: Thank you, officer. You
16 may step down. You wish him to be excused?

17 MS. SAVAS: Yes, Judge.

18 THE COURT: Any objection?

19 MR. SMIT: No.

20 MR. SHAHID: No objection.

21 THE COURT: Thank you very much. You
22 are free to leave, sir. Call your next witness,
23 Solicitor.

24 MS. SAVAS: The State calls Deputy
25 Newcomb.

JUSTIN NEWCOMB

having been duly sworn, testifies as follows:

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

THE WITNESS: Justin Newcomb,
N-E-W-C-O-M-B.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon, Deputy Newcomb. Where do you work?

A. Charleston County detention center.

Q. And how long have you worked there?

A. About eight and-a-half years.

Q. And what are some of your responsibilities, your job duties?

A. I'm an intake officer so as soon as someone comes in I take the paperwork, check the paperwork and patdown the subjects when they come in, take anything they have on them off.

Q. And can you sort of describe that patdown process that you take?

A. So the initial patdown when they first come in when they are still in cuffs, we pat them down and take anything out of the pockets like their cell phone, wallets, keys and everything like

1 that.

2 Q. And do you also do another type of
3 search?

4 A. So if the charge -- depending on the
5 charge, if somebody comes in on a drug or weapon
6 charge there's a second search that is done. It
7 will be a strip search. We take them into a room
8 behind a curtain and we conduct a strip search to
9 make sure they have no other contraband or anything
10 else on them.

11 Q. And that is if there is evidence
12 potentially hiding underneath their clothes?

13 A. Yes, ma'am.

14 Q. On their person. And were you involved
15 in this case back on March 6th, 2015?

16 A. Yes, ma'am.

17 Q. And how were you involved?

18 A. So I was the strip search officer on
19 this.

20 Q. And did you perform a strip search of
21 the Defendants in this case?

22 A. Yes, ma'am.

23 Q. Okay. And did you also find any
24 substance in this case?

25 A. From what I recall from my report it

1 was a small clear bag with a white powdery
2 substance.

3 Q. Okay. Deputy Newcomb, I am going to
4 show you what's been premarked for identification
5 State's Exhibit No. 16. This is Item 1.12. Do you
6 recognize that baggie?

7 A. It could be. I mean it's been a couple
8 of years.

9 Q. Okay. And just in your procedure in
10 doing that what happened once you located a baggie?

11 A. Once we collect and whatever we find on
12 them inside the room we turn it over to the
13 arresting officer who brought them.

14 Q. In this case did you do that?

15 A. Yes, ma'am.

16 Q. And do you recall who you had turned it
17 over to?

18 A. I can't recall by name or face.

19 Q. But was it a North Charleston police
20 officer?

21 A. It would have been, yes, ma'am, North
22 Charleston.

23 Q. And did you follow the policy and
24 procedures in this case?

25 A. Yes, ma'am.

1 Q. Beg the Court's indulgence.

2 THE COURT: Very well.

3 (Off-the-record conference.)

4 BY MS. SAVAS:

5 Q. And, deputy, did you do anything else
6 in this case?

7 A. Not that I recall.

8 MS. SAVAS: Nothing further from the
9 State.

10 THE COURT: Cross-examination.

11 MS. SEMAN: Very briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. SEMAN:

14 Q. Deputy, you searched both Defendants in
15 this case, right?

16 A. From my report the only one I remember
17 from the report would be Holmes, but at the time if
18 I was doing patdowns, yes, ma'am, I probably dealt
19 with them.

20 Q. So that baggie that you were talking
21 about, you did find that on Mr. Holmes, right?

22 A. Yes, ma'am.

23 Q. Not on Mr. Boston?

24 A. Not that I recall.

25 Q. Thank you.

1 MS. SEMAN: Nothing else, Your Honor.

2 THE COURT: Cross-examination?

3 MR. LEWIS: No questions.

4 THE COURT: Thank you. Any redirect?

5 MS. SAVAS: Nothing further from the
6 State.

7 THE COURT: You may come down. Thank
8 you very much. You wish the witness to be excused,
9 Solicitor?

10 MS. SAVAS: Yes, Your Honor.

11 THE COURT: Any objection?

12 MS. SEMAN: No.

13 MR. LEWIS: No, Your Honor.

14 THE COURT: Thank you, sir. You are
15 free to leave. Call your next witness, please.

16 MS. SAVAS: Your Honor, may we
17 approach?

18 THE COURT: Sure.

19 (Off-the-record conference.)

20 THE COURT: Ladies and gentlemen, at
21 this point we will take our lunch break. Do not
22 begin your deliberations. Don't discuss the case
23 among yourselves. I will let you have lunch until
24 1:30. Be back in the jury room at 1:30. Have a
25 good lunch. Thank you.

1 A. Yes.

2 Q. And you personally did not remove
3 anything?

4 A. No.

5 MR. LEWIS: Thank you. Nothing
6 further, Judge.

7 THE COURT: Redirect?

8 MS. TRAN: No, Your Honor.

9 THE COURT: Thank you. You may step
10 down, Ms. Davis. You wish this witness to be
11 excused?

12 MS. TRAN: Yes, Your Honor.

13 THE COURT: Any objection?

14 MS. SEMAN: No, Your Honor.

15 THE COURT: You are free to leave.
16 Thank you. State may call its next witness,
17 please.

18 MS. SAVAS: Thank you, Your Honor. The
19 State calls Ms. Shana Sorrells.

20 SHANA SORRELLS

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name
23 and spell your last name.

24 THE WITNESS: Shana Sorrells,

25 S-O-R-R-E-L-L-S.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon. What is your current occupation?

A. I am currently a forensic analyst with the South Carolina Law Enforcement Division.

Q. And how long have you been in that position?

A. I have been working as a drug chemist for four years.

Q. And what are your duties as a drug chemist?

A. As a drug chemist I analyze and determine if unknown substances, powder, liquids, crystal substances contain controlled substances or noncontrolled substances.

Q. And have you had the occasion to analyze what tested positive for narcotics?

A. Yes.

Q. And what type of training and education do you have as your background?

A. I have a Bachelor's Degree in Chemistry from the University of South Carolina. I also have my Master's Degree in Analytical Chemistry from the University of South Carolina. I spent eight years

1 as a toxicologist where I looked for drugs and
2 chemicals and other poisons in blood, urine and
3 body tissues such as liver and brain before I
4 switched over to the drug analysis department. I
5 also had inhouse extensive training by senior drug
6 chemists within the lab and I have also attended
7 seminars from DEA for drug training.

8 Q. And do you have special equipment in
9 your lab as for testing the drugs?

10 A. We do.

11 Q. And is that equipment precise and
12 accurate in its testing ability?

13 A. Yes, it is.

14 Q. And have you had the occasion to
15 analyze what's tested positive for cocaine or
16 cocaine base?

17 A. In general?

18 Q. Yes, ma'am.

19 A. Yes, many, many times.

20 Q. Very basic question. About how many
21 times would you say?

22 A. I work 12,000 cases a year. And
23 probably I would say at least -- oh, wow, I don't
24 know, half of those are cocaine or cocaine base.

25 Q. And have you previously been admitted

1 as an expert in court in drug analysis?

2 A. Yes, I have.

3 Q. And how many times?

4 A. Four times.

5 MS. SAVAS: Your Honor, at this time
6 the State moves to admit Ms. Shana Sorrells as an
7 expert in the field of drug analysis.

8 THE COURT: Do you care to examine her
9 as to qualifications?

10 MS. SEMAN: No, Your Honor.

11 THE COURT: Mr. Lewis.

12 MR. LEWIS: No, Your Honor.

13 THE COURT: Very well. She will be
14 permitted to render opinions in the area of drug
15 analysis.

16 BY MS. SAVAS:

17 Q. Thank you, Your Honor. Ms. Sorrells,
18 were you involved in the case State v. Boston and
19 Holmes?

20 A. Yes, I was.

21 Q. And doing your drug analysis do you
22 also generate reports?

23 A. Yes, we do. For every case that we get
24 a report is generated.

25 Q. Okay. And did you do that in this

1 case?

2 A. I believe I did, yes.

3 Q. I'm going to show you what's premarked
4 as State's Exhibits No. 17 and 18. Do you
5 recognize these?

6 A. Do you mind if I compare them with what
7 I have?

8 Q. Go ahead.

9 A. Thank you. Just to make sure. Yes,
10 these are my reports that I generated for today.

11 Q. And, Your Honor, at this time the State
12 seeks to publish to the jury State's Exhibit No.
13 17 and 18.

14 THE COURT: Any objection?

15 MS. SEMAN: No, Your Honor.

16 THE COURT: Mr. Lewis.

17 MR. LEWIS: No, Judge.

18 THE COURT: State's 17 and 18 are
19 admitted without objection.

20 (STATE'S EXH. 17-18 in evidence.)

21 BY MS. SAVAS:

22 Q. Ms. Sorrells, I want to briefly
23 describe this document. So this is your report?

24 A. Yes, it is.

25 Q. And that is your signature at the

1 bottom?

2 A. Yes, it is.

3 Q. And in this case can you explain what
4 that information is up here in the headings?

5 A. On the top left when a report is
6 generated when the evidence is submitted the
7 officer submitting it fills out the information on
8 the top left with their name and I'm not sure if
9 this is the officer submitting it or the
10 investigating officer. But with their name, their
11 department and where if we need to mail them the
12 report where to send it to.

13 Q. So it would be the case agent?

14 A. It could be the case agent. We're not
15 -- we actually don't worry about that. That's what
16 the officers put in. We have -- SLED itself has
17 nothing to do with that portion of it.

18 Q. Yes, ma'am. What is this heading up
19 here?

20 A. The heading on the right that is the
21 department that it's assigned to as soon as it
22 comes which in this case is our drug analysis
23 department, the date that the report is generated.
24 In this case the report was generated on
25 August 13th, 2015. Every case that comes in is

1 given a unique SLED lab number which is the L
2 number, L15, in this case 3479. When we say your
3 case number, that is the case number that the
4 police department or the investigating agency
5 assigns to it. We don't change that number, it's
6 again whatever they enter in. The incident date is
7 the incident date of the event that again the
8 agency enters in, not us, and the suspect that the
9 agency enters in.

10 Q. In this case what is the suspect's
11 name?

12 A. In this case the suspect's name was
13 William Holmes.

14 Q. And what is the next section as far as
15 the items of evidence, subsection one?

16 A. Subsection one is the item that was
17 actually delivered. And so on March 13th, 2015, an
18 item was delivered to SLED for analysis. Those
19 items that needed to be tested were received in
20 what is called a BEST kit which every BEST kit has
21 a unique number; in this case the BEST kit was
22 B247361. That was delivered from a Ms. Cindy Hearn
23 of the North Charleston Police Department.

24 So that's just telling us the items,
25 how they got into where we are with the items that

1 were going to be tested.

2 Q. And, Ms. Sorrells, showing you what's
3 been premarked as identification for State's
4 Exhibit No. 16. Do you recognize this?

5 A. Based off of that handwriting and my
6 initials this was the case that I worked back in
7 2015.

8 Q. And does that BEST kit number match the
9 one on the report you have there?

10 A. Yes, it does.

11 Q. And did you then, in fact, test this
12 substance?

13 A. Yes, I did.

14 Q. And is this materially in the same
15 condition as when you received it or is there any
16 changes to the --

17 A. There's some changes. There is some
18 slight changes. When it is -- when we received it
19 we received it in these little plastic bags.
20 That's how they were submitted to us. To analyze
21 it we have to take it out of the plastic bags to
22 weigh it, to look at it. And just for our ease and
23 if for some reason we have to go back and retest it
24 if the test didn't work properly, we repack it in
25 these little zip lock bags just so it is easier to

1 get the evidence out. If a zip lock bag is added
2 in there we actually write bag added on the bag
3 saying that that did not come from the case, that
4 did not come from the submitting officer, that came
5 from us specifically.

6 Q. And in this case do you recall who you
7 had received this from for testing within SLED?

8 A. I believe I received it from Jackie
9 Davis.

10 Q. Yes, ma'am. At this time, Your Honor,
11 the State seeks to admit evidence Item 16 and
12 publish to the jury.

13 THE COURT: Any objection subject to
14 the objections previously noted when the
15 introduction that was argued concerning that
16 exhibit, any other additional objections?

17 MS. SEMAN: No.

18 MR. LEWIS: No additional.

19 THE COURT: Very well. Subject to --
20 16 is admitted subject to the objection previously
21 on record and previously argued.

22 (STATE'S EXH. 16 in evidence.)

23 BY MS. SAVAS:

24 Q. Thank you, Your Honor. And, Ms.
25 Sorrells, I would like to explain that there are

1 two separate bags, a 1.1 and 1.2. Did you test
2 these together?

3 A. They were tested separately.

4 Q. And can you please describe that
5 process and your results?

6 A. Okay. When we say an evidence bag you
7 can kind of see it back here. It's in the back.
8 But it was just a simple evidence bag and inside
9 again were the two what we call plastic corner
10 bags, just little corner bags. I cannot tell the
11 difference between the two corner bags. There was
12 no distinguishing marks. So at that point I just
13 tested both of them. We do not test them together.
14 Each one is weighed separately. Each one is tested
15 separately. So a separate indicative test, a
16 separate confirmatory test on both of them. But
17 for ease for the report we add up the weight of the
18 two since both substances came back to be the same
19 thing and that's where when after both substances
20 were analyzed you see that cocaine was found in
21 both of them. And so we say that the cocaine was
22 found in the sample two tested because we had two
23 bags or two separate tests and the total net weight
24 which is the combination of both bag one and bag
25 two was 0.57 grams.

1 Q. And as far as your confidence level
2 99.7, can you explain what that means?

3 A. That confidence level is just -- that
4 confidence level is for the weight. Things can
5 alter the weight just slightly. Different
6 atmospheric conditions, humidity, it's not going to
7 make a significant change in the weight. So we say
8 but to add in that error we try to keep the lab as
9 temperature controlled, as humidity controlled as
10 possible.

11 But what we are saying with that
12 99.7 percent is that 99.7 percent of the time that
13 you go in and weigh these samples they will come
14 out to add up to 0.57 grams.

15 Q. So this tested, both of these baggies,
16 .57 grams of cocaine?

17 A. Yes, that's correct.

18 Q. And these were the items that came from
19 the Defendant William Holmes?

20 A. That was the suspect that was attached
21 to the case.

22 Q. Okay. And just on the second page of
23 your report, is this just a basic affidavit?

24 A. It is. It is just something that is
25 how many years I have been working at SLED. This

1 is number of months. This is how many times I have
2 testified and at the bottom you see a list of
3 checked boxes. That's what we did for this case.
4 So for each item I did a chemical test which is
5 just an indicative test, just a color test that
6 kind of tells which way we need to go to analyze
7 this. And then, of course, gas chromatography mass
8 spectrometry which will give you a fingerprint of
9 the drug that is very unique at its specific
10 retention time and that way we can confirm that
11 what we are seeing is cocaine.

12 Q. Okay. Thank you for that explanation.
13 Show you State's Exhibit 17 that's been admitted.
14 And is this your second report that you generated
15 in this case?

16 A. Yes, it is.

17 Q. Okay. And up here at the suspects
18 listed are those the Defendants in this case, both
19 of them? I am sorry. William Holmes and Boston
20 Darell, correct?

21 A. Yes.

22 Q. And that was given to you from the
23 agency?

24 A. That was also given to me from the
25 agency. That's not something that we put in there.

1 Q. Okay. And I'm going to show you what's
2 been marked for identification purposes as State's
3 Exhibit No. 15. Do you recognize this?

4 A. Again. Yes, it is my handwriting and
5 my initials and the date from 2015.

6 Q. And does that BEST kit match the BEST
7 kit number in your second report?

8 A. Yes, it does.

9 Q. And was this materially and
10 substantially in the same condition as when you
11 received it?

12 A. Again, you can see there's the word
13 evidence. That's the evidence bag in the case.
14 The substance was within the evidence bag. That
15 evidence bag is separated from the substance. It
16 is weighed and analyzed and placed back into the
17 bag that says bag added saying that I added that
18 little zip lock.

19 MS. SAVAS: At this time, Your Honor,
20 the State seeks to admit and publish to the jury
21 State's Exhibit No. 15.

22 THE COURT: Other than the objections
23 previously made and argued any additional
24 objections?

25 MS. SEMAN: No, Your Honor.

1 MR. LEWIS: No additional.

2 THE COURT: Very well. Subject to
3 those objections previously argued and preserved in
4 the record Exhibit 15 is admitted.

5 (STATE'S EXH. 15 in evidence.)

6 BY MS. SAVAS:

7 Q. And, Ms. Sorrells, could you explain
8 what your results were in this Exhibit No. 15 in
9 this lab number?

10 A. Yes. In this case again I had the
11 evidence bag containing a rock substance. This
12 rock substance again went under preliminary tests
13 which indicated that it could possibly be cocaine
14 base, was run on the gas chromatography mass
15 spectrometry where again we got the fingerprint.
16 Cocaine base was found in the sample tested and had
17 a net weight of 5.83 grams.

18 Q. And, Ms. Sorrells, is there an
19 explanation if the officers had stated it weighed
20 approximately a gram or more, does that change as
21 far as in your reports and the actual analysis of
22 the substance itself?

23 A. That -- we more often than not we get
24 where the officer weighs it beforehand just to kind
25 of get an idea is what we have been told. A lot of

1 times it is not safe for them to weigh it outside
2 of the bag that it is in. So when they weigh it
3 you are getting an approximate weight on the
4 scales. So sometimes it can include the packaging
5 whereas we do not include packaging in our weight.

6 Another thing is cocaine base
7 especially can be wet when it is formed. It's a
8 drying process. And so when it's wet water adds
9 weight. So a lot of times when we get it it
10 actually weighs less than what is submitted. We
11 have had times where we have gotten it and I don't
12 know if it's summer heat sometimes where it will
13 actually absorb and it weighs more. What we report
14 on our report is what it weighed at the time that
15 we analyzed it.

16 Q. And so it looks like here it's a little
17 dried out; is that correct?

18 A. That looks fairly dry, yes.

19 Q. And so you said the water weight could
20 add to it. Would that be true if it was freshly
21 made?

22 A. Yes, if it's freshly made it is going
23 to have that weight in there. And it is a drying
24 process so it takes time to dry. So by the time we
25 get it some of that water has evaporated. It has

1 dried out. And the weight will be less than what
2 the actual weight was reported on the scene.

3 MS. SAVAS: Nothing further from the
4 State. Please answer any questions the defense may
5 have.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MS. SEMAN:

9 Q. Good afternoon, Ms. Sorrells. Is that
10 how you say your name?

11 A. Yes.

12 Q. As you testified on direct you're a
13 forensic scientist?

14 A. That's correct.

15 Q. So it's your job to test stuff?

16 A. That's correct.

17 Q. And in this case it is drugs?

18 A. That's correct.

19 Q. So here the police department sent you
20 the drugs, right?

21 A. Yes.

22 Q. And you tested them?

23 A. Yes.

24 Q. And after you tested them you wrote
25 that report?

1 A. Yes.

2 Q. And your report says what you found and
3 how much?

4 A. Yes.

5 Q. Not your job to say who the drugs
6 belonged to?

7 A. No, it is not.

8 Q. Or whose guilty?

9 A. No, it is not.

10 Q. Just what you found?

11 A. That's correct.

12 Q. How much of it?

13 A. That's correct.

14 Q. SLED also has different departments,
15 right?

16 A. Yes, they do.

17 Q. Not just drug analysis?

18 A. No, we do not.

19 Q. You or other people at SLED can test
20 things other than drugs, can't you?

21 A. Yes, that's correct.

22 Q. For example, SLED can test things for
23 fingerprints, right?

24 A. Yes, they can. We have a latent
25 prints, it is a latent print department which is

1 for fingerprinting.

2 Q. And they can test things for DNA?

3 A. Yes, they can.

4 Q. And no fingerprint or DNA testing was
5 submitted to you from this case, right?

6 A. No. We actually get cases in where
7 they have requested fingerprints and DNA. In that
8 case we extract the drugs from whatever evidence is
9 given and then will we send it down, back down to
10 our log in department. And they let latent prints
11 and/or DNA department know that they now have a
12 case for them that was sent from us.

13 In this case there was not latent print
14 nor DNA requested. So there was no reason to send
15 it back down to our log in department for those two
16 departments.

17 Q. So again in this case you just received
18 the drugs and you tested them and you wrote a
19 report?

20 A. That's it.

21 MS. SEMAN: No further questions, Your
22 Honor.

23 THE COURT: Cross-examination, Mr.
24 Lewis.

25 CROSS-EXAMINATION

1 BY MR. LEWIS:

2 Q. I want to talk to you about that exact
3 thing that she just said at the end. So if someone
4 submitted something and wanted a DNA test or a
5 fingerprint test of the baggie that the drugs came
6 in, that could be done?

7 A. Yes.

8 Q. You don't say no, we do not get
9 fingerprints off of bags of drugs? You do the
10 testing?

11 A. No, we send it down and they try, yes.

12 Q. And that's -- you have had that done
13 before?

14 A. Yes.

15 Q. Often?

16 A. Not too often. I just had one
17 yesterday, but not -- it doesn't happen often, but
18 it does come up.

19 Q. But yesterday it happened?

20 A. It happened yesterday.

21 Q. And I don't want to go far into that
22 with you, but that would have helped establish
23 identity?

24 MS. SAVAS: Objection, outside her area
25 of expertise.

1 THE COURT: Overruled.

2 BY MR. LEWIS:

3 Q. That would establish identity? You
4 will just worry about content, but somebody else
5 could have said who possessed it?

6 A. Again, that's -- I just tell you what
7 the drugs are. I am not familiar with the latent
8 print DNA department. So that would be on them to
9 ask if they could identify it based off of
10 fingerprints or DNA.

11 Q. You know that's what their purpose is?

12 A. That's what they try to do, yes.

13 Q. If I can, I want to show you what has
14 been marked as State's Exhibit 1. Try not to mess
15 this up too badly. Can you tell me what is in
16 these baggies right here, please?

17 MS. SAVAS: Objection, Your Honor.
18 Outside of her personal knowledge.

19 THE COURT: She is asking not -- he
20 asked what's in that. The witness can answer the
21 question. Thank you, Solicitor. She's an expert.
22 Been qualified. Thank you. The objection is
23 overruled.

24 A. I honestly could not. I can't say what
25 is in that bag.

1 Q. Because you're a scientist?

2 A. Yes.

3 Q. You have to analyze things?

4 A. Yes.

5 Q. You don't just use your eyes, you have
6 incredibly advanced machines that break down the
7 chemical analysis to see how long something goes
8 through and please forgive my ignorance here, but
9 in general how long it takes to come through the
10 GCMS?

11 A. That's correct.

12 Q. And you as an expert looking at that
13 bag have no clue if there's any controlled
14 substance in it whatsoever?

15 A. No, I do not.

16 Q. What if it was 15 feet away from you?
17 Would that make it easier?

18 A. No, it would not.

19 Q. Either way you can't tell?

20 A. Yes. No, I cannot tell.

21 MR. LEWIS: One moment, Judge.

22 (Off-the-record conference.)

23 MR. LEWIS: No further questions.

24 THE COURT: Redirect?

25 MS. SAVAS: Nothing further from the

1 State, Your Honor.

2 THE COURT: You may come down. Thank
3 you very much. You wish the witness to be excused?

4 MS. SAVAS: Yes, Your Honor.

5 THE COURT: Any objection?

6 MS. SEMAN: Not from Defendant Boston.

7 MR. LEWIS: No, Your Honor.

8 THE COURT: You are free to leave.
9 Thank you. You may call your next witness,
10 Solicitor.

11 MS. SAVAS: At this time, Your Honor,
12 the State rests.

13 THE COURT: All right. Ladies and
14 gentlemen, there are some matters of law now that I
15 have to take up out of your presence. I'm going to
16 send you to your jury room. Do not begin your
17 deliberations however, don't discuss the case. We
18 will be with you as quickly as we can. Thank you.

19 (Thereupon, the jury exited the
20 courtroom at 2:36 p.m.)

21 THE COURT: Any motions from the State
22 at this point?

23 MS. SAVAS: We just renew our
24 pre-existing motions, Your Honor, but nothing
25 additional.

1 THE COURT: Pre-existing motions for
2 what?

3 MS. SAVAS: Just regarding what we had
4 our bench status on and your rulings on the Court,
5 but nothing at this point, Your Honor, no.

6 THE COURT: Those rulings -- that's why
7 what we kept having a little problem and I
8 understand what you were doing, but if we -- if the
9 Defendant had the same opportunity the State does
10 and that is to appeal the direct ruling of
11 suppression or allowing they wouldn't have had to
12 make all that and you wouldn't have had to ask all
13 these questions. It's the only chance they get to
14 build a record for the review purpose and that's
15 the whole purpose of that. That's why I
16 persistently and consistently allowed the
17 examination of that. Does not have anything to do
18 with your charge, it per se necessarily creates a
19 doubt, might not, but clearly it's for the purposes
20 of review of what was there for my granting or not
21 granting the motion, whether or not I should have
22 gone further. So those reasons the motion is -- I
23 don't think you have to, but because I have already
24 ruled on them for the sake of protection they are
25 noted. Thank you.

1 MS. SAVAS: Yes, Your Honor.

2 THE COURT: Any motions now from the
3 Defendant Boston?

4 MS. SEMAN: Yes, Your Honor. For
5 purposes of the record we would move for a directed
6 verdict in favor of Defendant Boston.

7 THE COURT: And looking at this -- in
8 fact this has -- it's not the first possession of
9 intent to distribute charge I have ever done, but I
10 have never done a charge -- in fact, Judge Clary
11 and Judge Floyd didn't even bother to do in our
12 bench book a charge on manufacturing. They don't
13 even have a form for it. I guess that's because we
14 maybe as the sergeant said I have never seen that
15 and that's it.

16 But clearly if you read the statute,
17 why it could be a separate offense, and this is why
18 I am articulating this, I anticipate the same
19 motion from Mr. Lewis as well, and why it would be
20 is it duplicative as it's subsumed basically.
21 Technically they were both established by the same
22 code section, manufacture or possession with intent
23 to distribute. We all know that. But the jury
24 could conclude that these Defendants manufactured
25 it but it was not for their possession. It was for

1 her possession. Which is -- that's one -- if I am
2 on the jury I don't conclude that, but I can't
3 ignore that as being and it is against the law to
4 manufacture it period. You don't have to possess
5 it. If you manufacture it then you violate that
6 section as I read that section.

7 There is evidence, it's challenged, but
8 there is evidence that suggests that these two
9 persons manufactured it. For that reason I am
10 denying the motion. If the jury believes it in the
11 light most favorable to the State, they could, then
12 I think it establishes it.

13 With respect to possession, that is an
14 interesting one that will be up to the jury to say.
15 Maybe that's why they are insisting on the
16 manufacturing because they don't know who was in
17 real possession. They have got to prove actual
18 constructive. Clearly they were in constructive
19 possession. There is evidence to establish that by
20 virtue of the fact they were found in the bathroom
21 with the drugs if the jury believes that. And that
22 should be control, evidence of control and then of
23 possession, constructive possession. Physical
24 possession, that's -- that could be anybody in this
25 situation. So but there's a way to construe it in

1 the light most favorable to the State that I think
2 creates the ruling.

3 MS. SEMAN: Your Honor, may I be heard
4 on that briefly?

5 THE COURT: Sure, absolutely.

6 MS. SEMAN: Your Honor, we have some
7 case law actually suggesting they may not continue
8 being charged with both of these offenses. And we
9 have the State v. Brown case. I have a copy for
10 you if would like.

11 THE COURT: I'd love to see it. I have
12 Westlaw up.

13 MS. SEMAN: Yes, Your Honor. So in the
14 case the Defendant possessed four ounces of a
15 controlled substance. He distributed two ounces of
16 that controlled substance to a confidential
17 informant. Was later charged with both
18 distribution for that two ounces and possession
19 with intent to distribute for the remaining two
20 ounces that he had in his possession.

21 Now, the court in this case said that
22 the Defendant could not be convicted of both
23 offenses at the same time. That was multiple
24 punishment according to double jeopardy. We
25 believe that that case applies here. We believe

1 that the content was merged or that the conduct was
2 merged, excuse me, and that case will tell you the
3 language is almost exactly that. There is a merger
4 of the conduct. It's the same subsection. It's
5 the same drug. It's the same actions.

6 So we believe that both charges, while
7 they can be submitted to the jury, that the jury
8 cannot find guilt on both. Thank you.

9 THE COURT: Thank you. All right. Mr.
10 Lewis, you wish to supplement? Again I assume a
11 similar motion.

12 MR. LEWIS: Similar, Judge. And,
13 again, procedurally not to sound like a broken
14 record again at this stage bringing up the prior
15 suppression arguments the Court ruled on in
16 addition in regards to the directed verdict and on
17 behalf of Mr. Holmes I am also moving that both the
18 manufacturing and the possession with intent to
19 distribute be dismissed for lack of substantial
20 circumstantial evidence. I understand the Court
21 has evidence that has been provided to suggest that
22 they were engaged in this activity.

23 Specifically though in regards to
24 possession with intent to distribute and it's
25 possible that I missed something that was read into

1 the record. At this stage I don't know of any
2 reason that they would be viewed as possessing with
3 intent to distribute. If you find they are in
4 constructive possession why are they intending to
5 distribute to anybody?

6 THE COURT: I understand that. I don't
7 quarrel -- and I will charge the lesser included
8 offense because it could be just simple possession.
9 The only thing that they have is the inference is
10 over I think a gram is what it is for crack
11 cocaine. And they have established five point
12 whatever it was. So that would raise that
13 inference. The jury can disregard that inference
14 obviously, but it would have to be from that
15 standpoint. There is nothing else to suggest for
16 both of them arguendo, but they're not raising that
17 for Mr. Holmes simple possession, the fact that he
18 had two packages. They are not saying -- that's
19 another indicia possibly, but that is I understand
20 the basis of the charge of possession of crack
21 cocaine which is attributed to only Mr. Holmes.

22 MR. LEWIS: In regards to the two
23 baggies, that would actually been have a cocaine
24 powder rather than a cocaine base. So thankfully
25 in this case they didn't decide to go forward on

1 PWID for cocaine as well, but I certainly would ask
2 that at that point once we get to charge conference
3 for the lesser included in regards to --

4 THE COURT: We are in the middle of
5 that.

6 MR. LEWIS: Then I am asking for that
7 too. I just derailed myself.

8 THE COURT: That's all right, I am
9 prone to do that. But you are not 70.

10 MR. LEWIS: Well, 35 and it's happening
11 to me. Oh, yes, in regards to my in chambers
12 comment on the motion to elect. As I said at the
13 beginning of today I tend to agree with them up
14 until that point where it goes to the jury itself.
15 Without an instruction that says for this
16 substance, for the 5.4 grams if you believe to be
17 cocaine base you can find them guilty of one or the
18 other. Reason there being is if to hold otherwise
19 hypothetically speaking I could be facing 90 years
20 for one Pyrex worth of crack. If I manufacture it
21 that's 30 years. If I provide it to Mr. Smit
22 that's 30 years and if I possess it before I hand
23 it to Mr. Smit that's 30 years and they are all
24 under the same subsection for that reason.

25 THE COURT: I wouldn't have any problem

1 if you sold it to Mr. Smit because that's a
2 separate act from manufacturing. I don't know
3 how -- I guess they don't bring manufacturing
4 because they typically find it in their possession
5 but don't know who manufactured it. But in this
6 particular case I'm going to look at this Brown
7 case, but you have got an act in and of itself is a
8 criminal act. To manufacture. They could have
9 manufactured it and dumped it down the drain, but
10 they would have violated that section because it
11 says -- I need to -- I looked at the definition of
12 manufacture when we started. But I think it's just
13 to create to make it and doesn't say for what
14 purposes it is done. Just against the law to
15 create it.

16 And so that crime was committed the
17 minute it was made. If in your example if you then
18 gave it to Mr. Smit and you committed another act
19 in my opinion in addition to manufacturing. In one
20 we don't have that. We have that they just simply
21 were in possession and the only thing they have an
22 indicia of with intent to distribute is the amount
23 which gives me greater concern. But I am going to
24 look at the case and see.

25 MR. LEWIS: Yes, Your Honor. And I

1 just wanted the Court looking at that through that
2 lens or if you are willing to because specifically
3 here the legislature could have decided how like
4 meth or like other substances we are going to
5 delineate or differentiate between manufacturing,
6 possession with intent to distribute, conspiracy to
7 possess with intent to distribute. Inside the
8 statute is all this language that includes all of
9 it under the same subsection.

10 THE COURT: Well, I know.

11 MR. LEWIS: And that's why it gives me
12 pause on behalf of my client that they could be
13 guilty for one Pyrex for 90 years worth of exposure
14 which I don't think was the legislature's intent
15 when drafting a single subsection.

16 THE COURT: Okay.

17 MR. LEWIS: Thank you, Judge.

18 THE COURT: You wish to be heard, Ms.
19 Savas?

20 MS. SAVAS: Yes, Your Honor. Thank
21 you. I would first like to address the issue of
22 directed verdict. Your Honor, as Your Honor had
23 stated, viewed in the light most favorable to the
24 State --

25 THE COURT: Ms. Savage, let's don't

1 waste a lot of time on the directed verdict. Let's
2 focus on one thing and one thing only. I have
3 already indicated I think I articulated enough -- I
4 mean you can keep talking, maybe you will talk me
5 out of what I was prepared to rule. But if you
6 want to talk me out of it feel free to continue.

7 I had already said there is sufficient
8 evidence to deny the directed verdict because of
9 what was there. I want to hear you how you get
10 both charges, how you are entitled to have
11 manufacturing and possession with intent to
12 distribute for the same drug.

13 MS. SAVAS: Yes, Your Honor. And
14 again, Your Honor, we had submitted that brief last
15 week.

16 THE COURT: I read that. That didn't
17 help me that much with that specifically.

18 MS. SAVAS: Well, Your Honor, in there
19 there is case law, significant case law that
20 actually distinguishes the two. And I would like
21 to start with the statute. In the statute although
22 they are the same code and there are different
23 subsections and they had carved out a second
24 subsection regarding the manufacturing and that's
25 about the possession of the equipment used.

1 THE COURT: You haven't charged with
2 possession of equipment.

3 MS. SAVAS: It is the prima facie
4 evidence of the intent to manufacture.

5 THE COURT: Again I appreciate that.
6 But okay. You really, really want to argue that as
7 a basis, because I'm going to tell you something.
8 That's a great thing. Let's frame everything we
9 can in this case, Solicitor, because right now if
10 they go in my trunk of my car and look in my car
11 they can charge me with possession of burglary
12 tools right now. Because I have a screwdriver in
13 there and I have got a hammer. And I believe
14 that's burglary tools because I have tried cases
15 where they were charged with having a screwdriver
16 was burglary tools.

17 So you really, really want to push this
18 and that also creates a separate reason for you to
19 be able to get manufacturing. What in the world is
20 the State looking for here? I don't know why you
21 want to complicate it, but go ahead and continue.
22 Your argument is set forth in these cases. You
23 don't need to reargue. I have read them. I don't
24 agree with you, okay? I don't agree with you in
25 your posture. I want to read this case to see if I

1 have got a legal basis to say no and because I
2 think your argument is well, the judge takes care
3 of that at sentencing. That's where that comes in.
4 Is for the same thing. Basically that was the
5 premise that you set forth. That's where I handle
6 that. I have the right to run them concurrently.
7 That's in essence what you argued. That the jury
8 should decide and then the judge can take care of
9 that. Is that not correct?

10 MS. SAVAS: In regard to Mr. Lewis's
11 comment of the concern of the 90 years, absolutely
12 sentencing can be run concurrent. That's not the
13 objection the State would make.

14 In regards to the case State v. Brown
15 that Ms. Seman had presented to us just now, that
16 is different because it's discussing CI
17 distribution and the PWID. And I agree with that
18 ruling if you have in your possession and you're
19 distributing at that point in time those are two
20 different offenses. That's why there is the
21 possession charge and then the distribution of
22 course. I think that's very distinguishable here
23 because again this case is actually, you know, the
24 State's position and the officers and Ms. Denise's
25 testimony is that they were in the act of making

1 crack which is the manufacturing. That is the
2 process. It's the action. It's the equipment used
3 as described by an officer that is how it is made.
4 And the possession with intent to distribute does,
5 Your Honor, as you had stated goes to the weight of
6 the drugs.

7 As far as that inference may be made
8 the jury wishes to do so or not, but we believe
9 that there was sufficient case law that would be
10 the distinguishable act. Even if they are in the
11 same statute the courts have ruled that they may --
12 the State is not required to elect and that the
13 defense must show prejudice and I have not -- the
14 State's opinion is that there has not been argument
15 regarding the prejudice it would make. All the
16 arrest warrants were sworn out. In the directed
17 verdict, Your Honor, we do feel that all the
18 elements have been met to be presented to the jury
19 and that is again argument for the defense as to
20 which charges they want to argue.

21 However, we do not believe that it is
22 required by -- the Supreme Court clearly laid out
23 that the State needs to elect in instances, but
24 again it is in the trial court's discretion.

25 THE COURT: Okay. Thank you. Anything

1 further?

2 MS. SEMAN: Just, Your Honor, for the
3 record I just wanted to renew my earlier motion or
4 our motion to suppress and I would ask you to read
5 that case.

6 THE COURT: Thank you.

7 MR. LEWIS: Just joining in the last
8 thing that I mentioned briefly, Judge, in addition
9 to the statute as I'm sure you will review, the
10 indictments are identical. Exactly identical.
11 There's -- caption at the top, one says
12 manufacturing, the other says possession with
13 intent to distribute. They cite the exact same
14 statute, use the same language mentioning
15 manufacturing in both and mentioning possession
16 with intent to distribute. They are in the same
17 conduct from those charging documents. I know
18 that's all they are, is charging documents. But it
19 further goes to show you're dealing with the
20 identical conduct. I feel stupid doing this, but I
21 have to.

22 With regards to State v. Brown, I do
23 think there is a little bit of difference and I
24 have to share that which is in that case supposed
25 to be a distribution for the full four ounces. And

1 law enforcement said oh, no, we are only going to
2 buy two which then left two quantities of drugs.
3 That said, here there's only one quantity to start
4 with. And it still falls in my opinion under the
5 same statute, same subsection, not two subsections,
6 one subsection, dealing with PWID and
7 manufacturing. Thank you, Judge.

8 THE COURT: Well, Mr. Grimes, that
9 sounds like it would be one of the Anders
10 entrapment which he was successful in prevailing in
11 the case he tried before me. I thought it was
12 crazy, the jury agreed. He filled in as I recall,
13 but in this case the entrapment is they now we will
14 only buy two and we have got him on the other.

15 MR. LEWIS: Exactly.

16 THE COURT: Let me read this. I will
17 be back. We will be at ease for a few minutes.
18 Thank you.

19 (A recess transpired.)

20 THE COURT: Thank you for the Brown
21 decision. I have reviewed it and reviewed very
22 quickly some of the cited decisions. And I agree
23 with your argument that if they really are merged
24 in some respects and I agree with you primarily
25 it's the same section that we are talking about

1 that this case deals with, said there is nothing
2 the legislature intended double punishment for the
3 same act. And that's clearly what we have here
4 because there's no way at least for the moment in
5 what we are dealing with respect to the
6 manufacturing and possession, it wasn't as though
7 they came back and later had possession which would
8 be a separate action altogether. That was all
9 simultaneous when they came in. They were in the
10 process of manufacturing and obviously be hard to
11 not -- come in and catch someone manufacturing,
12 hard not to have them in possession and the amount
13 triggers the possession with intent to distribute.

14 But I agree with sort of the end of it,
15 it seems they say we don't -- we are going to tell
16 you to reverse the decision of punish him on both,
17 but tell -- basically tell the jury they can
18 convict him only on one. And I think that's what
19 the instruction would be, that they either have to
20 find him guilty of manufacturing or find him guilty
21 of possession with intent to distribute. You can't
22 find him guilty of both.

23 Now, that having been said, Solicitor,
24 you have a trump card here. Because you can say
25 I'm withdrawing the manufacturing which would

1 trigger the lesser included offense of being in
2 possession because I'm going to have to charge that
3 or just go with the possession, go with the
4 manufacturing only because there wouldn't be any
5 lesser included offense on manufacturing. It would
6 be either guilty of manufacturing or not guilty.

7 If I charge with possession with intent
8 to distribute, then I have got to charge the lesser
9 included offense because they could say that he
10 didn't intend to distribute. So now we have a
11 dilemma that they can't find him guilty of the
12 possession, any possession.

13 So however you want to do it, you have
14 complicated something that really doesn't need to
15 be complicated in my opinion, but whatever you want
16 to do. That's what my ruling is going to be.

17 We are going to charge on all of it,
18 but I'm going to tell the jury they cannot convict
19 him on both of them. They have to pick.

20 MS. SAVAS: Beg the Court's indulgence.
21 One moment.

22 (Off-the-record conference.)

23 THE COURT: I extra copies of Anatomy
24 and Justice if anyone wants to read it.

25 MS. SAVAS: Your Honor, we would move

1 to charge the jury with all the indictments, yes.

2 THE COURT: That is fine. Okay. Thank
3 you. That's what will be done. Okay. All right.
4 My denial of the directed verdict is evidence as I
5 said that he can't be convicted on both
6 manufacturing and possession with intent to
7 distribute.

8 With respect to the possession, that's
9 the only thing I'm going to submit on that one as
10 to Mr. Holmes.

11 All right. First, Mr. Boston, we had a
12 conversation. First let me ask you, Ms. Seman, do
13 you intend to present any witnesses?

14 MS. SEMAN: No, Your Honor.

15 THE COURT: And, Mr. Boston, you stand
16 by your decision, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Thank you so much. Mr.
19 Lewis, do you intend to present any witnesses?

20 MR. LEWIS: I do not.

21 THE COURT: Very well. Then under the
22 convoluted rule, the State will open in full and
23 you will respond. There's no argument about that.
24 There's two ways of construing that, but I think
25 that's the old way and that's the simple way in

1 this case. One other theory we were all kicking
2 around is since the State -- the Defendant would
3 open and then the State and then you reply to the
4 State's arguments, but that's really subsumed in
5 what we are doing. So that's fine. We will just
6 flip the roles.

7 MS. SEMAN: Your Honor, would now be
8 the appropriate time to discuss jury charges?

9 THE COURT: Yes.

10 MS. SEMAN: We are requesting a charge
11 on mere presence, just a normal.

12 THE COURT: I have got that in every
13 drug charge I have ever given. So I agree. I am
14 going to charge the lesser included offense, I'm
15 going to charge possession with intent to
16 distribute, I'm going to charge manufacturing and
17 define manufacturing. I assume State wants me to
18 charge the tools issue which is clearly set out in
19 the statute and I will charge that. I will also
20 say that's an inference to be drawn. You are
21 entitled to accept it or reject it. But clearly
22 that was the intent of the legislature to establish
23 that. So that's fine. I will charge that as well.
24 Anything else?

25 MS. SEMAN: And a charge on the

1 co-defendant issue, Your Honor, that the jury does
2 not have to find both people guilty or both people
3 innocent. It can be one or the other.

4 THE COURT: I appreciate that. I
5 understand what you are asking me to do. But the
6 problem I have, if we were in federal court I would
7 do that in heartbeat. But we have a constitutional
8 provision that prevents me from charging on the
9 facts and now I am getting into that dangerous area
10 of charging on the facts. So I can't do that.

11 MS. SEMAN: Yes, Your Honor.

12 THE COURT: Thank you. All right. You
13 all need a few minutes or are you ready to go?

14 MS. SAVAS: Your Honor, just with
15 regard to charges we would seek to admit the hand
16 of one hand of all. I think that goes alongside.

17 THE COURT: Hand of one hand of all?
18 No.

19 MS. SAVAS: In regards to them being
20 joint in their actions, Your Honor.

21 THE COURT: You charged them both with
22 being in possession. They could be in constructive
23 possession. Somebody was in physical possession.
24 No, I decline to charge that.

25 MS. SAVAS: Yes, sir.

1 THE COURT: Thank you. I decline to
2 charge that.

3 MR. LEWIS: There's never a good time
4 to go, but I am ready whenever the Courts wants.

5 THE COURT: I'm ready. We have got the
6 verdict forms. What we need to do, give me the one
7 on the -- we will have a manufacturing. I will
8 tell them they can only fill out one of those.
9 Okay. Let's bring in our jury then.

10 (Whereupon the jury entered the
11 courtroom at 3:22 p.m.)

12 THE COURT: Ladies and gentlemen, thank
13 you very much. Thank you for your patience. And
14 if you recall when I spoke to you when we started
15 this process, I mentioned to you that the Defendant
16 of course in this case had no obligation to present
17 anything, didn't have to say anything. They don't
18 have any burden at all whatsoever. But they
19 wouldn't have an opportunity to present any
20 evidence until the State has completed its case.
21 The State has now completed its case. And that
22 brings us to the second part now.

23 So at this point, does Mr. Boston wish
24 to present any additional witnesses for the jury's
25 consideration?

1 MS. SEMAN: No, Your Honor.

2 THE COURT: Thank you. Does Mr. Holmes
3 wish to present any additional witnesses for the
4 jury's consideration?

5 MR. LEWIS: No, Your Honor.

6 THE COURT: Thank you. Then that would
7 conclude this case. Typically what I would do is
8 send you out and for the record we will -- with
9 respect to the jury having to leave twice and we
10 have already argued the motions. Motions have been
11 argued and preserved as previously been on the
12 record and rather -- just to accommodate the jury
13 we are not going to send them out and go through
14 that process. So that is protected for any
15 purposes that may be necessary going forward.

16 So now we are at the last two stages of
17 this process. As I mentioned to you, the attorney
18 had two opportunities. Now they get to address you
19 and discuss with you the evidence, suggest
20 reasonable inferences that you may draw from that
21 evidence. Their remarks, I think you will find
22 them extremely helpful when you begin the process
23 of resolving this case which will occur very
24 shortly. So give them your attention. But
25 remember their remarks, while extremely helpful and

1 very important, should never be considered evidence
2 in this case.

3 After the attorneys argument I will
4 then give you the instruction on the law and then
5 you will be asked to retire and resolve the
6 dispute. Thank you so much for your attention thus
7 far. Please give your attention to the attorneys
8 now as they make their closing argument.
9 Solicitor, you may proceed.

10 MS. SAVAS: Thank you, Your Honor. May
11 it please the Court, over the course of these two
12 days you all have heard what has happened through
13 the eyes of the officers that were there, through
14 Ms. Denise herself and also the chemist about the
15 drugs that were tested.

16 On March 6th, 2015, Sergeant Sherwood
17 had lawfully approached the door of Ms. Denise's
18 home. And when they gained access and she gave
19 that consent very willingly he literally caught Mr.
20 Boston and Mr. Holmes in the middle of making
21 crack. And as he stated, that is rare. They even
22 use this case as a training exercise about the
23 manufacturing and the same situations. You heard
24 from Ms. Denise who it is so rare to come across
25 someone like her in our line of work. It truly is.

1 That has realized that she needs to change her
2 life. But not only that, that she actually had to
3 move and she said because she needed to get away
4 from the people and from the drugs themselves.

5 And the judge will charge you on the
6 law and about witnesses. And you can believe some
7 testimony, all the testimony or none of the
8 testimony. But you want to think about where it's
9 coming from and the honesty behind Ms. Denise who
10 was in there that day that literally said Bubba had
11 called her to come over to her house and they are
12 going to make crack because she was hoping for a
13 piece.

14 As a result of everything that he found
15 that day, right there in plain view in the kitchen,
16 the Defendants were charged in this case. The
17 first charge was manufacturing of cocaine base.

18 Now, again, the judge will charge you
19 on the law and he will present that to you at the
20 close of all of our arguments. But in
21 manufacturing it's as simple as it sounds. Cooking
22 of crack. And they were charged with the
23 possession and intent to distribute the cocaine
24 base which arises from the actual five grams of
25 crack that was found on the scene. And Mr. Holmes

1 was additionally charged with the possession of
2 cocaine from those two baggies, one found at the
3 scene and in his pocket with a scale, the other in
4 the strip search at the jail.

5 These Defendants were literally caught
6 in the act. It's plain and simple. Before I go
7 into the explanations and to break some things out
8 for you, I want to go over the juror's roles and
9 the judge will charge you on that as well. As we
10 mentioned, your responsibility, you are the finders
11 of the facts. And just as they had stated in
12 opening, facts don't change, the truth doesn't
13 change. And it takes common sense. There are
14 maybe different perspectives about how the door was
15 approached or who went first or what the situation
16 was from each person's perspective. As you know,
17 you can tell the same story three ways with three
18 different people standing there. But what never
19 changed was that all of these items, Pyrex, the
20 scales, the crack, that never changed. That was
21 always in the kitchen and the bathroom from where
22 the only two people, the Defendants, ran from.
23 That's never changed. And it's common sense. Just
24 as they implied. That is what we have today.
25 There is 12 jurors. It's common sense. Where else

1 could they have possibly come from? There was no
2 one else in that apartment except for three people
3 there. And Ms. Denise was brave enough to share
4 her story and humble herself and say yeah, I was a
5 crack addict and yeah, I was getting my crack. I
6 wasn't making it. They were.

7 And in their opening they discussed
8 access, opportunity and ability. Access. They
9 were at the house. They knew each other. Bubba
10 called Denise to come over. They had access to her
11 house in the kitchen. Opportunity. Same thing.
12 Denise stated she was never even in the kitchen.
13 She was so honest she even goes I mean I'm not
14 really sure what was going on, but I knew why they
15 were there that day. I was playing video games on
16 my couch in the living room. And I asked did you
17 ever go to the kitchen? No. Okay. And ability.
18 All of these items were here at their disposal to
19 make the crack. You can see from Ms. Denise that
20 she is a very humble person and she's not really
21 going to argue and put up fights and quite
22 frankly --

23 MR. LEWIS: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MR. LEWIS: In regards to whether she's

1 going to argue and put up a fight. It's character.

2 THE COURT: I overrule the objection.
3 I will remind the jury that you're -- that I will
4 charge you that you take the evidence and you reach
5 the conclusion based on your analysis. You are not
6 bound by any of the statements of the lawyers. You
7 will make the final judge of that. But you may
8 continue.

9 MS. SAVAS: Thank you, Your Honor. I
10 don't think she had the ability to make the crack
11 because she didn't even have any of the cocaine to
12 do it. That's why she let them come over is
13 because she didn't have even the money to buy it
14 herself. The access, the opportunity, the ability.
15 It was Bubba and his friends. The fact didn't
16 change. This is all the same. It is a great
17 common theme. It really is a great way to explain
18 things. And in regards to the jury's role Judge
19 Dennis has several times explained he rules on the
20 law. There is reasons why you have to get up and
21 down and there's matters of law we take up. In
22 trial there's a lot of rules of what is able to be
23 presented, what is admissible, different things
24 like that and sometimes unfortunately it leaves you
25 all with extra questions.

1 And so as the officer stated, there
2 were several reasons why they had approached that
3 door.

4 MS. SEMAN: Objection.

5 THE COURT: What's the objection?

6 MR. LEWIS: Objection. She's now
7 alluding to the other reasons they approached the
8 door.

9 THE COURT: Move on, Solicitor. Stay
10 away from that. I have ruled on that. That's as a
11 matter of law the Court has addressed and not a
12 matter for the jury's concern. Thank you.

13 MS. SAVAS: Yes, Your Honor. And in
14 that context y'all's responsibility is the facts,
15 okay? We don't have to agree with however things
16 are done. We don't have to like everybody. You
17 don't have to like my officers. You don't have to
18 like me or care for the situations in general. But
19 your responsibility and oath you took is to find
20 out what actually happened that day and through the
21 officer's lawful actions.

22 I want to also briefly touch about some
23 distractions that we heard, okay? The defense can
24 bring into question a lot of things to try to make
25 you distracted. That's a common theme, okay? So

1 if you're looking over here about why every single
2 word wasn't in his summarized incident report you
3 know what that takes the focus off of? Their
4 actions. Okay? That is just a basic thing.
5 That's not something that really is that important,
6 nor is it really relevant, nor does it change the
7 facts and the truth that day. So it's very simple
8 things that they can make into a bigger issue that
9 necessarily isn't one, nor is it one for you to
10 actually focus on.

11 Also the issue of not charging Ms.
12 Denise. That was sort of made clear not through
13 just the officer's action, but Denise's actions
14 that day. These Defendants are charged with making
15 the crack. They were the only ones making the
16 crack. She is a user. She admits that. If she
17 was in the act of making the crack that day she
18 would have been charged. When they walked in quite
19 frankly she just didn't get around to it. It
20 wasn't done cooking. They had a few seconds left
21 on the microwave. And that's their explanation and
22 regardless what happens with Ms. Denise that's not
23 to cloud your judgement what happens here today
24 with the two Defendants. That is not something for
25 you to focus on. What your concern with again is

1 finding the facts in regards to just these two
2 people and what happened elsewhere happens
3 elsewhere and will be dealt with in time. But as
4 Ms. Denise stated, I didn't promise her anything to
5 come here. You know there is no script on what we
6 give people. For goodness sake, there is going to
7 be times that I know I paused to sort of clear my
8 thoughts after an answer because it is, this is
9 their truth. This is their statements.

10 And manufacturing cocaine base. There
11 are several reasons in this case and y'all will be
12 able to actually take these back and look at them
13 in the jury room. It's the Pyrex measuring cup
14 here from the kitchen, it's the Pryex cup with the
15 residue from the bathroom, it is the extra whisk in
16 the cabinet. And it's the whisk with the residue
17 from the crack. It's the scales that are used to
18 weigh drugs to sell them. It's the actual use of
19 the microwave that has and you will take these
20 pictures back you with 59 seconds left on it. That
21 they popped open and slammed the door when the
22 officers came in.

23 It's the baggies of cocaine residue.
24 The same baggies that matched the baggies that were
25 on Mr. Holmes's person in his pocket. He just used

1 these and those were empty. This was just left
2 there for himself and his possession. And of
3 course the baking soda. All of this is very easy.
4 It's used to make crack. And it's the 5.83 grams
5 of crack. Now, you heard Ms. Sorrells, is the drug
6 expert, the last witness testify that sometimes the
7 weight can be a little bit different from what the
8 police had initially weighed it.

9 And in this case you heard them say the
10 seven grams of crack. That's the 5.83 grams and
11 actually indicated it's heavier when it's wet.
12 Makes sense, right, like flour and thicker
13 consistency. And I asked her that would be because
14 it's freshly made and without her really knowing
15 the situation not being there she said yes.

16 So again another piece that yes, it did
17 weigh a little more because it was in their bag and
18 packaged in of course, but also because it was wet
19 and they had to paste it and was bubbling. It was
20 hot and it was steaming.

21 This statute, and it will be provided
22 by the judge, said possession of equipment or
23 paraphernalia used in the manufacturing of cocaine
24 base is prima facie evidence of intent to
25 manufacture. Basically what that means is all of

1 these items used to make crack is evidence of the
2 intent to make the crack. Here you don't have the
3 intent. We also have actually in the act of making
4 it. Therefore, you should find them guilty of
5 manufacturing cocaine base.

6 The next charge is possession with
7 intent to distribute. This comes from the actual
8 possession of that drug, again of the 5.83 grams
9 that was tested. Now, there's different ways to
10 get possession. The judge will explain that actual
11 so that's like Mr. Holmes. If he had it actually
12 in his pocket. Then constructive possession which
13 means legally dominion or control. So I am over
14 here. I have control what's going on because I am
15 here, but I am not actually holding everything,
16 okay? Same situation. And possession can be
17 shared. So in this case they were jointly doing
18 the same actions, making the crack, so it is okay
19 that they are both charged and found guilty of
20 sharing that possession of drugs.

21 Also, this statute again says for
22 possession of intent to distribute possession of
23 one or more grams of cocaine base is prima facie
24 evidence of violation of the subsection. That
25 means their 5.83 grams obviously is more than one

1 gram. So they can be found guilty of that because
2 of the weight.

3 Again, the actual possession is them
4 both making crack, they ran from the microwave to
5 the bathroom. Both attempted to conceal something.
6 Even if you found that it is constructive, again
7 the dominion and control, they were both there at
8 the microwave with the drugs and they could be
9 found guilty of possession with intent to
10 distribute cocaine base.

11 Clearly Mr. Holmes is found in
12 possession of the cocaine, the .57 grams of cocaine
13 that Sergeant Hoose had found in the intake from
14 the jail. The defense admitted that in their
15 opening and I mean rightfully said that he was
16 breaking the law. Mr. Holmes was breaking the law
17 and he is guilty of possession of cocaine.

18 Now, the reason they also do that is
19 another distraction in trial. When someone is
20 charged with multiple charges they try to say just
21 do this one and ignore the others. If you feel
22 like you have to choose or do one or the other,
23 again it's a distraction, okay? He can still be
24 guilty of possession of cocaine and the other
25 charges as he is. So they think they will just

1 take the fall for the basic one. But it doesn't
2 make him any less culpable of the other charges.
3 He was still there making the crack from the
4 cocaine.

5 Again, the baggies matched and they had
6 admitted that Holmes is breaking the law.
7 Therefore he should be found guilty of possession
8 of cocaine. Again, the direct evidence in this
9 case, they will charge you on the law, direct and
10 circumstantial evidence. Direct evidence is
11 testimony that we heard from our witnesses. That's
12 the officers saying I went in as I saw them they
13 were in the kitchen or Sergeant Hoose said I saw
14 them both run from the bathroom. He did not have a
15 clear view. He wasn't going to make up what was
16 going on. They ran to the bathroom.

17 Most importantly is Ms. Denise. Again,
18 she admitted she's a crack user. She admitted she
19 was getting her crack from Mr. Holmes and Mr.
20 Boston. And it was a very important point and
21 strategic move. A lot of times they kept saying
22 was her items, it was her microwave, it was her
23 house. That does not take away from the guilt of
24 the Defendants. Okay? And when Mr. Lewis was sort
25 of pounding her about that, she very naturally

1 replied well, I mean they were in my house, but
2 they brought them over and left them there and they
3 would use them, but I didn't pay for it. Those are
4 their's. She knows that's the arrangement that's
5 made. She doesn't have money for food, y'all.
6 There was no food, there was no flour. There was
7 no baking. I asked her if she had food and she
8 said well, I got some plates. Okay?

9 And she is important to discuss because
10 she is also a victim in this case. These crimes
11 are not victimless crimes. They feed and they prey
12 on these vulnerable addictions and they say I will
13 give you a piece.

14 MR. LEWIS: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. LEWIS: Vulnerability.

17 THE COURT: Sustained. That's
18 argumentive and it's improper. It's inconsistent
19 with the law. Appealing to the passion and
20 prejudice of the jury. Improper. Thank you.

21 MS. SAVAS: She had stated very clearly
22 what was going on in her apartment that day. And
23 she was very honest about it. And circumstantial
24 evidence is also indicating the existence of a
25 fact, right? So the fact that the two Pyrex and

1 the whisk were found in the tub and they just came
2 from the bathroom and there was no one else in
3 there, they had possession of that. They were the
4 ones that put it there. They just ran from the
5 microwave. Denise was playing games on her phone.
6 It's kind of like, you know, if you leave your
7 little kid unattended and they run into your pantry
8 and eat all the chocolate and there is chocolate
9 all over their face and hands, it's the same thing.
10 Common sense. They ate the chocolate. They were
11 using it. You don't have to see them specifically
12 holding it or eating the cookie, but you know
13 that's what happened.

14 They are going to charge on mere
15 presence. This does not apply in this case because
16 they weren't just standing around a four story
17 apartment. It's a tiny apartment smaller than that
18 area here. They were the only two people in the
19 kitchen. They weren't standing there watching
20 Denise. They were the ones doing the actions. So
21 because they were both at the microwave, they both
22 hid the drugs and the evidence in the bathroom, and
23 Denise literally says they were both making the
24 crack, they were both cooking the crack in this
25 case.

1 And lastly, it's a burden that I have
2 to prove, right? The State's responsibility.
3 Which is why I take the time to thoroughly explain
4 things and present everything to you. And they are
5 going to -- the judge is going to charge you on
6 beyond a reasonable doubt. And it's a very
7 difficult thing to sort of grasp, okay? Most
8 importantly there is some things you need to
9 understand about it.

10 You don't actually have to overcome all
11 doubt. There's very few things that we actually
12 know for certain. You just have to be firmly
13 convinced yes, it is more than a hunch and it's
14 more than a guess. But you don't have to be
15 absolutely 100 percent positive. You just have to
16 be firmly convinced by the evidence and the
17 testimony presented to you.

18 And given the insurmountable amount
19 evidence before you today, and the testimony of the
20 witnesses and Ms. Denise herself, the State
21 believes and respectfully asks that you do find
22 them guilty of these charges. You can find Mr.
23 Holmes guilty of possession of cocaine. And you
24 can find them both either guilty of manufacturing
25 the cocaine base or the possession with the intent

1 to distribute cocaine base in this case which is
2 again the making of the crack.

3 THE COURT: Ms. Seman.

4 MS. SEMAN: Yes, Your Honor, may it
5 please the Court. Members of the jury, we are here
6 today because Sergeant Sherwood and the State of
7 South Carolina have manufactured a case against
8 Darell Boston. They targeted Darell Boston on
9 March 6th.

10 MS. SAVAS: Objection, Your Honor.

11 THE COURT: What's the objection?

12 MS. SAVAS: In regards to the prior
13 objections of --

14 THE COURT: I will sustain the
15 objection. Refrain from that statement.

16 MS. SEMAN: Yes, Your Honor. Mr.
17 Boston was minding his own business when officers
18 approached Denise Holman's apartment. He was doing
19 nothing wrong. By now you have heard all the
20 evidence in this case. The evidence that the State
21 says proves that Mr. Boston is guilty of
22 manufacturing crack and possession of crack with
23 the intent to distribute. So what is that
24 evidence? Sergeant Sherwood, the chief
25 investigating officer, wrote a report. You heard

1 him tell you about the importance of that report.
2 He then told you about some big, huge, colossal
3 problems in that report. He testified on the
4 stand, on that witness stand that he had literally
5 caught Mr. Boston and Mr. Holmes in the middle of
6 making crack cocaine. He told you this case is a
7 slam dunk. It was open and shut. He saw them do
8 it.

9 Sergeant Sherwood then told you that he
10 left this most important fact out of his incident
11 report. His supervising officer, Sergeant Hoose,
12 told you that these facts would be essential to
13 write down. Sergeant Hoose also told you he
14 approved that report without editing it. He didn't
15 include that most important fact that Mr. Boston
16 and Mr. Holmes were allegedly in the process of
17 cooking crack when this happened. That is not a
18 small detail. This is not a distraction. This is
19 the entire case.

20 Members of the jury, the fact that it
21 wasn't in the report shows one thing clearly and
22 that is Sergeant Sherwood made it up. The only
23 thing being manufactured here is Mr. Boston's
24 guilt. Also, according to Sergeant Sherwood's
25 report no one claimed those drugs. After multiple

1 meetings with the solicitor when they were
2 scrambling to make a case Sergeant Sherwood put
3 those drugs in Mr. Boston's hands.

4 And if Mr. Boston and Mr. Holmes really
5 had drugs and paraphernalia in their hands it would
6 have been written down. But it wasn't.

7 Manufactured guilt. Beyond that Sergeant Sherwood
8 told you about his investigation. Investigation
9 meaning a couple of pictures and one lab report.
10 In fact, Sergeant Sherwood suggested that basic
11 investigatory processes like taking pictures,
12 taking statements from witnesses are things that he
13 rarely does as a patrol officer.

14 The witness from the South Carolina Law
15 Enforcement Division, she told you they only
16 analyze what was sent to her. She told you that
17 there were other departments at the South Carolina
18 Law Enforcement Division that can analyze drugs,
19 for fingerprints and analyze drugs and their
20 containers for DNA. There wasn't any of that done
21 in this case.

22 No witness statements from the supposed
23 witness either. And about that witness. Ms.
24 Holman, she did tell you about her history of drug
25 use. Her history of crack use. She then told you

1 about that aneurysm. She said on the witness stand
2 that she has a memory problem. She said that. She
3 said I had an aneurysm so I do not have a lot of
4 memory left.

5 But after talking with the solicitor
6 she remembers. Until recently Ms. Holman was still
7 using crack, the drug in question. The State wants
8 you to believe that she has a perfect memory of
9 this day almost three years ago. Mr. Boston had no
10 contraband on him, no paraphernalia, no drugs, no
11 weapon because he didn't do it.

12 So if Mr. Boston didn't do it then who
13 did? Let's talk about the contraband. It was
14 found in Ms. Holman's house, in Ms. Holman's
15 cabinets, in Ms. Holman's microwave and rooms in
16 Ms. Holman's house. It was found on the Defendant
17 Mr. Holmes. Found in that bathroom. Forgotten
18 perhaps by Ms. Holman. Found in the home of a
19 person with a history of drug use who was not
20 arrested. That's because it took Sergeant Sherwood
21 at least three meetings with Ms. Savas to get his
22 story straight. First he said Mr. Boston had the
23 drugs. Then he said Mr. Holmes. Then he said it
24 was both, but he did not see their hands. His
25 story was designed and created and manufactured to

1 make Mr. Boston and Mr. Holmes look guilty.

2 At least three different stories from
3 one day. He wanted you to believe this now almost
4 three years later that he is remembering these most
5 important details to support a conviction. And you
6 heard him on the stand. He classified
7 objectifiable facts like what's in that report as
8 opinions. He backed up on important details like
9 whether that Pryex would have been too hot for
10 anyone to touch. He backed up on forensic and DNA
11 saying they were too expensive to test. And then
12 you had a witness from the South Carolina Law
13 Enforcement Division saying that her agency does
14 that. Mr. Boston went from not guilty to guilty in
15 three visits. Sergeant Sherwood's job is to
16 police, to prosecute crime, to gather facts,
17 evidence and witnesses and to decide whether a
18 person's actions violate the law. Sergeant
19 Sherwood was not doing his job. He manipulated the
20 facts to fit the crime. This system manufactured
21 guilt.

22 The State has the burden of proof in
23 this case as Ms. Savas just told you. That's a
24 fancy way of saying that it's their job to convince
25 you that Mr. Boston is guilty. The burden of proof

1 in a criminal case is the highest burden in this
2 country. That means that the prosecution has to be
3 more convincing in a criminal case than in a civil
4 case, more convincing than a family law case,
5 because criminal cases are just that important.
6 The prosecution has to convince you to the extent
7 that you are firmly convinced of Mr. Boston's
8 guilt. If you are not firmly convinced Judge
9 Dennis will tell you that Mr. Boston deserves a
10 verdict of not guilty.

11 Judge Dennis will also instruct you
12 about something called mere presence. He will tell
13 you that if you find that Mr. Boston was just there
14 just merely present during illegal drug activity he
15 is not guilty. Additionally, finding Mr. Boston's
16 co-defendant guilty does not require you to find
17 Mr. Boston guilty. Their guilt is separate. You
18 can find Mr. Holmes guilty and still find that Mr.
19 Boston had nothing to do with anything illegal.
20 That he was merely present.

21 The State has not met its burden.
22 There's uncertainty all over this case.
23 Uncertainty all over that incident report.
24 Uncertainly all over that investigation. We
25 believe that you will see through the State's

1 attempt to manufacture a case against Darell
2 Boston. That is why we are confident that when you
3 go back to the jury room and you take with you your
4 common sense and the evidence that you have heard
5 and seen in this case and the law as the judge
6 instructs you that you will find Mr. Boston not
7 guilty. Thank you.

8 THE COURT: Thank you, ma'am. Mr.
9 Lewis.

10 MR. LEWIS: Thank you, Judge. Good
11 afternoon. The truth doesn't change isn't some
12 sort of phrase that we throw out lightly. It meant
13 something when Mr. Smit said it at the beginning of
14 the trial. It meant something because I could be
15 sitting right there. If Officer Sherwood said it
16 then you are going to believe it? No. You are
17 going to do your jobs as jurors and think
18 critically and see what should have actually been
19 there if this was true. Because the truth does not
20 change..

21 His original incident report does not
22 talk about any of the things that actually show
23 what they claim they were doing. Manufacturing
24 crack cocaine. In a manufacturing crack cocaine
25 incident report someone should say they were

1 manufacturing crack cocaine. Write that down.
2 Never seen it before, not in his entire career has
3 he walked in on that, right? He trains about it,
4 right? Very rare. But not important enough to
5 write that down to let us know how to defend our
6 clients? To let us know what the claims are
7 against us? Of course this is back in 2015 before
8 body cameras so there is no other evidence. You
9 just have to trust them, right? No. You have a
10 duty that's higher than that. You have to think
11 critically about the evidence that you have and the
12 evidence that you don't have.

13 If someone saw it, especially someone
14 who claims they were a professional, he said so,
15 I'm a professional, you would have written it down
16 had you seen that. His own words that Ms. Seman
17 brought out, if you don't tell the whole truth that
18 would be a lie. Sherwood said that himself and
19 then clearly he is not telling the whole truth. He
20 did not write it down. He did not document it.
21 But after meeting with them his story gets better.
22 It changes. Now, oh, yeah, walked in, they were
23 manufacturing crack. Was really easy to see.
24 Guess who didn't say that? Hoose. His supervisor.
25 Who approved the report did not talk about walking

1 in on someone manufacturing crack cocaine. Did not
2 talk about someone slamming a microwave door. Did
3 not talk about someone running or doing a football
4 carry with boiling crack cocaine.

5 How is somebody without any gloves
6 going to carry a boiling pot of crack cocaine?
7 Nobody had any gloves. Burns on their hands? We
8 had a camera. We could have documented that. Was
9 that done? No.

10 He did not want to use own phone, I
11 guess that's a decent explanation as to why you
12 didn't do your job. The forensics in this case are
13 not something that we can gloss over either. The
14 one scientist, the one person who is trained in
15 crime scene and things related to that who came
16 here said just yesterday she got a case where they
17 did look for fingerprints on a baggie like this.
18 Sherwood said no, it's not possible, we don't do
19 that. Too much money, too expensive. We don't do
20 that. Yesterday they did it. It's common.

21 It's important to fingerprint in cases
22 where you're trying to prove identity. Who touched
23 what. Who interacted with what. These men deserve
24 that. They deserve to be considered, that evidence
25 and not just say well, he said it happened so we

1 will believe him. That's not fair. It is not how
2 our system is designed to work. We are supposed to
3 require more than just a claim of one officer.

4 I want to talk to you a little bit
5 about how he said you make crack. There were
6 several steps that he talked about. But one of
7 them was boiling it up, right? You then have to
8 whisk it. Ms. Savas even made a hand motion. You
9 have to whisk it to take out the air bubbles. So
10 when exactly were they doing the whisking to take
11 out the air bubbles to make that beautiful cooking
12 is what he calls it that's in this Pryex when they
13 were supposedly running after just having slammed
14 shut the microwave?

15 Not possible. That's scientifically
16 not possible. Couldn't happen. Didn't think about
17 that before making up this manufacturing guilt
18 where he gets to say they were doing it right when
19 I walked in. Not true. I don't know who
20 manufactured it. I don't know. Could have been
21 someone who was in Ms. Holman's house before.
22 Could have been Ms. Holman. The Ms. Holman that
23 was in front of us today is not the same Ms. Holman
24 that existed before her aneurism. She has been
25 using drugs for 13 years and was still using up to

1 that point.

2 I know she's sympathetic. I represent
3 people like her. I'm a public defender. But that
4 doesn't mean that she can't make her own crack.
5 That doesn't mean that it wasn't already sitting
6 there when Mr. Holmes and Mr. Boston visited her
7 house that day.

8 I ask that you hold them to a higher
9 standard than just saying believe Sherwood. They
10 love to put all this stuff out here for you. What
11 on any of this can they say was touched by Mr.
12 Holmes or Mr. Boston? What did someone see in
13 their hands? I will correct that. The scale that
14 was in my client's pocket, the cocaine that was on
15 his person, that's his. We talked about that.
16 It's not a trick. It's honesty. We know that you
17 all have common sense to make your decisions. We
18 are not going to say oh, yeah, they planted that on
19 him. No. That was his. What they can't say is
20 that they know who was manufacturing. If they rely
21 on Sherwood that's unfair to this entire system.

22 I'm a little bit of a nerd when it
23 comes to forensics. I think that should be there.
24 I think that's important. Because if I were
25 sitting where they are or he is I would want people

1 to base their decisions about my future on
2 evidence. On the science. Not just based on
3 claims that change over time, but get better? Your
4 memory gets better, right? Everyone's memory gets
5 better? At least Mr. Sherwood's does. That's why
6 it was so important he should have written that
7 down because people's liberty are at stake. Didn't
8 even take the time to call crime scene. I guess it
9 is not important. We won't take pictures other
10 than the four that he took. Not significant enough
11 to actually do your job as law enforcement to see
12 what you can show happened.

13 I want to talk to you about something
14 I'm sure you have heard about from watching TV,
15 presumption of innocence and the burden of proof.
16 Ms. Seman went over that as well. These things are
17 not insignificant. They are not just things on TV.
18 Presumption of innocence is incredibly important.
19 When people are sitting at our tables and someone
20 comes in, you're the juror, probably the first
21 thing that comes to our head is I wonder what they
22 did. That's wrong. It is supposed to be I wonder
23 what they said he did. Because each person that
24 comes in here is presumed to be innocent until they
25 are proved guilty, proven guilty beyond a

1 reasonable doubt, firmly convinced beyond a
2 reasonable doubt.

3 I want to talk to you about the level,
4 what that really means. You sue somebody. You
5 want to take some money. That's down there.
6 That's preponderance of the evidence, 51 percent.
7 You want to take somebody's kids away from them?
8 Clear and convincing. That's right here. You want
9 to take somebody's liberty from them, proof beyond
10 a reasonable doubt. That is the highest standard
11 that exists in the law. That's what these men are
12 entitled to. Not a changing story, not a narrative
13 that gets better as time passes, not an oops, I
14 forgot to say they were manufacturing, not an oops
15 I forgot to say it was this guy or that guy. You
16 can't make up the stories as you go along. That's
17 what North Charleston did and that's what the State
18 of South Carolina has adopted. It is not fair.

19 The other way that I look at this when
20 I imagine the presumption of innocence is if
21 someone told my mom I was manufacturing crack
22 cocaine and they said it was based on the words of
23 Sherwood. What sort of evidence would I need to
24 believe that? Because you can't know these guys.
25 Otherwise you wouldn't be allowed to be on here.

1 They are entitled to that level of protection.
2 They deserve that and I ask that you demand that
3 with your verdict.

4 My client had cocaine on him. Please
5 convict him of that. Weird for a defense attorney
6 to say, but please convict my client for possession
7 of cocaine not because of some threat, but because
8 he did it. Find him not guilty for manufacturing
9 crack because there's no evidence that he did that.
10 The word of Sherwood is worthless. Because he can
11 make up a story as he goes along and there is no
12 one else who supports him. Hoose didn't support
13 him. Etminan didn't even know what was going on.
14 But any of them would have written that down had
15 they seen someone manufacturing drugs. That's as
16 basic as it gets.

17 Please find him not guilty, ladies and
18 gentlemen, except on the charge of possession.
19 Thank you.

20 THE COURT: Thank you. Ladies and
21 gentlemen, thank you very much for your attention.
22 Now we move into the final portion of this process.
23 It becomes my responsibility to give you the law
24 which you have of course promised that you will
25 accept and apply fairly and impartially to the

1 facts that you will determine very shortly when I
2 instruct you to begin your deliberations in this
3 case.

4 I'm going to tell you that you and you
5 alone have the exclusive duty to determine the
6 effect, value, weight and truth of the evidence.
7 And both Defendants and the State have a right to
8 expect that you will very shortly conscientiously
9 consider and evaluate the evidence, then apply the
10 law to those facts that you determine to be true
11 and report a decision. And once you have done
12 that, then -- Mr. Pryor, let me ask you to move
13 those. That is distracting to me. I don't know
14 about you. Thank you so much.

15 Sorry to bother you, sir. If I could
16 have easily gotten off here I would have done it.
17 But once you have done that, then you would have
18 honored the oath that you made when you started
19 this process. During this instruction from time to
20 time I may use the term Defendant and that's a term
21 that we use simply to designate the party against
22 whom a claim is made. It has no other significance
23 other than that just, another way of identifying
24 the person. Please know that I am referring to Mr.
25 Boston and to Mr. Holmes when I use that term.

1 They have been accused as I told you
2 when I qualified you in these documents that I hold
3 in my hand, they are various indictments that
4 create the charges that we have been talking about
5 and they're not evidence. They are not going to
6 accompany you to your jury room. To each of these
7 indictments each of the Defendants have rendered a
8 plea of not guilty which places upon the State as I
9 mentioned when we started the burden of proving
10 guilt beyond a reasonable doubt.

11 And the reason as I stated is because
12 in this country, in this state, persons accused of
13 criminal offenses such as Mr. Boston and Mr. Holmes
14 are never required to come in and prove or disprove
15 anything at all. They have no responsibility
16 whatsoever.

17 They are entitled to the presumption.
18 It's an active presumption as I stated, not just
19 words, to actively presume that they are innocent,
20 not guilty of these charges and that presumption
21 can only be removed when through your analysis you
22 become firmly convinced that the State has met its
23 burden of proof by establishing each element of the
24 crime and only then may you set aside that
25 presumption.

1 The obvious subsequent aspect of that
2 is the fact that a person who is accused of a
3 criminal offense does not testify, does not present
4 any evidence in a case, that never can be
5 considered by a jury in any way whatsoever.
6 Because, again, the person who is accused doesn't
7 have to. They have the absolute right to remain
8 silent. And the assertion of that right cannot and
9 must not be considered by a jury in their
10 deliberations.

11 I therefore instruct you under your
12 oath you are to reach no inference or draw any
13 conclusion whatsoever from the fact that neither
14 Defendant in this case testified or presented any
15 evidence. The failure of a Defendant to testify
16 should not ever be discussed in your jury room. If
17 it is you have violated your oath. No, the State
18 has the sole burden of proof and they have to prove
19 it beyond a reasonable doubt and that's what you
20 will be analyzing and determining, whether or not
21 you've found the State has met its burden of proof.

22 What is reasonable doubt? A reasonable
23 doubt is a doubt that would make an honest and
24 conscientious juror who is searching for the truth
25 in a case to hesitate to act or take some action.

1 Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced of either or both of
3 the Defendants guilt and there are very few things
4 in this world that we know with absolute certainty
5 and the law doesn't require that in criminal cases
6 that proof overcomes every possible doubt.

7 If based on your consideration of the
8 evidence you're firmly convinced that either or
9 both of the Defendants are guilty of the crime
10 charged you must find them guilty. If, on the
11 other hand, you think there is a real possibility
12 that he's not guilty, then you must give him the
13 benefit of the doubt and return a verdict of not
14 guilty.

15 A reasonable doubt, ladies and
16 gentlemen, may arise from the evidence which is in
17 the case or from the lack or absence of evidence in
18 the case. And it's up to you to determine whether
19 or not a reasonable doubt is the guilt --
20 reasonable doubt exists as to guilt of either or
21 both of the Defendants. I charge you that each
22 Defendant is entitled to every reasonable doubt
23 arising in the whole case. What do I mean by that?
24 Simply this, if upon any issue of fact which is
25 essential for that Defendant for you returning a

1 verdict of guilty against that Defendant, you are
2 instructed to resolve that difference or that
3 concern in that Defendant's favor.

4 Now, the evidence which you consider
5 consists of testimony of the witnesses and the
6 exhibits that have been introduced. As I discussed
7 with you earlier in this process, the objections
8 made by the attorneys, the arguments, the fact that
9 you were excused from the courtroom, that shouldn't
10 be discussed by you because that as I mentioned to
11 you was a matter for my concern and that's how we
12 work together as I explained. Those were matters
13 of law that I had to resolve and are not for your
14 concern.

15 Likewise, how you analyze the evidence,
16 what you find to be true and believable, that's
17 yours. I have nothing to do with that. But you're
18 to consider only the evidence that has been
19 presented from that witness stand.

20 I would remind you that the remarks of
21 the attorneys just as my remarks should never be
22 considered evidence. If in their arguments, either
23 any of the attorneys, they have suggested what a
24 witness said or didn't say and that differs from
25 your collective recollection of what that witness

1 said, you're instructed to disregard that
2 attorney's remarks. Why? Because you are the sole
3 judges of the facts in this case. That's your sole
4 responsibility.

5 I would remind you that if you have a
6 difference among yourselves as to what a witness
7 said or didn't say, Ms. Weese who is sitting here
8 has the responsibility of taking down testimony and
9 preserving that record. So we can replay that
10 should that become necessary. But you and you
11 alone it will be your responsibility to resolve
12 those differences. There is nothing that any of us
13 can do, nor should you take any of their suggestion
14 as to what your determination should be.

15 Furthermore, if any of the arguments of
16 the attorneys concerning the law differs from what
17 I tell you the law is, you're instructed to
18 disregard their remarks in that regard as well
19 because for purposes of this proceeding today it is
20 my responsibility to be the sole judge of the law.

21 How does the State present a case? How
22 do they present the evidence? Well, there are two
23 types of evidence typically are used and sometimes
24 you have one or the other. Most of the time it's
25 both, but one is known as direct evidence. The

1 other is indirect evidence, more common name,
2 popular name is circumstantial evidence. Direct
3 evidence as the name would imply generally deals
4 with one sensory perception, I saw something, I
5 heard something, I felt something or the like. And
6 if you are firmly convinced as to accuracy and
7 truthfulness or the reliability of that testimony
8 that would establish that particular fact.

9 Circumstantial evidence is when a
10 witness testified to a number of factors and you're
11 firmly convinced as to each of those facts, and
12 when you link them through inductive or deductive
13 reasoning it leads you to a logical conclusion. If
14 you are firmly convinced, that would establish that
15 particular fact through the combination of facts or
16 circumstantial evidence.

17 I would tell you that the law places no
18 distinction, makes no distinction between the
19 weight of the value to be given to either direct or
20 circumstantial evidence, nor is it any greater
21 degree of certainty required for circumstantial
22 evidence than direct evidence. You should weigh
23 all of the evidence in the case and determine what
24 you find to be credible and believable.

25 But the law does make one distinction

1 with regards to circumstantial evidence and that is
2 this, to the extent that the State is relying on
3 circumstantial evidence to prove a particular fact
4 or circumstance, all of those circumstances must be
5 consistent with each other and when taken together
6 point conclusively to the guilt of an accused
7 beyond a reasonable doubt.

8 I would further instruct you, ladies
9 and gentlemen, that the mere fact of circumstances
10 brought out in a case are strongly suspicious of
11 guilt or that the circumstances are such that the
12 Defendant's guilt is probable, then that is not
13 enough to sustain a verdict of guilty. Because in
14 order to sustain a verdict or conviction for a
15 criminal act proof offered by the State has to be
16 more than mere suspicion, has to be more than
17 someone probably being guilty. It has to be proof
18 that convinces you beyond a reasonable doubt.

19 How do you decide what you find to be
20 credible and believable? I think that's one of the
21 first things I told you you do. You brought
22 everything you need. You have been doing that all
23 your life from the time that we have began to think
24 on our own so to speak. You've considered things
25 and you have made decisions do I believe this or

1 not. And, if so, how strongly do I believe it.
2 There are many factors that we use to assist us in
3 making that type of decision.

4 I'm going to discuss some of them with
5 you now, but if I don't mention a method or fact
6 that you have used in your life and you have found
7 it to be reliable, please use it when you begin
8 analyzing the evidence in this case.

9 Some of the factors that you may want
10 to consider would be the appearance of the witness,
11 how they appear to you, straightforward or hesitant
12 in answering questions. Was the testimony of a
13 witness consistent or inconsistent. Was it
14 strengthened or weakened by other evidence in the
15 case. How did that witness come to know the facts
16 that he testified to? What was the ability of that
17 witness to know those particular facts or
18 circumstances? Was there a reason for the witness
19 to give testimony which may be helpful or
20 detrimental to one side or the other? In other
21 words, was the witness biased or prejudiced in any
22 fashion. In determining what you find to be
23 credible and believable you are given very broad
24 discretions. You have the right to believe many
25 witnesses against one, one witness against many.

1 You have the right to believe all of the witness's
2 testimony, part of the witness's testimony, none of
3 a witness's testimony.

4 Now, you don't make those decisions
5 arbitrarily, but if there is a reason in the record
6 of this case, that is an evidence in this case that
7 leads you to that conclusion you have that right
8 because your objective has been to determine the
9 true facts of this dispute considering what you
10 find to be credible and believable after analyzing
11 the evidence.

12 Now, while you are given very broad
13 discretion when it comes to determine the facts,
14 please remember we are separate. We have separate
15 responsibilities. You don't enjoy the same of the
16 law. You may -- you have every right as a citizen
17 in this great country to dislike a law, to think a
18 law should be changed, and to think it is wrong.
19 And I respect that right. But what you did when
20 you took that oath is for the purposes of this
21 proceeding you promised the State, you promised the
22 Defendants and you promised the Court that you
23 would set aside your personal beliefs and take the
24 law as I give it to you and apply that law fairly
25 and impartially to those facts and I am confident

1 that you will do that.

2 Please consider my charge as a whole.
3 Don't put any greater weight or emphasis on any
4 aspect of the charge, but rather consider it as a
5 whole. The fact that I give you an instruction on
6 a particular issue is not to be taken as a
7 suggestion or how you are to resolve that issue.
8 The order of my instructions makes -- has no
9 bearing on anything whatsoever.

10 Let's look at the charges. And first
11 I'm going to -- the Defendants are charged with the
12 charge of manufacturing crack cocaine or cocaine
13 base, both the same, one and the same. You have
14 heard the term cocaine base used or crack cocaine.
15 They mean the same thing. They are synonymous. In
16 order to prove either or both of the Defendants
17 guilty of the charge of manufacturing crack
18 cocaine, the State must prove beyond a reasonable
19 doubt that that particular Defendant manufactured
20 crack cocaine. Manufacturing means as you would
21 commonly expect to produce, prepare, convert,
22 process a drug naturally or chemically.
23 Manufacturing includes any packaging or repackaging
24 of the drug or labeling or relabeling of the drugs
25 contained. I would also instruct you in that

1 regard that the possession of equipment of
2 paraphernalia used in the manufacture of cocaine
3 base or crack cocaine is prima facie evidence of
4 the intent to manufacture. This inference,
5 however, does not release the State from proving
6 beyond a reasonable doubt that a particular
7 Defendant had the intent to distribute it. It's
8 simply evidence which is taken into consideration
9 looking with all other evidence to consider whether
10 or not the person is guilty of manufacturing.

11 Now, the weight to be given to it is
12 simply one evidentiary fact and the weight to be
13 given is up to you to decide how much weight you
14 place on it, whether you find that to be compelling
15 or reason to find the State has met its burden of
16 proof.

17 The Defendants are also charged with
18 the offense of possession with intent to distribute
19 crack cocaine or cocaine base. The State in order
20 to prove beyond a reasonable doubt that a Defendant
21 possessed crack cocaine or cocaine base with the
22 intent to distribute it has to prove that the
23 Defendant has both the power and the intent to
24 control the disposition or use of the crack
25 cocaine. Possession may be either actual or

1 constructive. Actual possession means the cocaine
2 base, crack cocaine, was in the actual physical
3 custody of the Defendant. Constructive possession
4 means that the Defendant had dominion and control
5 or the right to exercise dominion and control of
6 the cocaine base or crack cocaine.

7 Merely being present at the scene where
8 the drug is is not enough to prove possession, but
9 actual knowledge of the presence of the drug is
10 strong evidence of the Defendant's intent to
11 control its disposition or use. The Defendant's
12 knowledge and possession may be inferred when a
13 substance is found on the property under the
14 Defendant's control. However, this inference is
15 simply an evidentiary fact to be taken into
16 consideration by you along with all other evidence
17 in this case and to be given the weight you believe
18 it is entitled to receive.

19 The State must also prove -- in
20 addition to possession must prove beyond a
21 reasonable doubt that the Defendant intended to
22 distribute the crack cocaine. Distribute means to
23 deliver other than by administering or dispensing a
24 drug. Intent may be shown from acts and conduct of
25 the Defendant and other circumstances from which

1 you may naturally and reasonably infer intent.

2 In determining whether the Defendant
3 had the intent to distribute cocaine base or crack
4 cocaine, you may consider the circumstances
5 surrounding the Defendant's alleged possession.
6 You may consider the amount of the substance
7 alleged to have been possessed, the manner in which
8 it was allegedly possessed, the place where it was
9 allegedly possessed and all other factors you would
10 consider to be important. You must find the
11 Defendant did not intend to have the crack cocaine
12 cocaine base solely for his own use. In that
13 regard I would instruct you that possession of more
14 than one gram of cocaine base, crack cocaine,
15 creates an inference that a Defendant possessed the
16 crack cocaine with the intent to distribute. This
17 inference does not relieve the State from proving
18 beyond a reasonable doubt that he had the intent.
19 It's simply an evidentiary fact to be taken into
20 consideration by you along with all other evidence
21 in the case and to be given the weight you decide
22 it should have.

23 Now, in addition to the charge of
24 possession with intent to distribute, you have for
25 one Defendant, Mr. Holmes, he is charged with

1 possession of cocaine. I'm going to talk with you
2 about what that charge entails. The possession --
3 I will use the term simple possession, simply
4 possessing it for one's own use. But you will also
5 be instructed when I go over the verdict forms with
6 you, it will become clearer, in the charge of
7 possession with intent to distribute crack cocaine
8 as you have heard me say one of the elements they
9 have to prove is that they intended to distribute
10 it. That gives rise -- if you should find that the
11 State has failed to meet its burden of proof as to
12 the intent to distribute, then that gives rise to
13 possession of simple possession of that particular
14 drug.

15 As I say, that will become clear I
16 think when we go over the verdict forms that I will
17 be discussing with you. Possession as we already
18 talked about is actual or constructive and I have
19 already mentioned to you actual is physically
20 controlling it. The constructive possession as I
21 stated means the Defendant had dominion and control
22 or the right to exercise dominion and control over
23 the substance. And, again, the fact that is found
24 where the Defendant was in his presence is not
25 enough to prove possession, but actual knowledge of

1 presence is a strong -- as I previously said --
2 strong evidence of the Defendant's intent to
3 control its disposition or use. But it's simply a
4 factor to be considered by you in determining what
5 you find to be credible and believable.

6 In this particular case criminal intent
7 is a necessary element. And it's a matter that you
8 must determine beyond a reasonable doubt from the
9 circumstances which the State has established.

10 Criminal intent may be inferred from those
11 circumstances shown to exist. It's a -- criminal
12 intent is a state of mind that operates jointly
13 with an act in the commission of a crime. Intent
14 includes those consequences which represent the
15 very purpose for which the act is done or known to
16 be substantially certain to result regardless of
17 one's desire. Criminal intent is a mental state, a
18 conscious wrongdoing and I tell you that the State
19 must prove criminal intent as it must prove every
20 other element beyond a reasonable doubt. As I
21 stated to you with respect to the effect of merely
22 being present and it's an indicia of being in
23 control, I will instruct you further in that regard
24 if after reviewing all of the evidence you find the
25 State has proved the Defendant was only present at

1 the scene of a crime and that they have not proved
2 beyond a reasonable doubt any other participation
3 in the crime, then you must find the Defendant not
4 guilty.

5 The law is that the proof of a person
6 at the scene of the crime is not sufficient to find
7 someone guilty unless there's further proof that
8 they had some involvement in the crime itself.
9 That's known as just merely being present.

10 Ladies and gentlemen, throughout this
11 entire process you were not selected to be
12 advocates for either side. You certainly have no
13 friends to reward. You have no enemies to punish.
14 In fact, one of the things, and I mentioned this to
15 you and we were talking about it when I was
16 qualifying you, I talked about when we take an oath
17 to be a judge it requires us to be conscious of
18 things and I think it requires us to be conscious
19 of our humanity. And I talked about bias and
20 prejudice we all have to some degree and we have to
21 acknowledge that to ourselves, when we're --
22 especially when we are doing what you are involved
23 in right now.

24 We also have to do something else and I
25 confess to you this is something I hope -- it has

1 never been easy for the last 24 years, I hope it is
2 never easy for me because it is important that I
3 always remember I have to be conscious of setting
4 aside all human emotion in making the
5 determinations that I have to make. Why? Because
6 that's the responsibility of the judge. You have
7 to do the same thing.

8 You can't be motivated by any passion,
9 prejudice, any concern, anger, caring. Those are
10 things that are great for us in the proper setting,
11 but not here. Not in this process. You have to
12 methodically and carefully apply your common sense,
13 your sense of logic and reason and analyze the
14 evidence. Decide what you find to be the true
15 facts and once decided that report your decision.
16 The presiding juror will assist you in doing that.

17 I'm going to send back some verdict
18 forms. And I want to talk with you about them now.
19 And there's a little wrinkle here. You are going
20 to have one verdict form that deals with one
21 Defendant. Let's go over that one first. That's
22 Mr. Holmes is being accused of being in possession
23 of cocaine as I mentioned to you. The State has to
24 prove beyond a reasonable doubt that he possessed
25 the substance, that substance was cocaine and he

1 was either in actual or actual constructive
2 possession to others.

3 The verdict form, you see this is
4 captioned and it simply says we the jury by
5 unanimous consent, as I mentioned to you all 12 of
6 have you to agree, 11 and 1 is not sufficient, but
7 your choices and the order in which they are placed
8 means absolutely nothing. I had to put it in some
9 order. One guilty and the other not guilty.

10 There's a place that says presiding juror and a
11 line for your signature. Whatever the decision of
12 the jury if you will check in the line that

13 precedes it, that choice, and circle it and then
14 sign it and date it. You will have completed it.

15 What will you be saying if guilt is your choice?

16 You will be saying that all 12 of you the State has
17 met its burden of proof to establish each element
18 beyond a reasonable doubt and therefore as
19 instructed you are returning a verdict of guilty.

20 Not guilty says you have found the
21 State has failed to meet one -- meet its burden of
22 proof of one or more and therefore you are
23 returning a verdict of not guilty. Again, whatever
24 it is all 12 have to agree.

25 Now, you have two verdict forms for

1 each Defendant. One is for a manufacturing and one
2 with possession to intent to distribute crack
3 cocaine. I will tell you that you are to consider
4 this, but you have to make the choice. You can't
5 find them guilty of both of them. Find them guilty
6 of one if you are satisfied the evidence convinces
7 you that the State has met its burden as to that
8 particular crime.

9 But you can't find them guilty on both.
10 So you will have to make a choice of which one you
11 want to proceed. The one that has been charged
12 with manufacturing crack cocaine because they arise
13 out of the same activity. So you have to decide
14 which one it is. The choices on possession --
15 excuse me -- manufacturing there are the two
16 choices. Guilty or not guilty. That's your
17 choice.

18 Again, as I defined manufacturing, we
19 have given you the definition what that means. If
20 you find that either or both of the Defendants
21 manufactured the drug and you found that beyond a
22 reasonable doubt the State met its burden of proof,
23 and you elect that one you simply check guilty. If
24 you find that they failed to meet one or more of
25 the elements then you simply check not guilty and

1 sign that verdict form.

2 If you do that then you don't have to
3 do anything with possession with intent to
4 distribute. If on the other hand you choose -- you
5 the jurors choose to consider the charge of
6 possession with intent to distribute crack cocaine,
7 then your choices unlike the previous there would
8 be three. One, the State has met its burden of
9 proof in establishing that they had possession and
10 they possessed it with the intent to distribute.
11 Those were the elements that I discussed.

12 If that's been established beyond a
13 reasonable doubt then guilt would be your choice.
14 If you find well, they established possession, but
15 I'm not convinced beyond a reasonable doubt that
16 they intended to distribute it, it was merely for
17 their own personal use, that would be simple
18 possession which is called a lesser included
19 offense.

20 Third, not guilty means that they
21 failed to establish that they didn't possess it nor
22 that they had -- if they didn't possess it obviously
23 you don't have to worry about what the intent was
24 -- that would have to be that they found no
25 possession, either or both of them. Whatever your