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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN L. MIDDLETON,

APPELLANT

APPELLATE CASE NO 2017-000837

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 -vs-) TRANSCRIPT OF RECORD
)
 KEVIN L. MIDDLETON,) April 13-15, 2015
)
 Defendant.) Charleston, South Carolina

The Honorable W. Jeffrey Young, Judge.

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1 (April 13, 2015.)

2 THE COURT: Again, good afternoon, ladies and
3 gentlemen. Let me welcome you to your courthouse as the
4 potential jurors for this trial.

5 I'm Jeff Young, and I'm in circuit court in
6 Sumter. I'm always glad to come to Charleston. I went
7 to the Citadel. My son goes to Citadel. My sister lives
8 here, so it's always like a homecoming week, so I'm
9 always excited to come down to Charleston.

10 Ladies and gentlemen: We are about to start
11 the trial of the State -- Solicitor, am I one ahead of
12 you? You want to call your case officially?

13 MR. CORVEY: You're all right.

14 THE COURT: The State versus Kevin Middleton,
15 and he's charged under two indictments: Indictment
16 2013-GS-10-4659 and 4661. He's charged with trafficking
17 in cocaine base and possession with intent to distribute
18 cocaine.

19 Now, ladies and gentlemen, I'll read the
20 indictments to you, and they read as follows: Indictment
21 trafficking cocaine base reads: In Charleston County,
22 South Carolina, on or about April 19th, 2013, the
23 defendant, Kevin L. Middleton, knowingly did sell,
24 manufacture, deliver, purchase, or bring into this state
25 or did provide financial assistance or otherwise aid,

1 abet, attempt, or conspire to sell, manufacture, deliver,
2 purchase, or bring into the state or did possess or
3 attempt to possess a controlled substance or a controlled
4 substance analog to wit cocaine base in excess of ten
5 grams in violation of section 44-53-375 of the South
6 Carolina code of laws 1976 as amended.

7 And under indictment 4661, the charge is
8 possession with intent to distribute cocaine and the
9 indictment reads that in Charleston County, South
10 Carolina, on or about April 19th, 2013, the defendant,
11 Kevin L. Middleton, did manufacture, distribute,
12 dispense, deliver, purchase or did aid, abet, attempt, or
13 conspire to manufacture, distribute, dispense, deliver,
14 or purchase or did possess with the intent to
15 manufacture, distribute, dispense, deliver, or purchase a
16 controlled substance or a controlled substance analog, to
17 wit cocaine, in violation of section 44-53-370 of the
18 South Carolina Code of Laws 1976 as amended.

19 MR. CORVEY: Your Honor -- I'm sorry to
20 interrupt. I think there is one more indictment. It
21 would be 4460.

22 THE COURT: We have one more, and this is
23 possession with intent to distribute heroin under
24 indictment 4660, and this reads that in Charleston
25 County, South Carolina, on or about April 19th, 2013, the

1 defendant, Kevin L. Middleton, did manufacture,
2 distribute, dispense, deliver, purchase, or did aid or
3 attempt or conspire to manufacture, distribute, dispense,
4 deliver, or purchase or did possess with intent to
5 manufacture, distribute, dispense, deliver or purchase a
6 controlled substance or a controlled substance analog, to
7 wit heroin, in violation of section 44-53-370 of the
8 South Carolina Code of Laws 1976 as amended.

9 That's all of them; is that correct?

10 MR. CORVEY: That's correct.

11 THE COURT: Now, ladies and gentlemen, let me
12 remind you that the fact that this defendant was
13 arrested, charged, and indicted is in no way indicative
14 that he committed these crimes. The defendant has pled
15 not guilty, and therefore the State has the burden of
16 proving each and every allegation of every charge beyond
17 a reasonable doubt.

18 The burden throughout this trial will be on
19 the State to prove the defendant guilty beyond a
20 reasonable doubt. The defendant never has to do
21 anything. He is simply on trial, and the fact that these
22 papers are in court mean nothing. These are just the
23 papers that bring this case into court for this hearing.

24 Now, ladies and gentlemen, before we begin
25 this jury, there are a number of questions I need to ask

1 someplace else. I'm going to refrain from doing that at
2 this point in time until I see some more action.

3 MR. WHIPPER: Thank you, Your Honor.

4 THE COURT: Anything else?

5 MR. CORVEY: Nothing from State.

6 THE COURT: All right. We'll see you at
7 9:00, and then we'll start. All right? Thank you,
8 ladies and gentlemen.

9 (Recess taken.)

10 (April 14, 2014.)

11 (In open court, jury not present.)

12 THE COURT: Good morning, gentlemen.

13 All right. What do we have this morning
14 before we bring the jury? Actually before we bring them
15 in at 10:00.

16 MR. WHIPPER: Your Honor, we have several
17 motions.

18 THE COURT: All right.

19 MR. CORVEY: Your Honor, I think there are a
20 few -- I know Mr. Whipper has filed a motion to suppress,
21 which may require some testimony, and a few of my
22 officers are still en route. It's my understanding
23 they're parking right now.

24 The first was a motion I told you yesterday
25 regarding some admission and some res gestae material

1 regarding defendant's outstanding warrants. As my motion
2 indicated, as I said yesterday in chambers, kind of a
3 unique situation insofar as this case, being a drug case,
4 arose just on North Charleston's ILP team attempt to
5 serve the warrants.

6 They arrived and appeared, and then the drugs
7 happened to be inside, which then prompted them to bring
8 in the North Charleston narcotics unit to obtain a search
9 warrant and survey and catalog the drugs. I believe one
10 of the res gestae exceptions that we should be allowed to
11 elicit testimony that the warrants existed, not for what
12 they were for, but merely that that's what they were
13 doing and that they were attempting to serve warrants on
14 Kevin Middleton and not any of the other five individuals
15 in that house.

16 I think under that exception, I believe in
17 the Adams case, it's pretty clear that anything that
18 furnishes part of the context of the crime or is
19 necessary or essential in completing kind of the total
20 story or total picture of the crime is admissible under
21 this exception, and furthermore, Your Honor, I think that
22 failure to elicit that would prejudice the State in that
23 the case law regarding res gestae is clear there's no
24 need to fragmentize an event so long as that event and
25 the things that are trying to be elicited goes to

1 furthering the total the story and nothing beyond that.

2 Of course, it's also up to the Court's
3 decision in terms of admitting it under 403.

4 THE COURT: Well, my concern with that is the
5 specific crimes. I mean, if he was going to take a
6 warrant to him, I mean, that's certainly admissible.

7 MR. CORVEY: And that's the only thing I'm
8 seeking to admit.

9 THE COURT: You don't need to go there to say
10 he had a potential armed robbery because he hasn't been
11 convicted of that, and I think that would prejudice. So
12 they don't know whether there is a child support warrant.
13 I don't think that would be overly prejudicial, but the
14 State certainly has a reason to say why they were there.

15 MR. CORVEY: And that's all we were going --
16 to --

17 THE COURT: Mr. Whipper?

18 MR. WHIPPER: Your Honor, more than just
19 being an advocate here, can the State tell their story
20 without prejudicing the chances of this man getting a
21 fair trial?

22 THE COURT: Well, I think they can tell their
23 story as much for the reason that they were there. I'm
24 not going to let him say they were there to bring in a
25 warrant on armed robbery or any other drug possession

1 charges he may have pending, because I do think that --
2 the fact that they were there for a legitimate purpose,
3 though, would not prejudice him other than the fact that
4 they were there, and I can give a charge that basically
5 says that anything he was there for he's presumed to be
6 innocent of and give a curative charge and take away any
7 potential prejudice.

8 MR. WHIPPER: Well, Your Honor, for the
9 record then -- because I'm thinking that there are ways
10 to get us their story without prejudicing my client's
11 position. They received a call that he was there. I
12 mean, who knows why they need to talk to him? No one
13 needs to know exactly why they need to talk to him, why
14 they need to see him. He may be a witness in the case.
15 He may be a person of interest --

16 THE COURT: I mean, would you stipulate that
17 they were there legally, that I could tell the jury that
18 they were there for a legal purpose? Does that help your
19 case?

20 MR. CORVEY: Well, Your Honor, no, I don't
21 think it does. My concern is there are five other
22 individuals in this house, and the police stumbled upon
23 the drugs. They were there looking for Kevin Middleton.
24 They received information he was there, but their entire
25 purpose to find him was just to serve those warrants.

1 And, again, Your Honor, I've discussed this
2 with my officers who would testify to this. We have no
3 intention of going into the substance of those warrants,
4 merely that they existed and that's why they were looking
5 for Mr. Middleton, and that's the only purpose because
6 members of the ILP team, they are essentially the warrant
7 serving team. They go out and actively investigate the
8 search and deal with outstanding warrants, and I believe
9 that's certainly relevant as to their testimony, just as
10 basic background information about their duties with
11 North Charleston, and I think fragmentizing why they were
12 there would merely serve to confuse the jury, kind of
13 also highlighted by the context of five other individuals
14 being in that house.

15 And, again, the only purpose for the
16 additional warrants is only to tell the full context of
17 the story, not in any way to prejudice Mr. Middleton,
18 and, again, I have prepared my officers at some length
19 indicating that assuming we were able to get into the
20 warrants, we can't get into the substance of what they
21 were for at all.

22 MR. WHIPPER: Your Honor, it's interesting
23 that, number one, understanding that I may be wrong, but
24 when you talk about what is res gestae, this issue of the
25 warrant cannot be a part of it because the warrants are

1 not a part of the crime, the charge. They're not at all
2 a part of that, so by the black letter of the law, it's
3 not res gestae.

4 So then, okay, we need to talk about why
5 they're there, and I think that a non-prejudicial
6 explanation is hearing the fact that they were there for
7 some reason to talk to somebody, but not necessarily --

8 THE COURT: Well, that kind of takes away
9 from it. I mean, if you will stipulate that they were
10 there to see specifically this defendant, then that cures
11 their problem, to some extent, because what they're
12 worried about, I'm sure, is that, you know, in argument
13 and cross-examination that they weren't really there for
14 him when they were specifically going there for this
15 particular defendant.

16 I mean, if you would stipulate they were
17 going there for a legitimate reason for this defendant,
18 then they don't need to say they had an arrest warrant,
19 because I can see where that goes, and I know that -- I
20 don't know that that hurts your case, and it takes away
21 any prejudice from you.

22 MR. CORVEY: Well, Your Honor, if I may, I
23 just think not allowing them to say -- I just think it
24 would be somewhat disingenuous and confusing to the jury
25 to say they were there for a legitimate purpose, seeking

1 Kevin Middleton, while eliciting testimony from them that
2 they are on a warrant serving team.

3 THE COURT: Well, the jury can make what it
4 wants to of that, and they can draw that, but I'm leaning
5 more towards saying that they were there for Kevin
6 Middleton. They don't have to say they had an arrest
7 warrant, because that heightens the level that most of
8 the public thinks that if they got an arrest warrant for
9 you, then you're probably guilty.

10 MR. CORVEY: And, Your Honor, I understand
11 that, but I think you solve that with a curative charge
12 in the end, explaining that everyone is presumed innocent
13 by a crime. I mean, I know that there are already jury
14 charges that establish that. I think a separate one
15 would more than take out the sting.

16 I mean, in reading the case law, there are
17 several contexts where this is spot on. This is a
18 classic example of res gestae, and here their sole
19 purpose for arriving at [REDACTED] that
20 night was to serve warrants on Mr. Middleton, and, again,
21 I think failure to add that in would prejudice the State
22 in not allowing us to provide a full context of the
23 crime. But for them going in to serve the warrants, they
24 would never have found the drugs. I mean, it's sort of
25 fragmentizing it, really depreciates --

1 THE COURT: And I've done that for you, and I
2 think it has merit. What I'm going to do in this case is
3 I'm going to let them say they were there to serve
4 warrants. I will give a curative charge. They will not
5 make any reference as to what any of the warrants are
6 about.

7 MR. CORVEY: Exactly.

8 MR. WHIPPER: And to include who they are
9 for.

10 THE COURT: Right. They were there to serve
11 warrants on Mr. Middleton.

12 MR. WHIPPER: No, Your Honor, I think that
13 that really -- in other words, that's not -- the question
14 is, did Kevin Middleton possess drugs?

15 THE COURT: And that's a whole different
16 matter.

17 MR. WHIPPER: Exactly. And so what I'm
18 saying to the Court, if we don't prejudice his ability to
19 get a conviction -- or we don't prejudice his ability to
20 be found not guilty of possessing drugs but we put the
21 people where they need to be, we can say they were there
22 to serve warrants. Now, there are five, six, seven
23 people in there -- that puts them lawfully --

24 THE COURT: I don't think that puts them
25 there for the purpose that they were there to see him,

1 and that's what -- so what I'm going --

2 MR. WHIPPER: I'm sorry. With all respect,
3 Your Honor, then we ought to continue this case, let us
4 try the armed robbery case, because we know that that
5 case is less than meritorious.

6 MR. CORVEY: Well, Your Honor, the armed
7 robbery case is wholly irrelevant to this. I mean, it
8 only comes into what went on in this case in the context
9 of the arrest warrants; and, again, I completely agree
10 with what the Court indicated, that by not going into
11 those, we fully covered any prejudice to Mr. Middleton,
12 and I think that would be the appropriate way to handle
13 it.

14 THE COURT: Okay. Here's what my ruling is:
15 They will be allowed to say that they were there to issue
16 a warrant for Mr. Kevin Middleton with nothing going into
17 the details as to what they are, and then I will give a
18 curative charge within that that he may -- you may hear
19 evidence of other crimes; however, he is only on trial
20 for these specific things that he's indicted for.

21 MR. WHIPPER: And, Your Honor, I did file a
22 motion that talks about not going into charges that are
23 not relevant to this particular charge.

24 THE COURT: And that is what I would charge
25 for that, okay?

1 What's your next motion?

2 MR. CORVEY: Thank you, Your Honor. I have
3 two more, just briefly. One is really more out of an
4 abundance of caution, given sort of the current context,
5 and my understanding is this is the first case pending
6 trial in Charleston County involving the North Charleston
7 police department, and in the context of last week, I
8 would just ask that any mention or reference to the event
9 or the current kind of climate that's going on be barred
10 just because it's not relevant, and I think it would
11 prejudice the State's case.

12 THE COURT: Mr. Whipper is an honorable
13 lawyer. I know that he would not do anything that is
14 outside of this courtroom and outside of this case. I've
15 known him for many years.

16 MR. CORVEY: And I'm not implying anything
17 otherwise; and, lastly, one of the officers involved in
18 this case was actually the second responder to the Slager
19 scene. It's Officer Clarence Habersham. My indications,
20 and what I've been told by the administration in my
21 office is that we have been informed that SLED had
22 conducted its investigation of Officer Habersham. They
23 found no inconsistencies with his stories.

24 Notwithstanding what's being reported on the
25 news right now, which, in all candor, I think is unfair,

1 given what we've heard, given his involvement, I would
2 just ask that any reference, when Officer Habersham is on
3 the stand, that his involvement in that case also be
4 barred, and, of course, I don't anticipate --

5 THE COURT: And that happened -- you would
6 agree that happened two years later. We'll stick to what
7 happened in this particular case, and I know Mr. Whipper
8 being an honorable --

9 MR. WHIPPER: No problem with that, Your
10 Honor.

11 THE COURT: All right. What are your
12 motions, Mr. Whipper?

13 MR. WHIPPER: Well, Your Honor, first of all,
14 we'd like to also talk about limiting some discussions;
15 i.e., the State intends to call a gentleman by the name
16 of Deron Ferguson, and Mr. Ferguson, I think, will want
17 to talk about -- make some conclusions about who he
18 thought was doing what. In other words, he wants to make
19 some conclusions about who he thinks the contraband
20 belongs to, and he's not in a position to do that.

21 THE COURT: All right. I think that's where
22 you would cross-examine him and steer him, if he's not
23 accurate on that.

24 MR. CORVEY: And that's the State's position.

25 MR. WHIPPER: And then, secondly, Your Honor,

1 we move to -- we'd like to call the person who authorized
2 the search warrant because we think the search warrant
3 does not state who, in fact, had custody of these items.

4 THE COURT: My understanding is they were
5 there for an arrest warrant, not a search warrant, and
6 that it was in plain sight; is that correct?

7 MR. CORVEY: That's correct, Judge. It's the
8 plain sight of narcotics.

9 THE COURT: So your motion's basically a
10 motion for suppression, so we need some testimony from
11 the State.

12 MR. WHIPPER: We do, and, Your Honor, the
13 issue is that there was a search warrant in this
14 situation, and that search warrant is the warrant that
15 everything is based on, to my understanding.

16 MR. CORVEY: Well, Your Honor, again, the
17 search warrant is based on the observation of the
18 narcotics in plain view. I mean, I don't think there's
19 any --

20 THE COURT: Well, the State needs to put up
21 testimony as to how that came about.

22 MR. CORVEY: Well, in regard to the
23 suppression issue, Your Honor, I would initially argue
24 that this defendant couldn't have standing to even
25 challenge that.

1 THE COURT: Oh, this wasn't his house?

2 MR. CORVEY: No, it was not his house.

3 THE COURT: Okay.

4 MR. CORVEY: So it is the defense's burden to
5 prove he even has standing to challenge the warrant and
6 the drugs in this case, and it would be my contention
7 they have not established that burden.

8 MR. WHIPPER: Your Honor, he's charged with
9 possessing drugs, and the drugs were at the house.

10 THE COURT: But it wasn't his house, correct?

11 MR. WHIPPER: It definitely wasn't his house,
12 and so he's charged with possessing these drugs.

13 That's -- I think that's where the standard comes in.

14 THE COURT: Well, if it's not his house and
15 they're searching his house -- if you all want to bring
16 in the owner of the house and have him complain about it,
17 that'd be one thing. I don't think you have standing on
18 that.

19 MR. CORVEY: Then that's the State's
20 position, Your Honor.

21 MR. WHIPPER: So the next thing is that --

22 THE COURT: Let me just go ahead and clear
23 one thing up here: Y'all provided all Brady material --

24 MR. CORVEY: Yes, Your Honor.

25 THE COURT: -- to them? So there will be no

1 surprises.

2 MR. WHIPPER: The next thing, Your Honor, is
3 the issue of the arrest, illegally -- the arrest being
4 illegally performed in that what we know from the
5 incident report that there was not the proper entry used
6 into the premises.

7 MR. CORVEY: Your Honor, I think what the
8 testimony would elicit would be that officers were there,
9 as you know, to serve a warrant based on a tip
10 Mr. Middleton would be located there that night. They
11 then surveilled the scene upon getting there. It became
12 clear there was a social gathering taking place inside
13 the house. They then set up a perimeter, knocked on the
14 door. An individual inside opened the door, and they
15 made visual contact with Middleton, at which time they
16 had an active arrest warrant with him and had probable
17 cause to enter the home, so I don't see any issue in
18 entry once they saw that.

19 Not only did they see Mr. Middleton, but in
20 the trailer, there was very clearly narcotics in plain
21 view, which would also have provided them probable cause
22 to enter and detain everyone in there at that time and
23 then obtain a search warrant to conduct further searches.

24 MR. WHIPPER: Your Honor, I think we need to
25 take testimony.

1 THE COURT: Are y'all ready to take testimony
2 on that?

3 MR. CORVEY: Yes, Your Honor. I believe we
4 do have everyone here. Let me check outside in the
5 hallway.

6 THE COURT: We'll take testimony.

7 MR. CORVEY: One or two more. Thank you,
8 Judge.

9 MR. WHIPPER: Your Honor, I would like to
10 move that they be sequestered.

11 THE COURT: Any objection?

12 MR. OSBORNE: No, Your Honor.

13 THE COURT: All right. All potential
14 witnesses, except for the investigating officer, will
15 be -- and for both sides will remain outside of the
16 courtroom until they're called for their testimony.

17 MR. OSBORNE: Your Honor, we just ask that
18 our case agent --

19 THE COURT: That's what I said. Except the
20 investigating case agent.

21 MR. WHIPPER: Your Honor, I think when we
22 talk about the search warrants, it's clear that
23 everything the State will introduce into evidence is
24 based on the excuse of the search warrant. They held
25 everybody at the scene. They sent for a search warrant,

1 and they then did the search, as categorized by the
2 return, so it is an issue of the search warrant. It's
3 not --

4 THE COURT: Well, I think that's what their
5 testimony is going to be, but I will tell you this: If
6 they saw Mr. Middleton, they went in to make an arrest
7 and drugs were there in plain view when they went in to
8 arrest him, then that's -- all of my rulings, in all
9 likelihood, it's going to be allowed, but I certainly
10 will wait to hear the testimony.

11 MR. CORVEY: I'll be right back.

12 MR. WHIPPER: Your Honor, this isn't his
13 statement. This is just a summary of something that is
14 written by Officer Hall.

15 MR. CORVEY: It's kind of a unique case. It
16 got categorized as a narcotics case once they arrived and
17 took custody of the drugs. The first page of the
18 incident report is a supplement of the ILP team.

19 Officer Gorman was the case agent for the ILP
20 team in question. It's my understanding he wrote that
21 supplement, so it is the first page of the incident
22 report that was provided in discovery, and Mr. Whipper is
23 reading it. I just handed him an additional copy.

24 MR. WHIPPER: You might want to look at this
25 because this is from Mr. Hall.

KRISTOFER GORMAN - DIRECT EXAMINATION

1 THE COURT: Well, I mean, we're here only on
2 the preliminary part, so I'm not so concerned with --
3 this is basically on the arrest, so please proceed.

4 MR. CORVEY: Thank you, Judge.

5 KRISTOPHER GORMAN,
6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CORVEY:

10 Q. Good morning, Officer Gorman. Where are you
11 employed?

12 A. City of North Charleston.

13 Q. What are your duties with North Charleston?

14 A. I'm a police officer. I work currently with the
15 ILP team. It stands for intelligence led policing, and
16 I'm also a member of the SWAT team.

17 Q. How long have you been with the North Charleston
18 police department?

19 A. Four years, six months.

20 Q. Have you been with the ILP team the whole time?

21 A. No, sir. Three years.

22 Q. Were you working with the ILP team the night of
23 April 19, 2013?

24 A. Yes, sir.

25 Q. What were you doing that night?

1 A. I was the case agent for one subject Mr. Kevin
2 Middleton.

3 Q. And let me back you up just a little bit. When
4 you say case agent, what do you mean by that?

5 A. We assign cases based on when a subject comes out
6 with warrants. I believe we had an eight-person team at
7 that time, and we assign cases based on the area that the
8 subjects frequent and the officers' relationship with the
9 community and general knowledge of the area, and that's
10 how I was assigned that case.

11 Q. If you could, just generally describe what the ILP
12 team does.

13 A. Fugitive task force, we specialize in locating
14 wanted subjects. We're trained to use systems that can
15 give better background, addresses, family, anything like
16 that on a subject.

17 Q. Okay. And then back to the incident in question,
18 what happened on the night of April 19, 2013?

19 A. We received a tip from the community that
20 Mr. Middleton would be staying at that address. We
21 decided that -- we thought that he'd be sleeping there
22 overnight so we'd go early in the morning.

23 C Once we got to that address, we heard loud music
24 and multiple conversations that we could hear in the
25 trailer. We decided to surround the trailer with the

1 team, and since we knew people were inside, we just
2 decided to do a simple knock to see if anybody would
3 answer the door.

4 Q. And did you knock?

5 A. Yes, sir.

6 Q. And what happened once you knocked on the door?

7 A. As soon as I knocked, relatively quickly, a white
8 male opened the door and swung the door wide open. As
9 soon as the door went open, we positioned ourselves on
10 the sides of the door because we didn't want to stand
11 right in front of the doorway. That's just how we're
12 trained.

13 I was on the right side of the door, and as
14 soon as he opened the door, he took a step back, and I
15 could see multiple people in the room. I did a scan of
16 the room and saw the wanted subject, Mr. Middleton,
17 sitting on a couch.

18 Q. What did you do at that time?

19 A. At that time, I identified him as Mr. Middleton.
20 I did a direct path to Mr. Middleton on the couch and
21 ordered him down to the ground and placed him into
22 custody.

23 Q. So you entered because you saw a subject that had
24 an outstanding arrest warrant?

25 A. That, and I also saw a large off-white rock-like

KRISTOFER GORMAN -- CROSS-EXAMINATION

1 substance that was sitting on the table in front of
2 Mr. Middleton that I identified as narcotics.

3 Q. And were there other narcotics besides that in
4 plain view in the house?

5 A. Yes, sir.

6 Q. And was that readily apparent from the doorway?

7 A. Yes, sir.

8 MR. CORVEY: Your Honor, at that time I move
9 that the State had probable cause to obtain a search
10 warrant.

11 THE COURT: All right. Mr. Whipper, would
12 you like to cross-examine?

13 MR. WHIPPER: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. WHIPPER:

16 Q. Officer Gorman, you were the head man for this
17 particular team; is that correct?

18 A. Yes, sir.

19 Q. And so you knocked on the door. You had to step
20 back, didn't you?

21 A. No, sir.

22 Q. Doesn't that door open outward?

23 A. Yes, sir.

24 Q. So you didn't have to step back in order not to
25 get hit by the door?

1 A. No, sir. We position ourselves on the sides of
2 the doors. We don't stand in the doorway.

3 Q. One second.

4 I'm going to show you what's been marked
5 State's Exhibit 7 and 8. Do you recognize those?

6 A. Yes, sir.

7 Q. And you said you positioned yourself on the side?

8 A. Right here, to the right of the door.

9 Q. And where would that be, right here? So you were
10 essentially down on the steps?

11 A. Yes, sir.

12 Q. Down on the steps; is that correct? Is that
13 correct?

14 A. Yeah, on the side where the steps are.

15 Q. Down on the steps. So then when the door opened,
16 did you have any contact at all, physical contact,
17 anybody who came to the door?

18 A. No physical connection.

19 Q. Did you -- I think you guys -- did you in any way
20 announce why you were there, who you were?

21 A. Yes, sir. As far as our entry into the house, we
22 loudly announced North Charleston police department.

23 Q. In your testimony, I didn't hear you say that.
24 Isn't it true that when the door opened, you went in; is
25 that correct?

1 A. Yes, sir.

2 Q. All right. Now, when you went in, who all went in
3 with you?

4 A. I know -- there was other officers that went in.
5 We had a perimeter around the house. There was an
6 officer that went in right behind me. That was Officer
7 Habersham.

8 Q. At the time you had the arrest warrant; is that
9 correct?

10 A. Yes.

11 Q. It's my understanding that your investigation, or
12 how you did that, someone said to you that he would be
13 staying there, or he would be present at that house; is
14 that correct?

15 A. Yes, sir.

16 Q. And you were aware that you were going to somebody
17 else's house?

18 A. Yes, sir.

19 Q. Where else had you been looking for Mr. Middleton?

20 A. We mostly stayed in the community. The tips from
21 the community were that he didn't necessarily have
22 anywhere else to go and that he was spotted a couple
23 times in that same community, which is Dorchester
24 Village, and his family had a house there and we had been
25 staying in contact with his family.

1 Q. So it was known that he was not living there, that
2 he was kind of around; is that correct?

3 A. Yes, ma'am -- oh, sorry, yes, sir.

4 THE COURT: Anything further?

5 MR. WHIPPER: All right, Your Honor. That's
6 enough testimony.

7 THE COURT: Any redirect?

8 MR. CORVEY: None from State, Your Honor.

9 THE COURT: Thank you. You may step down.

10 THE WITNESS: Thank you, sir.

11 MR. WHIPPER: Here is why we think the
12 evidence should be suppressed:

13 Mr. Middleton clearly did not live at this
14 residence. Arrest warrants cannot be used to go into a
15 residence that does not belong to the defendant, and
16 that's what happened; therefore, what we have is officers
17 at the residence unlawfully and illegally because that's
18 an arrest warrant, and because of that, any of the
19 contraband, any of the evidence, even if it's in plain
20 view, has to be suppressed, because the Fourth Amendment
21 protects expectation of privacy.

22 In this particular situation, although he's
23 at the residence, the Fourth Amendment goes to the extent
24 that says you can't go into the residence of a third
25 person to execute looking for the defendant. That's an

1 old case. I believe it's Siegel vs. U.S., and that case
2 is still good law, and I have it.

3 Your Honor, what we have is impropriety, and
4 in this case, when you talk about making a decision, in
5 this case, they found 63 pounds -- 63 or 43 pounds? They
6 found a bunch of coke, but in that case, the evidence was
7 suppressed.

8 THE COURT: Yes, sir?

9 MR. CORVEY: Thank you, Judge. The Fourth
10 Amendment, as I understand it, protects places, not
11 necessarily people. I mean, the question is all about
12 reasonable expectation of privacy. Now, although the
13 Siegel case kind of -- it's really a different situation
14 than we have here, where here we have officers arriving,
15 an outstanding arrest warrant for an individual, they
16 make visual contact with that individual before entering
17 the premises, upon visualizing that person, they also
18 have probable cause to enter and make that arrest.

19 Notwithstanding that issue, the officer also
20 testified that there were narcotics in plain view.
21 Certainly police officers, upon observing narcotics in
22 plain view, have a right to enter a residence and detain
23 everyone inside for the purposes of obtaining a search
24 warrant, which is exactly what we have here.

25 I would first contend that they had a right

1 to enter, based on visualization of the suspect and an
2 outstanding arrest warrant; notwithstanding the fact that
3 I think the Court already determined that this defendant
4 had not made any showing of standing to challenge this
5 issue regarding the search warrant.

6 Now, although there are certain exceptions
7 that would allow a third party to have a reasonable
8 expectation of privacy in another's home, I don't think
9 any of them are present here. What the testimony showed
10 was that there was an active party going on, late into
11 the night, that we could assume also involved drug use
12 given the presence of drugs in the home. There's no
13 showing that he had met any of the exceptions or other
14 circumstances that would grant one a reasonable
15 expectation of privacy in another's home.

16 Not only that, Your Honor, there's also some
17 cases out of the Fourth Circuit -- beg Your Honor's
18 indulgence -- United States v. Gray, Your Honor, and in
19 Gray, that was a defendant visitor who the Court
20 determined was otherwise qualified in a number of the
21 exceptions to receive an expectation of privacy there;
22 however, the Court ruled in that case that where one is
23 merely using another's house as a commercial place, and
24 in this case, in the Gray case, selling drugs, they had
25 no reasonable expectation of privacy in another's home.

1 I would argue that this situation we have
2 here is completely analogous to the Gray case. Beyond
3 that, Your Honor, the defendant still has to prove that
4 he has the burden of proving he has a reasonable
5 expectation of privacy in another's home, and he hasn't
6 done that here.

7 THE COURT: Okay. And one thing I'm noting
8 in the Siegel case is that they were looking for Mr.
9 Lyons when he went in. Mr. Lyons wasn't there. Here is
10 the difference, Mr. Whipper, is that they always have a
11 right to knock on the door. Door opens, there is the man
12 they have the warrant for. Everything is in plain view.
13 I think most of the rules that protect the Fourth
14 Amendment, because of his presence there with drugs and
15 has an active arrest warrant, certainly gives them
16 probable cause to go further.

17 Now, whether or not the jury will find beyond
18 a reasonable doubt that they were his drugs is a
19 different matter. As the finder of law in this case, I'm
20 going to find that there was probable cause.

21 All right? Thank you. Have all of your
22 objections been preserved and protected for possible
23 appeal?

24 MR. WHIPPER: Your Honor, I also might add to
25 that, he testified -- Officer Gorman very truthfully

1 testified, number one, that he saw Mr. Middleton. He
2 didn't say anything about seeing drugs. He said after he
3 got in there, he started moving around there, he then
4 saw --

5 THE COURT: I thought testimony was he saw
6 Mr. Middleton and he saw drugs. He saw the drugs better
7 once he went to go get Mr. Middleton, but initially his
8 testimony was he initially saw those.

9 Now, whether the jury wants to put that in
10 the proper order and convict him of that is a whole
11 different matter, but as a matter of law, I find there's
12 a probable cause for them to go on into that.

13 MR. WHIPPER: There is one other thing.

14 THE COURT: Yes, sir.

15 MR. WHIPPER: Just one second. We want to
16 say also that I think that -- and I'm going to say I
17 think your ruling indicates your position on that in
18 terms of the visual, not announcing who they are and
19 going in --

20 THE COURT: Well, they knock on the door.
21 The door is opened, and there is a man who they have a
22 warrant for. I think, under any angle of the law, that's
23 sufficient for them to go further to arrest him, unlike
24 the Siegel case where Mr. Lyons was not in the home.

25 MR. WHIPPER: Your Honor, for the record, on

1 the Lyons case, the issue was that they were there, not
2 that Mr. Lyons was not there.

3 All right. Now, secondly -- thirdly, Your
4 Honor, they have not established a chain of custody of
5 the drugs, and so --

6 THE COURT: You're challenging the chain of
7 custody?

8 MR. WHIPPER: Yes, Your Honor.

9 THE COURT: I think that will come up during
10 the trial. They don't have to show that --

11 MR. CORVEY: Yeah, I think that's a bit
12 premature.

13 THE COURT: If they don't form a chain of
14 custody, then you're going to be home free at that point
15 in time, but right now, that's for a matter of trial.

16 MR. WHIPPER: Thank you, Judge.

17 THE COURT: All right.

18 Why don't we take a ten-minute recess. Are
19 our jurors here? Lacking two. How about when you get
20 the other two, give them a five-minute break so they can
21 go to the rest room. What I always find is when I say
22 bring the jury in, one of them always needs a couple
23 minute notice, and then we'll bring our jury out.

24 I will give my opening charge. You may then
25 give your opening statements, and then we'll begin the

1 trial. Okay? Thank you.

2 (Recess taken.)

3 THE COURT: All right. Are we ready to
4 proceed? Let's bring our jury in.

5 (In open court, jury present.)

6 THE COURT: Y'all may be seated. All right.
7 Please be seated.

8 Good morning, ladies and gentlemen. I hope
9 y'all had a nice evening last night. There is a lot of
10 rain in Charleston this week, so I guess being here in
11 trial is as good a week as any.

12 Sam, will you please swear the jurors.

13 (Whereupon, the jury was duly sworn.)

14 THE COURT: I want to tell you that this
15 trial might be different than what you might expect.

16 Most people don't have an opportunity to
17 attend and participate in an actual trial as you are
18 today and may think from watching TV, movies, or reading
19 in books that trials are full of high drama, intense
20 action, riveting circumstances, and while all these
21 things might be true at times, this trial is not for
22 entertainment. This is a real trial which is a
23 fundamental part of our democracy, and it's a search for
24 the truth in an effort to make sure that justice is done,
25 and searching for the truth and ensuring that justice is

1 done is often slow, deliberate, and repetitive, the
2 absolute opposite of what you see on TV, movies, and read
3 in books.

4 Now, this courtroom is a place of honor, and
5 I tell you, in Charleston, y'all do have a model
6 courthouse, and as citizens of Charleston County, you
7 should be proud of this, but this courtroom is dedicated
8 to the preservation and the protection of our citizens'
9 rights through what has been called and what I truly
10 believe to be the greatest justice system that has ever
11 been created by mankind. The attorneys who are appearing
12 before you are advocates for the parties that they
13 represent, but, ladies and gentlemen, first and foremost,
14 they are officers of this Court who are sworn to uphold
15 the integrity and the fairness of our judicial system and
16 to help you as jurors in your search for the truth, and,
17 ladies and gentlemen, you should expect them to be
18 professional, competent, and ethical in the
19 representation of their clients' interest.

20 Remember, ladies and gentlemen, you too just
21 took an oath to listen to the evidence in this case and
22 reach a fair and just verdict, and you're expected to be
23 professional, reasonable, and ethical as well. And,
24 ladies and gentlemen, I'll take this opportunity to thank
25 you one more time for accepting this important duty of

1 jury duty and for your contribution to our justice
2 system.

3 Now, ladies and gentlemen, what I'm going to
4 tell you now is just intended to serve as an introduction
5 of the trial in this case. These remarks are not a
6 charge on the law, and I'll charge you the law that is
7 applicable to this particular case at the end of the
8 trial. This is merely an explanation of the procedures
9 that we will follow so you may better understand what is
10 happening. Let me say up front you will not be allowed
11 to take notes during this trial and therefore it's very
12 important that you listen throughout this trial.

13 Now, ladies and gentlemen, the defendant,
14 Mr. Middleton, is charged by indictment filed in this
15 Court with trafficking in crack cocaine and possession
16 with intent to distribute heroin and cocaine. The
17 specific elements of these charges will be explained to
18 you as we go through the trial.

19 Now, ladies and gentlemen, I remind you, as I
20 did yesterday, that the indictment charging the defendant
21 is simply the documents which bring this case into court
22 and in no way or in any sense are evidence of any of the
23 allegations contained therein. The defendant has pled
24 not guilty to the charge of the indictment, so the State
25 therefore has the burden of proving all of the elements

1 of each charge beyond a reasonable doubt, and, ladies and
2 gentlemen, it will be your duty as jurors to decide
3 whether or not the State has met that burden.

4 Ladies and gentlemen: Your purpose in this
5 case is to determine the facts, and you're to determine
6 the facts that you'll hear from the testimony from the
7 witness stand and from any evidence that is introduced
8 during court, and it will be up to you to determine the
9 inference which you feel may be properly drawn from the
10 evidence that is presented. Ladies and gentlemen: It's
11 especially important that you perform your duty
12 diligently and conscientiously because ordinarily there
13 is no way to correct an erroneous determination of facts
14 by a jury.

15 Now, ladies and gentlemen, on the other hand
16 but with emphasis, the same law that makes you the judges
17 of the facts makes me the judge of the law, and the law
18 given to you by me is the only law that you may consider.
19 You must accept the law and apply it, even though you
20 might disagree, and I'll make an agreement with you right
21 now that I will not tell you what the facts are and you
22 will not disagree with me about what the law is or what
23 you think the law ought to be. Your job will be to take
24 the law as I give it to you and apply it to the facts as
25 you find them upon the testimony and the other evidence

1 and then, after hearing the evidence, you will deliberate
2 and render a just verdict under the solemn oath that you
3 just took as jurors.

4 Now, ladies and gentlemen, until I advise you
5 to begin your deliberations at the conclusion of this
6 case, you must not discuss the case with others and to
7 include your fellow jurors except when authorized to do
8 so by me. You may not use a computer, a cellular phone,
9 or other electronic device with communications
10 capabilities while in attendance here at trial or during
11 your deliberations. Of course, these devices may be used
12 when you go off for a lunch break or when you go home for
13 the evening, but even then, they may not be used to
14 disclose any information about a case when you're not in
15 court. Any information about the case would certainly
16 include but not be limited to any information about a
17 party, a witness, an attorney, or a court officer, any
18 news accounts about the case or any information collected
19 through juror research on any topic raised or testimony
20 offered from any witness or any information collected
21 through your research on any topic that you think would
22 be helpful in deciding this case.

23 Now, ladies and gentlemen, after the case is
24 submitted to you, you must discuss it only in the jury
25 room with your fellow jurors. The attorneys and the

1 parties in this case are advised that they are not to
2 talk to you at all, so if you see somebody involved in
3 this case around this small courthouse square, the four
4 corners of law, and they don't even say hello, well,
5 they're not being unfriendly. They're just following my
6 instructions.

7 Now, ladies and gentlemen, it's very
8 important that you keep an open mind and not decide any
9 issue in this case until all the evidence has been
10 presented, the attorneys have made their closing
11 arguments, and I have instructed you on the law that is
12 applicable to this particular case, and, ladies and
13 gentlemen, it is your solemn responsibility to determine
14 the guilt or the innocence of the defendant, and your
15 verdict must be based solely on the evidence as it is
16 presented within the four walls of this courtroom and on
17 the law as I give it to you.

18 Now, ladies and gentlemen, in just a moment,
19 the solicitor will make what is called an opening
20 statement where he will explain to you what he believes
21 the issues are in this case. The attorneys for the
22 defendant may also make an opening statement, although
23 they are not required to do so, but I will remind you
24 what the attorneys tell you during their opening
25 statement is not evidence. It is only their contention

1 as to what they believe the evidence will show in this
2 case.

3 Now, ladies and gentlemen, from time to time
4 during this trial, you may hear one of the lawyers say
5 something like, "Your Honor, I believe we have a question
6 or a matter of law to discuss with you," or, "Your Honor,
7 may we approach the bench?" or sometimes I might find it
8 necessary to excuse you from the courtroom for a few
9 moments while the attorneys and I discuss a matter of
10 law. The reason for this, as I have told you, I'm not
11 supposed to tell you what the facts are, and sometimes
12 when I'm discussing a matter as to whether a law applies
13 or not, it may be necessary for me to discuss the facts
14 with the attorneys in connection with making a ruling as
15 to whether that law applies or not. As I told you, I'm
16 not supposed to tell you what the facts are, so I will
17 excuse you from these conversations so that you will in
18 no way be influenced by anything I might say or do in
19 connection with the facts.

20 Also, during the trial, ladies and gentlemen,
21 you might hear one of the attorneys make an objection to
22 certain testimony or evidence that is about to be
23 presented. Now, whether or not I sustain the objection,
24 which would be to grant the objection, or overrule it,
25 which would be to deny the objection, should not be

1 construed that I favor one side over the other. I do
2 not, nor should you infer that the objecting party is
3 trying to hide something from you.

4 Ladies and gentlemen: In this courtroom, as
5 in all situations in life, there are specific rules that
6 must be followed, and the attorneys, as ethical officers
7 of this court, are merely trying to follow the rules of
8 evidence in making their objections, and I am only ruling
9 based upon what I believe the law to be of the State of
10 South Carolina in making my ruling.

11 Now, ladies and gentlemen, in determining
12 what the true facts are or what the facts are of this
13 case, you must decide whether or not the testimony of a
14 witness is believable. Now, it will be my responsibility
15 as the trial judge to rule as a matter of law as to
16 whether certain testimony is admitted, but once the
17 testimony is admitted, whether or not you decide to
18 believe it is solely for you as the jurors to determine.
19 In deciding whether to believe a witness, you have the
20 right to consider the interest of any witness, the bias
21 of any witness, the prejudice of any witness, and the
22 opportunity for the witness to have actually observed the
23 matters and things about which the witness might testify.

24 You may also consider the way the witness
25 acts on the witness stand, and, ladies and gentlemen, you

1 have a right to consider anything that is in the record
2 in this case to help you evaluate the witness. So that
3 means as jurors it is your responsibility and duty to pay
4 close attention to the witnesses, to observe the
5 witnesses, and to listen to the witnesses and to pay
6 close attention to the attorneys and the Court. So,
7 ladies and gentlemen, don't let your thoughts wander but
8 give strict attention to the testimony in this case so at
9 the end of all the testimony, after the argument of
10 counsel and their summations and the charge on the law by
11 me, you will then be in a position to apply the law to
12 the facts as you find them and thus render a true and
13 just verdict.

14 Now, Madame Forelady, in addition, it will be
15 your responsibility to preside in the jury room and be
16 the jury spokesperson here in court, and it will also be
17 your duty to write down the verdict, but I'll give you
18 further instructions on that at the appropriate time.

19 Now, in order to preserve everyone's rights,
20 I'll give the parties an opportunity to object to
21 anything that I've stated to you. Does the State have
22 any objections?

23 MR. CORVEY: Nothing from the State.

24 THE COURT: Does the defense have anything?

25 MR. WHIPPER: Nothing from the defense.

1 Thank you.

2 THE COURT: All right. We'll begin the trial
3 of this case.

4 Mr. Solicitor, would you like to give an
5 opening statement.

6 MR. CORVEY: Yes, Your Honor. Thank you.
7 May it please the Court?

8 THE COURT: Yes.

9 MR. CORVEY: Good morning, ladies and
10 gentlemen. First and foremost, thank you for being here.
11 I know it's not always the easiest thing to put your life
12 on hold and come in here, but I sincerely do appreciate
13 you being here, and I promise I will do everything I can
14 to make sure this process runs as smoothly and
15 efficiently as possible.

16 And now, just by way of introduction, you may
17 notice my co-counsel has changed. Unfortunately,
18 Mr. Voigt became ill overnight, and I'm now lucky enough
19 to have Mr. David Osborne here with me, who is also an
20 assistant solicitor with our office.

21 Now, ladies and gentlemen, we are all here
22 because the defendant, Kevin Middleton, is charged with
23 trafficking cocaine base, otherwise known as crack
24 cocaine, possession with intent to distribute heroin, and
25 possession with the intent to distribute powder cocaine.

1 Now, that incident all arose on the night of April 19,
2 2013, and, really, this is a case that boils down to just
3 a few things: It boils down to what makes sense and what
4 can be corroborated based on the testimony you'll hear in
5 this trial and the facts of this case and the evidence as
6 it will be presented to you.

7 Now, throughout the course of this trial, I
8 want you to be constantly evaluating what makes sense and
9 what doesn't make sense. Here, this will be a relatively
10 easy job for you, because what makes sense is what can be
11 corroborated by independent testimony and the evidence,
12 not on isolated stories, conjecture, or anything
13 otherwise. Now, I'm going to give you a preview of the
14 evidence, testimony, and facts of this case in just a
15 moment. Before I do that, I want to touch on the law
16 briefly, the law that you'll decide this case under and
17 the law under which you will find the defendant guilty.

18 Now, ladies and gentlemen, as Judge Young
19 just told you, he will charge you on the law at the end
20 of the case, and what he says is the law as you will
21 decide it, not what I say, not what Mr. Whipper says, and
22 the same goes for the evidence and the facts in this
23 case; however, before touching on the facts and giving
24 you a little preview of the testimony, I do want to go
25 ahead and give you a little bit of preview of the law as

1 I understand it.

2 Now, as I just mentioned, the defendant is
3 charged with trafficking cocaine base at [REDACTED]
4 Street, [REDACTED] On April 19, 34 grams of cocaine base was
5 found inside that house, and, again, that's crack
6 cocaine. He's also charged with possession with intent
7 to distribute heroin. 9.2 grains, apparently, were found
8 inside [REDACTED] Leslie Street. Possession with intent
9 to distribute cocaine, powder cocaine, 1.1 grams were
10 found inside that residence that night.

11 Now, I know you all have a very, I'm sure,
12 common sense definition of what trafficking and
13 distribution means, and I'm sure your notion does a much
14 better job of informing your decision about what those
15 charges are than I could ever explain, but at the end of
16 the day, for each of those charges, the State will have
17 to prove two things: First and foremost, the defendant
18 possessed those drugs, and possession is something I'm
19 going to touch on in a minute, but the second thing that
20 we'll have to prove is the intent to distribute and/or
21 the intent to traffic, as is the case with the crack
22 cocaine.

23 Now, as far as the evidence you are looking
24 at to prove those two elements that I mentioned, we're
25 looking for evidence like the sales of drugs, like large

1 amounts of money; conspiring to sell drugs, you're
2 looking for stuff like scales, baggies, things to package
3 the drugs in, things that could be used to distribute.
4 You're looking for evidence that goes to those things.

5 Now, again, possession is a point that I'm
6 going to come back to, but, really, the evidence needs to
7 prove the charges, these three charges, are ultimately
8 very similar. The real distinction between distribution
9 and trafficking comes down to weight. Now, when I say
10 weight, I'm talking about the actual physical weight of
11 the individual substances, and in South Carolina, there's
12 something called a presumptive weight, and the
13 presumptive weight is a factor that you will be able to
14 determine in making your decision on defendant's guilt or
15 innocence here. And the presumptive weight is merely one
16 factor of many that you can use to infer the defendant's
17 guilt; however, you can infer the defendant's guilt from
18 this factor because in the State of South Carolina if
19 anyone is found in possession of ten grams of crack
20 cocaine, they can be presumed to have the requisite
21 intent to traffic that cocaine base.

22 Now, as for heroin, any time anyone is found
23 possessing over two grains of heroin they can be presumed
24 to have the requisite intent to distribute that heroin,
25 and, lastly, with cocaine, any time anyone possesses over

1 one gram of powder cocaine, they can be presumed to have
2 the intent to distribute that cocaine.

3 Now, this presumptive amount is important. I
4 mentioned it's something you will be able to use in your
5 decision-making process, but here I think it's also very
6 telling, because here we have 2.5 times the presumptive
7 weight of crack cocaine found inside that house; 2.5
8 times, almost 35 grams. You have 3.5 times the
9 presumptive amount of heroin found in that house. There
10 were nine grains of heroin found. You also have over the
11 presumptive amount of powder cocaine.

12 Now, like I said, I do want to touch on
13 possession because ultimately I think that's what this
14 case will come down to, and at the of the trial, Judge
15 Young will explain to you that in order to prove
16 possession, the State must prove that the defendant had
17 actual or constructive possession.

18 Now, let's talk about that. Actual
19 possession, everyone knows and understands. Right now
20 I'm holding a pen. I'm physically possessing this pen.
21 What I think this case really comes down to is
22 constructive possession, however, and using this pen
23 again, when I put this pen down and step back, move
24 around the podium, I'm still in constructive possession
25 of that pen because I have the ability to control its

1 outcome and exercise dominion over it. The evidence in
2 this case will show the defendant had control and
3 dominion over the drugs in that house.

4 Now, regarding constructive possession,
5 there's few important points pertaining to this case that
6 I want you to keep in mind during the course of this
7 trial. Constructive possession can be proved through
8 direct and circumstantial evidence. Direct evidence
9 means the defendant had certain things on his person or
10 otherwise, but what is more often the case is that
11 possession is proved through circumstantial evidence, and
12 I know circumstantial evidence scares some people, and
13 you hear things on the TV and the media that it's a
14 circumstantial case.

15 Well, really, if you think about it, the way
16 we prove most things to ourselves in our everyday life is
17 through circumstantial evidence. For example, we don't
18 know what the weather is like outside right now. If
19 someone came inside right now in a rain jacket, carrying
20 an umbrella that was wet, we'd all assume it's raining.
21 That's a good example of circumstantial evidence, and I
22 want you to pay very close attention to the circumstances
23 in this case.

24 Now, again -- and I want you to keep this in
25 mind regarding possession. Under South Carolina law,

1 more than two people can be in actual or constructive
2 possession of the same amount of drugs. Doesn't matter
3 if it's closer to one person, farther away from another,
4 under the law, it can be possessed by two or more people
5 at the same time, and that's important because on the
6 night of April 19, 2013, not only was Mr. Middleton found
7 inside [REDACTED], but five other people were
8 found inside there as well.

9 You'll hear testimony regarding those people.
10 Some of those people will even testify as to what was
11 going on inside that house that night, but those other
12 people have nothing to do with this trial except that
13 they will be referenced in the testimony and evidence.
14 They ultimately have nothing to do with the defendant's
15 guilt. What they have to do with is merely being
16 present, and now, I just want you to keep that in mind
17 through the course of the trial.

18 Now, as to what happened on the night of
19 April 19, 2013, you will hear members from the North
20 Charleston ILP team. The ILP is the intelligence
21 policing unit. That is a team that specializes in
22 serving arrest warrants. They go out in the community,
23 make relationships with those in the neighborhoods and
24 the communities that make up North Charleston, and then
25 when an arrest comes in and they're searching for that

1 person, they then go out and use the community resources
2 they have and contacts they have in an effort to locate
3 the person.

4 You'll hear how members of the ILP team
5 received a tip from members of the community that
6 Mr. Middleton would be located at [REDACTED] on the
7 night of April 19, 2013. You'll hear from them about how
8 they then arrived at the scene, set up some surveillance
9 in the early morning hours, observed what appeared to be
10 a social gathering taking place inside the house: Loud
11 talking, music, et cetera, and this occurred at 5 a.m.,
12 at which point they decided they were going to knock on
13 the door at [REDACTED].

14 Now, upon doing so, someone from inside the
15 door opened the house, and keep in mind, they are here
16 because they have an arrest warrant for Mr. Kevin
17 Middleton. They're here to serve him with that arrest
18 warrant. Upon the door opening, officers can see inside
19 the residence, can see two things: First, they see the
20 defendant, who they're there to serve a warrant on;
21 secondly, they see all the drugs that we discussed in
22 plain view sitting on a coffee table in front of the
23 defendant.

24 Not only that, they observed a digital scale
25 sitting on his lap, at which time officers go inside the

1 residence and detain everyone inside, including
2 Mr. Middleton, and based on the presence of narcotics in
3 plain view, they call North Charleston narcotics unit to
4 obtain the search warrant and then come to serve that
5 warrant and continue to search the residence.

6 Now, I mentioned you'll hear from other
7 people inside the house that night. You'll hear from
8 Deron Ferguson. He was arrested and charged with this
9 case, and he'll also testify and tell you what was going
10 on that night. He'll tell you he arrived over there
11 early in the morning before his work shift to buy some
12 marijuana.

13 He's going to talk to you about how he
14 arranged to set up that buy, who he was going over to
15 see, who he talked to inside the residence, and what his
16 perceptions about who owned the drugs inside the
17 residence were. You'll also hear individuals from SLED,
18 the State Law Enforcement Division, chemical analysts
19 testifying to you exactly what the quantity of the drugs
20 found inside [REDACTED] were and how much they
21 weighed.

22 You'll also hear from members of the
23 Charleston County sheriff's office that work at the jail
24 with regard to what happens when an inmate -- or, excuse
25 me, a suspect is brought into the jail to be lodged with

1 regard to their personal property, specifically in this
2 case with money that comes in. You're hear about how
3 each individual that was charged that night was
4 ultimately taken to the jail. The money was logged into
5 their inmate account. I want you to pay attention to
6 that because ultimately I think that money is very
7 instructive of what was going on that night.

8 Lastly, ladies and gentlemen, you'll hear
9 from Officer Steve Hall of the North Charleston police
10 department. He was the narcotics officer that was on
11 call that night, so when the call came from the ILP team
12 about the presence of drugs, he needed to obtain the
13 search warrant and then went out to the residence,
14 cataloged the drugs, put them into evidence, and
15 questioned people on the scene.

16 Now, that's a bit of a preview of the
17 testimony, but at the close of this trial, once all the
18 testimony and the evidence has been heard, you will have
19 one conclusion: That the defendant is guilty of
20 trafficking crack cocaine, possession with intent to
21 distribute heroin, and possession with intent to
22 distribute powder cocaine.

23 In order for you to be personally convinced
24 of the defendant's guilt, all I ask is that you certainly
25 pay close attention, use all of your life experiences and

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1 common sense to guide your decision-making process and
2 your evaluation of the evidence, and remember what I
3 asked you a few moments ago: Use your common sense,
4 constantly evaluate what makes sense, what fits, and what
5 can be corroborated through the testimony and evidence
6 that you'll hear throughout the course of this trial.
7 And if you do that, I know that you will find the
8 defendant Kevin Middleton guilty.

9 Thank you.

10 THE COURT: Thank you, solicitor.

11 Mr. Whipper?

12 MR. WHIPPER: Thank you, Your Honor. We will
13 defer until the defendant presents its case.

14 THE COURT: State will call its first
15 witness.

16 MR. CORVEY: Thank you. State calls
17 Kristofer Gorman.

18 KRISTOFER GORMAN,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORVEY:

23 Q. Good morning, Officer Gorman.. What do you do for
24 a living?

25 A. North Charleston police officer.

1 Q. How long have you been working as a police officer
2 in North Charleston?

3 A. Four-and-a-half years.

4 Q. Have you ever worked for any other agencies?

5 A. No, sir.

6 Q. So, in all, how many years have you been a police
7 officer?

8 A. Four-and-a-half years.

9 Q. What are your current duties with North Charleston
10 police?

11 A. I'm on the ILP team, which stands for intelligence
12 led policing, and I'm currently a member of the SWAT
13 team.

14 Q. Please advise generally what your duties are with
15 the ILP team and the SWAT team.

16 A. We are a fugitive task force that gets assigned
17 one of the subjects that are high risk or violent due to
18 criminal history or the nature of the warrant.

19 Q. What sort of specialized training do you have in
20 order to become part of the ILP response team?

21 A. We had a lot of intelligence training. In basic
22 squad school, you get trained in recon, gathering
23 intelligence, surveillance; we have, you know, attended
24 weapons training.

25 Q. And then with regard to this case, were you the

1 case agent of this case assigned to the ILP team?

2 A. Yes, sir.

3 Q. Could you generally describe for the jury how
4 those cases get assigned inside your unit.

5 A. The cases get assigned -- they go to our sergeant,
6 and he assigns the case to one officer based on the
7 officer's relationship with the community in that area
8 and if they have any past with the wanted subject.

9 Q. Okay. Now, I'll direct your attention to the
10 night of April 19, 2013. Did you receive any information
11 that night?

12 A. Yes, sir.

13 Q. What did you receive?

14 A. That Mr. Middleton would be --

15 MR. WHIPPER: Objection, Your Honor. This
16 would be hearsay.

17 THE COURT: Rephrase your question.

18 BY MR. CORVEY:

19 Q. Now, what brought you to [REDACTED] that
20 night?

21 A. We received a tip from the community --

22 MR. WHIPPER: Objection, Your Honor.

23 THE COURT: Overruled.

24 BY MR. CORVEY:

25 Q. Go ahead. You can answer the question.

1 A. We received a tip from the community that the
2 wanted subject, Mr. Middleton, would be staying overnight
3 at this address.

4 Q. At [REDACTED]?

5 A. Yes, sir.

6 Q. So what happened once you received that tip?

7 A. We got the team together and -- early that
8 morning, and the trailer park was fenced in, so we had to
9 park outside and walk to the trailer park. And once we
10 got in there, we picked the trailer. It had loud music,
11 and we could hear multiple conversations inside. We
12 surrounded the trailer park with the whole team, and I
13 knocked on the front door.

14 Q. And then let's back up a little bit before then.
15 About what time did the team get there?

16 A. I believe we met around 4 a.m. We fanned out a
17 little bit before we made contact with the address.

18 Q. Now, it was about an hour later when you got on
19 scene?

20 A. Yes, sir.

21 Q. How long, approximately, did you do surveillance
22 on that location before setting up the perimeter and then
23 you knocking on the door?

24 A. It was relatively short. We could hear people
25 talking inside and the music. We were pretty positive

1 that somebody was inside.

2 Q. And then you surrounded [REDACTED] ?

3 A. Yes, sir.

4 Q. Would you recognize a picture of that residence if
5 I showed it to you?

6 A. Yes, sir.

7 Q. I am showing you what's been premarked for
8 ID purposes only as State's 7 and 8. What are those?

9 A. This is the address, [REDACTED]

10 Q. Is it the home in question?

11 A. Yes, sir.

12 Q. Did those pictures depict the home as it appeared
13 on the night of April 19, 2013?

14 A. Yes, sir.

15 MR. CORVEY: Your Honor, at this time, I
16 would move State's 7 and 8 into evidence.

17 THE COURT: Any objection?

18 MR. WHIPPER: No objection.

19 THE COURT: Without objection, State's 7 and
20 8 are admitted.

21 (Photograph marked for identification and
22 admitted into evidence as State's No. 7.)

23 (Photograph marked for identification and
24 admitted into evidence as State's No. 8.)

25 You may publish.

1 BY MR. CORVEY:

2 Q. Now, Officer Gorman, with the aid of this picture,
3 could you set the scene for the ILP team's arrival on the
4 scene that night?

5 A. Just touch it?

6 Q. You can draw right on there, and it will come up
7 on the lines.

8 A. The entrance was down this way. We had -- there
9 is a fence on this side. We had a couple of our guys
10 jump the fence on this side, a couple jump the fence on
11 that side. We placed guys on the corner of each wall.

12 I myself was right here, and my -- and I had a
13 couple teammates that were stacked behind me. I believe
14 at one point there was a teammate here due to the door
15 opening outward, and this way, I believe he might have
16 had to step out of the way, but this is how we set up,
17 with the deputies surrounding the residence.

18 Q. Okay. And that first yellow dot right by the
19 door, does that indicate you?

20 A. I could clear it. Right there.

21 Q. So you're right there, and you guys set up a
22 perimeter. What do you do next?

23 A. We knocked on the door.

24 Q. Okay. And what happened once you knocked?

25 A. As soon as we knocked, it was relatively quick, a

1 white male answered the door and opened the door wide
2 open and took a step back.

3 We're trained to not stand in the doorway, so I'm
4 hugged against this wall right here. As soon as the door
5 opens up this way, I can see the wanted subject,
6 Mr. Middleton, sitting on a couch against this wall.

7 Q. And can you just kind of draw a line on that
8 picture, just kind of indicating where the couch was?

9 A. Yes, sir. (Indicating.)

10 Q. And once the door opened, please describe exactly
11 what you observed inside.

12 A. As soon as the door opened, again, I'm hugged
13 against this wall. The subject that opened the door took
14 a step back, and I could see multiple people in the
15 residence.

16 We're taught to check corners first, and that's
17 where I -- that's where my vision went, to check this
18 corner. I made eye contact with Mr. Middleton sitting on
19 the couch. He was leaning forward, and there is a coffee
20 table in front of the couch right here. I noticed an
21 off-white rock-like substance on the counter -- on the
22 coffee table, excuse me, and he was hovered over it, and
23 he was cutting it with a razor blade. I made eye contact
24 with Mr. Middleton. He sat back, and there was a black
25 digital scale that was sitting on his lap.

1 Q. So what did you do upon making contact with Mr.
2 Middleton?

3 A. When I made contact with Mr. Middleton, I
4 announced North Charleston police, took a step into the
5 residence, and went straight to Mr. Middleton. I ordered
6 him to drop what was in his hand and get on the ground.

7 Q. And just as a point of clarification, why did you
8 arrive at [REDACTED] that night?

9 A. Due to my relationship with the community and
10 staying in touch with everybody, we received a tip that
11 he was at that address.

12 Q. So who were you looking for when you got there?

13 A. Mr. Middleton.

14 Q. Were you looking for any other individuals that
15 were inside that house?

16 A. No, sir.

17 Q. So you've made eye contact with Mr. Middleton, and
18 you've kind of indicated, generally, you saw a few
19 objects. You would recognize pictures of those objects
20 if I showed them to you?

21 A. Yes, sir.

22 Q. I'm showing you what has been premarked for
23 ID purposes as State's Exhibit 1. What is this?

24 A. These are the narcotics that were on the coffee
25 table in front of Mr. Middleton.

1 Q. And where in relationship to Mr. Middleton were
2 they?

3 MR. WHIPPER: Your Honor, may we approach?

4 THE COURT: You may.

5 (Discussion held at sidebar.)

6 Counsel will proceed.

7 BY MR. CORVEY:

8 Q. I had just asked you, where were the drugs you had
9 seen in relationship to Mr. Middleton?

10 A. They were right in front of him. Can I use this?

11 Q. Yep. Yeah.

12 A. Sorry. Couch is right here, and the coffee table
13 is right in front of the couch. He's sitting right
14 there, and the drugs were on the coffee table.

15 Q. Was he leaned over them?

16 A. Yes, sir.

17 Q. Now, the picture I handed you, does that
18 accurately depict those narcotics as they looked that
19 night?

20 A. Yes, sir.

21 MR. CORVEY: Your Honor, at this time I move
22 to admit State's 1 into evidence.

23 THE COURT: Any objection?

24 MR. WHIPPER: No objection.

25 THE COURT: Without objection, State's

1 Exhibit 1 is admitted.

2 (Photograph marked for identification and
3 admitted into evidence as State's No. 1.)

4 BY MR. CORVEY:

5 Q. Now you pretty well described exactly where they
6 were, just with the aid of this picture, can you try to
7 kind of explain, just to the jury of giving them a
8 context, of where this was, where actually the defendant
9 was seated in relationship to that amount of narcotics?

10 A. The couch is right here on this side.

11 Q. Would he have been sitting directly behind it?

12 A. I'm sorry?

13 Q. Would he have been sitting directly behind the
14 drugs on the coffee table?

15 A. Yes, sir. This is the edge of the coffee table.
16 This is the couch that he was sitting on right here,
17 over.

18 Q. And you mentioned something else. What was on his
19 lap?

20 A. Black digital scale.

21 Q. What happened to that scale once you went inside
22 the residence?

23 A. When he was ordered to the ground, he complied,
24 and the scale fell to the floor.

25 Q. Okay. Would you recognize a picture of that scale

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1 if I showed it to you?

2 A. Yes, sir.

3 Q. I'm handing you what has been marked for State's
4 Exhibit 3 for ID purposes only. What is that?

5 A. It's a black digital scale that was on
6 Mr. Middleton's lap.

7 Q. Is it in the same or does it accurately depict the
8 condition it was in that night?

9 A. Yes, sir.

10 MR. CORVEY: Your Honor, at this time we
11 would move to admit --

12 THE COURT: Any objection?

13 MR. WHIPPER: I need to take a look at it.

14 MR. CORVEY: I apologize.

15 THE COURT: Any objection, Mr. Whipper?

16 MR. WHIPPER: No objection.

17 THE COURT: Without objection, State's
18 Exhibit 3 is admitted.

19 (Photograph marked for identification and
20 admitted into evidence as State's No. 3.)

21 BY MR. CORVEY:

22 Q. Now, with the aid of this picture, can you
23 describe for the jury where the table is in relation to
24 the couch and where Mr. Middleton was sitting?

25 A. This is the legs of table -- or couch right here,

1 and Mr. Middleton was on the couch. This would be the
2 table right there.

3 Q. Okay. And now once you went in there, did you
4 observe anything else in the residence?

5 A. Yes, sir.

6 Q. What else did you observe?

7 A. Multiple people in the house and baggies with the
8 same white like substance. It appeared to be narcotics.

9 Q. Where were those baggies primarily located?

10 A. On the floor.

11 Q. Where were they located in relation to
12 Mr. Middleton?

13 A. In front of the table, on the other side of the
14 table.

15 Q. Were they just sort of all around the table in
16 front of Mr. Middleton?

17 A. Yes, sir.

18 Q. You mentioned that there were some other people in
19 the residence. Did -- how close was anyone else inside
20 to what you believed to be narcotics?

21 A. The white male that answered the door, there is a
22 kitchen on the other side of the door. He took a step
23 back into there. Like I said, my focus was on
24 Mr. Middleton, but I did observe another black male on
25 the other side of the coffee table, standing in the

1 middle of the living room.

2 Q. He was standing?

3 A. Yes, sir.

4 Q. Okay. And then why don't I put the picture of the
5 inside of the trailer back up.

6 Can you kind of describe where other people were
7 located once you went inside. Using this as kind of an
8 example, could you generally explain to the jury where
9 those people were located in relationship to
10 Mr. Middleton?

11 A. Yes, sir. Mr. Middleton was here, this is the
12 table, the subject was here, and the subject that
13 answered the door was here. I didn't have any contact
14 with them, but I know the team detained people in the
15 back room as well.

16 Q. And then was there another white male in the room?

17 A. Can I say his name?

18 Q. Sure.

19 A. Are you referring to Mr. Tisdale?

20 Q. That's correct.

21 A. Yes. This is Mr. Tisdale.

22 Q. Now, you also mentioned another black male that
23 was standing. Where was he?

24 A. I'm sorry. I was referring to Mr. Tisdale.

25 Q. Now, where were those other people in relationship

1 to the narcotics?

2 A. Mr. Tisdale was on the other side of the table,
3 standing up, but he had narcotics on the ground next to
4 him.

5 Q. What did Mr. Tisdale do once you made entry?

6 A. Mr. Tisdale -- as soon as I made entry,
7 Mr. Tisdale started -- there is a hallway right here, so
8 there is a hallway that goes down this way.

9 Mr. Tisdale tried to run towards the hallway, and
10 at that time is when the two plastic bags with the same
11 type of off-white rock-like substance that appeared to be
12 narcotics were found on the ground right next to him.

13 Q. Okay. Now, you testified about noticing some
14 other things around the table that night. Would you
15 recognize those things if I showed them to you?

16 A. Yes.

17 Q. I am handing you what has been premarked for ID
18 purposes as State's 2, 4, and 5. I'm handing you what
19 has been marked as State's 2, 4, and 5 for ID purposes
20 only. What are those?

21 A. Exhibit 2 is the narcotics found by the table, and
22 Exhibit 4 and 5 are the same type of narcotics found, but
23 I believe that was found by the narcotics team.

24 Q. Okay. And were those generally all around the
25 table where Mr. Middleton was located?

1 A. Yes, sir.

2 Q. Do they depict how they looked at that evening?

3 A. Yes, sir.

4 MR. CORVEY: Your Honor, at this time, I move
5 State's 2, 4 and 5 into evidence.

6 THE COURT: Any objection?

7 MR. WHIPPER: No objection.

8 THE COURT: Without objection, State's 2, 4,
9 and 5 are admitted.

10 (Photograph marked for identification and
11 admitted into evidence as State's No. 2.)

12 (Photograph marked for identification and
13 admitted into evidence as State's No. 4.)

14 (Photograph marked for identification and
15 admitted into evidence as State's No. 5.)

16 BY MR. CORVEY:

17 Q. Now, again, just for the benefit of the jury, what
18 does State's Exhibit 2 represent?

19 A. The narcotics by the table.

20 Q. And what about 4?

21 A. As well, that's narcotics and a cigarette carton.

22 Q. You also mentioned that Mr. Tisdale fled and
23 appeared to drop something in the hallway. Would you
24 recognize those if I showed them to you?

25 A. Yes, sir.

1 Q. I'm now showing you what has been marked as
2 State's Exhibit 6. What is that a picture of?

3 A. The narcotics that Mr. Tisdale dropped on the
4 floor.

5 Q. Do those accurately depict the narcotics as they
6 appeared on that night?

7 A. Yes.

8 MR. CORVEY: We offer State's Exhibit 6 into
9 evidence.

10 THE COURT: Any objection?

11 MR. WHIPPER: No objection.

12 THE COURT: State's Exhibit 6 is in evidence.

13 (Photograph marked for identification and
14 admitted into evidence as State's No. 6.)

15 BY MR. CORVEY:

16 Q. Just for the benefit of the jury, could you just
17 describe what that represents?

18 A. Yes, sir. This is the living room, so the table
19 and couch would be on this wall here. This is the other
20 wall to the trailer, and Mr. Tisdale is standing in the
21 middle of the living room, and he dropped that and it
22 fell that way.

23 Q. All right. Now, after you came inside and the
24 other team members came inside and detained everybody,
25 what did you do next?

1 A. I detained Mr. Middleton and removed him from the
2 residence.

3 Q. Why did you remove him?

4 A. He had active arrest warrants.

5 Q. And after you removed Mr. Middleton, what was the
6 rest of your involvement with this incident that night?

7 A. My primary goal was one of the subjects, and
8 Mr. Middleton was my case. So I placed him in the back
9 of my Tahoe in the cage, and he was transported to the
10 jail.

11 Q. Were you aware of whether or not the North
12 Charleston narcotics unit were called in?

13 A. Yes, sir.

14 Q. Why were they called in?

15 A. Like I said, we specialize in wanted subjects, so
16 they have more knowledge on narcotics and the procedures
17 to gather evidence. And our sergeant had called their
18 sergeant and they were on call, so it was early in the
19 morning, but they have on-call narcotics officers who
20 were sent to the scene.

21 MR. CORVEY: Court's indulgence, Your Honor.

22 THE COURT: Yes.

23 MR. CORVEY: I have no further questions for
24 you at this time. Please answer any questions Mr.

25 Whipper has for you.

1 THE COURT: Mr. Whipper?

2 MR. WHIPPER: Yes, sir, Your Honor. May it
3 please the Court:

4 THE COURT: Yes, sir.

5 MR. WHIPPER: May I approach the witness?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MR. WHIPPER:

9 Q. Take a look at that. Does that help you refresh
10 your memory? Does it help you refresh your memory?

11 MR. CORVEY: Objection, Your Honor. He
12 hasn't testified to anything.

13 THE COURT: He hasn't testified to anything.
14 Well, I mean, he can answer whether it refreshes his
15 memory or not. Overruled.

16 THE WITNESS: Answer, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: No, sir. It's incorrect.

19 BY MR. WHIPPER:

20 Q. Would you please help make the corrections?

21 A. I'm sorry. I don't know the other subjects'
22 names.

23 Q. Can you just use a letter or something for your
24 purposes? Tell us what you want us to know. Good.

25 A. Yes, sir.

1 Q. So then this drawing represents what you would
2 call that evening, based upon your corrections?

3 A. I can't testify about the rest of the residence,
4 just in the front door to the living room.

5 Q. It's going to be real helpful, Officer Gorman, if
6 you speak up just a little.

7 A. Just in the front door to the open living room. I
8 can't testify to the back bedrooms and bathrooms.

9 Q. Would you put a line through what you can't
10 testify to.

11 A. (Witness complies.)

12 Q. Now, from where your line is and from anything
13 else, you can testify to that; is that correct?

14 A. Yes, sir.

15 Q. Okay.

16 MR. WHIPPER: Based on his modification, we'd
17 like to publish this to the jury.

18 THE COURT: Any objection?

19 MR. CORVEY: Yeah, Your Honor. I would
20 object.

21 THE COURT: I mean, he's got to identify what
22 it is. You're got to lay a foundation.

23 MR. WHIPPER: I understand. I apologize.

24 THE COURT: You made the drawing originally?

25 BY MR. WHIPPER:

1 Q. What I'm showing you has been a drawing of the
2 interior of the trailer; is that correct?

3 A. From what I can testify to, the living room.

4 Q. Yeah. And so you have also drawn a line across --
5 I'll just do better than that line. Do this. I'll put
6 an X there, in that. And this is what you don't know
7 about; is that correct?

8 A. Yes, sir.

9 Q. So then but for what's Xed out, that matches what
10 you recall; is that correct?

11 A. I'm sorry?

12 Q. That matches what you recall?

13 A. Yes, sir.

14 Q. Okay.

15 MR. WHIPPER: All right. I'm going to have
16 that marked as Defense's Exhibit 1.

17 THE COURT: Any objection at this point now
18 that it's been testified to?

19 MR. CORVEY: Yes, Your Honor. I mean, I
20 don't have any objection to it being used for
21 demonstrative purposes, but as far as it being admitted
22 into evidence --

23 THE COURT: You're asking it be admitted into
24 evidence?

25 MR. WHIPPER: I will, Your Honor.

1 THE COURT: The witness has testified he's
2 now modified whatever it is, so he's kind of adopted it,
3 so I'm going to overrule your objection and allow it to
4 be -- as to what he put on to it, not anything else.

5 (Diagram marked for identification and
6 admitted into evidence as Defendant's No. 1.)

7 BY MR. WHIPPER:

8 Q. So, Officer Gorman, if you look at this picture,
9 what we did is we're focussing on the part of this line
10 back to there; is that correct? That's what you recall?

11 A. Yes, sir. Could I mark my corrections?

12 Q. And you may show what you corrected, what you
13 recall.

14 A. These are my corrections. (Indicating.)

15 Q. So then what do those corrections mean?

16 A. Just like I depicted, on the hitch of the trailer,
17 the couch is along this wall.

18 Q. And that's marked?

19 A. This is the front door. The white male opened the
20 front door. Mr. Middleton was seated on the couch and
21 the table in front of Mr. Middleton, and Mr. Tisdale was
22 standing in the middle of the room.

23 Q. Right there. So the table -- and you have a
24 circle around the Tisdale name over there. So this is
25 your -- so the darker blue writing that you've circled --

1 the darker blue writing that you've circled right here,
2 so this is where you're saying Middleton was?

3 A. The couch was -- I'm sorry. I'm going off of both
4 drawings, so the couch was along this wall. So if this
5 is going to be the couch, then it's going to be the couch
6 off the wall. The coffee table was right in front -- the
7 only thing that could fit between the couch and the table
8 was a pair of legs.

9 Q. So this table right here might be -- the idea of a
10 table is a little closer to the couch; is that correct?

11 A. Yes, sir, if that's the coffee table.

12 Q. Mr. Gorman, I'm going to tell you something: I
13 don't mind the truth. Doesn't bother me at all. I'm not
14 going to try to trick you, okay?

15 A. Yes, sir.

16 Q. Just want to know what you're saying, okay?

17 A. Yeah, I'm sorry. We're not arguing. It just
18 looks bigger than the couch, if that's -- if this is
19 supposed to be the coffee table, then yes, that's
20 relatively accurate.

21 Q. All right. So then what we're saying then is that
22 then Mr. Tisdale -- and so that's where you put in
23 there -- I think that's where you put him standing; is
24 that correct?

25 A. Yes, sir. He's in the middle of the living room.

1 Q. And Mr. Middleton is seated on the couch?

2 A. Yes, sir.

3 Q. Now, there are other people seated on the couch as
4 well; is that correct?

5 A. No, sir.

6 Q. So what you're differing with here is here -- I
7 think what you're saying is you don't recall if
8 Mr. Middleton was sitting there; is that correct?

9 A. No, sir. Mr. Middleton was seated on the couch.

10 Q. Now, let's make sure I understand something,
11 because you identified these pictures, and I didn't
12 have -- you know, it is what you recall, but I'm
13 concerned now. Help me understand this.

14 You called narcotics. I think when you get in,
15 normal police procedure, you got to get control of the
16 situation; is that correct?

17 A. Yes, sir.

18 Q. You go in there. You got a lot of bodies in
19 there. You don't know if they're armed; you don't know
20 what's going on, correct?

21 A. Yes, sir.

22 Q. And you got to get them under control, right?

23 A. Yes, sir.

24 Q. So you get in, so you got to have the guys come in
25 along with you, because you got a lot of bodies in there?

1 A. Yes, sir.

2 Q. All right. So I'm trying to make sure I
3 understand what's going on and how much -- because first
4 thing I understand is that you were there for the person,
5 not drugs.

6 A. Yes, sir.

7 Q. So then you're going in and you hear the voices
8 outside, so you know there are a number of people in
9 there, right?

10 A. Yes, sir.

11 Q. So you got to be concerned about what's going on
12 with all these people; isn't that correct? No?

13 A. No. It sounded like there was a party going on,
14 but we're a fugitive team.

15 Q. You say you've been there how long with the force?

16 A. Four-and-a-half years.

17 Q. You went through CJA, Criminal Justice Academy?

18 A. Yes, sir.

19 Q. So you if go in there, you're not assuming that
20 there is not weapons around, are you?

21 A. You have to always assume there is a possibility.

22 Q. Oh, yeah. Mr. Gorman, I'm not going to try to
23 trick you. I'm not going to try to trick you, okay? But
24 you got to be concerned about weapons and stuff.

25 You're going in there at 5:00, and you hear

1 partying, all right? You're getting ready to serve a
2 warrant on the guy, right?

3 A. Yes, sir.

4 Q. So you're going in, and it's a lot of the --
5 you're looking. You're aware of what's going on, so you
6 got to be loud, you got to be tough; is that correct?

7 A. Yes, sir.

8 Q. So at CJA, they train you -- you just kind of ease
9 into a place and you say, Well, guys, I'm here.

10 A. Every situation is going to be different.

11 Q. Yeah, but one thing about law enforcement, when
12 you go into a situation of unknowns, you've got to get
13 control of that area. So you're going in. You're big
14 and bad; isn't that correct?

15 A. No, sir.

16 Q. Oh, boy. At any rate, people are moving around.
17 Mr. Tisdale at some point starts to run; is that correct?

18 A. Yes, sir.

19 Q. All right. But you're not worried about him; is
20 that right?

21 A. I know I had my teammates behind me.

22 Q. You know you got somebody there you're keeping you
23 eye on?

24 A. Mr. Middleton.

25 Q. So what I'm saying to you now, you get all these

1 bodies settled down. I'm telling you again, Mr. Gorman:
2 I'm not going to try to trick you.

3 A. Yes, sir. I understand.

4 Q. You're trying to get this place settled down,
5 okay? Right?

6 A. Yes, sir.

7 Q. So when we identify these pictures and everything,
8 these pictures weren't taken by your people, correct?

9 A. By the ILP team?

10 Q. Yes, sir.

11 A. No, sir.

12 Q. So now -- but you know, after you kind of get
13 things settled down, get people identified, you know I
14 got an issue. After you get everybody settled down, I
15 got an issue. This stuff, obviously, it looks like
16 contraband, correct?

17 A. Yes, sir.

18 Q. How long does it take you to get everything
19 squared away, do you think?

20 A. To --

21 Q. To get everybody quieted down, get them separated.
22 You got Middleton. Now, you transport Middleton, don't
23 you?

24 A. Yes, sir.

25 Q. As a matter of fact, you got Middleton under

1 control; Your guys got a lot of other guys under control.
2 You're transporting them. You're taking them away from
3 the scene, correct?

4 A. Correct.

5 Q. Correct? So the guys are getting everybody
6 squared away; isn't that correct, more than likely?

7 A. Yes, sir.

8 Q. All right. Now, I heard you testify that somehow
9 your team communicated about narcotics. Does that go
10 through you do the guys you leave on the scene do that?

11 A. Once we see the narcotics and everybody is
12 detained and the residence is clear, our sergeant will
13 contact the sergeant of the narcotics team.

14 Q. All right. So, in fact, what we have you identify
15 here is -- I mean, we're all getting ready to make this
16 presentation. Everybody is -- the State, defense,
17 everybody gets ready to tell the story, because the
18 jurors have -- they don't know anything about this until
19 today, so part of what you had to do is to be asked to
20 reflect on this stuff so you know what it is; isn't that
21 correct?

22 A. I know what it is because I was there that day,
23 yes.

24 Q. You were there, but then the pictures, you didn't
25 take the pictures?

1 A. No, sir.

2 Q. So I notice this picture is taken real close.
3 This is State's Exhibit 6. It's taken real close, and so
4 what it does is that's the one that shows something that
5 Mr. Tisdale, I think, dropped.

6 Now, I heard you testify that there were two
7 things going on: I heard you say that Tisdale was
8 standing around the table, and there was something
9 already on the floor, or something near him already.

10 A. Yes, sir. I was focussed on Mr. Middleton, and
11 when Mr. Middleton was detained, Mr. Tisdale had already
12 been detained around the same time. He didn't flee very
13 far, and when I stood Mr. Middleton up is when I could
14 see these two on the ground.

15 Q. Now, that's the wall there -- that's the wall
16 that's represented by part of this line, right? Because
17 the wall goes from here to about there; is that correct?
18 Or is it -- you think it might be a little shorter, from
19 here to about there? But there is a wall there; isn't
20 that correct?

21 A. Yes, sir.

22 Q. And so that's what -- that panelling there, you
23 think that panelling represents that wall, you think?

24 A. No, sir.

25 Q. Which wall does that panelling represent?

1 A. The other wall of the trailer.

2 Q. I think you also identified Exhibit 5, did you
3 not?

4 A. Yes, sir.

5 Q. State's Exhibit 5, State's Exhibit 4, and when you
6 identify State's Exhibit 4, I guess that's because --
7 some of the stuff that was there, it looks like it's in
8 there, and State's Exhibit 5, it looks like it's near
9 some kind of basket, doesn't it? You're not sure?

10 A. I'm not sure.

11 Q. But this picture 4 is trying to show us something
12 that is down in this carpet; is that correct?

13 A. Yes, sir.

14 Q. So 4 is sort of a blowup of 5; is that correct?
15 Take a look.

16 A. I'm not sure.

17 Q. Looks that way? Now, you can't be sure. You know
18 there is drugs, and stuff, and this is State's Exhibit 2,
19 all right? You know your guys took these pictures; isn't
20 that correct?

21 A. 2 --

22 Q. I mean, the narcotics guys took that picture; is
23 that correct?

24 A. Yes.

25 Q. What we're saying is there were drugs all around,

1 and there were pictures that were taken, and this might
2 be some of the drugs that were there; isn't that correct?
3 I mean, in this picture -- and all you see is something
4 on the floor; is that correct?

5 A. Yes, sir. We tested the drugs when we were there.
6 That's -- the blue marks on the narcotics are from a
7 wipe, and if it turns blue, it's --

8 Q. So your guys test it, your guys do?

9 A. Yes, sir.

10 Q. This is State's Exhibit 2. This hasn't been
11 tested there?

12 A. If it's in a baggy, or, I mean, with other
13 evidence, we don't want to mess with that if we test the
14 other ones.

15 Q. Like the stuff Tisdale dropped?

16 A. Yes, sir, and the stuff on the couch in front of
17 Mr. Middleton.

18 Q. Okay. This is State's Exhibit 1 and it shows that
19 is sort of a glass table with some chrome on it?

20 A. Yes, sir.

21 Q. Is that anything like what you call a glass table
22 with some chrome?

23 A. It had all those baggies and everything on top of
24 it, but I think it was glass.

25 Q. You think it was glass? Okay. So you get

1 Middleton, if I'm not mistaken, and you probably found
2 out later on that there was maybe one or two people who
3 were not in that area; isn't that correct?

4 A. Yes, sir.

5 Q. And there's somebody in a back bedroom, because
6 there is a back bedroom. You found that out, correct?

7 A. Yes, sir.

8 Q. And I think there may have been another lady on
9 the other side of that door, I think; is that correct?

10 A. I'm not sure, sir.

11 Q. All right. You know there was at least one female
12 present; is that correct?

13 A. I'm not sure.

14 Q. When did you get back with your team after you
15 booked Middleton? Did y'all go back to the scene or at
16 the station?

17 A. We have an office where we brief and do paperwork.

18 Q. Where is the office located, the office where you
19 guys do your debriefing?

20 A. Tanger Outlets.

21 Q. If you want to say another location, away --

22 A. Oh, no, sir.

23 Q. Okay.

24 A. Tanger Outlets.

25 Q. Mr. Middleton -- Mr. Middleton didn't fight you,

1 didn't give you any problems?

2 A. No, sir.

3 Q. And, to your recollection, he was sober?

4 A. I'm not sure, sir.

5 Q. Not sure. You made no comments or anything about
6 that; is that correct?

7 A. Yes, sir.

8 Q. But you didn't have any problems with him; is that
9 correct?

10 A. Yes, sir, no problems.

11 Q. Just a second.

12 You drew some dots on this particular
13 photograph, I think. This is State's Exhibit 7. Now,
14 you knew and you had a sense this door opened outwards,
15 so you needed to avoid that door; is that correct?

16 A. Yes, sir.

17 Q. And you had a guy somewhere on that porch there.
18 Would you place your guy on the porch, please.

19 A. I believe he was on this side when we first
20 knocked. (Indicating.)

21 Q. Okay. I know you were on this first step.

22 A. I was hugging this wall right here.

23 Q. Now, you were -- if this was the door, if this was
24 that door, would you show us how you were facing the
25 door?

1 THE COURT: You may step down. Please be
2 sure to speak up when you're down on the floor.

3 BY MR. WHIPPER:

4 Q. Yes, both of us have that problem, Mr. Gorman.
5 Just show us how you did that.

6 A. The door handle was on this side. The door goes
7 out this way. I would be against the wall.

8 Q. All right. So just stay there. So then you
9 knocked or someone else knocked?

10 A. I knocked.

11 Q. So you knocked. So you have to knock -- what do
12 you do, you knock with your left hand?

13 A. Usually just give three knocks with the left hand;
14 knock, knock, knock.

15 Q. Pretty good knocks?

16 A. Yes, sir.

17 Q. So now is your hand on your weapon?

18 A. No, sir.

19 Q. All right. But your weapon is at the ready?

20 A. Holster.

21 Q. Holster is at the ready? In other words -- you
22 mean you've got your strap off of it?

23 A. No, sir. At the ready is out but down.

24 Q. Okay. So it's just plain holstered?

25 A. Yes, sir.

1 Q. But it's never strapped?

2 A. Always strapped.

3 Q. You didn't take the strap off?

4 A. (Shakes head.)

5 Q. But then were you sort of like -- show us again
6 how you were.

7 A. Against the wall to the trailer.

8 Q. All right. So then you got to have a foot down on
9 one of the steps there?

10 A. No, sir. I could fit there.

11 Q. You could fit there? All right. So you step
12 there, and you open. Is there a lot of light there?

13 A. It was pretty light.

14 Q. All right. So the door opened. What do you call
15 the guy -- what does he look like, the guy that you see?

16 A. He's an older white male.

17 Q. You don't remember anything about how he dressed?

18 A. No, sir.

19 Q. And you talked to him?

20 A. I announced North Charleston police, took a step
21 back into the kitchen, and right away made contact with
22 Mr. Middleton.

23 Q. You never touched this white male at the door?

24 A. No, sir.

25 Q. How long does it take, you think, for you to get

KRISTOFER GORMAN - REDIRECT EXAMINATION

1 in?

2 A. After I knocked?

3 Q. After?

4 A. Pretty much as soon as the third knock, the door
5 was opened. He opened the door. It was really quick,
6 and then eye contact with Mr. Middleton and announced and
7 straight into the place. I would say the whole place --
8 we had support up, and the whole place was detained
9 within a minute.

10 MR. WHIPPER: Just one second.

11 THE COURT: Yes, sir.

12 BY MR. WHIPPER:

13 Q. I just want to make sure. Now, I think we talked
14 about the fact that you recognized that this house didn't
15 belong to Mr. Middleton. Didn't we talk about that, a
16 lot of discussion?

17 A. Yes, sir.

18 MR. WHIPPER: No other questions.

19 THE COURT: Thank you. Any redirect?

20 Briefly.

21 REDIRECT EXAMINATION

22 BY MR. CORVEY:

23 Q. Officer Gorman, Mr. Whipper asked you some
24 questions regarding once you arrived on the scene. Once
25 you made contact with Mr. Middleton verbally, did you

1 provide forceful commands for everybody to get down?

2 A. Yes, sir.

3 Q. Everyone complied?

4 A. Yes, sir, besides Mr. Tisdale.

5 Q. Right, but generally everyone else complied?

6 A. Yes, sir.

7 Q. Now, when you arrived there, again, what was your
8 primary objective?

9 A. Wanted subject.

10 Q. And who was that?

11 A. Mr. Middleton.

12 Q. So were you concerned with the others in the
13 residence?

14 A. Me personally, concerned? You know, reasonably,
15 to prevent harm to the team, but as soon as I made
16 contact with Mr. Middleton, I knew the rest of my team
17 was coming in and could handle everybody.

18 Q. And when you made commands, it appeared to you
19 everyone was complying?

20 A. Yes, sir, besides Mr. Tisdale.

21 Q. And he ran. Now, Mr. Whipper asked you a little
22 about the defendant's demeanor. Was he slurring at all?

23 A. I don't recall.

24 Q. Did he appear intoxicated to you at all?

25 A. No, sir.

1 Q. Now, I want to go through Defendant's Exhibit 1.
2 Now, the blue marks on here are your writing, right?

3 A. Yes, sir, except I moved the table there.

4 Q. And now did you draw the rest of that?

5 A. No, sir.

6 Q. And what is on here isn't accurate, per your
7 recollection. There is a table with a lamp on it. I
8 believe this is Mr. Tisdale. David is his first name?

9 A. That's correct. He was in the middle of the
10 living room. The table wasn't in the middle of the
11 living room. It was against the couch which was against
12 the wall, and he was in open space in the living room,
13 and I guess this says Brittany?

14 Q. Uh-huh.

15 A. There was nobody else on the couch with
16 Mr. Middleton.

17 Q. Would there have been some other people in the
18 room that you missed when you first went in?

19 A. Oh, yes, sir; yes, sir.

20 Q. And, again, just for a point of clarification, who
21 were you there to find?

22 A. Mr. Middleton.

23 Q. And did you see him pretty quickly?

24 A. Yes, sir.

25 MR. CORVEY: I have no further questions.

1 THE COURT: Any recross based on his
2 redirect?

3 RECROSS EXAMINATION

4 BY MR. WHIPPER:

5 Q. Let's go back to Defense's Exhibit 1.

6 Mr. Ferguson, you didn't put him anywhere. Do you not
7 recall Mr. Ferguson? Is that what it is?

8 A. Nobody was on this back wall with Mr. Middleton,
9 so nobody was on this back wall. I noticed Mr. Tisdale
10 because he tried to flee.

11 There could have been other people in the house,
12 or, obviously, in the kitchen, but my responsibility as
13 the first man in is these corners, and so I did this
14 corner and Mr. Middleton was the subject that I
15 encountered so --

16 Q. All right.

17 MR. WHIPPER: Thank you very much.

18 THE COURT: Thank you. You may step down.
19 Is there any objection to this witness being excused for
20 the balance of the trial?

21 MR. CORVEY: None from the State, Your Honor.

22 THE COURT: Any from the defense?

23 MR. WHIPPER: He might need to be on call.

24 THE COURT: All right. Witness is still
25 under subpoena.

1 All right. Ladies and gentlemen, I think is
2 this is a good time for a break. Why don't we take about
3 a 15-minute recess. If you need to smoke, one of the
4 bailiffs will take you outside to smoke, and we'll take
5 about a 15-minute recess.

6 If you would like something to drink, they
7 will provide it for you. Please don't discuss anything
8 about the case. You'll get tired of me saying that, but
9 I need to say that.

10 (Recess taken.)

11 THE COURT: Just bring our jury in.

12 (In open court, jury present.)

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen: A lot of times I
15 always see the jurors become very territorial about their
16 seats, and y'all are doing a pretty good job of mixing it
17 up. So you can sit anywhere you want to except for you.
18 You have to sit in the foreperson chair.

19 Is the State ready to proceed with the next
20 witness?

21 MR. CORVEY: We are.

22 THE COURT: You may call your next witness.

23 MR. CORVEY: State calls C. J. Habersham.

24 CLARENCE HABERSHAM,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CORVEY:

4 Q. Good afternoon, Officer Habersham. Where do you
5 work?

6 A. North Charleston police department.

7 Q. How long have you been with North Charleston
8 police department?

9 A. Eight years.

10 Q. Have you worked for any other agencies before
11 that?

12 A. No, sir.

13 Q. What are your current roles with North Charleston
14 police department?

15 A. I work day shifts, central, team one.

16 Q. Are you a patrol officer?

17 A. Yes, sir.

18 Q. What other duties have you held with North
19 Charleston previously?

20 A. I previously worked the evening shift in the city,
21 was on the bike team from '09; '10; SWAT team as well as
22 the ILP team, which is the Intelligence Led Policing.

23 Q. And how long were you with the ILP team?

24 A. About three years.

25 Q. Could you just describe for the jury, what does

1 the ILP team do?

2 A. We work violent crime, serve violent crime
3 warrants, things --

4 Q. And then were you working with the ILP team on the
5 night of April 19, 2013?

6 A. Yes, sir.

7 Q. And what were you doing that night?

8 A. We got a tip from the community that a possible
9 warrant suspect was in the area, so we conduct some
10 surveillance.

11 Q. Was that at [REDACTED]?

12 A. It was.

13 Q. After you conducted surveillance on that
14 residence, what time did you arrive -- or, excuse me,
15 what did do you next?

16 A. We parked down the street from the trailer park.
17 We exited our vehicle. We walked the perimeter to locate
18 any noise or any occupants of any trailers because we
19 didn't have a precise location where the individual was,
20 at which time we saw one trailer was dimly lit, some
21 noise coming from that trailer. It was like muffled
22 conversations, some music, so we proceeded to go to that
23 trailer to investigate further.

24 Q. Is [REDACTED] in Charleston County?

25 A. It is.

1 Q. So after you performed your surveillance, what did
2 you do?

3 A. We determined someone was in the trailer. We
4 proceeded to set a perimeter around the trailer. Myself
5 and Officer Gorman, other officers, went back to the
6 trailer. After everyone was set and ready to go, we
7 proceeded to knock on the door.

8 Q. Would you recognize a picture of that trailer if I
9 showed it to you?

10 A. Yes, sir.

11 Q. I'll show you what has been admitted as State's 7.
12 Now, is that the trailer?

13 A. Yes, sir.

14 Q. Now, on the monitor in front of you, you can
15 actually draw with your finger little lines. Could you,
16 just for the jury, indicate where Officer Gorman was
17 standing and where you were standing.

18 A. I was here in front of the door, Gorman was to the
19 right.

20 Q. And when you say to the right, was he hugged
21 against --

22 A. Hugged against the wall.

23 Q. Doorjamb?

24 A. Yes, sir.

25 Q. Why would he do that?

CLARENCE HABERSHAM - DIRECT EXAMINATION

1 A. Just for coverage reasons because there wasn't
2 coverage for everyone at the front door. We did knock at
3 the door. Someone should be present to make contact with
4 the person who answered the door.

5 Q. And then what happened once you knocked on the
6 door?

7 A. Older white male answered the door. It opened
8 towards me, so I was -- I think the first one to see him
9 was Gorman to the right, and Gorman made a quick peek in
10 the house. I was trying to yell contact.

11 Q. What did that mean?

12 A. That he made contact with someone. Usually when
13 we use the word "contact", we mean made contact with a
14 threat or possibly an individual we're looking for, so he
15 yelled contact.

16 Q. And upon him saying contact, what did you do next?

17 A. We entered the room, or the house. Officer Gorman
18 went first, cut in front of me, and he went directly down
19 the wall of the house to this -- in that area. I went
20 straight into the living room.

21 Q. And what was along that area you just --

22 A. Was located right behind that window is a couch.

23 Q. Okay. And you can draw a line kind of
24 approximately where that couch was?

25 A. Just below that window right there.

1 Q. And who was seated on the couch?

2 A. When Officer Gorman yelled contact, I glanced to
3 the left and saw Mr. Middleton standing there, or sitting
4 there, before I proceeded to go past him in the living
5 room.

6 Q. And before we go into what you did in the living
7 room, why were y'all at [REDACTED] that night?

8 A. We got a tip that Mr. Middleton was possibly in
9 the trailer park.

10 Q. Were you looking for him?

11 A. Yes, sir.

12 Q. Were you looking for anyone else in the trailer?

13 A. No, sir.

14 Q. So when you see Mr. Middleton sitting on the
15 couch, was there a coffee table in front of him?

16 A. There was a coffee table in front of it.

17 Q. And what was on the coffee table?

18 A. I didn't actually see anything on the coffee table
19 as I approached, but afterwards there was narcotics on
20 the coffee table.

21 Q. Was that coffee table directly in front of where
22 he was sitting?

23 A. It was.

24 Q. So after you guys go inside the residence, what
25 did you do next?

CLARENCE HABERSHAM - DIRECT EXAMINATION

1 A. I noticed an individual in front of Mr. Middleton
2 standing up by the name of Tisdale. He saw us and
3 proceeded to walk to the back of the residence, toward
4 the back door.

5 Q. What did you do?

6 A. I in turn went to Mr. Tisdale and detained him.

7 Q. When Mr. Tisdale went toward the back door, did he
8 drop anything?

9 A. He did.

10 Q. Would you recognize what he dropped if I showed
11 you a picture?

12 A. Yes, sir.

13 Q. I'm showing you what has been entered into
14 evidence as State's 6. Now, does that reflect what Mr.
15 Tisdale dropped in the hallway when he moved back that
16 way?

17 A. Yes, sir.

18 Q. And as he dropped that, what were you asking him
19 to do?

20 A. As far as --

21 Q. Did you give him any commands?

22 A. I gave him one quick command to stop. He in turn
23 stopped, dropped -- and when he did, he dropped it.

24 Q. And there were other people in the house as well,
25 weren't there?

1 A. I believe so.

2 Q. Did everything happen really quickly?

3 A. It did. It happened within seconds of us entering
4 the house.

5 Q. And you talked about after you had detained
6 everybody. Did the rest of the team come in?

7 A. Yes, sir.

8 Q. And then were all the subjects in the house
9 detained?

10 A. Yes, sir.

11 Q. Now, you mentioned that after having detained
12 everybody, you noticed a substance on the couch in front
13 of Mr. Middleton?

14 A. Yes, sir.

15 Q. You would recognize that if I showed it to you?

16 A. Yes, sir.

17 Q. I'm showing you what has been entered into
18 evidence as State's 1. What is that?

19 A. That would be considered a half a cookie of crack
20 cocaine and marijuana.

21 Q. Okay. And then can you, you just for the benefit
22 of the jury, kind of draw an arrow as to where
23 Mr. Middleton would have been sitting in reference to
24 that quantity of drugs?

25 A. The couch would have been behind the tray, so he

CLARENCE HABERSHAM - DIRECT EXAMINATION

1 would be facing the crack. So, I mean, he's behind it.

2 Q. And when you walked in, did you notice whether or
3 not Mr. Middleton had anything on his lap?

4 A. I did not see anything.

5 Q. Okay. After you had detained everybody, did you
6 notice anything on ground around his person?

7 A. A black scale.

8 Q. Would you recognize a picture of that if I showed
9 you?

10 A. Yes, sir.

11 Q. Showing you what has been marked as State's
12 Exhibit 3, what does that reflect?

13 A. Black scale on the ground where he was detained.

14 Q. And I guess the arrow was already there. Would
15 that kind of reflect where Mr. Middleton was sitting in
16 reference to that scale?

17 A. Yes, sir.

18 MR. CORVEY: Beg the Court's indulgence, sir.

19 Officer Habersham, I have no further
20 questions for you at this time.

21 THE COURT: Mr. Whipper?

22 MR. WHIPPER: May it please the Court:

23 CROSS-EXAMINATION

24 BY MR. WHIPPER:

25 Q. Did you place yourself on the stoop?

1 A. Yes, sir.

2 Q. Sort of back away from the door?

3 A. Yes, sir.

4 Q. You were expecting the door to open out?

5 A. Yes, sir.

6 Q. And, if I'm not mistaken, then, so you would have
7 been -- you would have come in behind Gorman somehow?

8 A. Yes, sir.

9 Q. How are you saying -- are you the third person
10 behind him?

11 A. Second.

12 Q. Second person? Okay. Now, so you're not -- let's
13 do it like this, because I want to make sure -- okay.
14 All right.

15 So you're on the landing there, the stoop.

16 A. Yes, sir.

17 Q. All right. Put yourself where you were there,
18 right here? Okay. And you're in front of the door?

19 A. Yes, sir.

20 Q. But you're far enough away from the door that it's
21 going to clear.

22 A. Yes, sir.

23 Q. Okay. So then Gorman goes in, I think -- he
24 doesn't go in. I think -- there is something because you
25 said you said the word contact, something that he does?

1 He says contact, and you guys to know to go in; is that
2 right?

3 A. Yes, sir.

4 Q. So you guys enter after that goes on, is what you
5 recall. And so when you get in, what we're talking about
6 is that maybe, maybe not, but people might be moving?

7 A. Uh-huh, yes, sir.

8 Q. So when you get in there, you see Tisdale, and
9 somehow -- now, I kind of read some reports that said
10 Tisdale was really almost running, that you mentioned he
11 was walking over there. Doesn't seem like he would be
12 walking away, but he was moving away from you?

13 A. Yes, he was moving away.

14 Q. And you interpreted that movement to be he was
15 somehow going to avoid contact with law enforcement?

16 A. Yes, sir.

17 Q. So he's moving away, and you're seeing him. Now,
18 you guys weren't worried about people having weapons in
19 that place?

20 A. Sir?

21 Q. You knew they didn't have weapons in there?

22 A. No. We were unaware of anyone that had any
23 weapons in there.

24 Q. But until you know that, aren't you kind of
25 concerned about that?

1 A. Yes, sir.

2 Q. Of course. So you go in there, and you've never
3 been in this trailer before, have you?

4 A. No, sir, I have not.

5 Q. So you go in there because there was music going
6 on?

7 A. Uh-huh.

8 Q. And you heard that music. As a matter of fact, I
9 think you said you weren't sure where this trail -- the
10 trailer that you wanted to get to, you weren't sure where
11 it was, and you guys kind of moved around in there,
12 because I think it's maybe -- what, six, seven, eight,
13 nine -- there are a number of trailers in there. It's a
14 little yard. It's fenced. There is a big double gate.
15 There is a driveway that sort of rises up and goes in
16 there?

17 A. Yes, sir.

18 Q. And the trailer is on the right?

19 A. Yes, sir.

20 Q. And they go right on back in there, and then this
21 trailer is one of two or three or four that is on the
22 left at the end.

23 A. Yes, sir, as you're walking in.

24 Q. Uh-huh. But you got to go in there a little bit,
25 because there is a house on the left; is that correct?

CLARENCE HABERSHAM - CROSS-EXAMINATION

1 A. I believe so.

2 Q. Do you recall the house? You don't recall the
3 house? You don't recall the house?

4 A. No.

5 Q. There is a home, nice-sized lot, nice-sized home,
6 and you go in there, and there is a trailer in front of
7 this, as a matter of fact. You don't recall that?

8 A. Yeah.

9 Q. And so you go in there, and so you guys are kind
10 of paying attention, trying to see what's what, but
11 you're attracted to this one because it has the music on
12 and there's people in there, correct? That's what I'm
13 understanding you're saying.

14 A. Yes, sir.

15 Q. All right. So you say you want to try this one,
16 right? And you go -- and you do what you're trained to
17 do, and you go in there. People are moving around.
18 Tisdale is moving around.

19 Do you recall -- now, my understanding is there is
20 a female that was in there. Do you recall a female being
21 there?

22 A. I believe she was in the back. I did not see the
23 female until she came out of the back bedroom.

24 Q. All right. Now, there was also another person who
25 was not in the living room area, but somewhere in one of

1 those bedrooms. Do you recall that?

2 A. Yes, sir. I saw him come down from the hallway.
3 The officer had detained him.

4 Q. All right. Now, did you stay with the subjects
5 and with the scene until narcotics got there?

6 A. Yes, sir.

7 Q. Okay. When narcotics got there, did they have
8 their warrants with them, do you recall?

9 A. I believe they arrived first, and afterwards they
10 typed a search warrant.

11 Q. All right. So the search warrant was actually
12 sought after narcotics got there, and then they sent
13 somebody forward; is that what you're saying?

14 A. They came on scene, and the process server got the
15 search warrant typed, yes.

16 Q. So the search warrant was delivered to them while
17 they were at the scene?

18 A. That's my understanding.

19 Q. All right. At first I thought, Officer Habersham,
20 you were in the back. I thought you came in from the
21 rear.

22 A. No, sir.

23 Q. Okay. Now, were you there when they were
24 interviewed, the subjects were interviewed?

25 A. I was outside when they -- who was detained inside

1 the house was outside.

2 Q. Did you guys interview them at all regarding the
3 narcotics?

4 A. No, sir.

5 Q. And were you present when narcotics got there and
6 interviewed them?

7 A. Yes, sir.

8 Q. You were?

9 A. Yes, sir.

10 Q. And from what you recall from your observations is
11 that no one claimed ownership to these drugs; is that
12 correct?

13 A. That's my understanding.

14 Q. Just give me one second.

15 Now, as far as your participation in this too,
16 Officer Habersham, once this was done, you were not
17 required to appear in court for anything else?

18 A. No, sir.

19 MR. WHIPPER: Thank you, sir. No further
20 questions.

21 THE COURT: Any redirect?

22 MR. CORVEY: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. CORVEY:

25 Q. Officer Habersham, just as a point of

1 clarification, after everyone was detained inside the
2 residence, what happened to Mr. Middleton?

3 A. He was transported by Officer Gorman to serve his
4 warrants that we had on him, the city of North
5 Charleston.

6 Q. Where was he taken?

7 A. I believe he was taken to city hall to have the
8 warrants be served to him.

9 Q. And where was he going?

10 A. To the Charleston County Detention Center.

11 MR. CORVEY: No further questions.

12 THE COURT: Any recross?

13 MR. WHIPPER: No recross.

14 THE COURT: You may step down. Any objection
15 to this witness being released?

16 MR. WHIPPER: No, sir. He may be released.

17 MR. CORVEY: No objection.

18 THE COURT: All right. State may call its
19 next witness.

20 MR. OSBORNE: State calls Officer Kruger.

21 THE COURT: Just for your information and
22 your stomach's information, this will be the last witness
23 before we break for lunch.

24 ROBERT KRUGER,
25 having been first duly sworn,

ROBERT KRUGER - DIRECT EXAMINATION

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. OSBORNE:

4 Q. Good afternoon, Sergeant Kruger. You work for
5 North Charleston police department?

6 A. Yes, sir.

7 Q. And how long have you worked there?

8 A. Fourteen years.

9 Q. What are some of the various assignments you've
10 had while you worked there?

11 A. I was there as the -- I've been on patrol
12 division. I was on the North Charleston weed and seed
13 program, where it's community project policing at the
14 elementary schools and middle school. Then I was on the
15 department SWAT team for 12 years. Did that, and now I'm
16 currently on for the last ten years, the -- it's like a
17 fugitive unit violent offender fugitive squad.

18 Q. And I think that's referred to as the ILP unit?

19 A. Yes, sir.

20 Q. Are you still in SWAT?

21 A. No, sir, I just got off there.

22 Q. You said the ILP unit is a fugitive unit. I guess
23 you track down fugitives in that unit?

24 A. Yes, sir.

25 Q. Did you receive any special training in the SWAT

1 unit that assists you in the performance of your job in
2 ILP?

3 A. Yes. I've been through several training classes.

4 Q. Could you just go through a couple to explain to
5 the jury how that training helps you in the performance
6 of your job now.

7 A. Several training classes, we're conducting
8 surveillance, tracking fugitives and going out just to
9 try to see who we're dealing with on a daily basis, just
10 people throughout the city; multiple training classes,
11 briefing school, tactical class, training classes,
12 distraction devices, all sorts of miscellaneous classes
13 like that.

14 Q. Now, I want to talk to you a second about the ILP
15 unit. Officer Habersham and Gorman, they were or are
16 still in the unit; is that correct?

17 A. Officer Gorman is. Officer Habersham just went
18 back to patrol.

19 Q. So he was in the unit at one point?

20 A. Yes, sir.

21 Q. And you're the lead of the unit? You're the
22 supervisor of the unit?

23 A. Yes, sir.

24 Q. Tell the jury, how does an officer become a member
25 of the ILP unit?

1 A. Usually the ILP unit, mostly guys on the team --
2 you put in for a team, and you're chosen, you pass the
3 physical fitness test and then you get selected to come
4 on a team because we try to keep tightness in the squad,
5 so there is a bunch of different classes, steps.

6 Q. Are you one of the individuals who makes the final
7 decision on who gets accepted into the unit and who
8 doesn't?

9 A. Yes, sir.

10 Q. Is it fair to say that -- or are there a lot of
11 people who apply to come to the unit who aren't accepted
12 into the unit?

13 A. Yes, that's correct.

14 Q. So it's a sought after position?

15 A. Yes, sir.

16 Q. And these individuals that are on your unit are
17 trained; is that correct?

18 A. That's correct.

19 Q. And you probably share with them whatever
20 knowledge you have to help them with their job as well?

21 A. Yes, sir.

22 Q. All right. Let's go back to April the 19th of
23 2013. Were you a supervisor of the ILP unit then?

24 A. Yes, sir.

25 Q. And were you working that night?

1 A. I was.

2 Q. The arrest of the defendant in this case, I
3 believe it occurred about 5:45 in the morning; something
4 along those lines?

5 A. That's correct.

6 Q. Is that your normal times in the ILP?

7 A. Our times change depending on information we
8 receive, so depending on what fugitive we're tracking at
9 the time, that is what our hours are. They vary. Every
10 day is different.

11 Q. What brought you to be working that night, or
12 early morning hours?

13 A. We worked later that night. We went home because
14 some of the guys were receiving information on the
15 offender we were tracking at the time, which was the
16 defendant, Mr. Middleton. So we left there, and then
17 later on investigation obtained a warrant and came back
18 at 5:00 in the morning.

19 Q. So one of the officers under your supervision
20 obtained information leading to where the defendant may
21 or may not be?

22 A. That's correct.

23 Q. And they would share it with you?

24 A. Yes, sir.

25 Q. And then I suppose, what, you then got some people

1 together and said, "Hey, we're working late tonight"?

2 A. Yep. Then you get the whole unit, change hours,
3 make some adjustments, and then they came in early that
4 morning, so --

5 Q. Okay. So what was the plan in trying to apprehend
6 the defendant?

7 A. The plan was just to offer the information we
8 received?

9 Q. Uh-huh.

10 A. We received this information of a possible
11 location where the defendant could be. The officer that
12 received information kind of scattered out rather than
13 have a bunch of police cars and a bunch of other officers
14 driving around that would tip off our fugitive, so one or
15 two of the guys went in there and just pulled some
16 detail, looked at some of the activity going on and
17 followed up with information received.

18 Q. So the information was that the defendant would be
19 at -- I think the address is [REDACTED]?

20 A. Yes, sir.

21 Q. Like boy? What neighborhood is that?

22 A. Dorchester Village area.

23 Q. Dorchester Village? All right. For individuals
24 that aren't familiar with that neighborhood, is it just
25 an area that --

ROBERT KRUGER - DIRECT EXAMINATION

1 MR. WHIPPER: Objection, Your Honor.

2 THE COURT: Rephrase the question.

3 BY MR. OSBORNE:

4 Q. How would you characterize this neighborhood?

5 MR. WHIPPER: Objection, Your Honor. This
6 is -- it's irrelevant.

7 THE COURT: I'm going to let him ask
8 questions. You can follow up with the cross-examination.

9 BY MR. OSBORNE:

10 Q. How you would characterize this neighborhood?

11 A. It's a -- some apartments, some older apartments
12 and a trailer park, so a lot of mobile home parks in the
13 area. A little transient. A lot of rental property out
14 there.

15 Q. Is this an area in which police officers often
16 patrol?

17 A. Yes, sir.

18 Q. And, why is that?

19 A. Around that current time there --

20 MR. WHIPPER: Objection, Your Honor.

21 THE COURT: I'm going to sustain the
22 objection. He said he patrolled there.

23 BY MR. OSBORNE:

24 Q. You said you were setting up surveillance. Did
25 you take one car, multiple cars? How many officers did

1 you bring?

2 A. I want to say that night we probably bought six to
3 seven officers that were on our fugitive unit, all SWAT
4 guys we brought that night. We met someplace else.
5 Everybody doubled up in cars to limit the cars, but we
6 did double up, took multiple cars in there to the target
7 location where Intel was received. After scouting
8 through surveillance on the residence, we moved into the
9 residence.

10 Q. Okay. How long did you all conduct surveillance
11 on the location, about?

12 A. I would say 25 minutes.

13 Q. Okay. During that time, the information regarding
14 the surveillance, was that forwarded to you, or
15 transmitted to you?

16 A. Yes, sir.

17 Q. You were the supervisor out there?

18 A. That's correct.

19 Q. Do you recall what type of information was relayed
20 to you regarding the surveillance?

21 A. Yeah. They remembered to bring up the chain link
22 fence, you got the trailer. They were supposed to have
23 some kind of social gathering at 5:00 in the morning.
24 Doing surveillance in there, you kind of look to see at
25 5:00 in the morning who has lights on, who has music,

1 what kind of activity you see at 5:00 in the morning,
2 what is normal behavior, what is not.

3 Q. Was there activity in the apartment at that time
4 in the morning?

5 A. That's correct.

6 Q. So some of that information would seem to be
7 corroborated?

8 A. Yes, sir.

9 Q. All right. So at a certain point you made a
10 decision to go ahead and make contact with the target?

11 A. That is correct.

12 Q. And were you one of the individuals that made the
13 contact with the target location?

14 A. Yes.

15 Q. Do you recall -- and I know this was over two
16 years ago, and you had several guys out there. Do you
17 recall when you approached the location, you know, how it
18 sort of broke down and who was where?

19 A. Yes, sir.

20 Q. All right. Tell that to the jury.

21 A. What we did is we went in there. Obviously, we
22 did a perimeter around the residence. There was a couple
23 officers behind and on the side. I was in the front. I
24 think there was about four other guys possibly in the
25 front, possibly, and Officer Gorman was knocking at the

1 door. Officer Habersham is up at the trailer. I was a
2 little bit off away from the trailer. They knocked on
3 the door. Before you know it, door opened up. Someone
4 allowed us to come in. Officer Gorman immediately went
5 inside and so did Habersham, I guess to identify the
6 target inside the residence.

7 Q. Did you then enter the residence behind them or --

8 A. That is correct. I entered right behind them.
9 When the individual were -- people were off to the right.
10 I believe there was a kitchen. There was one or two in
11 there. The officers that fled after two subjects, one
12 was on the couch to the far left, which we're trained --
13 the first place we looked is we look in that corner, and
14 so from our training, that's what we do, and the other
15 guy in the other corner, there was another codefendant.
16 On the couch there is where we see the one individual
17 close to us.

18 MR. WHIPPER: Your Honor, if -- Officer
19 Kruger, if he could speak up a little bit.

20 THE COURT: Speak right into the microphone.
21 That's why we have it.

22 BY MR. OSBORNE:

23 Q. So is it fair to say that when you enter the
24 apartment, the first thing you're concerned about are
25 individuals?

1 A. That's correct.

2 Q. Is that correct? And you said you're looking at
3 corners. I think in SWAT terms they call it digging the
4 corner?

5 A. Yeah, slicing the pie, digging the corner. That's
6 the first main thing, is when a door opens we check the
7 corners.

8 Q. Because that's where people could hide?

9 A. That's the most dangerous spot in the room.

10 Q. When you first walked in the apartment, do you
11 recall what Officer Gorman was doing?

12 A. Officer Gorman -- when the door opened, Officer
13 Gorman went straight, right down to the side to that
14 corner and took a left.

15 Q. Took a left?

16 A. Yes.

17 Q. And Officer Habersham, did he go the same
18 direction?

19 A. Officer Habersham finally -- there was another
20 target over there that kind was of acting -- kind of
21 fled. When I came in, the other individuals I
22 confronted.

23 Q. Okay. When you first walked in, you said that
24 there was an individual who was on the couch.

25 A. That's correct.

1 Q. Did you see an individual on the couch?

2 A. Yes, sir. Officer Gorman was handling the
3 individual on the couch.

4 Q. Officer Gorman was with the person on the couch?
5 Did you later learn the identify of the person on the
6 couch?

7 A. Yes, sir.

8 Q. And who was that?

9 A. That was our fugitive we were seeking after, that
10 we were seeking information to bring us to that location.

11 Q. Do you remember his name?

12 A. His name was Middleton, the last name.

13 Q. Do you see him in the courtroom here today?

14 A. Yes, sir.

15 Q. Could you point him out and describe what he's
16 wearing.

17 A. Right here, black jacket.

18 Q. He's on the couch. Officer Gorman is dealing with
19 him. Officer Habersham is dealing with another
20 individual, and you said there were other people in the
21 room. Were they on the couch with him?

22 A. No, sir.

23 Q. Were they anywhere near him?

24 A. No, sir.

25 Q. Do you recall where they were?

1 A. There is one guy, I remember, on the -- Officer
2 Gorman was handling. Officer Habersham, another
3 officer -- Habersham went to -- there was another threat
4 over in the other corner. They occupied them, and
5 then --

6 Q. Stop right there. The other guy, was that a white
7 male?

8 A. Yes, it was a white male. It was a younger white
9 male. I remember him, and there was other individuals in
10 the house, which obviously we can't let them run, so they
11 got my main attention right there, so I was dealing with
12 them.

13 Q. And they were in the rest of the house, and I
14 guess at this point maybe coming forward, because
15 other -- were other officers entering the apartment then
16 at that point through the rear?

17 A. Yes.

18 Q. So they were all detained as well?

19 A. They were detained. Normally what we do when we
20 see more individuals like that, we usually say support
21 up, and they come around to assist.

22 Q. Okay. And it came to your attention that there
23 were narcotics found near the couch, near the defendant?

24 A. Yes, sir.

25 Q. Is that correct?

1 A. That's correct.

2 Q. All right. So you're -- I just want the jury to
3 understand. You're on the ILP team; is that correct?

4 A. Yes, sir.

5 Q. Are you a narcotics officer?

6 A. No.

7 Q. You arrest people for warrants?

8 A. That's right.

9 Q. When it came to your -- did you see the narcotics
10 or did Gorman bring it to your attention there were
11 narcotics?

12 A. After he got them in handcuffs, obviously detained
13 them, that's when they advised me of the narcotics that
14 were located right there in the spot.

15 Q. And this is about 5:45 in the morning?

16 A. Yes.

17 Q. What were y'all going to do if and when you
18 arrested the defendant? In other words, was your day
19 over or did your day just begin or do you remember?

20 A. No, it just began. Typically what we do is that
21 since we get credit, our main focus is catching the
22 offender, so we usually just look for that offender
23 because we get our credits from warrants, serving that
24 warrant. We're basically a fugitive warrant team.
25 Sometimes we come upon an investigation further, get

1 other stuff, but my main job assignment is warrants.

2 Q. So you mentioned credit. So your unit is tracked
3 based on the warrants that you serve; is that correct?

4 A. That's correct.

5 Q. So when you learned that there were narcotics
6 there, I guess you were happy about that, right?

7 A. Yes.

8 Q. You were happy?

9 A. Yes, that's correct.

10 Q. So that meant that you had more paperwork, more
11 narcotics to log and put into evidence. Was that happy?

12 A. It's just part of the job.

13 Q. Just part of the job?

14 A. Yeah.

15 Q. But in all honesty, it possibly would have been
16 easier if you made the arrest and left?

17 A. And we could have left, yes.

18 MR. OSBORNE: No further questions.

19 THE COURT: Mr. Whipper, any
20 cross-examination?

21 MR. WHIPPER: Just a couple quick questions.

22 CROSS-EXAMINATION

23 BY MR. WHIPPER:

24 Q. Officer Kruger, if I'm not mistaken, you are about
25 the fourth person -- fourth, fifth, sixth into that

1 trailer?

2 A. Yes, sir.

3 Q. 'Cause you got guys on the stoop, the one guy
4 clearly on the stoop. That's Habersham. Gorman, you got
5 two or three others right there. He said he had two or
6 three people to his right; is that correct?

7 A. Correct.

8 Q. So you're about fifth?

9 A. Fourth or fifth, fourth or fifth.

10 Q. So you're coming in then, now. They got it.
11 These guys have got it. That's part of what you're
12 doing, right, because you got to observe how they're
13 doing this thing, right?

14 A. Correct.

15 Q. So you train these guys?

16 A. Correct.

17 Q. And you can't have guys getting hurt on your
18 watch; isn't that right?

19 A. Yes, sir.

20 Q. So you're watching them, make sure they're doing
21 this thing right. So when you come in, you're backing
22 them up so you know what's going on and so you got it
23 under control, but when you get in there -- because one
24 of the things I didn't hear you talk about, there was the
25 white male at the door who opened the door, right?

1 A. Correct.

2 Q. All right. So you got him, and then you got
3 Tisdale who is the other white male, correct?

4 A. Correct.

5 Q. So you got to get the guy who opened the door.
6 Someone has to secure him. I don't know who did that.
7 Maybe you did that because you mentioned there was some
8 other people in there on the kitchen side and all that,
9 because I asked about that too, so it's sort of kind of
10 what you were saying?

11 A. Yes, sir.

12 Q. There is kind of a lot of folks back in there like
13 that. All right. So now when you talk about credit for
14 warrants, what you're saying -- and I understand about
15 warrants. What you're saying is if I put a stack of
16 warrants on your desk, Kruger, six months later, I don't
17 need to see that same stack of warrants on your desk;
18 isn't that right?

19 A. That's right.

20 Q. All right. I'm not trying to trick you, all
21 right? So that's what you're talking about. When you
22 got these people, you can't have them languishing out
23 there. You got to go get them, or else they shut the
24 unit down. They move you; is that correct?

25 A. That's correct.

ROBERT KRUGER - REDIRECT EXAMINATION

1 Q. All right. So what we want to make sure about
2 then is you got all these people secured and a lot of
3 bedlam going in. You're not a part of all this picture
4 taking stuff, the drugs and all that. You're not a part
5 of that?

6 A. No, sir.

7 Q. Those -- a little louder.

8 A. No, sir.

9 Q. You and I got the same problem. You and I can
10 hear ourselves better than other people can.

11 So you get this all together. You're processing
12 folks, and then after that, you're going on to the next
13 thing; is that correct?

14 A. That's correct.

15 Q. All right.

16 MR. WHIPPER: Thank you very much.

17 THE COURT: Any redirect?

18 MR. OSBORNE: One question.

19 REDIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. So your job is to find and arrest a quantity of
22 people; is that correct?

23 A. Quantity? We have specific targets we have for
24 the day.

25 Q. There was one?

1 A. There was one.

2 Q. And on April 19th, you found one?

3 A. Yeah. That was our main goal, our main target for
4 the day.

5 MR. CORVEY: Nothing further.

6 THE COURT: Any recross?

7 MR. WHIPPER: Nothing further, Your Honor.

8 THE COURT: You may step down. Is there any
9 objection to the witness being excused from the balance
10 of this trial?

11 MR. WHIPPER: None from the defense.

12 MR. CORVEY: No, sir.

13 THE COURT: All right. Thank you. Have a
14 nice day, Officer.

15 Let me see the attorneys up here.

16 (Discussion held at sidebar.)

17 THE COURT: All right.

18 Ladies and gentlemen: Now seems to be an
19 appropriate time to break for lunch, so I'm going to send
20 you to lunch with the instructions that you're not to
21 speak to anyone and you're not to talk amongst yourselves
22 about the case, and be back here just a little bit before
23 2:00 -- we'll say 2:15 by the time you get out of the
24 parking lot and everything like that.

25 Be back here ready to go at 2:15. Thank you.

A F T E R N O O N S E S S I O N

(In open court, jury present.)

THE COURT: All right. I just had an in chambers conference with the attorneys. Mr. Whipper, I'm going to allow you to state what you told me in there, and we'll put it on the record.

MR. WHIPPER: Your Honor, it's come to my attention that the attorney for the solicitor, Attorney Corvey, has counseled one of the witnesses for the State, Deron Ferguson, to change his testimony, and that change would lead me to confirm that the contraband belonged to my client. In other words, he's going to tell the Court that, tell the jury that, which is a definite difference.

THE COURT: Well, I mean, from one of our pretrial things, I think his client was always going to say that, wasn't he?

MR. WHIPPER: No. His client was supposed to testify to what he thought and what he figured might be his opinion, but he was told --

THE COURT: Yes, sir?

MR. CORVEY: Your Honor, I certainly did not ask him to, by any means, change his testimony. I did have a conversation with Mr. Ferguson briefly before coming back into the courtroom, really just reiterating what I discussed with him when I met with him with his

1 attorney present and then what I discussed with him on
2 the phone last Friday. I in no way instructed him to in
3 any way lie or change his testimony that the drugs were
4 Mr. Middleton's. I had always asked him, Who did you
5 believe the drugs in that house belonged to?

6 And his response to me has always been that
7 he believed they belonged to Mr. Tisdale, David Tisdale,
8 the codefendant in this case, and Mr. Middleton, and that
9 is exactly what he told me when we spoke out there. And
10 I don't know if Mr. Osborne was present, but I know his
11 attorney was present when he told me that, who I think is
12 right outside in the hallway, so I'm kind of taken aback
13 by this.

14 THE COURT: Who is making that allegation? I
15 mean, who told you?

16 MR. WHIPPER: My associate.

17 THE COURT: All right. Put her on the stand.
18 Come to the stand and be sworn.

19 MR. WHIPPER: Call to the stand Ms. Latoya
20 Scott.

21 LATOYA SCOTT,
22 having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Ms. Scott, you were when a
25 conversation was held by one of the solicitors and one of

LATOYA SCOTT - DIRECT EXAMINATION

1 the witnesses?

2 THE WITNESS: I wasn't present outside. I
3 was sitting in --

4 THE COURT: You said -- you're telling your
5 attorney that you were present when that happened.

6 THE WITNESS: I heard the conversation, yes,
7 sir.

8 THE COURT: You heard the conversation?

9 THE WITNESS: Yes.

10 THE COURT: Who was making the conversation?

11 THE WITNESS: Mr. Corvey and Deron.

12 THE COURT: And who is Deron?

13 THE WITNESS: Mr. Ferguson.

14 THE COURT: Okay. Now, what was the nature
15 of the conversation? What did you hear specifically?

16 THE WITNESS: What I heard specifically was
17 Mr. Corvey asking the code to the solicitor's room. I
18 don't remember what the code was, and he said, What you
19 need to say is that those drugs belonged to
20 Mr. Middleton.

21 And Mr. Ferguson said, Well, I saw I think
22 the investigator talking to the white guy outside, and
23 when they were trying to speak with him, his family
24 hovered around him to prevent him from speaking with him
25 outside.

1 THE COURT: Would you like to ask any
2 questions?

3 MR. CORVEY: Your Honor, I'm kind of taken
4 aback. I don't even know where to begin.

5 DIRECT EXAMINATION

6 BY MR. CORVEY:

7 Q. Where did this conversation supposedly take place?

8 A. About two doors down, by courtroom B. I guess
9 it's 4B. I was sitting inside. The solicitor's room is
10 on this side. I was sitting on this side. My door was
11 closed when I heard the conversation, but I recognized
12 your voice.

13 Q. And who all was there?

14 A. I was not outside the door, but I recognized
15 Mr. Corvey's voice, and I recognized Mr. Ferguson's
16 voice.

17 Q. How you would recognize Mr. Ferguson's voice?

18 A. I recognized Mr. Ferguson's voice and I recognized
19 your voice.

20 Q. And can you please reiterate exactly what you're
21 accusing me of saying again?

22 A. I said that you told Mr. Ferguson to say that the
23 drugs were Mr. Middleton's.

24 MR. CORVEY: Your Honor, may I call someone
25 else, please?

LATOYA SCOTT - CROSS-EXAMINATION

1 THE COURT: Mr. Whipper, would you like to
2 ask her any questions?

3 CROSS-EXAMINATION

4 BY MR. WHIPPER:

5 Q. Ms. Scott, what you heard was an exchange
6 between -- you heard an exchange between Corvey and
7 Ferguson, didn't you?

8 A. I did.

9 Q. You heard an exchange, and you heard him talking
10 to a person who was going to testify; is that correct?

11 A. Yes, sir.

12 Q. You were paying attention because there had been a
13 problem with the State. After we had the witnesses taken
14 out into the hallway -- that's called sequestration.
15 Remember we had them all taken out?

16 A. Correct.

17 Q. And after they were taken out, that is when
18 somebody from the solicitor's office attempted to speak
19 with Mr. Wilson, George Wilson; is that correct? George
20 Allen Wilson, the white guy that's testifying for us.

21 A. Correct.

22 Q. Isn't that right?

23 A. Correct.

24 Q. Okay. So then when that happened, the folks were
25 all upset about the fact that somebody from the

1 solicitor's office was trying to talk to Mr. Wilson while
2 he was sequestered; is that right?

3 A. Correct.

4 Q. Now, you heard Ferguson talk about -- he called
5 Mr. -- I think you said he called Mr. Middleton a victim.

6 A. Correct.

7 Q. He said, I saw the victim's family?

8 A. Downstairs, and they were hovering all around
9 Mr. Allen so that the State would not speak to him.

10 Q. All right. And then that's when you heard this
11 conversation; is that correct?

12 A. Yes.

13 Q. And, if I'm not mistaken, you were in what is
14 called the waiting room?

15 A. Yes.

16 Q. It's across from the solicitor's work room?

17 A. Correct.

18 Q. So there is a little cubby there. You come in,
19 and you can make a left and go into the work room?

20 A. Correct.

21 Q. Right? And that's where you were.

22 A. Correct.

23 Q. And the work room is across from the waiting room?

24 A. Correct.

25 Q. And that's where you heard these conversations?

1 A. Correct.

2 Q. And it concerned you, so you reported it to me,
3 correct?

4 A. Yes, sir.

5 Q. Now, you heard the tone of, You just make sure you
6 tell them the drugs belonged to Middleton?

7 A. To Mr. Middleton.

8 Q. And that's what you heard?

9 A. Yes, sir.

10 Q. Now, did you get a chance to see the statement --
11 the e-mail from Mr. Corvey to me regarding his
12 conversation with Ferguson?

13 A. I did recall seeing it. I don't remember mainly
14 what it said. Right now I do not remember what it said.

15 THE COURT: Didn't the statement already say
16 that he said it was Mr. Middleton's?

17 MR. WHIPPER: No.

18 THE COURT: I was asking the prosecutor.

19 MR. WHIPPER: I'm sorry.

20 MR. CORVEY: It does, Your Honor.

21 THE COURT: What does it say?

22 MR. CORVEY: I would like to read it into the
23 record.

24 THE COURT: Yes, sir. Please do.

25 MR. CORVEY: Should I read the entire e-mail?

1 THE COURT: Read the entire e-mail.

2 MR. CORVEY: Okay. I sent this to Mr.
3 Whipper on Tuesday, March 17, 2015. It was entitled
4 State v. Kevin Middleton, Deron Ferguson proffer.

5 THE COURT: And, Mr. Whipper, you acknowledge
6 receiving this?

7 MR. WHIPPER: Oh, yes.

8 MR. CORVEY: Seth: I just wanted to let you
9 know of my meeting and proffer agreement with codefendant
10 Deron Ferguson. This is a bit of a unique situation
11 since Deron has already pled to lesser charges, but his
12 attorney preferred that we proceed with the conversation
13 under my office's standard proffer agreement, which is
14 attached. Here is a summary of what Mr. Ferguson told
15 me:

16 He has known Kevin Middleton for several
17 years as they grew up in the same neighborhood and had
18 family who also live in the same neighborhood. He has
19 bought drugs, mainly marijuana, off Kevin in the past.
20 Quote, if I ever needed it, I would get in touch with
21 Middleton. If he didn't have it, then he would know who
22 would, end quote.

23 He met codefendant Tisdale a few days
24 parentheses, 2-3, end parentheses, before the incident
25 and understood him to be related in some capacity with

1 codefendant George Wilson. In the short time that he
2 knew Tisdale, Ferguson had bought weed off him a couple
3 times before the incident.

4 On the morning in question, he got up early
5 before work, parentheses, at the time he was working a
6 landscaping job and had an early start time, and he was
7 trying to buy some marijuana before his shift. He called
8 Tisdale and arranged to meet at Mr. Wilson's trailer
9 where the arrest took place. He said he must have gotten
10 there a short time before the arrest and only remembers
11 being inside for, like, 20 to 30 minutes, maybe less,
12 before the police showed up.

13 As for when he was inside, he came in and
14 exchanged pleasantries with everyone inside who he
15 described as out of it, like they had been partying and
16 using all night. Then started negotiating with Middleton
17 and Tisdale regarding the weight of the marijuana they
18 were selling.

19 MR. WHIPPER: One second. The language
20 says --

21 THE COURT: He's going to read it verbatim.

22 MR. WHIPPER: That is not verbatim.

23 MR. CORVEY: Please correct me.

24 MR. WHIPPER: And then started negotiating
25 with Middleton and Tisdale over the weight of marijuana

1 he was selling.

2 MR. CORVEY: My mistake.

3 The next sentence: According to
4 Mr. Ferguson, he was trying to buy a dime bag, or around
5 \$10 of weed, which he believed should have weighed two
6 grams. When he was handed the baggy, it looked, quote,
7 unquote, light to him so, he wanted to have Middleton
8 weigh it in front of him because Kevin had the scale on
9 his lap, and the larger bag of weed and the big crack
10 cookie was closer to Kevin than to Tisdale. Although
11 they were both sitting in chairs on either end of the
12 small table where the bulk of the drugs were located.

13 Apparently negotiation went on for a little
14 while as everyone seemed to be trying to game each other
15 to get the best deal. The negotiation was not heated by
16 any means. According to Ferguson, Middleton and Tisdale
17 were just blowing him off and saying things -- or saying
18 stuff along the lines of, Take what we are giving you or
19 give it back and go on your way.

20 Per Ferguson, he felt like he was negotiating
21 with both of them, but he did call Tisdale to set it up;
22 however, he got the sense the bulk of the crack was
23 Middleton's, not Tisdale's, based off what was said and
24 the proximity of the drugs to Middleton compared to
25 Tisdale. He also thought Middleton having the scale

1 implied that they were his drugs.

2 According to Ferguson, he was standing up
3 with his back to the door when police arrived. Once the
4 police saw Kevin, they came in and they ordered everyone
5 on the ground and everyone complied except for Tisdale
6 who ran toward the back door where officers were able to
7 detain him before he got outside.

8 He, being Ferguson, didn't seem to recall
9 anything specific that anyone said or did except for
10 Tisdale running because everything -- because, quote,
11 everything happened so fast. Once everyone was detained,
12 Middleton was taken outside and then pretty quickly
13 transported so that he could be served with his
14 outstanding warrants. Everyone else was held outside and
15 likely questioned until narcotics arrived.

16 Once narcotics arrived with a search warrant,
17 they further questioned the remaining codefendants.
18 Everyone else denied the drugs were theirs so they
19 arrested and transported everyone. Of note, according to
20 Ferguson at different times both Tisdale and Middleton
21 approached Ferguson about trying to put blame on each
22 other. Tisdale made some passing comments to Ferguson
23 while they were waiting to be booked at the jail along
24 the lines of, quote, we should pin this on Middleton
25 since he is already in a lot of other trouble already,

1 end quote. Middleton and Ferguson ended up in the same
2 GED class while at the jail, and at some point before the
3 actual conversation, Tisdale had bonded out while
4 Middleton and Ferguson were still inside.

5 Ferguson described it as a quick conversation
6 in which Kevin initially got a note or a message to him
7 somehow saying that he, being Ferguson, should get with
8 his lawyer about blaming Tisdale and leaving Middleton
9 out of it. According to Ferguson, they next spoke about
10 it in person during a GED class when Middleton approached
11 him and said something along the same lines as his
12 message, and Ferguson responded that he would consider it
13 but that he needed Middleton to go forward and tell his
14 lawyer that first.

15 Ferguson's impression was that Middleton was
16 asking him to merely admit that the drugs were Tisdale's
17 and leave Middleton out of it. To Ferguson, Middleton
18 seems to be implying the drugs were both Tisdale's and
19 Middleton's so that Middleton wasn't asking him to lie
20 but to merely give a half truth.

21 That was the general gist of the conversation
22 and should serve as a summary of his prospective
23 testimony, at least the parts that are admissible. I
24 plan on talking with Ferguson again before trial and
25 update you accordingly. Should you have any questions,

WILLIAM THROWER - DIRECT EXAMINATION

1 please feel free to give me a call. If you want to talk
2 further, please feel free to reach me on my cell,
3 [REDACTED], as I will be out of the office for the rest
4 of the week.

5 Hope all is well. Thanks, Ted.

6 THE COURT: Do you want to ask her any
7 follow-up questions?

8 MR. CORVEY: No, but I'd like to call Bill
9 Thrower to the stand.

10 THE COURT: Thank you. You can step down.

11 WILLIAM THROWER,

12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CORVEY:

16 Q. Mr. Whipper {sic}, do you represent Deron
17 Ferguson?

18 THE COURT: Mr. Thrower.

19 BY MR. CORVEY:

20 Q. I'm sorry. Mr. Thrower, do you represent Deron
21 Ferguson?

22 A. That's correct. I represented him after he had
23 been arrested for this charge that we're here on today.
24 His mother hired me after he had probably been in jail
25 for several months.

1 Q. Have I -- every time I've spoken with
2 Mr. Ferguson, have you been present?

3 A. I think so, yes.

4 Q. And just to summarize, did we first meet some time
5 a few weeks ago in my office in the solicitor's office?

6 A. Yes.

7 Q. And then did we meet at your office in which we
8 phoned Deron in?

9 A. That Friday, yes.

10 Q. And the third time being when I spoke to Deron,
11 being right out here in the hallway.

12 A. Just a few minutes ago, that's correct.

13 Q. Were you present for all those conversations?

14 A. Yes.

15 Q. At any time throughout any course of those
16 conversations, did you ever get the sense that I was
17 asking Mr. Ferguson to blame this all on Middleton?

18 A. Absolutely not, no.

19 Q. Did I ever ask him a specific question of whether
20 or not he was going to blame this all on Kevin Middleton?

21 A. I don't think so, no.

22 Q. Did I ever ask him to change his testimony?

23 A. Definitely not.

24 Q. Had I ever -- have I ever asked him anything that
25 you deemed inappropriate?

WILLIAM THROWER - CROSS-EXAMINATION

1 A. No. I would have stopped it, if you had.

2 MR. CORVEY: Thank you. No further
3 questions.

4 THE COURT: Mr. Whipper?

5 CROSS-EXAMINATION

6 BY MR. WHIPPER:

7 Q. Mr. Thrower, are you telling me that the whole
8 time today that Mr. Ferguson's been out in the hallway
9 that you've been with him? Is that what you're telling
10 me?

11 A. Yes.

12 Q. Are you sure?

13 A. If he walked up before me -- he was sitting by
14 himself. We didn't come upstairs together, but we
15 arranged to meet here at a time. When I got here, he was
16 sitting by himself on a bench right outside the
17 courtroom, and I sat down next to him and I've been with
18 him the rest of the time.

19 Q. What other conversation did Mr. Ferguson and Mr.
20 Corvey have? What else did they talk about?

21 A. You mean in which -- what do you mean?

22 Q. In regards to what they needed -- what else did
23 they talk about today when you were present?

24 A. Today?

25 Q. Uh-huh.

1 A. Well, we got here right when we broke for lunch,
2 and Mr. Middleton, we agreed -- he wanted to speak to him
3 before testimony this afternoon, so Mr. Middleton and I
4 agreed to meet up here at 1:45.

5 That was kind of a conversation just on scheduling
6 before y'all went to lunch, and then we got back up here.
7 Like I said, I came back up at 1:45, and he was already
8 sitting outside the courtroom, and then Mr. Corvey and
9 Mr. Osborne came up, just shortly after, and we had a
10 brief conversation in the hallway and then another brief
11 conversation in that -- I think it's the solicitor's work
12 room, actually got the code to get the door open.

13 Q. So Mr. Ferguson didn't inform Mr. Corvey about
14 anything having to do with Mr. Middleton's family?

15 A. Not that I heard, no.

16 MR. WHIPPER: Thank you, sir.

17 THE COURT: All right. Any further
18 questions?

19 MR. CORVEY: No, Your Honor. I would like to
20 call Deron Ferguson too.

21 THE COURT: All right. Thank you.

22 DERON FERGUSON,
23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CORVEY:

2 Q. Good afternoon, Deron.

3 A. Good afternoon.

4 Q. At any point have I talked to you outside the
5 presence of your attorney, Mr. Thrower?

6 A. No, sir.

7 Q. Has he been present for every question that I've
8 asked you, either in person or over the phone?

9 A. Yes, sir.

10 Q. Have I ever asked you to lie?

11 A. No, sir.

12 Q. Have I ever asked you to change your testimony in
13 any way?

14 A. No, sir.

15 Q. Have I ever asked you to blame all this on Kevin
16 Middleton?

17 A. No, sir.

18 Q. In fact, haven't I reiterated to you over and over
19 and over again that all I'm asking you to do is tell the
20 truth?

21 A. Yes, sir.

22 MR. CORVEY: No further questions, Your
23 Honor.

24 MR. WHIPPER: No questions.

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

1 All right. I find the claim to be baseless.
2 The trial will continue, and she's got the testimony
3 under oath, and I don't know what's going to happen from
4 this point in time.

5 Right now, I find her credibility to be zero.
6 She's -- it obviously wasn't what, Mr. Whipper, that you
7 thought it was, so we will continue with the trial as is.

8 Let's take a five-minute break and we'll
9 bring the jury back in. Thank you.

10 MR. WHIPPER: Thank you, Your Honor.

11 (E-mail correspondence marked for
12 identification as Court's No. 1.)

13 (E-mail correspondence marked for
14 identification as Court's No. 2.)

15 (Recess taken.)

16 THE COURT: Anything further?

17 MR. OSBORNE: When Mr. Whipper was making his
18 argument, he mentioned sequestration of witnesses, and I
19 wanted to get a little bit of clarification.

20 THE COURT: Let me tell you what my idea of
21 sequestration is: It means you can't be in the
22 courtroom. It doesn't mean you can't talk to them as
23 witnesses. There's nothing wrong with that. That's
24 normal witness preparation. That's part of trying a
25 case, so he can still talk to witnesses, they just can't

1 be in the courtroom.

2 MR. OSBORNE: And the flip side to that is
3 there's nothing wrong with us or our investigator trying
4 to speak to one of their witnesses.

5 THE COURT: That's exactly right. The
6 witnesses are witnesses. They're not witnesses for
7 either side. They're witnesses to an event.

8 MR. OSBORNE: Thank you, Your Honor.

9 THE COURT: Let's bring our jury in.

10 When I had lunch, one of the jurors was
11 sitting at the table next to me. I said hey. We talked
12 nothing about the case. Full disclosure.

13 (In open court, jury present.)

14 Ladies and gentlemen: I hope you had a nice
15 lunch. I meant to remind you, and I always tell jurors,
16 when you go to lunch, don't eat a huge lunch. I've had a
17 couple of cases where I noticed -- in the afternoon, we
18 were doing a doctor's deposition. A video deposition of
19 a doctor, especially a chiropractor, is probably the most
20 boring thing that you can imagine. I noticed one of the
21 jurors kind of doing this. I said, Stop the video.
22 Everybody stand up. Well, one of the jurors didn't stand
23 up. They were sound asleep.

24 If you need to take a break or something like
25 that or I start seeing your heads bobble and one of the

DERON FERGUSON - DIRECT EXAMINATION

1 bailiffs brings you a cup of water, it's me. State ready
2 to call your next witness?

3 MR. CORVEY: We are, Your Honor. State calls
4 Deron Ferguson.

5 DERON FERGUSON,
6 having been first duly sworn,
7 was examined and testified as follows:

8 THE COURT: You may begin.

9 DIRECT EXAMINATION

10 BY MR. CORVEY:

11 Q. Good afternoon, Deron. How are you?

12 A. I'm good, sir.

13 Q. Deron, were you arrested on the night of April 19,
14 2013?

15 A. Yes, sir.

16 Q. What were you arrested for?

17 A. Well, they first arrested me with -- possession
18 with intent to distribute cocaine, trafficking, and I
19 can't remember.

20 Q. Let me ask a different way: Were you arrested in
21 this case?

22 A. Yes, yes, sir.

23 Q. Were you at [REDACTED] on the night that
24 Mr. Middleton got arrested?

25 A. Yes, sir.

1 Q. Was everyone in the house arrested?

2 A. Yes, sir.

3 Q. Before going into a little detail about that,
4 would you tell me a little bit about yourself? What do
5 you do for a living, sir?

6 A. I work landscaping.

7 Q. How long have you been working landscaping?

8 A. Since I came home, five months.

9 Q. About five months? Who were you working with?

10 A. My brother.

11 Q. Your brother? Does he own a landscaping business?

12 A. Yes, sir.

13 Q. Do you know the defendant, Kevin Middleton?

14 A. Yes, sir.

15 Q. How do you know him?

16 A. From the neighborhood.

17 Q. Did you guys grow up together?

18 A. I wouldn't say grew up together, but I know him
19 from the neighborhood.

20 Q. Are your families from the same area?

21 A. Yes, sir.

22 Q. On the night in question, can you tell the jury
23 how it was you end up over at [REDACTED]?

24 A. Why did I go over there?

25 Q. Yes. Why did you go over there?

1 A. To purchase some marijuana. That's why I went
2 over there.

3 Q. And about what time in the morning did you go over
4 there?

5 A. I would say around 5:00, 5:00-ish, around 5:00.

6 Q. Why were you going over there so early?

7 A. Because I had to be to work that morning to try to
8 get me something to smoke.

9 THE COURT: You got to speak into the
10 microphone.

11 THE WITNESS: Yes. I was over there. I went
12 over to get me something to use, to smoke.

13 BY MR. CORVEY:

14 Q. Okay. During work?

15 A. Sir? Yeah, during work, yes, sir.

16 Q. Okay. And how much weed were you trying to buy
17 when you went over there?

18 A. \$10 worth.

19 Q. \$10 worth. Now, how did you figure out to go
20 there? How did you know there was marijuana there?

21 A. I know Tisdale. I know the codefendant. I called
22 him to see if he had something, went over there.

23 Q. Okay. And now if you could please just describe
24 for the jury, it's around 5:00 in the morning. What did
25 you observe when you went inside that house?

DERON FERGUSON - DIRECT EXAMINATION

1 A. When I went in, there were a couple of people --
2 everybody was sitting down.

3 Q. Okay.

4 A. Well, it looked like they was up all night, and --

5 Q. And how did everybody appear? What was their
6 general appearance?

7 A. Appearance, like they were all tired. It seemed
8 like they was up all night.

9 Q. It seemed like everyone was up all night?

10 A. Yes, sir.

11 Q. Now, once you went over there and you went inside,
12 how did you go about trying to purchase the marijuana?

13 A. I walked over to Tisdale, start talking to Tisdale
14 about purchasing some marijuana.

15 Q. Did you talk to Mr. Middleton about purchasing
16 marijuana as well?

17 A. No, sir. I didn't talk to him, but he said
18 something -- when I was talking to Tisdale, you know, it
19 was me and Tisdale conversation. He just added himself
20 in.

21 Q. What do you mean by that?

22 A. I mean, he was talking; like, getting in me and
23 Tisdale conversation.

24 Q. What did that mean to you?

25 A. I mean, what it mean to me, I just -- I mean, it

1 didn't mean nothing. It mean, he just trying to mind our
2 own business, that's how I look at it.

3 Q. Well, did you get the sense in the course of that
4 conversation that --

5 MR. WHIPPER: Your Honor, that's leading.

6 THE COURT: Rephrase your question.

7 BY MR. CORVEY:

8 Q. Now, Deron, during the course of your conversation
9 with Mr. Tisdale, at any point did you feel like you were
10 negotiating with both Mr. Middleton and Mr. Tisdale?

11 MR. WHIPPER: Your Honor, that's suggesting
12 an answer.

13 THE COURT: Overruled. He can answer that
14 question.

15 MR. CORVEY: I'll restate it.

16 BY MR. CORVEY:

17 Q. At any point during your initial conversation with
18 Mr. Tisdale, did you ever feel like you started
19 negotiating with both Mr. Middleton and Mr. Tisdale?

20 A. Yes, sir.

21 Q. And that started happening when you mentioned
22 Mr. Middleton injected himself into the conversation?

23 A. Yes, sir.

24 Q. Now, if you could, for the jury, just kind of
25 generalize, what was that conversation about? /

1 A. What it was about was what I paid for, it didn't
2 look like what I paid for, what I was trying to pay for.

3 Q. Did it look like it was less than what you were
4 paying for?

5 A. Less than what it was, yes, sir.

6 Q. Did you ask Mr. Middleton to weigh the drugs?

7 A. Yes, sir.

8 Q. Why did you ask him to weigh the drugs?

9 A. Because he had a scale in his lap.

10 Q. Did Mr. Tisdale have a scale at any point?

11 A. No. Mr. Middleton had a scale in his lap.

12 Tisdale did not have one.

13 Q. Tisdale did not have one?

14 A. No, sir.

15 Q. About how long did this conversation take place?

16 A. About ten -- about ten minutes, ten, fifteen
17 minutes.

18 Q. How long were you over there that morning?

19 A. Probably -- I mean, between 10 to 30 minutes. I
20 wasn't looking at the time. I really -- I know I was
21 there a while.

22 Q. And when you were inside, did you notice any other
23 drugs over there?

24 A. Yes, sir.

25 Q. Where did you see those?

1 A. When I walked in, it was on the table, on the end
2 table.

3 Q. Okay.

4 A. And Kevin Middleton and Tisdale were sitting by
5 it.

6 Q. When you saw it?

7 A. When I seen the scale.

8 Q. And would you recognize those drugs if I showed
9 you a picture of them?

10 A. Yes, sir.

11 Q. Deron, I'm showing you what's been marked for
12 evidence as State's Exhibit 1. Deron, is that what
13 Mr. Middleton was sitting next to?

14 A. Yes, sir.

15 Q. What is that?

16 A. Marijuana.

17 Q. Can you -- on that screen right in front of you,
18 you can actually draw on it, can you circle the
19 marijuana?

20 A. (Indicating.)

21 Q. What's that white substance?

22 A. Crack cocaine.

23 Q. Did you know that was going to be over there?

24 A. No, sir.

25 Q. You were just going over there to buy a little bit

1 of marijuana?

2 A. Yes, sir.

3 Q. Now, I want to talk to you a little bit about what
4 was going on that morning, just for the sake of the jury.
5 I mean, not many people wake up at 5:00 in the morning to
6 buy marijuana. You had to work. What time did you have
7 to be at work?

8 A. 7:00, 7:30.

9 Q. How were you going to get to work that day?

10 A. Use the bus.

11 Q. What were your plans after you bought the
12 marijuana?

13 A. Well, I was going to smoke it before, I go to work.

14 Q. Did you have to go anywhere else before smoking
15 it?

16 A. Just to buy a cigar, and then I go home, yeah.

17 MR. WHIPPER: I'm having a hard time
18 understanding him.

19 THE COURT: Please speak into the microphone.

20 BY MR. CORVEY:

21 Q. We'll just back up. So you bought the marijuana,
22 and then you said you were going to go to the store?

23 A. Yes. I was going to go to the store, yes.

24 Q. Then back home?

25 A. Then back home, yes, sir.

1 Q. And then what were you going to do?

2 A. Go to the bus stop and wait for my bus.

3 Q. About what time did that bus come?

4 A. It come like 6:00 -- 6:00 something in the
5 morning.

6 Q. So you had to be there pretty early?

7 A. Yes, sir.

8 Q. So you were in a little bit of a rush?

9 A. Yes, sir.

10 Q. Now, Mr. Middleton, during the time when you were
11 in [REDACTED], did you get a sense of whose drugs
12 those were?

13 MR. WHIPPER: Your Honor, objection. That is
14 really suggesting.

15 MR. CORVEY: I'm not suggesting an answer at
16 all, Your Honor.

17 THE COURT: He's just asked the question.
18 Overruled.

19 BY MR. CORVEY:

20 Q. At any time when you were inside that house, did
21 you get a sense of whose those drugs were?

22 A. No, sir.

23 Q. What was your impression?

24 A. What was my impression of --

25 Q. Uh-huh.

1 A. I don't understand the question, sir.

2 Q. What was your impression regarding who the drugs
3 belonged to?

4 A. I mean, to be honest, I didn't have an impression.
5 I just come over there to buy marijuana, and I called
6 David Tisdale, you know what I'm saying? I didn't know
7 the other stuff was going to be there, you know what I'm
8 saying, so I didn't have an impression. I was just
9 coming for some marijuana, you know what I'm saying?

10 Q. And so just backing up, who was sitting next to
11 that table?

12 A. David Tisdale and Kevin Middleton.

13 Q. Okay. And you had testified that you were
14 negotiating with them about the marijuana?

15 A. Yes, sir.

16 Q. Was that the marijuana we see in that picture?

17 A. Well, something -- yeah, something like that, yes,
18 sir.

19 Q. And you testified that Mr. Middleton had a scale
20 on his lap?

21 A. Yes, sir.

22 Q. So you're sure you didn't have any impression upon
23 who owned those drugs sitting on that coffee table?

24 A. No, sir.

25 Q. If you had to guess.

1 A. I mean --

2 MR. WHIPPER: Objection.

3 THE COURT: Sustained. You can't speculate.

4 THE WITNESS: Yeah. There you go.

5 BY MR. CORVEY:

6 Q. Now, Mr. Ferguson, I want to talk to you just
7 briefly about what ended up happening in that house that
8 night. So you were there, and then you were talking back
9 and forth with Mr. Tisdale and Mr. Middleton and then
10 what happened?

11 A. Then the police came.

12 Q. And what did you do when the police came?

13 A. I turned around. We was trying to figure -- at
14 first, we were trying to figure who was it, and then when
15 we figure out it was the police, then Tisdale run. I got
16 on the ground. Everybody got on the ground, but I really
17 wasn't seeing who was behind me. I was on the ground,
18 you know what I'm saying.

19 Q. Did it happen quickly?

20 A. Yes, sir, real quickly.

21 Q. Then did you say anything to the officers that
22 night at all?

23 A. I mean, they pull us in one by one. I just told
24 them what I was there for. I told them what my part was.
25 I came to buy, you know.

DERON FERGUSON - DIRECT EXAMINATION

1 Q. And then did you get arrested for this?

2 A. Yes, sir.

3 Q. All right. Now, briefly, I want to talk to you a
4 little bit about your past. You've been arrested before?

5 A. Yes, sir.

6 Q. Were you arrested in -- did you plead guilty in
7 2004 to possession with intent to distribute cocaine?

8 A. Yes, sir.

9 Q. Did you plead guilty in that same time to
10 possession with intent to distribute cocaine within
11 proximity?

12 A. Yes, sir.

13 Q. Did you plead guilty to grand larceny in 2005?

14 A. Yes, sir.

15 Q. In 2012, did you plead guilty to possession with
16 intent to distribute marijuana?

17 A. Yes, sir.

18 Q. I want to talk to you a little bit about your time
19 at the jail. Now, while at the jail, was there ever a
20 plan to blame this on anyone else?

21 A. Yes, sir.

22 Q. Please describe that for the jury.

23 A. Mr. Tisdale was trying to put it on Kevin
24 Middleton.

25 Q. When did that happen?

1 A. When -- Kevin Middleton get arrested first, and
2 Tisdale was -- said that -- said he already is going to
3 jail, put it on Mr. Middleton.

4 Q. Okay. And then did anyone else approach you in
5 the jail?

6 A. Then Middleton came to me and asked -- and he want
7 to put it on Tisdale.

8 Q. Okay. And what did you say when he asked you to
9 do that?

10 A. Sir?

11 Q. What did you say when he asked you to do that?

12 A. I told him if he get his lawyer and he go forward
13 first, he tell, then I would tell.

14 Q. Okay. And did you guys exchange any letters about
15 that?

16 A. Yes, sir.

17 Q. Would you recognize a copy of that letter if I
18 showed it to you?

19 A. Yes, sir.

20 Q. What is that I'm handing you?

21 A. Letter I wrote to him --

22 Q. Okay. And --

23 A. -- explaining that.

24 Q. That this -- what do you mean by explaining that?

25 A. Explaining that if he want me to give up Tisdale,

1 that he have to go first.

2 Q. Okay. Now, did you ever go about blaming Tisdale
3 for this?

4 A. I didn't blame nobody.

5 Q. Okay. Because you ended up pleading guilty?

6 A. Pleading guilty.

7 Q. And what did you plead guilty to?

8 A. To conspiracy with attempt to break South Carolina
9 laws.

10 Q. Could it have been accessory in violation of drug
11 laws?

12 A. Accessory? I don't know. It was something like
13 that, accessory with attempt to break South Carolina law.

14 Q. But you didn't plead to the bulk of the drugs?

15 A. No.

16 Q. Why not?

17 A. Because they know it wasn't mine.

18 Q. Why did you plead guilty then?

19 A. Because I was in the house, and I was already on
20 probation, and I knew I was in the wrong.

21 Q. How were you in the wrong?

22 A. Because I was coming to buy drugs, and I wasn't
23 supposed to do that, and I know I'm not supposed to do
24 that.

25 MR. CORVEY: Beg the Court's indulgence, Your

1 Honor.

2 No further questions, Your Honor.

3 THE COURT: Let me see the attorneys for one
4 moment, please.

5 (Discussion held at sidebar.)

6 MR. CORVEY: I'm sorry, Judge.

7 THE COURT: Mr. Whipper, you may proceed.

8 MR. WHIPPER: May I approach, Your Honor?

9 THE COURT: You may.

10 CROSS-EXAMINATION

11 BY MR. WHIPPER:

12 Q. Mr. Ferguson, let's see this document you got
13 right here. This, that's is your letter. It's in your
14 handwriting, correct?

15 A. Yes, sir.

16 Q. You recognize this? You remember writing it?

17 A. Yes, sir.

18 Q. I want you to just keep that there in front of
19 you. I think I have a copy of it. Take a quick look and
20 make sure it's the same thing.

21 That's the same thing? That's the actual letter I
22 gave you?

23 A. Yes, sir.

24 Q. That's the original; is that correct?

25 A. Yes, sir.

1 MR. WHIPPER: I would like to mark this as
2 Defense Exhibit 2.

3 THE COURT: Any objection to Defense Exhibit
4 2?

5 MR. CORVEY: No objection.

6 THE COURT: Without objection, Defendant's 2
7 is admitted.

8 (Handwritten note marked for identification
9 and admitted into evidence as Defendant's No. 2.)

10 You may proceed.

11 BY MR. WHIPPER:

12 Q. In your letter, Mr. Ferguson, you say, I'm just
13 stuck like Chuck, meaning that you were trapped by the
14 circumstances; is that correct?

15 A. Yes, sir.

16 Q. And you said, But like I said, I don't want to be
17 the first one to sing like a bird; is that correct?

18 A. Yes, sir.

19 Q. In other words, if anybody want to talk to
20 somebody about what the real deal is, you were going to
21 go first?

22 A. Yes, sir.

23 Q. And then you say, I feel like I could ring it out
24 and tell.

25 Mr. Middleton says, I know you're ready to go

1 home.

2 Then you say, But he will get his in the long run,
3 making reference to Mr. Tisdale; is that correct? But he
4 will get his in the long run, is that Mr. Tisdale?

5 A. Yes, sir.

6 Q. Here you said, I feel like we should just wait it
7 out; is that correct?

8 A. Yes, sir.

9 Q. And you also haven't been around lawyers and had
10 some idea you wanted your lawyer to represent you. You
11 talk about making sure that the lawyers got together, got
12 things worked out; is that correct?

13 A. Yes, sir.

14 Q. And then you have, I need to see you make the
15 first move. Have your lawyer talk to my lawyer; is that
16 correct?

17 A. Yes, sir.

18 Q. Now, you mentioned that you got some charges.
19 Now, your charges had to do with the fact that you wanted
20 to buy some marijuana.

21 A. Yes, sir.

22 Q. And so then you were charged with conspiracy to
23 violate South Carolina laws?

24 A. Yes, sir.

25 Q. And that's a misdemeanor, isn't it? I think you

1 got some treatment too behind that; isn't that right?
2 What is ATU?

3 A. Oh, are you talking about 2004?

4 MR. CORVEY: Objection, Your Honor.
5 Relevance.

6 MR. WHIPPER: It's part of the sentencing
7 sheet.

8 THE COURT: Well, but it's outside of the
9 scope of --

10 MR. WHIPPER: Your Honor, he asked what he
11 pleaded to.

12 THE COURT: His were within the ten-year
13 period. Sustained.

14 MR. WHIPPER: Your Honor, this plea -- you
15 might want to see this. This is just last year, July
16 2014, following on the questions that he asked, asking
17 what did he plead to in this particular arrest.

18 THE COURT: Have you seen this?

19 MR. CORVEY: I'm not sure what this is.

20 MR. WHIPPER: I'm sorry. I didn't show it to
21 him, so --

22 THE COURT: I'm going to overrule your
23 objection. You may proceed, counsel.

24 BY MR. WHIPPER:

25 Q. Approaching, Your Honor. Take a look at this.

1 Now, that's you there.

2 A. Yes, sir.

3 Q. Right?

4 A. Yes, sir.

5 Q. And look at this. So you had five years?

6 A. Yes, sir.

7 Q. Suspended to three.

8 A. Yes, sir.

9 Q. And further suspension upon two years' probation;
10 is that correct?

11 A. Yes, sir.

12 Q. And there is ATU, so you had to do some alcohol
13 training; is that correct?

14 A. No, sir.

15 Q. No? What is this --

16 A. Yeah, I see it, but it wasn't on my paper.

17 Q. It wasn't on your paper?

18 A. No, sir.

19 Q. Now, you see right here? That's Judge Hughston,
20 and everybody there on the sentencing sheet, okay?

21 Now, when law enforcement came in, like you were
22 saying, you said you're not sure about a length of time,
23 maybe from ten to 30 minutes, you're not really sure, but
24 when law enforcement came in, you immediately complied
25 with what they said. You did what you were instructed to

1 do.

2 A. Yes, sir.

3 Q. You got down. You cooperated; is that correct?

4 A. Yes, sir.

5 Q. And you remembered that Mr. Middleton was taken
6 out of the room?

7 A. Yes, sir.

8 Q. Is that correct?

9 A. Yes, sir.

10 Q. Tisdale tried to run?

11 A. Yes, sir.

12 Q. When you say he tried to run, he was trying to get
13 out of it?

14 A. Yes, sir.

15 Q. They got him somehow. Do you remember how they
16 got him?

17 A. Someone was at the back door, he ran to the back,
18 waiting on him.

19 Q. Okay. All right. And now so then you,
20 Mr. Tisdale -- I think there was somebody else in there.
21 Do you remember this guy? I know somebody in the back
22 there brought out. Do you remember seeing that person
23 come out?

24 A. Yes, sir.

25 Q. But it was about -- ended up being all together, I

1 think, six of you?

2 A. Six, yes, sir.

3 Q. Tisdale, Wilson; ended up Middleton being charged,
4 but there was a young woman, Brittany Boyd, and some
5 fellow by the name of Curtis Wilson; is that correct?

6 A. Yes, sir.

7 Q. And they got you all there, and then they asked
8 questions as to whose drugs were these?

9 A. Yes, sir.

10 Q. And, of course, nobody wanted to own the drugs; is
11 that correct?

12 A. Yes, sir.

13 Q. Now, when you heard the people ome in, what did
14 you hear when law enforcement came in exactly? Did you
15 hear the knock on the door?

16 A. No, sir.

17 Q. Music was still going pretty good?

18 A. Yes, sir.

19 Q. Okay. But when they came in, you knew police were
20 coming in.

21 A. Yes, sir.

22 Q. How did you know police were coming in?

23 A. They got their shirts that said SWAT team and
24 waving big guns, sir.

25 Q. Waving guns. All right. So to avoid the guns and

SHAWNTA MIDDLETON - DIRECT EXAMINATION

1 them, you immediately knew the drill, right?

2 A. Yes, sir.

3 Q. All right.

4 MR. WHIPPER: Thank you very much.

5 THE COURT: Any redirect?

6 MR. CORVEY: No redirect, Your Honor.

7 THE COURT: All right. Thank you. You may
8 step down. Any objection to this witness being excused?

9 MR. WHIPPER: No objection from defense, Your
10 Honor.

11 THE COURT: All right. You are excused, sir.
12 Are you good, or do y'all want a break?

13 You may call your next witness.

14 MR. OSBORNE: The State calls Shawnta
15 Middleton.

16 SHAWNTA MIDDLETON,
17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. Good afternoon, Shawnta. Where do you work?

22 A. North Charleston police department.

23 Q. How long have you worked there?

24 A. Eight years.

25 Q. What is your position there?

1 A. Evidence technician.

2 Q. Did you receive any independent training with
3 North Charleston or any education to assist you in that
4 position?

5 A. Yes.

6 Q. And what are some of the training that you
7 received?

8 A. Evidence, preservation and preparation, inventory
9 control and data entry.

10 Q. And that's really one of your primary duties in
11 North Charleston, isn't it, preserving evidence and
12 making sure nothing has been tampered with before
13 bringing it into court?

14 A. Yes, sir.

15 Q. Per North Charleston's procedure, do you assign
16 evidence a case number or any sort of identification or
17 identifying markers?

18 A. We assign locations, but case numbers come from
19 dispatch.

20 Q. Okay. But there are numbers that would enable you
21 to be able to look at the evidence and then tell what
22 case it's assigned to; is that accurate?

23 A. Yes, sir.

24 Q. Okay. How do you -- once you come into possession
25 of evidence, how do you log it in, or how do you keep it?

1 A. We make sure it's sealed, case numbers match the
2 chain of custody, and then we assign it to a location.

3 Q. To a location?

4 A. To a location throughout our inventory system.

5 Q. So if you need to go back and get it, you can
6 easily find it?

7 A. Yes.

8 Q. And where do you log it in? Where do you actually
9 physically put the evidence?

10 A. You mean like a computer system or --

11 Q. No, I mean like the evidence itself. Once you get
12 it, where do you store it?

13 A. Depends on what it is. We have separate locations
14 for general evidence, drugs, jewelry and money.

15 Q. Okay. On April the 20th of 2013, did you receive
16 evidence from an Officer Steve Hall regarding a case
17 versus the defendant, Kevin Middleton?

18 A. Yes.

19 Q. When you received the evidence, did it appear to
20 be tampered with in any way?

21 A. No, sir.

22 Q. When you received the evidence, if it had been
23 tampered with in any way, would you have received it or
24 would you have rejected it?

25 A. Rejected it.

1 Q. Okay. Now, when officers bring you evidence, and
2 evidence in this case, what are some of the different
3 ways that it's presented to you? How is it packaged?

4 A. Sometimes it's a paper bag, or plastic bag, heat
5 sealed.

6 Q. When they give you the evidence, do they then have
7 access to be able to come back and then retrieve the
8 evidence, or somehow tamper with it or anything like
9 that?

10 A. No, sir.

11 Q. All right. I'm going to show you some evidence at
12 this time.

13 (Discussion held at sidebar.)

14 THE COURT: Counsel, proceed as instructed.

15 MR. WHIPPER: Let me see what you have as
16 evidence.

17 BY MR. OSBORNE:

18 Q. I'm showing you now for ID purposes State's
19 Exhibit No. 9 and State's Exhibit No. 10. Can you take a
20 look at these two items and tell me if you recognize
21 them?

22 A. Yes, sir.

23 Q. And what are they?

24 A. This is the BEST kit, and this is the digital
25 scale.

1 Q. How do you know that?

2 A. It has our evidence label on it, along with the
3 packages.

4 Q. And you recognize that?

5 A. Yes, sir.

6 Q. Do you know when you first saw those items?

7 A. Yes.

8 Q. What was the date?

9 A. I believe it was April 30, 2013.

10 Q. Okay. And I take it it's in substantially the
11 same condition now it was as whenever you saw it?

12 A. Yes.

13 Q. Do you know who submitted these items into
14 evidence?

15 A. Yes.

16 Q. And who was that?

17 A. Officer Steve Hall.

18 Q. And do you know the date and time, or the date?

19 A. I believe it was -- he dropped it on the 19th, I
20 believe, and I received it the next day.

21 Q. Do you know who received and logged in the
22 evidence?

23 A. I did.

24 Q. Okay. And just tell the jury, just so everyone
25 knows, when you receive it into evidence, what do you do

1 again? What did you do with those pieces of evidence?

2 A. I made sure the case number matched the paperwork,
3 made sure it was sealed and initialed and put it into an
4 inventory system.

5 Q. And you took that evidence and then secured it?

6 A. Yes, sir.

7 Q. Okay. Do you know who was next in the chain of
8 custody to come into possession of the evidence?

9 A. I was.

10 Q. And what did do you with that?

11 A. Transported it to SLED.

12 Q. Why was it going to SLED?

13 A. For analysis.

14 Q. To test it?

15 A. Yes, sir.

16 Q. And you're the person who received it and
17 transported to SLED?

18 A. Yes, sir.

19 Q. Are you the only individual that takes items to
20 SLED to be analyzed?

21 A. No, sir.

22 Q. Okay. Was the evidence tampered with in any way
23 when it was in your evidence or your custody?

24 A. No, sir.

25 Q. And once you get to SLED, per your procedures, how

1 do you submit evidence to SLED?

2 A. We just give them the evidence and they do pretty
3 much the same thing we do. They make sure the case
4 numbers match the seal and they sign a chain of custody
5 saying they received it.

6 Q. And then log it in as evidence?

7 A. Right. Yes, sir.

8 Q. And then, once again, when you dropped it off to
9 them and you relinquished custody or control over to
10 their evidence technician, was it tampered with or
11 destroyed in any way?

12 A. No, sir.

13 Q. Did you come into possession of evidence again?

14 A. Yes, sir.

15 Q. Did you receive the date on any of that?

16 A. June -- I don't recall the date, but it was in
17 June.

18 Q. After the analysis was done?

19 A. Yes.

20 Q. And you got it from SLED?

21 A. Yes, sir.

22 Q. And brought it back to North Charleston?

23 A. Yes, sir.

24 Q. And stored it again?

25 A. Yes, sir.

1 MR. OSBORNE: No further questions.

2 THE COURT: Mr. Whipper?

3 MR. WHIPPER: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. WHIPPER:

6 Q. So you have no paperwork at all demonstrating who
7 handled what once you took it to Columbia, do you?

8 A. No, sir.

9 Q. You know from what your job says what is supposed
10 to happen in Columbia; isn't that correct?

11 A. Yes, sir.

12 Q. And the job says that SLED is supposed to do some
13 things with it?

14 A. Yes, sir.

15 Q. Is that correct? When you get it back, all you
16 know is you pick it up from Columbia?

17 A. Correct.

18 Q. Do you travel there to get it?

19 A. Yes, sir.

20 Q. You travel there to get it. They call you and
21 tell you to come get it?

22 A. No, sir. Well, we transport evidence every week,
23 and they return the items to us.

24 Q. When it's ready, then you get it back?

25 A. That's correct.

SHAWNITA MIDDLETON - CROSS-EXAMINATION

1 Q. Now, you have no paperwork at all, Ms. Middleton,
2 at all. There is nothing signed by Mr. Hall saying that
3 he gave it to you, nothing?

4 A. A chain of custody, yes, sir.

5 Q. And where is it?

6 A. I don't have it with me.

7 Q. Aren't you supposed to sign something when you
8 take it to SLED?

9 A. Yes, sir.

10 Q. Did you sign something for SLED?

11 A. Yes, sir.

12 Q. But you don't have a copy of it?

13 A. Yes, I have a copy of it.

14 Q. But you don't have it today?

15 A. No, sir.

16 Q. What about the statement you need to get from
17 SLED? Where is that?

18 A. Statement --

19 Q. Yes. In other words, SLED is supposed to sign
20 something. You're supposed to sign something for SLED
21 when you pick it up?

22 A. Yes, sir.

23 Q. And you don't have that?

24 A. No, sir.

25 Q. Now, when you dropped it off at SLED, you don't

1 know exactly what happened with it?

2 A. No, sir.

3 Q. And that's not your job; is that correct?

4 A. That's correct.

5 Q. You don't know who all would have it and what they
6 might do, right?

7 A. Yes, sir.

8 Q. All right. So you do recall coordinating -- I
9 think the case number -- is that the L number on this
10 thing? Which number is -- there it is. It's on the
11 back.

12 A. Yes, and it's also written here.

13 Q. All right. Okay. So you get this back, and you
14 put it somewhere? 7

15 A. Yes, sir.

16 Q. And where do you put it?

17 A. In our drug locker.

18 Q. And how many people have access to your drug
19 locker?

20 A. All the evidence technicians.

21 Q. At least three?

22 A. Yes, sir.

23 Q. So there are documents that have a life based on
24 the stuff right here?

25 A. Yes.

SHAWNTA MIDDLETON - CROSS-EXAMINATION

1 Q. But you have none of those documents?

2 A. No, sir.

3 Q. So when you got back in -- now, who got this? Did
4 you give this to somebody for this week?

5 A. Yes.

6 Q. You actually gave it to somebody?

7 A. Yes.

8 Q. Who did you give it to?

9 A. Officer Hall.

10 Q. Now, you're saying this thing looks like it did
11 when you first got it?

12 A. Yes, sir.

13 Q. So when you got it, did it have all this liquid
14 stuff in it?

15 A. Yes, sir.

16 Q. It was always liquified like that?

17 A. Yes.

18 Q. And y'all handled it despite the fact it had some
19 kind of unknown liquid in there?

20 A. Yes. It was sealed.

21 Q. It was sealed in that stuff, because that was
22 inside there?

23 A. Yes.

24 Q. And you have no idea what that liquid is?

25 A. No, sir.

1 Q. When you took it to Columbia, it had that liquid
2 in it?

3 A. Yes.

4 Q. When you get this stuff, you don't take any
5 photographs of it when you get it?

6 A. No, sir.

7 MR. WHIPPER: Thank you, ma'am.

8 THE COURT: Any redirect?

9 MR. OSBORNE: Just briefly.

10 May I have these two forms, just for
11 ID purposes, marked.

12 THE COURT: These would be 11 and 12.

13 (Chain of custody sheet marked for
14 identification as State's No. 11.)

15 (Chain of custody sheet marked for
16 identification as State's No. 12.)

17 REDIRECT EXAMINATION

18 BY MR. OSBORNE:

19 Q. All right. Ms. Middleton, again, I know we kind
20 of covered this already, but you don't photograph
21 evidence, you don't store evidence, you just transport
22 evidence?

23 A. Yes, sir.

24 Q. Mr. Whipper was basically asking you about a chain
25 of custody and how do you know this and how do you know

1 that.

2 I'm going to ask you, for ID purposes only, about
3 State's Exhibit is 11 and State's Exhibit 12. Could you
4 look at those and tell me what documents those are.

5 A. They're chain of custody forms for the evidence.

6 Q. Do those documents detail where that evidence
7 went, who received it, who transported it somewhere, and
8 then who stored it?

9 A. Yes, sir.

10 Q. And on there, does that document show Officer Hall
11 having possession of those two items?

12 A. Yes, sir.

13 Q. Does that show Officer Hall then giving those
14 items to you?

15 A. Well, I received it from the drop-off, yes.

16 Q. It's not a situation where he hands it to you. He
17 stores it in maybe a mailbox or something where it's
18 locked, and you get it out of there?

19 A. That's correct.

20 Q. Does that document show where you then transported
21 it to SLED?

22 A. Yes.

23 Q. So when Mr. Whipper asked is there a document that
24 shows a chain of custody, in fact, there is a document
25 that shows that, and it is called a chain of custody?

1 A. That's correct.

2 MR. OSBORNE: Thank you. No further
3 questions.

4 THE COURT: Any recross?

5 MR. WHIPPER: No recross.

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

7 All right. I think this is a good time for a
8 break. If you want a Coca-cola or you want to take a
9 smoke break, they'll take you out. All right? Please
10 don't discuss anything about the case.

11 (Recess taken.)

12 (In open court, jury present.)

13 THE COURT: All right. Thank you. You may
14 be seated. All right.

15 The State may call its next witness.

16 MR. CORVEY: Thank you. The State calls
17 Douglas Robinson.

18 DOUGLAS ROBINSON,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CORVEY:

23 Q. Good afternoon, Mr. Robinson. What is your
24 occupation?

25 A. I'm a forensic chemist assigned to the drug

1 analysis department of the South Carolina Law Enforcement
2 Division, commonly known as SLED.

3 Q. How long have you worked in SLED?

4 A. Just over seven years now.

5 Q. And what are your duties as a chemist?

6 A. My primary duty is analysis of drug evidence
7 submitted to the laboratory by various agencies
8 throughout the state.

9 Q. And what type of training do you have in analyzing
10 chemicals like that?

11 A. I received my bachelor of science in chemistry
12 from the University of South Carolina. After graduating,
13 I spent approximately three years performing chemical
14 analysis in the environmental chemistry field. Upon
15 being hired at SLED, I received law and legal training
16 through the South Carolina Criminal Justice Academy as
17 well as in-house training in the analysis of controlled
18 substances through the SLED drug analysis department.
19 I've also attended the Drug Enforcement Administration's
20 forensic chemistry seminar.

21 Q. And then how many times have you analyzed
22 substances in your duties with SLED?

23 A. Hundreds if not thousands of times.

24 Q. Now, have you ever had the occasion to analyze
25 crack cocaine?

1 A. Yes, sir.

2 Q. What about powder cocaine?

3 A. Yes, sir.

4 Q. Heroin?

5 A. Yes, sir.

6 Q. And have you previously been admitted as an expert
7 on drug analysis in court before?

8 A. Yes, sir.

9 Q. How many times?

10 A. Sixteen.

11 Q. Okay. And did you have occasion to analyze the
12 drugs involved in this case?

13 A. Yes.

14 MR. CORVEY: Your Honor, at this time I would
15 move that Mr. Robinson be declared an expert on drug
16 analysis.

17 THE COURT: Mr. Whipper, would you like to
18 voir dire him?

19 MR. WHIPPER: No, Your Honor.

20 THE COURT: Do you have any objection to him
21 being deemed an expert in drug analysis?

22 MR. WHIPPER: No, sir.

23 THE COURT: Now, ladies and gentlemen,
24 normally a person, a witness, can only testify as to what
25 they heard, saw, smelled, felt, or tasted; however, there

1 is an exception. If somebody has an additional amount of
2 education and experience, then they can testify as an
3 expert witness, and they can give an opinion about
4 something they did not taste, smell, feel or hear,
5 something like that.

6 Now, ladies and gentlemen, whether or not you
7 decide you want to accept their opinion will be entirely
8 up to you as the jurors in this case, and you can accept
9 his opinion or you can reject it, but you should give it
10 no greater weight just because I consider him and deemed
11 him to be an expert, but give it the weight that you, as
12 jurors, believe it should have and treat it like any
13 other evidence.

14 Thank you, and you may proceed.

15 MR. CORVEY: Thank you, Your Honor.

16 BY MR. CORVEY:

17 Q. Now, Mr. Robinson, before we get into your work in
18 this case, I just kind of want to talk generally about
19 your procedures at SLED, but please explain to the jury
20 and kind of walk us through, once evidence checks into
21 SLED once it arrives to you.

22 A. Yes. As a general procedure, typical procedure,
23 the law enforcement agency that's submitting the evidence
24 would arrive at the SLED laboratory. They would submit
25 the evidence through a process of paperwork with our

1 evidence control department.

2 The evidence would be received by an evidence
3 control technician and then promptly secured in a secured
4 vault room within the evidence control department. That
5 evidence would stay secured in that location until I let
6 evidence control know that I'm ready to pick up that
7 evidence. I would personally then go down and retrieve
8 that evidence, bring it up to my department, and either
9 work it at that time or secure it within a vault that we
10 have in our department.

11 Q. And once you have then retrieved evidence and are
12 going to analyze it, could you explain the steps you
13 would take then?

14 A. Yes, sir. At the point in time that I decide to
15 do the analysis on the case, it would be retrieved from
16 the secured vault. The evidence would be removed. The
17 initial thing would be to check and make sure the seals
18 were intact. We have what we call a BEST kit that most
19 submissions are submitted with. It's called a BEST
20 submission. That stands for best evidence sample
21 testing. (

22 This consists of a temper evident plastic
23 container that has a glue sealed top, and the law
24 enforcement officer can seal this bag on scene and that
25 way it can pass through various hands, various locations

1 and arrive to me with confidence that the evidence inside
2 has not been tampered with. On all four sides of the
3 bag, there is some sort of marking that would be -- it
4 would be evident if any attempts were made to get into
5 the bag; whether it be stretch marks. Obviously, a cut
6 in plastic would be obvious.

7 The first step is to ensure that these seals are,
8 in fact, intact. May I refer to my notes before I move
9 any further?

10 Q. Yes.

11 A. In this particular case, the evidence was sealed.
12 It's noted on my worksheet that I'm looking at here.
13 Once that is established, that the evidence is sealed and
14 the integrity of the chain is there, I would then remove
15 the evidence, separate it out into items as to how I was
16 going to perform the analysis. At that time, I would
17 remove each individual item separately from all this
18 packaging, take an initial weight of the items.

19 At that point I would take an initial or
20 indicative test sample. Based on what the indicative
21 testing gave me as a result, I would proceed to a
22 confirmatory instrumentation testing. A final weight is
23 then taken after all samples have been aliquoted for
24 analysis, and then each item is secured separately to
25 prevent cross contamination.

1 Once all that analysis is performed, the evidence
2 is placed inside of a new heat sealed bag we refer to as
3 a Kristopher-pack.

4 Q. And I think you already answered this, but just as
5 a point of clarification, if any evidence arrived to you
6 that did appear to be tampered with, would you test it?

7 A. No, sir. We do not test evidence that is not
8 sealed.

9 Q. Okay. And with regard to the evidence in this
10 case, was it sealed?

11 A. Yes, sir, it was.

12 Q. Did it appear to be tampered with in any way?

13 A. No, sir.

14 Q. Would you recognize the drug evidence in this case
15 if I showed it to you?

16 A. I would.

17 Q. Mr. Robinson, I'm showing you what's been
18 premarked as State's Exhibit 10. Can you please tell the
19 jury what that is, please.

20 A. Yes, sir. What we have here is actually several
21 things. The outer packaging that you can see is
22 completely clear; is, in fact, the Kristopher-pack that I
23 just referred to as the heat-sealed bag. On the very
24 bottom, the initials D.R. and the date of 5/8/13 are
25 actually on the seal. This is the date I actually did

1 the analysis and resealed the evidence.

2 Inside of the Kristopher-pack with a green top and
3 blue swirl patterns, this is the BEST kit and BEST bag.
4 It's folded in half to fit inside the Kristopher-pack.
5 On this bag, you will see in blue marker seal instant, my
6 initials, and 5/8/13 also. This was a notation I made as
7 well as on my worksheet to note the seals were intact and
8 no suspected tampering had been done.

9 On the reverse side, there are several plastic
10 bags, some containing rock substance and some powder
11 substances.

12 Q. Okay. And now does that -- what is in that bag,
13 does that appear to have been tampered with in any way?

14 A. No, sir. The seal that I made on 5/8/13 appears
15 to be intact.

16 Q. And would you be able to tell if that seal had
17 been broken?

18 A. Yes, sir.

19 MR. CORVEY: Your Honor, at this time I move
20 to admit State's Exhibit 10 into evidence.

21 THE COURT: Any objection?

22 MR. WHIPPER: No objection.

23 THE COURT: Without objection, State's
24 Exhibit No. 10 is admitted.

25 (BEST kit marked for identification and

1 admitted into evidence as State's No. 10.)

2 BY MR. CORVEY:

3 Q. Now, Mr. Robinson, with regard to the analysis you
4 performed on the substances inside that bag, did you
5 compile a work report?

6 A. Yes, sir.

7 Q. Would you recognize that report if I showed it to
8 you?

9 A. Yes, sir.

10 Q. I'm handing you what has been premarked as State's
11 Exhibit 13. What is this?

12 A. This is a SLED drug analysis drug report that was
13 issued by me. This appears to be a copy of it.

14 Q. Now, is that a copy of the report you made in
15 analyzing the drugs in this case?

16 A. Yes, sir, it is.

17 Q. Does it appear to be accurate?

18 A. Yes, sir, it does.

19 MR. CORVEY: Your Honor, at this time I move
20 State's Exhibit 13 into evidence.

21 THE COURT: Any objection?

22 MR. WHIPPER: No objection.

23 THE COURT: Without objection, State's
24 Exhibit 13 is admitted.

25 (SLED drug report marked for identification

1 and admitted into evidence as State's No. 13.)

2 BY MR. CORVEY:

3 Q. Now, Mr. Robinson, I'm going to put your report on
4 here, on this projector. I want to go through it with
5 you.

6 Will you describe to the jury what your findings
7 were with regard to the submission in this case?

8 A. As I stated, when I opened the BEST bag to do the
9 analysis, I was able to separate the evidence out into
10 various items for testing. The first item that was
11 worked is marked item 1.1. The evidence is described as
12 evidence bag marked 1, containing rock substance.
13 Result: Cocaine base, crack, C-II found, 25.2 grams,
14 388.8 grains.

15 Q. What about the next item?

16 A. Item 1.2, evidence bag marked 2, containing
17 plastic bag containing rock substance. Results: Cocaine
18 base, crack, C-II found, 4.3 grams, 66.3 grains.

19 Q. And item 1.3?

20 A. Evidence bag marked 3, containing rock substance.
21 Results: Cocaine base crack, C-II found, 0.4 grams, 6.1
22 grains.

23 Q. On the section page, how about item 1.4?

24 A. Item 1.4, evidence bag marked 4 containing rock
25 substance. Cocaine base crack C-II found, 4.1 grams,

1 63.2 grains.

2 Q. Item 1.5?

3 A. Evidence bag marked 6 containing compressed powder
4 substance, heroin C-I and cocaine C-II found, 0.6 grams,
5 9.2 grains.

6 Q. And the last item, item 1.6?

7 A. Evidence bag marked 7 containing two plastic
8 corner bags containing powder substance, cocaine C-II
9 found with a combined weight of 0.5 grams, 7.7 grains.

10 Q. And then on your worksheet did you indicate, or
11 did you tally up what the weight of each substance was
12 totally or just each individual?

13 A. No, sir. Each individual item was totalled
14 separately.

15 Q. Now, I wanted to talk to you a little bit about
16 item ten here. I noticed, in looking at it, that there
17 appears to be some liquid in there. Could you explain
18 for the jury what you believe that is.

19 A. The liquid was not noted or present during
20 analysis; however, cocaine base -- the purpose of
21 cocaine -- converting cocaine hydrochloride, or powder
22 cocaine, into cocaine base is to actually lower its
23 melting point. It makes it suitable for smoking.

24 There will be times, especially in a hot South
25 Carolina summer, that evidence has been transported and

1 the temperature within the trunk, or wherever the
2 location was, exceeded temperatures to where the cocaine
3 can actually degrade somewhat from a solid substance to a
4 liquid substance.

5 Q. And is that fairly common?

6 A. We do see submissions quite often that are in
7 various stages between a liquid and a solid substance of
8 cocaine base, yes.

9 MR. CORVEY: I have no further questions at
10 this time.

11 THE COURT: Mr. Whipper?

12 MR. WHIPPER: May it please the Court:

13 CROSS-EXAMINATION

14 BY MR. WHIPPER:

15 Q. C-I and C-II, what do these refer to?

16 A. These are the control status in South Carolina
17 law.

18 Q. This item 1.5, that says that somehow contains two
19 different substances.

20 A. Yes, sir.

21 Q. What do you make of that?

22 A. It's quite common, actually. It's a mixed matrix
23 of two controlled substances.

24 Q. So it's actually neither, or it's both?

25 A. It's a totality of both. It's a mixed matrix

1 containing both heroin and cocaine.

2 Q. So I would be -- and I'm just making sure I
3 understand. I mean, it would be already if I charged
4 somebody with having cocaine, right?

5 A. It's not for me to say, sir.

6 Q. Uh-huh. Is there a name for it, when it's mixed
7 like that?

8 A. I believe it's typically referred to as a speed
9 ball, but I don't -- my expertise is in drug analysis,
10 not narcotics.

11 Q. Now, we had testimony that said that this thing
12 was -- there were no instructions about making sure you
13 keep it in a cool space?

14 A. Drugs are actually fairly stable from the chemical
15 makeup. There's no requirements for the vast majority of
16 drugs as far as temperature requirements, no.

17 Q. But when it starts to convert, does that affect
18 its toxicity?

19 A. I want to be clear that I didn't say it converts.
20 It just melted.

21 Q. Okay. Do you have notes that help you to remember
22 what condition these things reached you in? Is there
23 anything in your notes that -- say, for instance, I
24 started to convert. You know, I got it, beginning to
25 convert, do you check off anything of that kind?

1 A. Typically, I would note that a substance was moist
2 or wet, but we don't have a way to determine the liquid
3 content of the sample when it comes in.

4 Q. Now, your documents don't show that because
5 earlier testimony showed this was happening when you took
6 it to Columbia. These were already --

7 A. I can't speak to that, sir.

8 Q. But you -- what I'm saying is, testimony says
9 that -- I mean, it's obviously in there, but this is --

10 MR. CORVEY: Objection, Your Honor. Pitting
11 witnesses.

12 THE COURT: Sustained.

13 MR. WHIPPER: We might need a little
14 direction on that.

15 (Discussion held at sidebar.)

16 THE COURT: Counsel, proceed as instructed.

17 MR. WHIPPER: Thank you, Your Honor.

18 BY MR. WHIPPER:

19 Q. When you determined the weight, do you do that
20 based on the concentrations or how it reacts or is that
21 actually a scale weight?

22 A. It's a scale weight, absent of all packaging.

23 Q. When packaging comes in and you take it out, you
24 repackage it; is that correct?

25 A. Repackage is a term that we use. It depends on

1 whether the initial packaging is a secure packaging; for
2 example, a zip-lock bag. If a zip-lock bag was the
3 original packaging and I could secure the evidence back
4 in there, there would not be a repack.

5 If a bag is added to the case, the word repack is
6 written on the bag to denote that I've added that bag
7 back into the evidence.

8 Q. Okay. So that then these small bags that we see
9 here are your bags.

10 A. May I?

11 Q. Take a look at these.

12 A. Thank you. Yes, sir. Any bag within the
13 Kristopher-pack with the words bag added would be the
14 bags that I add.

15 MR. WHIPPER: Thank you very much.

16 THE COURT: Any redirect?

17 MR. CORVEY: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. CORVEY:

20 Q. Now, Mr. Robinson, I just want to briefly ask you,
21 I note on your report that the heroin you tested was in
22 grains. Can you explain what the difference between
23 grains and grams is?

24 A. Most substances are reported out in both grams and
25 grain. Grains is actually a reference to old English

1 weights. Some of the South Carolina laws are still
2 written in grains. Heroin is one that actually has a
3 weight threshold in grains.

4 Q. Okay. And then I just want to talk to you again.
5 Would you have tested this if the BEST kit arrived to you
6 looking like that?

7 A. Well, again, the liquid is not of concern to me.
8 The seal is what concerns me. If the seal was intact and
9 there was no signs of tampering to the evidence, I would
10 have worked it. If it came in and it was wet, I would
11 have tested the liquid as such rather than the solid, but
12 the compelling factor of analysis or non-analysis is the
13 seal.

14 Q. Okay. And you testified earlier that had it
15 arrived to you, if it was wet at all, you likely would
16 have notated it?

17 A. If it was in this condition, I absolutely would
18 have notated it. It would not have been on my report,
19 but it would have been on my worksheet as wet.

20 Q. Is it on your worksheet?

21 A. It is not.

22 MR. CORVEY: No further questions.

23 THE COURT: Any recross?

24 MR. WHIPPER: No recross.

25 THE COURT: Thank you. You may step down.

STEVE HALL - DIRECT EXAMINATION

1 Any objection to this witness being excused?

2 MR. WHIPPER: None, Your Honor, from the
3 defense.

4 MR. CORVEY: None from the State.

5 THE COURT: All right. Thank you. Have a
6 nice evening.

7 THE WITNESS: Thank you, sir.

8 THE COURT: State may call its last witness.

9 MR. CORVEY: State calls Steve Hall.

10 STEVE HALL,

11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CORVEY:

15 Q. Officer Hall, where do you work?

16 A. I'm a police officer with the city of North
17 Charleston.

18 Q. How long have you worked for North Charleston?

19 A. Approximately nine years.

20 Q. Have you worked with any other agencies before
21 that?

22 A. No, I haven't.

23 Q. Okay. Now, can you please explain some of the
24 capacities that you've worked in while with North
25 Charleston.

—STEVE HALL - DIRECT EXAMINATION—

1 A. I'm currently a patrol officer. Prior to that, I
2 was in the narcotics unit.

3 Q. How long were you with the narcotics unit?

4 A. Approximately three-and-a-half years.

5 Q. What were your duties with the narcotics unit?

6 A. Drug investigations, handling of confidential
7 informants, stuff like that.

8 Q. And what sort of training do you have in the field
9 of narcotics detection enforcement?

10 A. I received training at the criminal justice
11 academy, went through narcotics undercover techniques,
12 gang investigations, so forth.

13 Q. Now, were you working with the narcotics unit on
14 the night of April 19, 2013?

15 A. Yes, I was.

16 Q. What happened that night?

17 A. I was on duty. I got called by my sergeant that
18 the ILP team had brought in some narcotics and they
19 needed a search warrant.

20 Q. And just backing up a moment, what did you mean by
21 being on duty?

22 A. We have callouts certain weekends. We have
23 callouts, like if it's early in the morning, and that
24 particular night me and another detective were on
25 callout.

1 Q. Did you obtain a search warrant for the residence?

2 A. I did.

3 Q. How did you go about doing that?

4 A. My partner, Detective Hurst, he went to the actual
5 scene with ILP. I went to our office. He then relayed
6 me over the phone what he had witnessed on scene, what he
7 was told by ILP. I typed up the search warrant and got
8 it signed by a judge.

9 Q. Okay. And then what did you do once the search
10 warrant was signed?

11 A. I responded to the incident location on Leslie
12 Street and proceeded to execute a search warrant.

13 Q. And what do you do? Just describe for the jury,
14 generally, what do you do when you execute a search
15 warrant?

16 A. Typically we -- once we show up, we have a copy of
17 the search warrant. We read it to anyone that's in the
18 house, maybe possible defendants, and, basically, we
19 began searching the residence. There was already
20 narcotics in plain view, so that was a probable cause for
21 the search warrant. We gathered that first, took
22 photographs of it, and searched the rest of the house.

23 Q. When you say you gathered it up, what did you do
24 with it once you gathered it up?

25 A. I mean, one -- we take one piece at a time. We'll

—STEVE HALL - DIRECT EXAMINATION—

1 photograph it, place it into an evidence bag; seal it, go
2 into the next item that I find, photograph it, place it
3 into a bag, seal it and so forth and so on, and then once
4 that's all done, everything is done on a return. We have
5 a computer there. Everything is written down on the
6 computer, where it was located, what the weight was, what
7 it tested, so forth and so on.

8 Q. And with regard to where the drugs were located at
9 Leslie Street, can you describe for the jury where you
10 found everything?

11 A. They were all on what looked like an end table.
12 As the officers displayed earlier, when you walked in
13 there was a couch, and then there was a small table that
14 was sitting there. The large piece of crack, or cookie,
15 was located on top. There was several -- I think there
16 was one bag underneath that had a rock substance.

17 I think there were two separate baggies that had a
18 powder substance. There was also a carton of cigarettes
19 that had a small clear plastic baggy that had like a
20 brown, tannish type substance, and there was also two --
21 what I recall, near the hallway, two off-white rock
22 substances on the floor that were kind of loose.

23 Q. Okay. And then you said you took pictures of
24 those?

25 A. That's correct.

1 Q. And, just generally, were most of the drugs except
2 for the ones that were sort of located in the hallway
3 around the coffee table or side table in front of the
4 couch?

5 A. Correct.

6 Q. Now, Officer Hall, I'm going to show you what's
7 been entered as State's Exhibit 1. Can you please
8 describe where that was located in reference to where the
9 couch was.

10 A. The couch would be kind of -- can I draw on that?

11 Q. Yeah.

12 A. The couch would be kind of right here.

13 Q. And what do you see in that picture?

14 A. I see the cookie of crack. I see a bag of
15 marijuana, some -- it looks like clear plastic baggies
16 that have been maybe ripped open a little bit.

17 Q. And I want to talk to you a little bit about that
18 clear plastic baggy. Are baggies commonly used in
19 narcotics trafficking?

20 A. Yes, they are. Typically, in a trafficking
21 situation, there is going to be baggies -- I mean, the
22 little -- you know, the box of baggies you get at a
23 grocery store, usually there's that there. There's
24 scales, stuff like that. I'm not too -- I don't think
25 there is anything in these particular baggies right here.

1 They just look like they're empty.

2 Q. Okay.

3 A. Or have been already ripped open or something.

4 Q. Okay. And then you mentioned -- and you described
5 that as a cookie. Could you explain what you mean by
6 cookie.

7 A. Typically, to make crack cocaine you need cocaine
8 as the raw ingredient. The cocaine is usually mixed with
9 baking soda, water, cooked in usually a Pyrex glass jar
10 or some type of glass jar and microwaved, most of the
11 time, and when it's cooked, what happens is it solidifies
12 and turns into the shape the bottom of the jar, Pyrex
13 dish, would be.

14 Q. And that looks like a cookie?

15 A. Yes. It looks like a cookie, or sugar cookie or
16 whatever you call it.

17 Q. I'm now showing you State's Exhibit 2. Would you
18 please describe for the jury what we're seeing there?
19 There is a clear button on there if you want to clear
20 those marks.

21 A. This is underneath the table. This right here is
22 a small piece of crack cocaine. This object right here
23 is a larger piece of crack cocaine, looks like it's
24 already been packaged. It looks like -- I think there is
25 a knot you can kind of see here, sandwich bags like I

1 explained earlier; typically found at any type of drug
2 trafficking operation.

3 Q. What are they used for?

4 A. To package drugs, like -- I mean, a good example
5 right here, just like that, just put in there and then
6 knot inside it, and it's ready for sale.

7 Q. Okay. I'm showing you State's Exhibit 3, and just
8 so I'm clear, for everything you just saw on State's
9 Exhibit 2, is that under the table?

10 A. Correct, correct.

11 Q. What do you see here in 3?

12 A. The digital scale. What I recall, these are two
13 separate bags of powder cocaine, and then there's some
14 swisher sweets, some cigars.

15 Q. And let's talk about those swisher sweets. How
16 are those commonly used?

17 A. A lot of time they are used -- they're split open,
18 tobacco is emptied out and marijuana can be placed in
19 them, sealed back up and smoked.

20 Q. And there was marijuana on the table?

21 A. Correct.

22 Q. And then that scale, can you explain why scales
23 are important in drug trafficking?

24 A. 'Cause weight -- weights vary. I mean, if the
25 weight is not there, in the end, it's all about the

1 money. So you can't just start breaking off chunks and
2 guesstimating, so hence the digital scales. Plus, any
3 clients or users or buyers want to make sure they're not
4 getting ripped off, weight-wise.

5 Q. And did you check that scale?

6 A. That's correct, yes.

7 Q. Would you recognize it if I showed it to you?

8 A. I would.

9 Q. Showing you what's been premarked as State's 9,
10 what is that?

11 A. That's the same scale.

12 Q. How do you know that?

13 A. That's the scale I recall to take a picture of.

14 Q. Did you log it into that bag?

15 A. I did.

16 Q. Is it in the same or substantially the same
17 condition as when you cataloged it?

18 A. It is.

19 MR. CORVEY: At this time, I move State's
20 Exhibit 9 into evidence.

21 THE COURT: Any objection?

22 MR. WHIPPER: No objection.

23 THE COURT: Admitted into evidence.

24 (Digital scale marked for identification and
25 admitted into evidence as State's No. 9.)

1 BY MR. CORVEY:

2 Q. I want to talk to you a little about powder
3 cocaine. What's the significance of how to make powder
4 cocaine in relation to a large amount of crack cocaine?

5 A. Without the powder cocaine, there would be no
6 crack cocaine. It's impossible.

7 Q. Because that's how you make crack?

8 A. Correct.

9 Q. I'm now going to show you first State's 5, but you
10 mentioned a cigarette carton that was sitting next to the
11 table. Is that a picture of the cigarette carton?

12 A. Yes.

13 Q. That is a closer up picture of the cigarette
14 carton. What is that inside?

15 A. That's a clear plastic bag, knotted, and it has,
16 like, a tannish, brown substance inside.

17 Q. Do you remember what that was?

18 A. It tested presumptive for heroin also.

19 Q. And what do you mean by presumptive?

20 A. We have field test kits that you can place a tiny
21 bit in, and there's little chemicals that you break, and
22 it will field test it. That's what it tested for.

23 Q. Now, showing you State's Exhibit 6, what are
24 those?

25 A. Those are the two off-white rock substances. They

STEVE HALL - DIRECT EXAMINATION

1 were kind of near the hallway.

2 Q. And then --

3 A. Kind of a little bit further away from the table.

4 Q. And then just as a point of clarification, those
5 are the only substances that were located in the
6 residence that weren't right around the coffee table?

7 A. Correct.

8 Q. So after you then individually recover each piece,
9 or each series of narcotics, what do you then do with
10 them once you've put them in an individual baggy?

11 A. Typically, we'll take them back to our office,
12 usually back to our office, do all the chain of
13 custodies. Chain of custodies is usually done on the
14 scene, bag everything, get everything together. We've
15 got to have an incident report that's attached to it, so
16 we do that, and then, basically, take it to the evidence
17 technician, and if they're not there, we lock it up.

18 Q. And do you put it in a BEST kit?

19 A. Oh, yes, yes.

20 Q. So they're all sealed by the time --

21 A. Yes. The cocaine and cocaine base and the heroin
22 were all placed in the BEST kit prior to.

23 Q. Now, I want to talk to you a little bit about the
24 quantity of cocaine base that was there. How much did
25 you find on scene in total?

1 A. I think it was around 35 grams, approximately.

2 Q. And then when cocaine base or crack is broken up
3 to be sold, how is it commonly sold on the street?

4 A. Typically, like a quarter of a gram is a common --
5 .2 grams, one-quarter gram, around there.

6 Q. And then how much does it normally go for on the
7 street?

8 A. Like, \$20, or what they call a 20; 20 rock is
9 about a quarter of a gram.

10 Q. So just by rough math, I know I won't be able to
11 do it, but how much exactly would 35 grams of crack be
12 worth on the street?

13 A. We typically go by -- if it's .2, about \$100 a
14 gram, so \$3,500, that piece right there, or, all
15 together, that piece right there was 25 grams, I think,
16 \$2,500.

17 Q. So total \$3,500 and then \$2,500 for that piece?

18 A. Correct.

19 Q. And then can you please describe what a trap house
20 is.

21 A. It's usually a house that's been set up kind of
22 almost like going to a convenience store, in and out
23 revolving doors where drugs have been set up. It's a
24 known location for users, and until the police catch on
25 to it, it just -- it's like a revolving door, basically,

—STEVE HALL - DIRECT EXAMINATION—

1 for drug trafficking.

2 Q. Drug dealers and users?

3 A. Yeah. The dealers will stay in the house and
4 users -- instead of users going out to make the sale,
5 users will come to the house.

6 Q. Okay. And then I want to ask you a little bit
7 about the heroin that was found. How is heroin normally
8 sold on the street?

9 A. I'm not sure. I mean, as far as --

10 Q. As -- like a normal serving size, for lack of a
11 better word.

12 A. Not very much at all, maybe .1 grams. It's not
13 much at all. Not much is needed.

14 Q. Do you have any recollection of what the street
15 value of that would be?

16 A. A couple years ago when I was in narcotics, I
17 think they were half a gram for maybe \$180 or so.

18 Q. In your experience as a narcotics officer, what
19 did everything that observed and hear on the scene
20 indicate to you?

21 A. It was obviously some type of drug operation,
22 trafficking operation was going on.

23 Q. And now then, just generally, so you kind of
24 described for the jury that once you obtain the warrant,
25 you then came back on the scene. Did you have any

1 interactions with the defendants that were remaining on
2 scene?

3 A. I know Detective Hurst had Mirandized them. No
4 one claimed anything. It was -- there was no questions
5 asked. Once no one claimed anything, then we pretty much
6 stopped any type of questioning.

7 Q. And then you charged all of them with that?

8 A. Correct, correct.

9 Q. Why did you charge everyone there?

10 A. I mean, it's a pretty significant amount of drugs.
11 No one was claiming it. They were all in constructive
12 presence of it.

13 Q. Now, normally, I guess you could say -- would you
14 agree this situation is unique for a narcotics bust?

15 A. Yeah. I mean, it has happened, but, yes. It's
16 not like an everyday --

17 Q. Just kind of briefly describe, what is your
18 general narcotics kind of investigation like --

19 A. Usually, we have confidential informants or
20 undercover officers that will develop a case or target,
21 and the investigation goes on from there. You just try
22 to build your case and build your case and go down the
23 line, go from small to bigger to bigger to bigger to
24 bigger, and this was not like that type of case.

25 Q. Not like that type of case because there was no

1 investigation?

2 A. There was no investigation. There was no target.

3 Q. You got -- the ILP team just stumbled upon it?

4 A. Correct. We were called out of the blue to the
5 scene.

6 MR. CORVEY: Court's indulgence, Your Honor.

7 THE COURT: Yes.

8 BY MR. CORVEY:

9 Q. Now, in your experience, is it common to find a
10 drug seller with hundreds of dollars in their possession?

11 A. Yes.

12 Q. What about your average buyer?

13 A. Average buyer? No, not a lot of money, no.

14 Q. And is that something you consider significant in
15 regards to making narcotics arrests?

16 A. Yes.

17 Q. The amount of money someone has on them?

18 A. If you have a large quantity of money, that's
19 obviously an indicator that there is, you know;
20 especially in small denominations of bills and stuff like
21 that.

22 Q. Because drug dealers normally deal in cash.

23 A. Yes.

24 MR. CORVEY: No further questions at this
25 time.

1 THE COURT: Mr. Whipper?

2 MR. WHIPPER: May it please the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WHIPPER:

6 Q. I want to be clear about this issue for the search
7 warrant. You guys were called in after ILP was there.
8 When you guys got there, they had these people outside of
9 the trailer, correct?

10 A. Correct.

11 Q. And you yourself were on scene.

12 A. Correct.

13 Q. Now, what we're trying to do is make sure to do
14 things right here, so when you got there, you had an
15 executed warrant, is that what you're saying? You had an
16 executed warrant?

17 A. I had a signed warrant from a judge, correct.

18 Q. I'm approaching Your Honor.

19 THE COURT: Yes. Not a problem.

20 BY MR. WHIPPER:

21 Q. Take a look at that.

22 A. Yes.

23 Q. There is a paper there, several documents there.

24 A. Yes. It looks like everything is there.

25 Q. Now, I notice -- did you maybe -- did you say that

1 when you go out to the scene, you take a printer with
2 you? Is that what you say?

3 A. It's for the return. I did not type this on
4 scene. This was typed at our office. I had a partner,
5 Detective Hurst, who was on scene. They relayed the
6 information to me via telephone while I was at the
7 office, to give me the information regarding everything,
8 from the description of the house to how to get to the
9 house from city hall, to the probable cause for the
10 search warrant.

11 Q. All right. And so I'm going to ask you -- take a
12 look at this, all right? That document there, that's
13 your warrant.

14 A. This is just a description of the premises to be
15 searched. Oh, I see what you're saying.

16 Q. Where is your signature on there?

17 A. There is no signature on here.

18 Q. Your signature is not on there.

19 A. No. The judge's signature is on here.

20 Q. Okay. Look at the other document. Look at the
21 one under that.

22 A. This one?

23 Q. Yeah, that one.

24 A. Return? That is the return -- that's going to be
25 Detective Hurst's signature. He was doing the actual

1 return, typing this, on scene.

2 Q. This was on scene?

3 A. The return you actually type on scene, and this is
4 left on scene to let the resident know this is what we
5 removed from their house. This is just showing that I
6 recovered this. I actually took physical custody of
7 everything that was in that house while Detective Hurst
8 took this document back, got it signed by the judge that
9 initially gave us a search warrant, or initially signed
10 the search warrant.

11 Q. So now this is the return?

12 A. That's the return, yes, sir.

13 Q. And then so this is the warrant.

14 A. This is part of the warrant. The whole --
15 everything, this would not -- this would not be part of
16 that when we originally got the warrant signed, to be
17 executed, correct.

18 Q. All right. So the return is a separate document,
19 in fact.

20 A. Yes.

21 Q. And I understand maybe this is being typed at the
22 scene.

23 A. That would have been typed at the scene, yes, sir.

24 Q. So you had left the scene by then; is that
25 correct?

—STEVE HALL - CROSS-EXAMINATION—

1 A. Well, this would be brought to the scene. This
2 would be blank. Nothing would be on there. Once we were
3 there, we'd take our printer, our portable computer, and
4 start logging: We found an off-white rock-like
5 substance. Okay. Where is it located? People would
6 type that in.

7 Once that was all done, we print out a copy of the
8 whole warrant, Detective Hurst signed it, and we left a
9 copy with the house and we took a copy with us.

10 Q. So the copy that was left at the house, you're
11 saying that would already be signed?

12 A. Yes. Everything except for the return would be
13 signed. The return had to be brought back to the judge
14 within ten days and would have to be signed.

15 Q. Take a look at that search warrant, again. Take a
16 look at that.

17 A. Am I looking for something in particular?

18 Q. Yeah, because -- take a look at -- (indicating).

19 A. Dates? I believe it says April 20th.

20 Q. Yeah, it says April 20th.

21 A. I don't know if that's the judge's -- yeah. I can
22 see what you're saying.

23 Q. Yeah, and so the 19th was a Friday; is that
24 correct? Do you recall the 19th was a Friday?

25 A. I honestly can't recall. It doesn't say there.

1 Q. Well, then I got a warrant signed on the 20th, and
2 everything happened on the 19th. Now, I agree this stuff
3 was all over the place, but let me ask you this: I'm
4 concerned about this.

5 Now, let's take a look at the return. Somehow, as
6 part of what you do, because you're head of the unit,
7 they got your name as finding stuff and where stuff is
8 located, okay? All right. And here is what my concern
9 is. When you guys come in, there's been a lot of stuff
10 happening in there?

11 A. Correct, correct.

12 Q. A lot of people. Folks are certainly not wanting
13 to be caught with stuff in their hands or in their
14 pockets, all moving around. They're rushing; they're
15 diving; they got you guys coming in, taking control of
16 the situation, stuff everywhere.

17 A. Uh-huh.

18 Q. Do you see my concern about that?

19 A. Yes, sir.

20 Q. Let me do it this way: You figure how much time
21 did it take for you to get that warrant?

22 A. To actually -- to get it signed?

23 Q. Yeah, get it signed, get it together.

24 A. About the time I left my house, typed it up, got
25 it signed, I'd say about an hour, I'd say.

1 Q. Okay. And so in the meantime, they're processing
2 stuff, taking pictures --

3 A. We wouldn't have taken pictures until we
4 collected -- once the search warrant was there, as far as
5 actual evidence.

6 Q. You're saying pictures aren't taken until you
7 get --

8 A. Until we're about to collect them. As soon as
9 we're about to collect them, we take a picture and then
10 enter it back in evidence.

11 Q. All right. That's good. But certainly when you
12 do that -- so as you process, you're putting it in
13 something to make sure you know what's what?

14 A. Correct.

15 Q. Now, this stuff has been handled by a lot of
16 people, and we got stuff here and the bag is added and
17 all of that in here.

18 A. Correct.

19 Q. And then so what we have to rely on then is, in
20 fact, the pictures, because we don't know -- nothing -- I
21 mean, no one owns up to it, initially?

22 A. Correct.

23 Q. Tisdale was seen with something, for sure?

24 A. From my understanding, yes.

25 Q. From what we're hearing, Tisdale was seen with

1 something, and there is an allegation that there was
2 something being handled by Mr. Middleton.

3 A. Correct.

4 Q. All right. But there is no way to connect what's
5 in these bags, in fact, with anybody but Tisdale,
6 correct? The only thing -- because the only piece that
7 we've got -- I mean, we've got some more information
8 about that, but when you're there that evening, you guys
9 are doing what you do.

10 MR. WHIPPER: Do you have a picture of that?

11 MR. CORVEY: I do.

12 BY MR. WHIPPER:

13 Q. When you guys are doing what you're doing, that
14 for sure came out of Tisdale.

15 A. I couldn't testify to that. I wasn't there.

16 Q. I mean, you heard the testimony. It's your case.
17 You're sitting there. I mean, that's what everybody
18 said, right? It came out of Tisdale?

19 A. That's what they testified to, yes.

20 Q. And, again, I'm in search of the truth too, so I'm
21 concerned about this. What concerns me -- I'm concerned
22 about this as well. Now, you say this thing here is
23 supposed to be a cookie, right?

24 A. Correct.

25 Q. Is that a CD up here?

1 A. It looks like a CD case.

2 Q. All right. So I got this thing sitting on -- I'm
3 looking at. For the record, Madame Court Reporter, I'm
4 looking at Defendant's Exhibit 1 --

5 THE COURT: Defendant's 1 or plaintiff's?

6 BY MR. WHIPPER:

7 Q. State's Exhibit 1, okay, and so this thing seems
8 to be sitting on a CD cover, and there's one that looks
9 like, in the bottom right-hand corner, there is a
10 cigarette box there. Like you said, there was empty
11 bags, and there is marijuana here.

12 A. Yes.

13 Q. It's there, I don't know, and, of course, on the
14 marijuana, did we -- let's see. We never did anything --
15 the marijuana didn't go to SLED, because I don't see it.

16 A. No, sir.

17 Q. And in your incident report, do you recall if you
18 had any field weight on it? I don't recall.

19 A. It may be in this search warrant return. No, it's
20 not in there. I would have to see a copy of the incident
21 report. I don't know if there is a weight that was
22 listed on there or --

23 Q. Well, I've looked through this thing. Okay. It
24 may be -- someone said it may be six grams, something
25 like that. So we got this stuff here.

1 Now, did you guys do any fingerprinting on
2 anything at all in this stuff? Did anybody print any of
3 it?

4 A. No, we didn't.

5 Q. You didn't print that CD thing that it's been
6 sitting on, which could clearly hold prints; the CD could
7 clearly hold prints, couldn't it?

8 A. Yeah, absolutely.

9 Q. Okay. And you didn't do any prints on the scale?

10 A. No, sir.

11 Q. And you could -- because that's a nice hard
12 surface there, you could get a print or two?

13 A. Possibly.

14 Q. And it's my understanding that sometimes these
15 bags could also give you prints; is that correct?

16 A. Yes. From my understanding, yes, they can.

17 Q. And so you did search that trailer completely, as
18 far as you know?

19 A. Yes, we did.

20 Q. But everything was found in that living room area;
21 is that correct?

22 A. That's correct.

23 Q. Do you recall who that judge was that signed that
24 warrant?

25 A. I was just trying to figure that out. It might

—STEVE HALL - REDIRECT EXAMINATION—

1 have been one of our city judges.

2 Q. Is it a magistrate or city judge?

3 A. Honestly, sir, I can't remember.

4 Q. So in your nine years, you did a number of things.

5 You're currently in patrol?

6 A. Correct.

7 Q. And so you did only three years with narcotics?

8 A. I was in patrol prior to narcotics approximately
9 four years, and then I did almost four years in
10 narcotics, about three-and-a-half years.

11 MR. WHIPPER: Thank you so much.

12 THE COURT: Any redirect from the State?

13 MR. CORVEY: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. CORVEY:

16 Q. Officer Hall, do errors happen on search warrants
17 occasionally?

18 A. Yes.

19 Q. And you took this warrant to a judge about 5:00 in
20 the morning, 5:30 in the morning?

21 A. Yes. Probably even earlier than that.

22 Q. And then you then went back to that same judge to
23 have the return signed later that day?

24 A. That's what it appeared.

25 Q. Did the judge agree to sign a return on a warrant

1 they hadn't executed?

2 A. No, no.

3 Q. So the judge may have just made a mistake in
4 writing a date?

5 A. Correct.

6 Q. Now, regarding this return, it was then signed on
7 April 19th.

8 A. Yes.

9 Q. Which is the same day you executed the search
10 warrant?

11 A. Correct.

12 Q. So the same judge you went to for the search
13 warrant then saw you executed the warrant and you brought
14 him or her the return?

15 A. Correct.

16 MR. CORVEY: Court's indulgence, Your Honor.

17 BY MR. CORVEY:

18 Q. And just to be abundantly clear -- and I just want
19 to educate the jury on the process here. When you go to
20 a judge to get a search warrant signed, do they sign the
21 return first or the search warrant first?

22 A. The search warrant first. They would not sign --
23 the return is strictly there to let the property owners
24 know what we took and let the judge know what was seized
25 from the property.

STEVE HALL - RECROSS EXAMINATION

1 Q. And after you executed the warrant, they already
2 signed it?

3 A. Yes, exactly.

4 Q. And now I want to talk to you a little bit about
5 the fingerprints that Mr. Whipper mentioned.
6 Mr. Middleton was found in that house.

7 A. Correct.

8 Q. Would you expect his fingerprints to be in there?

9 A. Absolutely.

10 Q. Would you expect the fingerprints of all the
11 codefendants to be in there?

12 A. Yes.

13 Q. When people are found in possession of drugs, do
14 you commonly fingerprint things?

15 A. No.

16 MR. CORVEY: No further questions.

17 THE COURT: Recross, Mr. Whipper?

18 MR. WHIPPER: Real quick.

19 RECROSS-EXAMINATION

20 BY MR. WHIPPER:

21 Q. Are you saying that in your business, the return
22 just says somebody -- somebody notarized it. You see
23 right there on the return?

24 A. Yes.

25 Q. It's a notary. Are you saying that you always --

1 anybody could be a notary.

2 A. No, that's a judge's signature there. That's a
3 judge's signature.

4 Q. You're certain that's a judge's signature?

5 A. Absolutely. I would lose my job if I didn't
6 return it.

7 Q. So that's the part that went back to the judge?

8 A. Yes.

9 MR. WHIPPER: So what I would like to do is
10 offer this into evidence, search warrant and return.

11 THE COURT: This will be Defense Exhibit 3.

12 (Warrant and return marked for identification
13 and admitted into evidence as Defendant's No. 3.)

14 BY MR. WHIPPER:

15 Q. And you agree that fingerprints, like DNA, help
16 you link things together?

17 A. They can, absolutely.

18 Q. So if you're investigating a crime, you got six
19 people, you know, saying, you know -- handling this CD.
20 That would be one way to find out whose CD it was?

21 A. It would be one way.

22 Q. Yeah.

23 MR. WHIPPER: Nothing further.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: All right.

2 Ladies and gentlemen: This will be a good
3 place to break for the evening. Please do not discuss
4 this case with anyone. Do not discuss it among
5 yourselves. If there is anything on the news, which I
6 doubt that there will be, please disregard it, and 9:30
7 we'll be good to go.

8 Counsel, be here just a little bit before
9 9:30, and we'll resume the trial at that time. Have a
10 nice evening, ladies and gentlemen. Get a good night's
11 rest. Y'all did very good this afternoon.

12 (In open court, jury not present.)

13 THE COURT: All right. Anything before we
14 break for the day?

15 MR. CORVEY: Nothing from the State.

16 THE COURT: My law clerk has gone ahead and
17 done a boilerplate of the charge. He's going to go ahead
18 and e-mail it to you. If you want to make any particular
19 changes, we'll have an appropriate time to do that, but I
20 just wanted him to give it to you. If you have any
21 proposed charges, please get them to me first thing in
22 the morning.

23 MR. WHIPPER: Your Honor, make sure -- did
24 you close? You have one more witness?

25 MR. CORVEY: One more witness.

1 MR. WHIPPER: We're good, Judge.

2 THE COURT: And you are going to have a
3 couple witnesses?

4 MR. WHIPPER: I think I've got three, Your
5 Honor.

6 THE COURT: Okay. Very well. We'll see you
7 all in the morning. Have a nice evening.

8 (Recess taken.)

9 (April 15, 2015.)

10 THE COURT: Anything we need to bring up?

11 MR. CORVEY: I have a copy of the e-mail I
12 read into the record.

13 THE COURT: Why don't we make it a Court's
14 exhibit.

15 MR. CORVEY: That is my request, Your Honor.

16 (In open court, jury present.)

17 THE COURT: Good morning, ladies and
18 gentlemen. Some of us got caught in heavy rain coming
19 in. I don't know if y'all did, but it was really coming
20 down, so I hope you had a need evening and are ready to
21 hear some testimony.

22 Is the State ready to proceed?

23 MR. CORVEY: We are, Your Honor.

24 THE COURT: Defense ready?

25 MR. WHIPPER: Defense is ready.

KEVIN SHERBINE - DIRECT EXAMINATION

1 THE COURT: You may call your next witness.

2 MR. CORVEY: Thank you. State calls Kevin
3 Sherbine.

4 KEVIN SHERBINE,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CORVEY:

9 Q. Where do you work?

10 A. I work at the Charleston County Detention Center.

11 Q. Could you please describe for the jury your roles
12 in the detention center.

13 A. I'm a professional visitation officer. I'm the
14 main point of contact between inmates, public defenders,
15 attorneys, and outside law enforcement agencies. I
16 complete about 90 percent of the subpoenas that are
17 served on the jail, as well as I help the regular lobby
18 staff with some of their day-to-day duties.

19 Q. Would you please explain to the jury what happens
20 when an individual is brought to the jail with personal
21 property.

22 A. It is logged into the system. Their valuable
23 property is put into a bag, and any money that they may
24 have is put into, like, a canteen account, or commissary
25 account, if you will.

1 Q. Is that kind of an inmate in jail bank account, so
2 to speak?

3 A. It is.

4 Q. And now, do you remember how much the defendant
5 was logged into the jail with?

6 A. I don't recall.

7 Q. Is it all right if I refresh your memory here?

8 A. That's fine.

9 Q. On April 19th, how much was Mr. Middleton booked
10 into the jail with?

11 A. \$400.

12 Q. And that went into his account?

13 A. It did, yes.

14 Q. And that would have been on his person when he
15 came into the jail?

16 A. Yes.

17 Q. Do you remember how much a George Allen Wilson was
18 booked into the jail with?

19 A. I don't recall.

20 Q. If I handed you his inmate transcript, would that
21 help refresh your memory?

22 A. \$16.

23 Q. Do you remember how much a David Allen Tisdale was
24 booked into the jail with on April 19th?

25 A. No.

1 Q. If I handed you his inmate transcript, would that
2 refresh your memory?

3 A. Yes. \$808.

4 Q. Just for point of clarification, would that have
5 all been cash on their person when they were booked into
6 the jail?

7 A. Right.

8 Q. And those would have been on their persons on
9 April 19th?

10 A. Yes.

11 MR. CORVEY: No further questions.

12 THE COURT: Mr. Whipper?

13 MR. WHIPPER: If it please the Court?

14 CROSS-EXAMINATION

15 BY MR. WHIPPER:

16 Q. Mr. Sherbine?

17 A. Yes.

18 Q. Do you do any testing of these moneys when they
19 come in? Do you check to see if they're counterfeit,
20 check to see if there are any organisms on them, any kind
21 of debris, anything like that?

22 A. The money is taken in the intake and booking
23 process. I work in the lobby, so I don't physically
24 handle the money.

25 Q. And the sheriff has no policy itself for doing it,

1 as far as you know?

2 A. As far as I know, he may or may not.

3 Q. So that might be happening?

4 A. What might be happening?

5 Q. That when the money comes in, someone takes a pen
6 and they rub it to see if it's counterfeit. That might
7 be happening?

8 A. That may be happening.

9 Q. And they might take it and randomly sort of check
10 it, maybe with the drug thing, rub it to see if it turns
11 some color; is that correct?

12 MR. CORVEY: Objection.

13 THE COURT: What is your objection?

14 MR. CORVEY: Mr. Sherbine has already
15 testified he has no personal knowledge other than when
16 money comes in, it gets logged into their account.

17 THE COURT: You can ask him that. You can't
18 give a dissertation.

19 BY MR. WHIPPER:

20 Q. Can you answer?

21 A. What was the question? I'm sorry.

22 Q. The question is, do they -- do you know whether or
23 not they swipe it with a little streak thing that tells
24 them there is some drugs on it?

25 A. There is a pen, which we also use in the lobby to

KEVIN SHERBINE - REDIRECT EXAMINATION

1 mark money to see if it's counterfeit. As far as whether
2 or not -- that's the only point that I know, is it
3 detects counterfeit.

4 Q. So, in other words, I was trying to make sure
5 before he objected that it may be happening, but you're
6 not sure?

7 A. That's correct.

8 MR. WHIPPER: All right. Thank you.

9 THE COURT: Any redirect?

10 MR. CORVEY: Briefly.

11 REDIRECT EXAMINATION

12 BY MR. CORVEY:

13 Q. Mr. Sherbine, if any money had come into the jail
14 that was counterfeit, would it have been logged into the
15 inmate cash account?

16 A. No.

17 MR. CORVEY: No further questions.

18 THE COURT: Any recross?

19 MR. WHIPPER: No recross.

20 THE COURT: All right. Thank you. Any
21 objection to this witness being excused?

22 MR. CORVEY: None from the State, Your Honor.

23 MR. WHIPPER: Nothing from the defense at
24 this time.

25 MR. CORVEY: State rests, Your Honor.

1 THE COURT: Ladies and gentlemen: I brought
2 you in here for just a few minutes, but I need to send
3 you back out. We have a few matters of law to take up,
4 so if you need to take a rest room break, now is a good
5 time. Please don't discuss anything about the case while
6 you're out of the courtroom.

7 (In open court, jury not present.)

8 THE COURT: Are there any motions to be made
9 at this point?

10 MR. WHIPPER: May it please the Court, Your
11 Honor, from the defense there are several.

12 THE COURT: All right.

13 MR. WHIPPER: First of all, Your Honor, as to
14 the BEST kit, Exhibit No. 10, I feel that there has not
15 been sufficient chain of custody established. There are
16 written affidavits of any kind dealing with the
17 admissibility -- dealing with the transfer of that
18 particular exhibit back and forth. The exhibit was
19 handled in Columbia by SLED, and no affidavits at all
20 about who handled it after that, and there has been
21 plenty of moving about of this particular exhibit.

22 The exhibit also has damage internally, at
23 least the consistency of what we think might be the drugs
24 that have changed because it has not been properly stored
25 and cared for, so we think that is self-tampering right

1 there. So, Your Honor, we think that should not be
2 allowed in evidence.

3 Secondly --

4 THE COURT: Well, let's go ahead, and we'll
5 handle that motion. Yes?

6 MR. CORVEY: Just right off the bat, Your
7 Honor, Mr. Whipper had no objection when this was
8 admitted yesterday, so I think he's waived his right at
9 this point now to object regarding the entry of that
10 evidence.

11 MR. WHIPPER: I didn't know it was admitted
12 into evidence.

13 THE COURT: It was, without objection. But
14 even if you had strongly objected, I still would have let
15 it in.

16 It was clear that the chain of custody was
17 testified to, and once it gets to state, whatever the law
18 is, their internal things, it's fine, just assume that
19 it's well kept in SLED, and it came back. I had it from
20 the scene, transported to Middleton. We kept it in
21 the -- the evidence technician, she took it to SLED, she
22 took it back from SLED, and at that point it was tested
23 and it was brought here, so no matter what had happened,
24 it was clear it was going to come into evidence.

25 I'll assume that you have strong opposition

1 to it coming in, but it will be coming in.

2 MR. WHIPPER: Would have been the same
3 opposition. That fact notwithstanding, I think it's
4 clear that relative to the indictments on -- I think it
5 was the heroin and the cocaine, there is nothing in the
6 record except mere presence, nothing. As a matter of
7 fact, when I think back, there is nothing in the record
8 for any of the others, nothing, exception mere presence,
9 and if that's the case, Your Honor, the jury cannot find
10 possession. They cannot find that. Unfortunately, for
11 the State, I think that's the real fact. There's no
12 evidence.

13 THE COURT: All right.

14 MR. CORVEY: Thank you, Judge. I think there
15 is plenty of testimony to prove Mr. Middleton was, in
16 fact, in constructive possession of the drugs. Officer
17 Hall testified to the location of the drugs. All of the
18 ILP team officers testified to the location of the drugs,
19 and all the testimony here places those drugs on a coffee
20 table that is in front of a couch where it's been
21 identified where Mr. Middleton was sitting. I think to
22 allege merely mere presence at this point is a bit
23 premature and really not dispositive of whether or not
24 this case can go to jury. I think the State has fully
25 challenged evidence that links Mr. Middleton to the

1 drugs.

2 Beyond the drugs, Your Honor, there was also
3 a scale on his lap that fell out while he was right in
4 front of the drug, so the State would object to
5 Mr. Whipper's motion.

6 THE COURT: All right. Well, Mr. Whipper, at
7 this stage of the trial, Court is more concerned about
8 the presence of any evidence, and, again, it has to rise
9 to more than just a mere suspicious, but the Court is
10 more concerned about the presence of evidence versus the
11 weight of the evidence, and so I find there's sufficient
12 evidence to let it go to the jury, and the jury may side
13 with you and decide that he just merely happened to be
14 there, but that will be for you to argue.

15 All right. Any other motions?

16 MR. WHIPPER: I think that's it, Judge.

17 THE COURT: All right. I'm going to need to
18 question your client concerning his wanting to testify.

19 MR. WHIPPER: We need to have a conversation.

20 THE COURT: Let me question him. We'll take
21 a short break, and you can question him.

22 Mr. Middleton, if you can stand and be placed
23 under oath, I need to ask you a few questions concerning
24 your willingness to testify.

25 (Defendant duly sworn.)

1 All right. Mr. Middleton, at this time I'm
2 going to explain to you certain of your rights. Now, if
3 you don't understand anything that I say or you want me
4 to explain it in greater detail, I'll be happy to do so.
5 Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Middleton, we've
8 now reached the stage of the trial where you may present
9 your defense. You have the right to claim protection
10 under the Fifth Amendment of the United States
11 constitution that states, in part, that no person shall
12 be compelled in any criminal case to be a witness against
13 himself.

14 Now, this means you cannot be required to
15 testify in this case, but you do have a right to testify
16 on your own behalf; however, no one can make you testify.
17 This is a personal right, and no one can waive this right
18 except for you.

19 Now, if you decide to testify, you will be
20 subjected to the same rules that govern the other
21 witnesses, and you may be examined and cross-examined on
22 any relevant issue in this case. In addition, if you
23 have any convictions involving dishonesty or false
24 statements or for crimes punishable by more than one year
25 and I determine that the probative value of admitting

1 these convictions outweighs the prejudicial effect on
2 you, then the solicitor will be able to introduce your
3 record to attack your credibility.

4 At this time, I'm going to ask the State, if
5 he takes the stand, are there any convictions that you
6 would intend to cross-examine him on?

7 MR. CORVEY: There are, Judge. He has a 2010
8 conviction for obtaining money under false pretenses --
9 excuse me -- yeah, 2010 conviction, 2009 violation date;
10 2010 conviction for receiving stolen goods, and I believe
11 that's it, Judge.

12 THE COURT: Is that what your understanding
13 was?

14 MR. WHIPPER: That's my understanding, Judge.

15 THE COURT: It's your understanding if you
16 take the stand, they'll bring those out?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you decide to testify, the
19 decision on your part must be made freely, voluntarily,
20 and intelligently with the full knowledge of the
21 protections given to you by the Fifth Amendment and the
22 consequences of your decision to testify.

23 Now, if you decide not to testify, I will
24 instruct the jurors that they cannot give the fact that
25 you do not testify any consideration whatsoever, and

1 there is to be absolutely no prejudice to you because you
2 do not testify. It's entirely up to you whether you want
3 to testify. You may talk with your attorney, you may
4 talk with a family member, any friends, but the final
5 decision will be left up to you.

6 Do you understand what I told you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about
9 anything that I have explained to you?

10 THE DEFENDANT: No, sir.

11 THE COURT: What I'm going to do is we'll
12 take ten minutes and allow you to talk to your attorney,
13 and I understand he's in custody now, but if, one of the
14 guards, he needs to speak to a family member, y'all can
15 make it so he can speak to somebody, okay?

16 In ten minutes I'm going to come back, and
17 I'm going to ask the ultimate question, unless you
18 already know.

19 MR. WHIPPER: We need to have that
20 conversation.

21 THE COURT: All right. Very good. We'll
22 take a ten-minute recess.

23 (Recess taken.)

24 THE COURT: Have you decided whether or not
25 you want to testify?

1 THE DEFENDANT: I'm not going to testify.

2 THE COURT: Very well.

3 Mr. Whipper, ready to present testimony?

4 MR. WHIPPER: We are, Your Honor.

5 MR. CORVEY: Your Honor, briefly, before we
6 bring them back in, Mr. Whipper indicated he had a few
7 people that were not on the witness list he planned on
8 calling today. I still don't know who those witnesses
9 are. We haven't had a chance to run their rap sheets.

10 I would object to anyone being called that is
11 not on the witness list. He said he would like the
12 defendant's father to testify, and while I completely
13 understand his father's willingness to testify, he wasn't
14 present at [REDACTED] that night, and I don't see
15 any relevance he would have except to bolster
16 Mr. Middleton's credibility or other factors to in some
17 way influence the jury.

18 THE COURT: I'm sure he's going to testify
19 and say he was a good kid --

20 MR. WHIPPER: No, he's not.

21 THE COURT: There certainly can't be an alibi
22 because there's been no notice of alibi in this case.

23 MR. WHIPPER: And he will not be testifying.

24 THE COURT: Who will be testifying?

25 MR. WHIPPER: Sarah -- what is Sarah's last

1 name?

2 MR. CORVEY: Lippe.

3 MR. WHIPPER: -- Sarah Lippe, who is merely
4 here to serve as -- she's the custodian of records in the
5 Clerk of Court's office. We're offering the sentencing
6 sheets of the codefendants.

7 MR. CORVEY: Your Honor, I would have no
8 objection to those.

9 THE COURT: Okay. Those can come in with
10 just a stipulation.

11 MR. CORVEY: I'm happy them coming in, Your
12 Honor.

13 MR. WHIPPER: So we're ready to move on. Oh,
14 let me get them marked.

15 (Sentencing sheet for Deron Ferguson was
16 marked for identification and admitted into evidence as
17 Defendant's No. 4.)

18 (Sentencing sheet for David Tisdale was
19 marked for identification and admitted into evidence as
20 Defendant's No. 5.)

21 (Sentencing sheet for George Wilson was
22 marked for identification and admitted into evidence as
23 Defendant's No. 6.)

24 THE COURT: So you're not going to put up any
25 evidence, any other evidence?

1 MR. WHIPPER: That's right. I'm not going to
2 put up any other evidence.

3 THE COURT: Okay.

4 MR. CORVEY: Well, Your Honor, at this point,
5 I would contend that he's entered evidence --

6 THE COURT: Oh, he has. No question about
7 that. They entered in your case, so that's -- so what
8 we'll do is, we'll let you rest on the record. Then
9 we'll take a break, and then we got to get the charge
10 ready and make sure, and then we'll talk about charges,
11 or do y'all kind of want to do that now before I bring
12 them out? Just let you rest on the record and move
13 forward, why don't we do that?

14 MR. WHIPPER: That way we won't have to get
15 them in.

16 THE COURT: Tell them to get another cup of
17 coffee or something like that.

18 All right. I've seen your additional
19 charges, and I believe they're appropriate. Do you have
20 any objection to his additional charges?

21 MR. WHIPPER: Of course I have not seen --

22 MR. CORVEY: I copied Mr. Whipper on the
23 e-mail, Judge.

24 MR. WHIPPER: I was moving them into
25 evidence, Judge.

1 THE COURT: Then what I'll do is, I'll just
2 let the Court be at ease for a couple minutes, and any
3 objections you have, you can put them on the record.

4 MR. CORVEY: Thank you.

5 MR. WHIPPER: Thank you.

6 (Recess taken.)

7 THE COURT: All right. We had a charge
8 conference in my office, and I have sent out copies of
9 proposed charges. Are there any objections you need to
10 place on the record, from either side?

11 MR. CORVEY: None from the State, Your Honor.

12 MR. WHIPPER: None from the defense, Your
13 Honor.

14 THE COURT: Very well. We'll bring the jury
15 out, and, Mr. Whipper, you can rest on the record, and
16 then we will proceed right into closing arguments.

17 MR. WHIPPER: Yes, sir.

18 THE COURT: All right. Bring them in.

19 MR. WHIPPER: Rather than bring them back and
20 forth -- because I'll have to make my motions.

21 THE COURT: Why don't you renew them now?

22 MR. WHIPPER: So, Your Honor, I would like to
23 renew my motions that I proposed at the beginning, the
24 pretrial motions, and the motion to suppress based on the
25 arrest warrant.

1 THE COURT: Yes, sir.

2 MR. WHIPPER: On the items of no knock, no
3 announcement, of course on the chain of custody, and also
4 renew my motions, my directed verdict motion, on the
5 issue of lack of evidence, particularly on cocaine,
6 heroin, as well as the crack cocaine, as opposed to
7 trafficking, there is no evidence, so I renew all those
8 motions, ask for a directed verdict, and I think that
9 covers my motion.

10 THE COURT: I think you're covered, and,
11 respectfully, I'm going to deny it.

12 MR. WHIPPER: Thank you, Your Honor, for the
13 record.

14 MR. CORVEY: Just one thing, if I may: With
15 regard to no knock and announcement and as for clothing,
16 it's my understanding --

17 THE COURT: Well, testimony was that they
18 knocked.

19 MR. CORVEY: Right, and I don't think there
20 is anything in the record to suggest there was no knock,
21 so I just want --

22 THE COURT: Well, the testimony -- you're
23 going to have an opportunity to argue last so if he has
24 no knock --

25 MR. WHIPPER: I'm renewing my motions.

1 THE COURT: That's his motion.

2 MR. CORVEY: I understand, Your Honor. It's
3 merely out of an abundance of caution.

4 THE COURT: All right. Thank you.

5 (In open court, jury present.)

6 THE COURT: All right. Mr. Whipper?

7 MR. WHIPPER: May it please the Court, Your
8 Honor: Having presented our case, we close on the part
9 of the defense.

10 THE COURT: Okay. All right. So, ladies and
11 gentlemen, the defense has now rested, and therefore all
12 the testimony that you are going to hear in this case has
13 been presented to you.

14 Now is the time where the attorneys will give
15 you the closing arguments. I will then charge you on the
16 law, and then you'll be sent back to your jury room, and
17 I believe -- have they already ordered their lunches?

18 So we'll provide lunch for you. If your
19 stomach starts growling, we'll take care of that. Is the
20 State ready to proceed?

21 MR. CORVEY: We are, Judge.

22 THE COURT: Defense ready to proceed?
23 Mr. Whipper, you're ready to proceed?

24 MR. WHIPPER: We're ready to proceed.

25 THE COURT: The State?

1 MR. CORVEY: Thank you, Judge. Good morning,
2 ladies and gentlemen: Thank you so much for your
3 attention and your cooperation in the last few days.

4 I know I said at the beginning of the trial
5 it's not the easiest thing to put your lives on hold and
6 come here and sit in court and listen to evidence, but I
7 appreciate your effort in doing so, and, in saying that,
8 I am going to do what is called an opening on the law.
9 I'm going to briefly touch on the law.

10 I know I mentioned it in my opening, and,
11 again, this is a reminder Judge Young will instruct you
12 on the law after the closing arguments are done, and what
13 he says goes, not what I say, not what Mr. Whipper says,
14 and the same goes for the evidence in this case. What I
15 say isn't in evidence, nor what Mr. Whipper says is
16 evidence. The evidence is up here, and you heard the
17 evidence from the witness stand.

18 Now, ladies and gentlemen, as you know, the
19 defendant is charged with trafficking cocaine base, or
20 crack cocaine, possession with the intent to distribute
21 heroin, possession with the intent to distribute cocaine.
22 You know, this all stemmed on April 19th, 2013 when the
23 ILP team of North Charleston police department was
24 attempting to serve arrest warrants on Mr. Middleton.
25 They arrived and kind of stumbled upon the drugs.

1 Now, I mentioned to you in my opening,
2 really, what this case comes down to is a matter of
3 possession. Now, we, in fact, know now the substances
4 involved in this arrest were crack cocaine, heroin, and
5 cocaine. You heard from the SLED analyst. He testified
6 to that.

7 Now, the second point is that the defendant
8 had possession of the crack cocaine. He had either
9 actual possession or constructive possession. I remind
10 you of the example I gave you at the beginning of my
11 opening with the pen. Right now I'm in actual possession
12 of this device, and I'm using it to control the Power
13 Point. I have it. I can control it. I have the power
14 to exercise dominion and control over it.

15 If I place this device down right on the jury
16 bar and walk away, you are all in constructive possession
17 of that device now. Any one of you, despite not
18 necessarily owning it, could pick it up and exercise
19 dominion and control over it. That's all constructive
20 possession is. It's the opportunity and the ability to
21 exercise control over an item.

22 Now, as I mentioned in opening, possession
23 was going to be key, and I talked about the differences
24 really here between trafficking and possession with
25 intent to distribute heroin and cocaine really were just

1 a matter of distinction when it comes to weight, and I
2 talked about how you could make a presumptive inference
3 as to someone having -- either trafficking crack cocaine
4 or distributing heroin or powder cocaine if they met
5 certain thresholds.

6 The threshold for trafficking cocaine, or
7 excuse me, crack cocaine is ten grams. If someone
8 actually or constructively possesses over ten grams of
9 crack cocaine, you can make an inference -- that's one of
10 many factors you can consider in making a determination
11 that someone had the intent to traffic that crack
12 cocaine.

13 The same can be said for heroin; however,
14 that threshold is a little lower. For possession with
15 intent to distribute heroin, the presumptive inference is
16 two grains. Here there's nine grains of heroin found
17 inside of [REDACTED]. As for cocaine,
18 presumptive inference you can make as to the defendant's
19 intent to distribute it is only one gram. The evidence
20 in this case and the testimony from Mr. Robinson from
21 SLED showed you there was powder cocaine present in an
22 amount over one gram.

23 Now, the judge is going to talk to you and
24 charge you on the law once Mr. Whipper and I are done
25 talking, and he'll read a whole list of things that you

1 may consider in making your determination. I've
2 highlighted what I think is important, what this case
3 comes down to. I think it comes down to possession. I
4 think the facts in this case are clear that the defendant
5 was in possession.

6 All the testimony and evidence in this case
7 that you heard put cocaine in question and the other
8 drugs in that house right on the scene with
9 Mr. Middleton. He was sitting right behind them. He
10 certainly had the ability to exercise dominion and
11 control over that substance, over those drugs, and
12 therefore he possessed it.

13 Now, as to the other things you may be able
14 to consider, in the statute -- and I'll just read part of
15 it. Other things you can consider are evidence of sales,
16 manufacturing, distribution, purchases, deliveries in and
17 out of the state.

18 Now, here is other evidence that goes to
19 that. You have the presence of baggies, and as Officer
20 Hall testified to, baggies are common in the drug trade.
21 They are common in everyday households, but you saw how
22 they were packaged. You saw how they were used. They
23 were used to break down larger quantities to use them for
24 sale.

25 You also saw a scale. Officer Hall testified

1 about how that scale is important. That scale is used
2 as, really, the drug dealer's best friend. They wouldn't
3 make any money if they were just dealing out their supply
4 willy nilly. They want to make sure they provide a
5 measured amount to their clients in order to make money.

6 Officer Hall also testified about sort of
7 what large sums of cash indicate with regard to drug
8 trafficking, and you heard testimony from Officer
9 Sherbine this morning that of all six of the people who
10 were arrested in that house, three of them had cash:
11 David Tisdale had \$808, Mr. Middleton had \$400, and
12 George Wilson, the owner of the home, \$16. None of the
13 other people in the home had any cash on their persons.

14 Now, ladies and gentlemen, I'm going to
15 charge you -- or continue my closing in a minute after
16 Mr. Whipper has had an opportunity to talk to you about
17 what he believes the issues are in this case, but the
18 last thing I'm going to touch on with regard to the law
19 is this: The judge is going to charge you on a part of
20 South Carolina law that is known as the hand of one is
21 the hand of all. As you can see, if a crime is committed
22 by two or more people who are acting together in
23 committing a crime, the act of one is the act of all.

24 Keep in mind everyone in that trailer was in
25 possession of those drugs, constructive possession of

1 those drugs. State's Exhibit 1 shows you that. It shows
2 you where everyone is. Everyone is around that table
3 with the exception of one person who is asleep in the
4 back. Under South Carolina law, if one of them is guilty
5 of committing the crime of trafficking cocaine,
6 possession with intent to distribute heroin, possession
7 with intent to distribute cocaine in that house, they are
8 all guilty by being present and having constructive
9 possession over those drugs.

10 Now, again, I will touch further on the facts
11 in a moment after Mr. Whipper has had an opportunity to
12 address you. Thank you.

13 THE COURT: Thank you, Mr. Corvey.
14 Mr. Whipper?

15 MR. WHIPPER: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. WHIPPER: Ladies and gentlemen of the
18 jury: I think it's important to talk about what my role
19 is, because I am representing Mr. Middleton who is
20 charged with committing the crime. We all probably have
21 had some contact with criminal activity, and I can't
22 think of any of us who have had that contact that has
23 been happy about it.

24 Break-ins, my car. Someone tried to run my
25 wife off the highway once because she helped a woman who

1 was trying to get her children away from a man, their
2 father. We've all had problems with crime, but one of
3 things that we have to accept is that living in this
4 country, we make sure that we are fair to people. Why do
5 we make sure that we are fair with people?

6 My phone is now 25 grams of crack cocaine.
7 You are now constructively in possession of 25 grams of
8 crack cocaine. Is it fair? Fairness is important. It's
9 what this country is built on. Outside of this
10 courtroom, you and I, even the judge, outside this
11 courtroom, you know, we take shortcuts, and we do things
12 that are not always the nicest things. Some of them are
13 not even legal sometimes.

14 We take shortcuts, and so what happens is our
15 forefathers set up this system so that when we do things,
16 we take shortcuts outside of these rooms, doing things.
17 When we come here, we don't do shortcuts, and how we
18 treat people is very important because folks can go
19 around leaving 25 grams of cocaine and get people in
20 trouble, and sometimes we don't take care to make sure if
21 we're not around people who might have 25 grams of
22 cocaine, have nothing to do with me, has nothing to do
23 with who I am, but I might be around it.

24 Now, when we get inside of here, it's sort of
25 a different world, and that's why, when the judge gives

1 you the charges, he's going to talk about the evidence
2 and the testimony, because our world right now is what
3 happens inside here, and we're going to have to slow down
4 and do shortcuts, because when you come in here, fairness
5 matters. Truth matters. The rules of law matter.

6 Even Your Honor has to follow the law. He is
7 the giver of the law today in this courtroom, and any
8 time he's up there, that's where the law comes from, and
9 we all have to be controlled by it. But he's going to
10 tell you what the law is that you're going to use to deal
11 with what you got from the stand and what you'll get from
12 these articles that have become evidence. This is your
13 world right here and what he tells you.

14 He's right: What we say is not evidence.
15 What we say is observations. We got to point some things
16 out, because we represent these people. Now, I have to
17 tell you, I'm the advocate, but I'm just being fair to
18 Mr. Middleton. He's got a picture like this, and we
19 don't know what this is. You don't know this is. It's
20 on a table, but where? And what does that mean? Is that
21 really what happened? Does that tell you what was going
22 on before law enforcement went in? Look at this; look at
23 that. You know, that doesn't tell me a lot.

24 I mentioned this: Somebody should have -- I
25 mean, in a serious matter like this, if we're going to

1 convict somebody for serious charges -- and these are
2 serious charges. All these charges are felonies.
3 They're serious charges. So if we're going to do that, I
4 think we ought to have some idea of what we're looking
5 at.

6 Did anybody tell you where this is? This is
7 supposed to be the scale. Now, where is that? That's a
8 little baggy with crack cocaine. There is some crack on
9 the dollar bill. Where is it? And so because it's like
10 this, I have to tell you about what might be going on
11 because it doesn't speak for itself. I wouldn't have to
12 say a whole lot if it showed more, but it doesn't speak
13 for itself. This is not a bad approach. You kind of get
14 a sense of what you're looking at, these pictures of the
15 trailer.

16 So we have to slow down, and we protect our
17 country by doing this. In some countries, folks get in
18 trouble; police doesn't know them, doesn't like them.
19 They go "poof". They disappear. In some countries, you
20 don't get a bail; you don't get a bond; you don't get a
21 defense attorney. It's just a judge maybe, or sometimes
22 it's just left up to whoever is supposedly in control of
23 things around town, but here we slow down and we go
24 through these changes because it's important to the
25 country.

1 Now, here's what I understand from what I've
2 heard from the testimony: Mr. Gorman comes in, says he
3 sees Mr. Middleton. He says he sees him. He says there
4 is a scale, says he's cutting a white rock object.
5 Officer Hall shows us on the return one off-white rock
6 substance near the end table, living room; a third that's
7 in a clear plastic bag, end table, floor of the living
8 room; third off-white rock, living room floor; one dollar
9 bill on the table.

10 Which rock was he cutting? And you have to
11 slow down and say, well, which rock was he cutting?
12 Because according to the SLED testimony, there is one
13 cocaine base crack-like rock thing that's 25.2 grams.
14 Trafficking is a serious offense. There is another one,
15 white rock, 4.3 grams. There is a third white
16 rock, .4 grams. What was being used to cut? There's no
17 evidence about that at all. None.

18 Now, there have already been some question
19 about, well, okay. Fingerprints, DNA. There is a lot of
20 time to do all these things. None of these things were
21 done. There were materials that could have been used to
22 get this information. None of this was done. How hard
23 can you imagine would it be to get fingerprints off of
24 that CD thing that is laying there? Any of these
25 baggies, carton of cigarettes?

1 Mr. Corvey attempted to tell us about the
2 hand of one and the hand of all, and the judge will tell
3 us what that is, and I think -- I think; I can't be sure
4 now -- what the judge will say is it has to do with
5 people coming together and deciding they're going to do
6 something. We have -- and there were some conflicts
7 about what remember about the case, but we don't have
8 anything on that except there might be one issue raised
9 around the young fellow Deron Ferguson who testified
10 about coming in in the morning before he went to work,
11 and that was the State's witness.

12 He testified about coming in to buy
13 something. He was really didn't want to admit he was
14 going in to buy drugs, and you could understand that. He
15 knows that wasn't the right thing to do, and so he talks
16 about going over there, and there is some difference in
17 opinion between me and the State when he says
18 Mr. Middleton jumped in and was giving him a hard time.

19 I admit I took it for what it was, that he
20 jumped in and was giving him a hard time, but I wonder
21 what the hard time was all about? That really was never
22 gone into. It could have been he was going to tell him
23 he needs to move on, get out of here, that he's
24 interrupting him. He was trying to sleep that night, or
25 early that morning, anything; don't want to talk to you.

1 But even so, one of the things that we can definitely
2 agree on was in his letter, which he admitted that he
3 recognized that, the drugs belonged to somebody else, not
4 Mr. Middleton. He said that.

5 And, you know, you try to get you all some
6 good evidence to rely on. This is a letter that he
7 admitted writing before he knew there would be an April
8 14th, 2015. He just wrote this letter, and he admits, he
9 says that he knew that these drugs belonged to David
10 Tisdale. He says, I know you are ready to go home, but
11 he will get his in the long run, and he admitted because
12 he knew that was his drugs, David Tisdale's drugs.

13 That's who came there was, but he said he
14 didn't want to do anything because, you know, this whole
15 thing about not being a snitch, he didn't want to be the
16 first one to contact somebody to tell them the truth
17 about whose drugs it was. Now, that's something that we
18 know. It doesn't have to come from me or from him, it
19 came from the stand from the world that we really, really
20 need to be a part of.

21 Now, I can only tell you that I hope you
22 listen to the judge. The judge is going to tell us what
23 the law is. You take that law and you use it to solve
24 this problem for us. You all are the judges of the
25 facts. He said that once before. You do facts, he'll do

1 the law, and we all get along, and that is a very
2 important part of what we have as a system.

3 I must tell you, it's the State's burden, and
4 the reason the State has the burden is because we try to
5 make sure in this country that we just don't run
6 pell-mell. Because somebody doesn't like you they put
7 some charges on you, and you're going to get locked up.
8 The folks who set up this country have been through that
9 before, and they didn't want that to be the case even
10 before we were born. They said, look, you don't want
11 that here, and it's a real thing. It's protected us all
12 of these years. It's protected us, and I hope that we
13 will all be constrained by the law.

14 Now, I want to make sure I go through this
15 checklist because I can't come back. Mr. Corvey is going
16 to come back after me so I need to say what I have to say
17 and move on. I guess I want to leave by saying that
18 people get together sometimes and they do stuff and they
19 have parties and they get together or they hang out.

20 You heard about the loud music, the music up
21 at a certain hour of the night. I think we all agreed
22 that was on a Friday night, April 19th, because we had
23 some issues about what was going on around this arrest
24 warrant, the 19th at one point, the 20th at one point,
25 and when was an arrest warrant signed? And that's real

1 important. It seems small, but that is part of what we
2 do. We make sure that before you go searching and
3 probing around in people's homes, that you are properly
4 authorized. You can't come back and un-ring the bell
5 once you've done that.

6 So I'm done. That's it, and that's what
7 we've got: Mr. Middleton, in a place. There's drugs
8 around; he's young; they're young; some older. There's
9 drugs around, and, I might add, let's do this too, before
10 I -- oh, yeah. I have to do this before I sit down. I
11 can't get back up.

12 Deron Ferguson, he pled guilty to attempt or
13 conspiracy to violate drug laws in drug court, and that's
14 what I had to close on because we had these admitted they
15 were wrong. Trafficking in cocaine base: 228 grams
16 David Allen Tisdale; George Allen Wilson, Jr., PWID,
17 distribution, manufacturing cocaine base, first offense.

18 So, you know, where does this match up with
19 the warrant with the off-white substance? And I'm not
20 going to fool you. I'm not going to try to trick you.
21 People can jointly possess drugs, so all of them could
22 have been in possession of the drugs, but there's no
23 evidence of what Mr. Middleton had. I will tell you,
24 when they were arrested, he was taken out, but I think
25 it's fairness, and I would hope that you will be fair.

1 That's all, just be fair.

2 Thank you so much.

3 THE COURT: Thank you, Mr. Whipper.

4 Mr. Corvey?

5 MR. CORVEY: Thank you, Judge. May it please
6 the Court: Good morning, ladies and gentlemen. Once
7 again, thank you. I really appreciate your attention. I
8 don't want to belabor that, but you are a very important
9 part of our judicial system, and I hope you realize that.
10 Sincerely hope you take the decision you're about to make
11 very seriously, because it's a serious one, but, like I
12 told you at the beginning of the trial, it's easy. It's
13 an easy one in South Carolina. It's an easy one in the
14 facts of this case.

15 Ladies and gentlemen: When we started this
16 trial, Judge Young swore you, and you took an oath. You
17 swore an oath that you would decide this case from the
18 testimony on the witness stand and the law as he directs
19 it to you. That's your version. What did we have to do?
20 Testimony in this case makes it clear: Mr. Kevin
21 Middleton was not only in possession of those drugs, he
22 had the intent to traffic the drugs that were sitting in
23 front of him.

24 Now, Mr. Whipper is right: We can only make
25 decisions in this courtroom based on what was presented

1 in this courtroom, not what's going on outside, not
2 anything else that's happening around our country or
3 around the world. We make decisions in this courtroom
4 based on the law and based on the facts.

5 Now, I asked you at the start of this trial
6 that what I wanted you to be doing would be constantly
7 evaluating what makes sense and constantly asking what
8 doesn't make sense. You, constantly checking what you
9 can corroborate with independent testimony from one
10 witness to another, what you can corroborate through the
11 pictures that Mr. Whipper was showing you.

12 I think corroboration in this case is very
13 important because that's what paints the picture of that
14 night. I would agree with Mr. Whipper: A picture in
15 isolation is just some crack cocaine on a table, but
16 through the testimony you heard from the stand, again,
17 this is crack cocaine on a table that the defendant was
18 sitting on that, when officers came to arrest him for the
19 outstanding warrants that he had, he was bent over. He
20 was bent over with this scale on his lap. That's what
21 completed the story.

22 I think Officer Hall will be the first person
23 to tell you he's not a photographer. At that time he was
24 a narcotics detective. Now he's a police officer. I'm
25 not a photographer either. Now, I want to touch briefly

1 on what Mr. Whipper said. Red herrings: Red herrings
2 came into our cultural lexicon a few years ago, things
3 that people throw out there to distract you from the
4 truth, and I agree with Mr. Whipper. We're here because
5 of the truth. This is a search for the truth, and the
6 truth was presented to you from the witness stand and
7 from the facts in evidence.

8 So let's talk about the red herrings here,
9 other people's drugs: Mr. Whipper just told you. Other
10 people can possess drugs, one or more people. Everyone
11 in the house was in possession of those drugs. Other
12 people have already taken responsibility for those, their
13 actions that night. I also told you at the beginning of
14 this trial that this case is only about Kevin Middleton.
15 Of course, by the nature of what happened that night,
16 we're going to talk about the other people involved.
17 Some have already had their day in court. Some have
18 already taken responsibility, but, believe me, everyone
19 will get their day in court. Today just happens to be
20 Mr. Middleton's. That's the beauty of our system.
21 Everyone gets their day in court.

22 Let's talk about this issue with the search
23 warrant. If I'm understanding correctly, Mr. Whipper
24 wants you to believe that the judge's signature here
25 looks like April 20th is some sort of fabrication, that

1 the judge gave him a search warrant at a later date, but
2 when Officer Hall was up there, I had him talk to you
3 about how that same return for the search warrants
4 required him to go back to the judge after he executed
5 it. It was then signed on April 19th, same judge.

6 I asked Officer Hall, Officer Hall, would a
7 judge ever sign a return for a search warrant they had an
8 issue? He almost laughed it off because it's ridiculous.
9 You know that; I know that. Think of the context in
10 which the judge has to sign this search warrant. He was
11 pulled out of bed at his home, Officer Hall knocking on
12 his door about 5:30 in the morning on a Saturday morning.

13 I'm not thinking clearly, you know? I'm
14 asking him what's going on. I'm doing my due diligence
15 to make sure there was probable cause for this search
16 warrant to go in there, which there was, because all of
17 these drugs, all of the drugs that were found in that
18 house, more or less, in plain view of the ILP team when
19 they went in [REDACTED], Lot Bin order to affect
20 that arrest warrant for Mr. Middleton.

21 Let's talk about fingerprinting. There has
22 been a big deal that it wouldn't be a hard issue to
23 fingerprint a CD case. Maybe it wouldn't be, but as I'm
24 sure you know, a lot of police officers are busy. They
25 have limited resources. They have to parse them out as

1 they can. Officer Hall testified that normally in cases
2 like this where you find a defendant sitting behind a
3 table with drugs sitting in front of them, bent over with
4 a scale on his lap, they wouldn't fingerprint that,
5 because possession is clear.

6 There remains some deal with chain of
7 custody. That is a nonissue. Drugs made it to SLED.
8 They were tested. You can look at them. All the
9 procedures were followed. They weren't tampered with,
10 and they were sent back to North Charleston where they
11 waited in evidence until we brought them here to show you
12 in the trial of this case.

13 So let's talk about the facts as you saw them
14 on the witness stand, as the witness has testified to,
15 and what the evidence in the case shows. I asked you at
16 the beginning of this trial to pay attention to what
17 would be corroborated by the facts in evidence and the
18 testimony from the witness stand.

19 You heard first from Officer Gorman, the ILP
20 team. Officer Gorman was the assigned case agent in the
21 ILP, team which is a fugitive task force. They're a task
22 force made up of mostly SWAT members, and they go and
23 look for individuals who are hiding from the law so they
24 can serve arrest warrants on those individuals. They go
25 in the communities in which the certain subjects are

1 known to live or to spend time in, and they crowd source.

2 They gather information from the community so
3 they can serve outstanding arrest warrants. They
4 received a tip on April 18th, about, hey, Kevin Middleton
5 is hiding out in Dorchester Village. We think he's going
6 to be at [REDACTED] through the night and
7 the early morning hours of April 19th. They've been
8 partying over there.

9 So they go over there, perform some
10 surveillance. There obviously is a party going on.
11 Their first attempt has been corroborated. Where they
12 were told a party was going on, a party was going on.
13 They then knock on the door. The owner of the home,
14 George Wilson, opens, and then Officer Gorman who, per
15 their procedure, is huddled against the door, sees
16 Mr. Middleton, their subject. He had every right to go
17 into that house at that point and serve the arrest
18 warrant on Mr. Middleton.

19 It just so happened that there were drugs in
20 there. They weren't looking for them that night, and
21 what's very important is when they go in there, what does
22 he see? He sees Kevin Middleton, sitting behind a couch
23 that as you know now is directly behind this table,
24 leaned over, that cookie of crack cocaine, with a scale
25 in his lap. He appeared to be cutting it up.

1 Yeah, Mr. Middleton got on the ground. He
2 was fully cooperative. We never said he wasn't.
3 Frankly, I'm sure most of us would be if scary guys like
4 that came in at 5:00 in the morning, but all the drugs
5 were in plain view. He then detained everybody, waited,
6 and what did they do? Called the North Charleston
7 narcotics who specialize in cataloging, collecting, and
8 searching homes for narcotic evidence.

9 We saw all this. Mr. Whipper made a big
10 point that you don't know where any of that was. Well,
11 you do know where that was. You heard from the witness
12 stand. You heard how all of those drugs, except for two
13 pieces of crack cocaine that one of the codefendants
14 threw down when he ran out of that residence, trying to
15 flee from the police, was around the coffee table that
16 was in front of the couch where this one person was
17 sitting. That one person was Kevin Middleton.

18 Next, you heard from Officer Hall from the
19 ILP team. He was the second person in that night,
20 standing behind Gorman. He hears contact. He goes in.
21 What does he see first? He sees the individual running,
22 because that's what they do. They take the corners.
23 They slice the pie to make sure no one can hide that
24 could potentially be a danger to the police officers, but
25 also the other people inside that home. They order

1 everyone down.

2 Next thing, he looks over and sees the scale
3 on Kevin Middleton's lap. He didn't see it at the time,
4 but he testified to that. After the situation calmed
5 down, after he detained everybody, he walks over. What
6 does he see? He sees that sitting on the table. He sees
7 all that sitting around the table. One person on the
8 ground by the table: Kevin Middleton.

9 I think this picture was the most important
10 picture in the trial, because I think it says a lot about
11 what was really going on inside that house that night,
12 and I think it says a lot because Mr. Whipper would like
13 you to believe David Tisdale brought those drugs to that
14 house. Well, if David Tisdale brought those drugs to
15 that house, why would he have left this sitting in front
16 of Mr. Middleton, have these two smaller pieces in his
17 possession, and run? That makes no sense. Drug dealers
18 don't do that with their supplies, just like car dealers
19 don't do that with their cars.

20 Mr. Middleton was the dealer there that
21 night. That was his crack cocaine. As I just talked
22 about, you heard that from the ILP team. No one was
23 around it but Mr. Middleton. Mr. Tisdale wasn't around.
24 He was standing in front of the table, but these were in
25 his possession. Why would he have these smaller pieces

1 unless they already conducted a transaction? They were
2 going to leave.

3 So then next you heard from Sergeant Kruger,
4 sergeant of the ILP team. A lot of people make it; a lot
5 of people don't make it. Trained in trafficking
6 fugitives. One more witness, a highly decorated officer
7 who was in charge of selecting a specialized team, told
8 you exactly what the prior two people did. They went
9 there that night.^u They performed surveillance based on a
10 tip they got from a member of the community. They then
11 knocked on the door. They went in.

12 He was the fourth or fifth person in. What
13 does he see? By the time he gets in, one person in the
14 kitchen hasn't been detained yet. He talks to him.
15 Presumably, that's Mr. George Wilson. He detains him,
16 gets him down on the ground. Then they search everybody
17 at the scene. Well, what does he see? He sees Kevin
18 Middleton on the ground, near the vicinity of this table,
19 a scale on the ground, and other drugs and that cigarette
20 carton around the table.

21 Well, let's talk about that cigarette carton.
22 See that, what's in the bottom right-hand corner of that
23 picture? Missing cigarette box, right in front of
24 Mr. Kevin Middleton. Then, like he told you, they're not
25 there to get the drugs. They're not there to get them

1 off the street. That's not what they were there for.
2 They were there to serve an arrest warrant.

3 They then did what they were supposed to do:
4 They called the drug guys. They called North Charleston
5 narcotics and obtained a search warrant based on the
6 presence of drugs in plain sight. Then the narcotics got
7 signed by a judge. They came, executed it, and cataloged
8 the drugs.

9 Next you heard Deron Ferguson. I think Deron
10 is one of the most important witnesses in this case. I'm
11 not here to try to convince you or point out to you Deron
12 is a choir boy. He had past troubles. He admitted to
13 that freely. He didn't waffle on that. He took
14 responsibility for the fact that he had made some bad
15 decisions in the past. Not only that, he took
16 responsibility that he made a bad decision on that night.
17 He went there before work to buy a little bit of
18 marijuana. Called David Tisdale. He said, yeah, we have
19 some marijuana over here. Why don't you come get some?

20 He goes, tries to buy it. It was short. It
21 looks like he was getting treated. He wanted to buy a
22 dime back, \$10 of marijuana. He asked Mr. Middleton to
23 weigh it. Why would he ask Mr. Middleton to weigh it?
24 Well, as he told you, he asked Mr. Middleton to weigh it.
25 It was on his lap. Who else could have weighed it? He

1 told you how he was negotiating back and forth with
2 Mr. Middleton and Mr. Tisdale. They seemed like they
3 were both involved in the transaction.

4 Now, there is one area where Deron kind of
5 waffled. I asked him if he knew who the drugs where. He
6 said no, he didn't know. He seemed scared. I don't
7 blame him for being scared. He still lives in Dorchester
8 Village. There were people in that community who
9 probably wouldn't be too happy about him testifying here.
10 In fact, I think it's safe to say they weren't happy
11 about it, but yet he came in here after taking
12 responsibility for what he did.

13 You heard him. Deron, if all those drugs in
14 the house weren't yours, why did you plead to them? Why
15 did you plead guilty? I took responsibility for what I
16 did. I went there to buy marijuana that night. So I
17 took responsibility for what I thought I was involved in.
18 He also told you the rest of the drugs in the house
19 weren't his.

20 We also heard talk about two different
21 conversations. We heard about Mr. Tisdale and
22 Mr. Middleton while in the jail. He approached him, said
23 Kevin is already in trouble. Let's blame this on him,
24 and when separately Middleton approached him. That's all
25 this letter says. This letter, once again, corroborates

1 Deron's testimony, corroborates another bit of the
2 testimony you've heard in this case.

3 Deron said, Yeah, I'm tired of being in jail.
4 Maybe we should blame it on Tisdale because he's bonded
5 out. He's out on the streets. Here you and I are still
6 sitting here. He told you that. He didn't hide from it.
7 He admitted it.

8 Now, one more important thing, an important
9 issue about the testimony from Deron. Deron was there
10 that night. He knew what was going on in the house
11 before it happened. Where did he put Kevin Middleton?
12 He put Kevin Middleton right here, right next to these
13 drugs. He said at the time he was arguing back and forth
14 to Mr. Tisdale. Mr. Tisdale was there too. Kevin
15 Middleton was there. That corroborates what the ILP team
16 told you. That corroborates what Gorman told you, what
17 Habersham told you. That corroborates what Kruger told
18 you. That corroborates also Officer Hall's testimony
19 that comes up in a little while. It corroborates that.
20 He told you where the drugs were. That's where Officer
21 Hall found the drugs. It's convenient how all this stuff
22 builds on itself.

23 Next you heard from the SLED analyst, Doug
24 Robinson. Told you about the drugs that were sent to him
25 from North Charleston police department to us. He told

1 you about how there was about 34 grams of crack cocaine
2 in there that night. This is 2.5 times over the
3 presumptive amount, and, again, that presumptive amount
4 is important, because with that, it is something that you
5 can use to infer intent, intent to traffic drugs, intent
6 to distribute drugs: 2.5 times over the presumptive
7 amount.

8 He testified about the big cookie, the cookie
9 that's in front of Kevin. You heard about cookies. When
10 crack cocaine is made, they're made generally in glass
11 dishes and microwaved and come out looking like a sugar
12 cookie. That cookie weighed 25 grams. Then you heard
13 from him about the heroin, small mix of heroin and
14 cocaine, or a speedball, 9.2 grains, presumptive amount
15 for heroin in the state of South Carolina.

16 With regard to possession with intent to
17 distribute, .2 grains, over 3.5 times the presumptive
18 amount, another thing you can use to infer that someone
19 intended to distribute those drugs. Then cocaine.
20 There's a separate baggy of cocaine. There's cocaine in
21 the speedball. You combine those, we get 1.1 grams of
22 cocaine, powder cocaine, and powder cocaine is important
23 because that's how crack is made. That is over the
24 presumptive amount.

25 Now, here is where I think it gets to what's

1 really the most important crux of the issue about what
2 was going here that night: We have all the actors in
3 place. We know where everyone is. We know where they
4 were standing. We know where the drugs were. Then we
5 get the drug expert in here. We get Officer Hall in
6 here, trained narcotics detective to come in, and he
7 testifies where he cataloged everything, where he found
8 it, and what the presence of the other evidence at the
9 scene says to him.

10 What he says, generally, when they are
11 ongoing in the narcotics investigation, they have a
12 target, or a number of people in mind. Here, it's
13 obviously the case where another part of the North
14 Charleston police department stumbled upon it. They get
15 called in. They didn't know who the target was. All he
16 really testified to was where the drugs were and what
17 they said to him and what the other evidence in that
18 house said to him.

19 What the other evidence in that house said to
20 him is a trafficking operation is going on, and a
21 trafficking distribution operation was going on. And he
22 said that because there was baggies found near the bulk
23 of the drugs. There appeared to be packaging going on
24 with smaller amounts of drugs. There was a scale there.
25 He explained the importance of that and how they're

1 weighed. He talked about the street value of those
2 drugs, how in total the amount of crack in that house was
3 over \$3,500.

4 That's a new car to me. The cookie that is
5 in front of Kevin Middleton, that was \$2,500. Officer
6 Hall testified that that could be broken down, generally,
7 into .2 grams for sale, a 20 rock. So every gram, you
8 got five sales. You break it all down, you've got 125
9 different people that would have been smoking crack,
10 would have been using drugs, terrorizing neighborhoods,
11 getting people addicted, getting people in jail. Kids.

12 He also told you about the importance of
13 money in drug operations. I asked him point blank, Do
14 users have money normally? Excuse me -- users have
15 money? No. Normally, users don't have money. Maybe a
16 little bit, because they're looking for the next buy,
17 looking for the next high.

18 Who has the money? Drug dealers have the
19 money. Well, who had the money? Kevin Middleton had
20 \$400 in his pocket. Owner of the house had \$16 in his
21 pocket. David Tisdale had \$800 in his pocket. Brittany
22 Boyd had none. Deron Ferguson had none. Curtis Williams
23 had none, no money. We know who the drug dealers were.
24 You know who the drug dealers were. You know what was
25 going on that night.

1 Too often I think we don't look for the truth
2 anymore. People ignore what is obvious because they
3 think something bigger is going on. Ladies and
4 gentlemen: Sometimes the truth just is what it is. It's
5 obvious. It's right in front of us. We know what was
6 going on. You know what was going on.

7 Now, I asked you at the start of this trial
8 to use all of your common sense, all of your life
9 experience to guide your decision-making process, to let
10 it guide your decision in this case, to let it guide you
11 in the truth.

12 All of the facts in evidence, all of the
13 testimony from the witness stand, comes to one
14 conclusion, and, again, I'm not talking about anyone else
15 that was involved there that night. As I've said, today
16 is only about Kevin Middleton, not David Tisdale, not
17 Brittany Boyd, not Curtis Williams, none of them, but one
18 person: It is about Kevin Middleton, and the facts and
19 evidence in this case make it abundantly clear Kevin
20 Middleton is guilty.

21 Thank you.

22 THE COURT: Please secure the courtroom. Let
23 me see the attorneys for a second.

24 (Discussion held at sidebar.)

25 THE COURT: Ladies and gentlemen: All of the

1 testimony and evidence, what is going to be presented to
2 you, has been presented to you. The attorneys have given
3 you their closing arguments, and now is the time that I
4 will give you the law that is to be applied to this case.

5 Ladies and gentlemen: I remind you that
6 during this trial you and I have certain duties to
7 perform, and, as the trial judge, it is my responsibility
8 to preside over the trial of this case, and I also had
9 the duty to rule on the admissibility of evidence that
10 has been offered during this trial.

11 You are to consider only the competent
12 evidence that has been presented before you, and if there
13 was any testimony ordered stricken from the record in
14 this case during the trial, you must disregard that
15 testimony. You are to consider only the testimony which
16 has been presented from the witness stand, any exhibits
17 that have been made a part of the record, and any
18 stipulations of counsel.

19 Now, ladies and gentlemen: I have the
20 additional duty to charge you the law that is applicable
21 in this case, and as the presiding judge, I am the sole
22 judge of the law in this case, and it is your duty as
23 jurors to accept and apply the law exactly as I now state
24 it to you. If you already have some idea as to what the
25 law is or what the law ought to be and it does not agree

1 with what I now tell you the law is, you must abandon
2 that idea because, ladies and gentlemen, you are sworn to
3 accept the law as I state it to you.

4 In every case tried before a jury, the jury
5 becomes the sole and the exclusive judges of the facts,
6 and as a trial judge, I cannot intimate, state, comment,
7 or in any way make any statement to the trial jury about
8 the facts in a case. Since you are the judge -- I said
9 you were the sole judges of the facts, and you are not to
10 infer from anything that I have said during the progress
11 of this trial, ruling on the admissibility of evidence or
12 anything that I say now during the course of these
13 instructions that I have any opinion about the facts of
14 the case.

15 The law simply does not allow me to have an
16 opinion about the facts. It's a matter solely for you as
17 jurors, and, as jurors, it is your duty to determine the
18 effect, the value, the weight, and the truth of the
19 evidence that has been presented during this trial.

20 Now, ladies and gentlemen, the indictments in
21 this case allege three different offenses against the
22 defendant, Kevin L. Middleton: The charges are under
23 indictment 2013-GS-10-4650, trafficking in cocaine base;
24 under indictment 2013-GS-10-4660, possession with intent
25 to distribute heroin; and then, under indictment

1 2013-GS-10-4661, possession with intent to distribute
2 cocaine.

3 Now, ladies and gentlemen, each indictment
4 charges a separate and distinct offense, and you must
5 decide that each indictment separately on the evidence
6 and the law that is applicable, uninfluenced by your
7 decision as to charges in any other indictment. The
8 defendant may be convicted or acquitted on any or all of
9 the offenses charged, and you will be asked to write a
10 separate verdict of guilty or not guilty for each
11 indictment.

12 And, ladies and gentlemen, I remind you that
13 the fact that the defendant was arrested, charged, and
14 indicted is not evidence in this case and cannot be
15 considered by you as evidence of his guilt, nor does it
16 create any presumption or inference of guilt. The
17 indictments are simply the formal written instruments
18 which contain the charges and is the formal written
19 document by which this case is brought into court.

20 Now, ladies and gentlemen, the defendant has
21 pled not guilty to the charges in these indictments, and
22 the plea puts the burden on the State to prove the
23 defendant guilty. A person charged with committing a
24 criminal offense in South Carolina is never required to
25 prove himself innocent. I charge you that is an

1 important rule of law, that the defendant in a criminal
2 trial, no matter what the seriousness of the charge might
3 be, will always be presumed to be innocent of the crimes
4 in which the indictment was issued, unless guilt has been
5 proven by evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 And the presumption of innocence does not end
8 when you begin your deliberations, but it accompanies the
9 defendant throughout the trial until you reach a verdict
10 of guilt based on evidence satisfying you of that guilt
11 beyond a reasonable doubt.

12 The presumption of innocence is like a robe
13 of righteousness that's placed about the shoulders of the
14 defendant and will remain with the defendant until it has
15 been stripped from that defendant by evidence again
16 satisfying you of the defendant's guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere
19 legal theory. It's not just a legal phrase that we use,
20 but it is a substantial right to which every defendant is
21 entitled unless you, the jury, again, are satisfied of
22 the evidence of the defendant's guilt beyond a reasonable
23 doubt.

24 Now, ladies and gentlemen, the State, as I
25 said, has the burden of proving the defendant guilty

1 beyond a reasonable doubt. Some of you may have served
2 as jurors in civil cases where you were told that it is
3 only necessary to prove that a fact is more likely true
4 than not true, such as by the greater weight or the
5 preponderance of the evidence, but in criminal cases, the
6 State's proof must be more powerful than that. It must
7 be beyond a reasonable doubt. Proof beyond a reasonable
8 doubt is proof that leaves you firmly convinced of the
9 defendant's guilt.

10 Ladies and gentlemen: There are very few
11 things in this world that we know with absolute
12 certainty, and in criminal cases, the law does not
13 require proof that overcomes every possible doubt. If,
14 based upon your consideration of the evidence, you are
15 firmly convinced that the defendant is guilty of the
16 crime charged, you must find the defendant guilty. If,
17 on the other hand, you think that there is a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find him
20 not guilty.

21 Now, ladies and gentlemen, there are two
22 types of evidence that are generally presented during
23 trial: There is direct evidence and circumstantial
24 evidence. Direct evidence is the testimony of a person
25 who has actual knowledge of a fact such as an eyewitness.

1 It is evidence which immediately establishes the main
2 fact to be proved. Circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the existence
4 of a fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred.

7 Circumstantial evidence is based on inference
8 and not on personal knowledge or observation. The law
9 makes absolutely no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence, nor is a greater degree of certainty required
12 of circumstantial evidence than of direct evidence.

13 Ladies and gentlemen: You should weigh all
14 of the evidence in this case, and if after weighing all
15 of the evidence you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 Now, ladies and gentlemen: I instruct you
19 and I emphasize that the fact that the defendant did not
20 testify is not a factor to be considered by you in any
21 way in your deliberations and in your consideration on
22 the question of guilt or innocence of the defendant. It
23 must not be considered by you in any manner whatsoever.
24 A defendant has the constitutional right to remain
25 silent, and the assertion of this right must not be

1 considered by you in your deliberations.

2 I repeat: Under the oath that you took, you
3 are to draw no conclusion whatsoever from the fact that
4 the defendant in this case did not testify. The fact
5 that the defendant did not testify should not even be
6 discussed in the jury room, and the burden of proof, as
7 I've stated to you, is on the State. The defendant is
8 not required to prove his innocence. The burden of proof
9 remains on the State to prove guilt beyond a reasonable
10 doubt.

11 Now, ladies and gentlemen, necessarily, you
12 must determine the credibility of witnesses who have
13 testified in this case, and credibility simply means
14 believability, and it will become -- and it becomes your
15 duty as jurors to analyze and evaluate the evidence and
16 determine which evidence convinces you of its truth. In
17 determining the believability of witnesses who have
18 testified in this case, you may believe one witness over
19 several witnesses, or several witnesses over one witness.
20 You may believe a part of the testimony of a witness and
21 reject the remaining part of the testimony of that same
22 witness. You may believe the testimony of a witness in
23 its entirety or reject the testimony of a witness in its
24 entirety, and you may consider whether any witness has
25 exhibited to you any interest, bias, prejudice, or other

1 motive in this case, and you may also consider the
2 appearance and the manner of the witness on the witness
3 stand.

4 Now, ladies and gentlemen, the rules of
5 evidence ordinarily do not permit witnesses to testify to
6 opinions or conclusions. There is an exception to this
7 rule for witnesses we call expert witnesses. A witness
8 who by education and experience has become expert in some
9 art, science, profession, or calling may state an opinion
10 as to relevant and material matters in which the witness
11 claims to be an expert and may also state the reason for
12 the opinion.

13 And, ladies and gentlemen, you should
14 consider any expert opinion received in evidence in this
15 case and, like all other evidence, give it the weight
16 that you think it deserves. You can decide the opinion
17 of an expert witness is not based on sufficient education
18 and experience, or if you conclude that the reason given
19 in support of the opinions are not sound or that the
20 opinion is outweighed by other evidence, you may
21 disregard the opinion entirely. An expert witness's
22 testimony is to be given no greater weight than that of
23 other evidence or any other witness simply because the
24 witness is an expert. Further, you are not required to
25 accept an expert's opinion even though it is not

1 corroborated, or contradicted.

2 Now, ladies and gentlemen, the defendant is
3 charged with trafficking in cocaine base, and the State
4 must prove beyond a reasonable doubt that the defendant
5 knowingly sold, manufactured, cultivated, delivered,
6 purchased, brought into the state, provided financial
7 assistance, or otherwise aided and abetted, attempted, or
8 conspired to sell, manufacture, cultivate, deliver,
9 purchase, or bring into the state and was knowingly in
10 actual or constructive possession, knowingly attempted to
11 become in actual or constructive possession of cocaine
12 base.

13 The State must also prove beyond a reasonable
14 doubt that the amount of cocaine was 10 grams or more but
15 less than 28 grams or 28 grams or more but less than 100
16 grams.

17 Ladies and gentlemen: If you determine the
18 State has not proven trafficking in cocaine base beyond a
19 reasonable doubt, you should then consider whether the
20 State has proven beyond a reasonable doubt that the
21 defendant is guilty of possession with intent to
22 distribute cocaine base, and possession with intent to
23 distribute contains all of the elements of trafficking
24 except the amount of cocaine base. In addition, the
25 State must prove beyond a reasonable doubt that the

1 defendant had the intent to distribute cocaine base.

2 Distribute means to deliver other than by
3 administering or dispensing a drug. An intent may be
4 shown by acts and conduct of the defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent, and in determining whether the defendant
7 had the intent to distribute the cocaine base, you may
8 consider the circumstances surrounding the defendant's
9 alleged possession.

10 You may consider the amount of the substance
11 alleged to have been possessed, the manner in which it
12 was allegedly possessed, the place where it was allegedly
13 possessed, and other factors which you consider to be
14 important. You must find that the defendant did not
15 intend to have the cocaine base solely for his own use,
16 and possession of one or more grams of cocaine base
17 creates an inference that the defendant possessed the
18 cocaine base with intent to distribute.

19 This inference does not relieve the State
20 from proving beyond a reasonable doubt that the defendant
21 had the intent to distribute. It was simply an
22 evidentiary fact to be taken into consideration by you,
23 along with all the other circumstances in this case, and
24 to be given the weight you decide that it should have.

25 Ladies and gentlemen: The defendant was

1 charged with possession with intent to distribute heroin.
2 The State must prove beyond a reasonable doubt that the
3 defendant possessed heroin with the intent to distribute
4 it. To prove possession, the State must prove beyond a
5 reasonable doubt that the defendant had both the power
6 and the intent to control the disposition or the use of
7 the heroin. Possession may be actual or constructive
8 possession, which means that the heroin was in actual
9 physical custody of the -- and actual possession means
10 that the heroin was in actual physical custody of the
11 defendant, and constructive possession means that the
12 defendant had the dominion or control or the right to
13 exercise dominion or control over the heroin itself or
14 the property on which the heroin was found, and mere
15 presence at the scene where the drug was found is not
16 enough to prove possession.

17 The defendant's knowledge and possession may
18 be inferred when a substance is found on the property
19 under the defendant's control; however, this inference is
20 simply an evidentiary fact to be taken into consideration
21 by you along with other evidence in this case and to be
22 given the weight that you decide that it should have.

23 And, ladies and gentlemen, two or more
24 persons may have joint possession of a drug, and the
25 State must also prove beyond a reasonable doubt that the

1 defendant intended to distribute the heroin, and just to
2 distribute means to deliver other than by administering
3 or dispensing a drug. Intent may be shown by acts and
4 conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent.

6 In determining whether the defendant had the
7 intent to distribute the heroin, you may consider the
8 circumstances surrounding the defendant's alleged
9 possession, and you may consider the amount of the
10 substance alleged to have been possessed, the manner in
11 which it was allegedly possessed, the place where it was
12 allegedly possessed, and other factors which you consider
13 to be important, and you must find the defendant did not
14 have the intent to have the heroin solely for his own
15 use.

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

25 Ladies and gentlemen: If you find the State

1 has failed to prove beyond a reasonable doubt that the
2 defendant is guilty of possession with intent to
3 distribute heroin, you may consider whether the State has
4 proven beyond a reasonable doubt that the defendant is
5 guilty of simple possession of heroin, and simple
6 possession does not require an intent to distribute the
7 heroin.

8 Ladies and gentlemen: The defendant is
9 charged with possession with intent to distribute
10 cocaine, and the State must prove beyond a reasonable
11 doubt that the defendant possessed cocaine with the
12 intent to distribute it. To prove possession, the State
13 must prove beyond a reasonable doubt that the defendant
14 had both the power and the intent to control the
15 disposition or use of the cocaine. Possession may be
16 actual and constructive, and actual possession means that
17 the cocaine was in the actual physical custody of the
18 defendant. Constructive possession means the defendant
19 had dominion or control or the right to exercise dominion
20 or control over either the cocaine itself or the property
21 on which the cocaine was found.

22 Mere presence at the scene where the drugs
23 were found is not enough to prove possession.
24 Defendant's knowledge and possession may be inferred when
25 a substance is found on the property under the

1 defendant's control; however, the inference is simply an
2 evidentiary fact to be taken into consideration by you
3 along with other evidence in this case and to be given
4 the weight you decide it should have. Again, two or more
5 persons may have joint possession of a drug, and the
6 State must prove beyond a reasonable doubt that the
7 defendant intended to distribute the cocaine, and
8 distribute means to deliver other than by administering
9 or dispensing a drug.

10 An intent may be shown by acts and conduct of
11 the defendant and other circumstances from which you may
12 naturally and reasonably infer intent, and in determining
13 whether the defendant had the intent to deliver the
14 cocaine, you may consider the circumstances surrounding
15 defendant's alleged possession. You may consider the
16 amount of the substance alleged to have been possessed
17 and the manner in which it was allegedly possessed and
18 the place where it was allegedly possessed and other
19 factors which you consider to be important.

20 You must find the defendant did not intend to
21 have the cocaine solely for his own use, and possession
22 of more than ten grains of cocaine creates an inference
23 that the defendant possessed the cocaine with the intent
24 to distribute it. This inference does not relieve the
25 State from proving beyond a reasonable doubt that the

1 defendant had the intent to distribute, it simply means
2 it's an evidentiary fact to be taken into consideration
3 by you along with other evidence in this case and to be
4 given the weight that you should decide it should have.

5 Now, ladies and gentlemen: If you find the
6 State has failed to prove beyond a reasonable doubt that
7 the defendant is guilty of possession with intent to
8 distribute cocaine, you may consider whether the State
9 has proved beyond a reasonable doubt that the defendant
10 is guilty of simple possession of cocaine. Simple
11 possession does not require an intent to distribute the
12 cocaine.

13 Ladies and gentlemen: If a crime is
14 committed by two or more people who are acting together
15 in committing a crime, the act of one is the act of all,
16 and a person who joins with another to commit an unlawful
17 act is criminally responsible for everything done by the
18 other person which happens as a probable or natural
19 consequence of the acts done in carrying out the common
20 plan and purpose.

21 For example: Two people can be guilty of
22 killing another person when only one of the two had a
23 gun, there was only one bullet, and only one of the two
24 fired the shot that caused the death. If two or more
25 people are acting together, assisting each other or

1 committing the offense, the act of one is the act of all,
2 and, as it is said, the hand of one is the hand of all.

3 Prior knowledge that a crime is going to be
4 committed without more is not sufficient to make a person
5 guilty of that crime, but mere knowledge that another
6 person is going to commit a crime, even if the defendant
7 is present when the crime is committed, is not sufficient
8 to convict the defendant as a principal. Guilt as a
9 principal is shown by actual or constructive presence at
10 the scene as a result of a prior arrangement; therefore,
11 finding of a prior arrangement plan or common scheme is
12 necessary for a finding of guilt as a principal.

13 The State must prove beyond a reasonable
14 doubt by competent evidence under the theory of the hand
15 of one is the hand of all that a principal in a crime is
16 the one who either actually commits the crime or is
17 present aiding and abetting or assisting in the
18 committing of the crime, and when a person does an act in
19 the presence of and with the assistance of another, the
20 act is done by both, and where two or more acting with a
21 common plan or intent are present at the commission of
22 the crime, it is done -- it does not matter who actually
23 commits the crime. All are guilty of the hand of one is
24 the hand of all, and presence at the commission of the
25 crime means to be sufficiently near to aid and abet and

1 assist in the commission of the crime; however, mere
2 presence at the scene of the crime is not sufficient to
3 convict one as a principal on the theory of aiding and
4 abetting and intent.

5 There's also a necessary element for there
6 have to be a common design or intent to commit the crime,
7 and the crime must have been committed pursuant thereto
8 with the person aiding and abetting some overt act.

9 Intent means intending the result which actually
10 occurred, not accidentally or involuntarily. Intent may
11 be shown by acts and conduct of the defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent, and the State must prove these elements
14 beyond a reasonable doubt.

15 Now, ladies and gentlemen: There are two
16 possible verdicts you may find in this case. Under the
17 indictment 2013-GS-10-4650, trafficking in cocaine base,
18 10 to 28 grams: Guilty or not guilty, or trafficking
19 cocaine base, 8 to 28 to 100 grams, not guilty or guilty,
20 or, on a lesser included offense of possession with
21 intent to distribute cocaine base, guilty or not guilty.
22 On 2013-GS-10-4660, possession with intent to distribute
23 heroin, not guilty or guilty, and, for a lesser included
24 offense of possession of heroin, not guilty or guilty;
25 and then under indictment 2013-GS-10-4661, possession

1 with intent to distribute cocaine, not guilty or guilty,
2 or, on the lesser included offense of possession of
3 cocaine, not guilty or guilty.

4 Ladies and gentlemen: There is no
5 significance in the order in which you state the possible
6 verdicts. It's simply that one must be stated first.
7 Now, ladies and gentlemen, your verdict must be a
8 unanimous one. All 12 of you must agree on the verdict,
9 and your verdict must not be based on sympathy,
10 prejudice, or any other consideration that is not
11 evidence in this case.

12 Madame Forelady: When the jury reaches a
13 verdict on each charge -- you'll see it's a long verdict
14 form. Number one, as to the charge of trafficking
15 cocaine base, that's kind of what I was telling you. You
16 kind of follow that, and if you find him guilty of number
17 one or number two, go on to number three, and it will
18 give you instructions of how to follow in sequence.

19 Now, once you check the appropriate verdict,
20 sign it as the foreperson. Knock on the jury room door,
21 and you will be brought back into court for the
22 publication of your verdict.

23 Now, ladies and gentlemen, I will ask that
24 you go to your jury room, but do not begin your
25 deliberations. There's still some matters I need to take

1 up with the attorneys. Now, ladies and gentlemen, for
2 your convenience, everything that I just read to you, you
3 will have a hard copy to go along with you in the jury
4 room as you review your verdicts.

5 Thank you, ladies and gentlemen.

6 (At 12:32 p.m., jury exits the courtroom.)

7 (Jury charge marked for identification as
8 Court's No. 3.)

9 THE COURT: All right. You may be seated.

10 Are there any other objections to the charge
11 that has been made from the State or the defendant?

12 MR. CORVEY: None from the State, Your Honor.

13 MR. WHIPPER: Your Honor, none from the
14 defense except we wondered if there might be a need for
15 further definition of mere presence. I know it was said
16 in there. I wondered if maybe that could be sort of
17 explained a little more.

18 THE COURT: That's generally the mere
19 presence charge I use, and I thought it was pretty clear,
20 and they'll have that in front of them if that's a
21 question. I think it's sufficient.

22 Anything further? All right. If y'all want
23 to make sure the right evidence goes back into the jury
24 room, please do so. The Court will be at ease pending
25 the call. Thank you.

1 Let me say on the record right now, y'all did
2 a wonderful job in trying this case. You certainly have
3 held your civility, and it has been a pleasure presiding
4 in this case.

5 MR. WHIPPER: Thank you.

6 MR. CORVEY: Thank you, Your Honor.

7 (12:35 p.m., deliberations commence.)

8 (1:53 p.m., in open court, jury not present.)

9 THE COURT: Okay. This is the question:
10 What is the difference between -- and this is on the
11 search warrant. They got it circled.

12 What is the difference between page 108 and
13 109 because they have two different addresses with the
14 same date, April 20th, 2013, signed by the same judge.

15 Do y'all know what --

16 MR. WHIPPER: Yeah, Your Honor. I mentioned
17 it. I think I mentioned it.

18 THE COURT: I think both of y'all explained
19 something like that.

20 MR. WHIPPER: We tried to leave the date, but
21 what happened was they set the search warrant for another
22 address.

23 MR. CORVEY: Well, I think, Your Honor, what
24 happened is just that I believe -- if I may approach?

25 THE COURT: Yeah, I didn't see it.

1 MR. CORVEY: I think this is what they're
2 talking about, and I think this is just a template they
3 used, and I think there is maybe another warrant. I just
4 believe it to be a clerical error. It's certainly an
5 unrelated address.

6 THE COURT: Okay. Well, I guess my only
7 answer is you'll have to review the evidence, and this
8 is -- which exhibit was this? I guess the only thing I
9 can say is y'all will have to carefully examine the
10 documents. I don't know if I can explain it to you any
11 more, because if I was explaining it, that is adding to
12 one of y'all's closing arguments.

13 MR. WHIPPER: Yeah, Your Honor.

14 THE COURT: Unless y'all have a better idea.

15 MR. WHIPPER: I'm thinking, Judge, that --

16 MR. CORVEY: Your Honor, I think --

17 MR. WHIPPER: It's in evidence, one, and no
18 motions.

19 THE COURT: And you either brought it up on
20 the closing or it was just a red herring.

21 MR. CORVEY: Well, that's right, Your Honor.
22 I don't think it has any effect, notwithstanding anything
23 Mr. Whipper has.

24 THE COURT: So you want me to just tell them,
25 look, y'all are going to have to look at the evidence?

1 MR. CORVEY: I agree with that.

2 THE COURT: Again, I can't explain it;
3 otherwise, I start getting into the facts of the case,
4 explaining the facts, but, you know, I'm just going to
5 write --

6 MR. WHIPPER: I think they have to look at it
7 in the context of what the charges are.

8 THE COURT: I said, Please review the exhibit
9 in light of all the evidence presented to you.

10 MR. CORVEY: I think that's fine, Your Honor.

11 MR. WHIPPER: The defense is okay with that.

12 THE COURT: We have another inquiry, and here
13 is what I think I'll do: Is the only difference between
14 trafficking and possession the amount?

15 And I sent a copy of the charge back there
16 with them, but what I think I'm going to do is bring them
17 all back in here and start with the charge starting with
18 traffic and possession, and I'm going to read it to them.

19 Does anybody have any objection to me doing
20 that?

21 MR. CORVEY: No objection.

22 MR. WHIPPER: No objection.

23 THE COURT: Y'all want to look at it?

24 You have an objection?

25 MR. WHIPPER: Yes. I do want to put it on

1 the record.

2 Your Honor, relative to the questions about
3 the search warrant, I understand Your Honor's position on
4 it, but I think that relative to the first way you
5 addressed that point as to how should the jury handle the
6 search warrant, on further reflection, I think what we
7 suggested the first time is the right thing to do.

8 THE COURT: Again, we talked about it, and
9 there was no objection in chambers, but I think that was
10 probably the wrong instruction. It's not a fact for them
11 to consider. It's a ruling on the law that I made, and,
12 therefore, I think I cured what was a mistake by sending
13 the note back there, but your objection is noted.

14 MR. WHIPPER: All right. I think the
15 positions that I took relative to -- there are some
16 questions about the accuracy of the warrant relative to
17 the --

18 THE COURT: But I have already ruled that it
19 was admissible, and, quite frankly, the drugs came in.
20 Exhibit No. 10 came in without objection.

21 MR. WHIPPER: Well, it came in mistakenly
22 without objection, but, by the same token, the idea of is
23 this, in fact, unauthorized, one I think went to the date
24 issue, and I think the date issue is a fact issue, and
25 they do with it what they want, and that would be my

1 objection.

2 THE COURT: All right. Your objection is
3 duly noted, and I'm not changing my ruling, but I am
4 going to go back in there. I guess this is page 10 of
5 22, and I'm just going to read what the charges are and
6 what the weights and how they would go about it. That is
7 the answer they're looking for.

8 MR. WHIPPER: My sense is that too, Your
9 Honor.

10 THE COURT: Let's bring them in.

11 MR. WHIPPER: So the question is, what is the
12 difference?

13 THE COURT: Is the only difference between
14 possession and trafficking the weight, and that's not the
15 only difference. I'm just going to read the one
16 concerning trafficking since that's possession with
17 intent, or do you want me to read them all?

18 MR. WHIPPER: Your Honor, I think you have to
19 read them all.

20 THE COURT: All right. That's easier.

21 (3:37 p.m., in open court, jury present.)

22 THE COURT: All right. Ladies and gentlemen
23 of the jury: I've received your question, and the only
24 way I can really answer it, and you've got a copy of it,
25 but I'm going to read you this part of the charge again

1 to make sure, and the question was, Is the only
2 difference between possession and trafficking the amount?

3 The defendant is charged with trafficking in
4 cocaine base. The State must prove beyond a reasonable
5 doubt that the defendant knowingly sold, manufactured,
6 cultivated, delivered, purchased, brought into the state,
7 provided financial assistance or otherwise aided,
8 abetted, attempted, or conspired to sell, manufacture,
9 cultivate, deliver, purchase, or bring into the state,
10 was knowingly in actual or constructive possession,
11 knowingly or attempted to become in actual or
12 constructive possession of cocaine base. The State must
13 also prove beyond a reasonable doubt that the amount of
14 the cocaine base was 10 grams or more but less than 28
15 grams, or 28 grams or more but less than 100 grams.

16 If you determine that the State has not
17 proven trafficking in cocaine base beyond a reasonable
18 doubt, you should then consider whether the State has
19 proven beyond a reasonable doubt that the defendant is
20 guilty of possession with intent to distribute cocaine
21 base.

22 Possession with intent to distribute contains
23 all of the elements of trafficking except the amount of
24 the cocaine base. In addition, the State must prove
25 beyond a reasonable doubt that the defendant had the

1 intent to distribute cocaine base. Distribute means to
2 deliver other than by administering or dispensing a drug.
3 Intent may be shown by acts and conduct of the defendant
4 and other circumstances from which you may naturally and
5 reasonably infer intent.

6 In determining whether the defendant had the
7 intent to distribute the cocaine base, you may consider
8 the circumstances surrounding the defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed, the manner in which it
11 was allegedly possessed, the place it was allegedly
12 possessed, and other factors which you consider to be
13 important. You must find that the defendant did not
14 intend to have the cocaine base solely for his own use.
15 Possession of more than one or more grams of cocaine base
16 creates an inference that the defendant possessed the
17 cocaine base with intent to distribute it.

18 This inference does not relieve the State
19 from proving beyond a reasonable doubt that the defendant
20 had the intent to distribute. It is simply an
21 evidentiary fact to be taken into consideration by you,
22 along with the other evidence in the case, and to be
23 given the weight you decide that it should have.

24 And then I'll go and read: Defendant is
25 charged with possession with intent to distribute heroin.

1 The State must prove beyond a reasonable doubt that the
2 defendant possessed heroin with the intent to distribute
3 it. To prove possession, the State must prove beyond a
4 reasonable doubt that the defendant had both the power
5 and the intent to control the disposition or use of the
6 heroin. Possession may be either actual or constructive,
7 and actual possession means the heroin was in the actual
8 physical custody of the defendant.

9 Constructive possession means the defendant
10 had dominion and control or the right to exercise
11 dominion or control over either the heroin itself or the
12 property on which the heroin was found. Mere presence at
13 the scene where the drugs were found is not enough to
14 prove possession. The defendant's knowledge and
15 possession may be inferred when a substance is found on
16 the property under defendant's control; however, this
17 inference is simply an evidentiary fact to be taken into
18 consideration by you along with the other evidence in the
19 case and to be given the weight you decide that it should
20 have.

21 Two or more persons may have joint possession
22 of a drug, and the State must also prove beyond a
23 reasonable doubt that the defendant intended to
24 distribute the heroin. Distribute means to deliver other
25 than by administering or dispensing a drug. An intent

1 may be shown by acts and conduct of the defendant and by
2 other circumstances from which you may naturally and
3 reasonably infer intent.

4 In determining whether the defendant has the
5 intent to distribute the heroin, you may consider the
6 circumstances surrounding the defendant's alleged
7 possession. You may consider the amount of the substance
8 alleged to have been possessed, the manner in which it
9 was allegedly possessed, the place where it was allegedly
10 possessed, and other factors which you consider to be
11 important.

12 You must find the defendant did not intend to
13 have the heroin solely for his own use. Possession of
14 more than two grains of heroin creates an inference that
15 the defendant possessed the heroin with intent to
16 distribute it. This inference does not relieve the State
17 from proving beyond a reasonable doubt that the defendant
18 had the intent to distribute, it is simply an evidentiary
19 fact to be taken into consideration by you along with the
20 other evidence in the case and to be given the weight you
21 decide that it should have.

22 And then simple possession of heroin, if you
23 find that the State has failed to prove beyond a
24 reasonable doubt that the defendant is guilty of
25 possession with intent to distribute heroin, you may

1 consider whether the State has proved beyond a reasonable
2 doubt that the defendant is guilty of simple possession
3 of heroin. Simple possession does not require an intent
4 to distribute the heroin.

5 The defendant is charged with possession with
6 intent to distribute cocaine. The State must prove
7 beyond a reasonable doubt that the defendant possessed
8 cocaine with the intent to distribute it. To prove
9 possession, the State must prove beyond a reasonable
10 doubt that the defendant had both the power and the
11 intent to control the disposition or use of the cocaine.

12 Possession may be either actual or
13 constructive. Actual possession means the cocaine was in
14 the actual physical custody of the defendant.
15 Constructive possession means the defendant had dominion
16 and control or the right to exercise dominion and control
17 over either the cocaine itself or the property on which
18 the cocaine was found. Mere presence at the scene where
19 the drugs were found is not enough to prove possession.

20 The defendant acknowledges possession may be
21 inferred when a substance is found on the property under
22 the defendant's control; however, the inference is simply
23 an evidentiary fact to be taken into consideration by you
24 along with the other evidence in the case and to be given
25 the weight you decide that it should have.

1 Two or more persons may have joint possession
2 of a drug. The State must also prove beyond a reasonable
3 doubt that the defendant intended to distribute the
4 cocaine, and distribute means to deliver other than by
5 administering or dispensing a drug. An intent may be
6 shown by acts and conduct of the defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent.

9 In determining whether the defendant had the
10 intent to distribute the cocaine, you may consider the
11 circumstances surrounding the defendant's alleged
12 possession. You may consider the amount of the substance
13 alleged to have been possessed, the manner in which it
14 was allegedly possessed, the place where it was allegedly
15 possessed, and other factors which you consider to be
16 important.

17 You must find the defendant did not have
18 intent to have the cocaine solely for his own use, and
19 possession of more than ten grains of cocaine creates an
20 inference that the defendant possessed cocaine with
21 intent to distribute.

22 This inference does not relieve the State
23 from proving beyond a reasonable doubt that the defendant
24 had the intent to distribute. It's simply an evidentiary
25 fact to be taken into consideration by you along with

1 other evidence in this case and be given the weight you
2 decide that it should have.

3 If you find that the State has failed to
4 prove beyond a reasonable doubt the defendant is guilty
5 of possession with intent to distribute cocaine, you may
6 consider whether the State has proved beyond a reasonable
7 doubt the defendant is guilty of simple possession of
8 cocaine. Simple possession does not require an intent to
9 distribute the cocaine.

10 All right? Thank you, ladies and gentlemen..
11 You go back and continue your deliberations.

12 (3:46 p.m., deliberations resume.)

13 THE COURT: Court will be at ease.

14 MR. WHIPPER: Your Honor, based on the ruling
15 and based on the ruling involving the warrant question,
16 how do we describe how we get to this incident scene?
17 That issue is a trial issue that you may rule on, where
18 we allow the context of the warrant to establish the
19 use -- to describe how law enforcement got to the point
20 of view that it did, allegedly.

21 I think that the idea of disclosing the
22 nature of the warrant does taint deliberation of the
23 jury, so, on that ground, I would move for a mistrial.

24 THE COURT: State?

25 MR. CORVEY: Your Honor, he introduced the

1 warrant into evidence, so, I mean, any alleged pain would
2 have been of his own doing; however, I don't see how the
3 introduction of the warrant taints this at all. This is
4 really a question that came up because in a jury question
5 and the best way to deal with it, not necessarily whether
6 or not the introduction of the warrant itself provided
7 any taint or anything like that.

8 Moreover, Your Honor, I think the testimony
9 here is clear: No narcotics investigation gave officers
10 directions to the house. Someone from the community gave
11 directions to the house. I'm not sure I understand
12 Mr. Whipper's point regarding that, but I certainly don't
13 think a mistrial is appropriate at this stage.

14 THE COURT: And I hear your objection and
15 your motion, but I'm going to respectfully deny it. All
16 right.

17 (Note from jury marked for identification as
18 Court's No. 4.)

19 (Note from jury marked for identification as
20 Court's No. 5.)

21 (Recess taken.)

22 (6:14 p.m., in open court, jury not present.)

23 THE COURT: Question: If we are unable to
24 decide on one question, what happens next? If we are
25 unable to decide on one question, what happens next?

1 I think they're saying, We can't reach a
2 unanimous verdict, so I think my response needs to be
3 just, Does your question mean you cannot reach a
4 unanimous verdict at this point in time?

5 If they say no, then I may ask them to better
6 explain the question, what that means. If it's a yes,
7 then I'll give an Allen charge and then send them back
8 and order them more pizza. Do y'all agree that that's a
9 fair way to handle this?

10 MR. WHIPPER: Yes.

11 MR. CORVEY: That sounds fine to me, Judge,
12 if they're asking if they're stuck on one particular
13 charge.

14 THE COURT: Does your question mean that
15 you're unable to resolve one question or cannot all agree
16 on the verdict for any charge? I think that's good.

17 (Note from jury marked for identification as
18 Court's No. 6.)

19 (Brief recess taken.)

20 THE COURT: The answer is: It's just for one
21 of the questions.

22 Now I got to ask back which one, you know?
23 Then maybe I can recharge or something like that on that
24 particular area. David brought up a good point: Why
25 don't we just bring the foreperson in, put them under

1 oath and -- you know what? I just never have done it
2 that way.

3 Do y'all see any other judges do it different
4 from what I've been doing? Do y'all have an objection
5 with me bringing the foreperson in and asking her what
6 is --

7 MR. CORVEY: No objection.

8 MR. WHIPPER: No.

9 THE COURT: Good idea, David. Bring the
10 foreperson in.

11 (In open court, foreperson present.)

12 THE COURT: Hello, ma'am. How are you doing?

13 We're a little confused on your question,
14 just want some clarification. You say it's one question
15 that y'all have a problem on; is that right?

16 THE FOREPERSON: Uh-huh.

17 THE COURT: Would you want me to recharge you
18 on a certain area, or -- I guess I'm going to say -- what
19 is it that you're confused on that we could maybe give
20 you a better charge or something like that?

21 THE FOREPERSON: The number is number two.

22 THE CLERK: On this verdict form?

23 THE FOREPERSON: Yes. That's the
24 trafficking 28 to 100 grams of something, where some of
25 us are confused, and should it be trafficking or should

1 it be possession with intent to distribute?

2 THE COURT: There are two levels of
3 trafficking. They're both trafficking, but it's based
4 upon the weight, and there were different weights and
5 that's -- under this verdict form, you could find the
6 defendant guilty on both of them or guilty on neither of
7 them, based upon what you believe the weight to be.

8 THE FOREPERSON: Okay. So we can find him --
9 okay. So this was another -- the 10 to 28 grams --

10 THE COURT: You could find he was guilty of
11 that and not guilty of the 28 to 100; you could find that
12 he was guilty of the 28 to 100 -- it would be difficult,
13 and I think this is where the problem is, now that I look
14 at it. It would be virtually impossible for you to find
15 him guilty of one -- number two but not number one.

16 THE FOREPERSON: Right. And that was one of
17 the questions, so --

18 THE COURT: Come here. Let me show you all
19 this. Let me ask you to step back out of here while we
20 have a quick conversation.

21 (Brief recess taken.)

22 THE COURT: Okay. Bring her in.

23 (In open court, foreperson present.)

24 THE COURT: All right. Ma'am, what we have
25 decided, as to one and two, you will decide one or two.

1 If you decide on one, you shouldn't decide on the other.

2 THE FOREPERSON: So if we decide on number
3 one, we shouldn't decide on number two? Is that what I'm
4 understanding?

5 THE COURT: Or vice versa.

6 THE FOREPERSON: Okay.

7 THE COURT: If you find he is guilty on
8 number two, you don't need to worry about number one. If
9 you find that he is guilty on number one, you don't need
10 to worry about number two. You can say not guilty of
11 number two, or just strike through it, actually.

12 THE FOREPERSON: So if we answer number one,
13 we shouldn't answer number two? I just want to make sure
14 I have the right --

15 THE COURT: If you answer number one that he
16 is guilty, you don't need to go to number two. If you
17 answer not guilty, then that's basically -- but if you
18 find not guilty on number one, you want to look at number
19 two -- you can find him not guilty on both of them, if
20 you choose.

21 THE FOREPERSON: Okay. And the difference is
22 the amount of weight?

23 THE COURT: The amount, that's right. One is
24 from 10 to 28, and one is 28 to 100 grams.

25 THE FOREPERSON: Okay. And with the

1 possession --

2 THE COURT: I think those are laid out pretty
3 good. Do you think that answers your question?

4 THE FOREPERSON: Yes.

5 THE COURT: Don't tell us what you're going
6 to do, just -- okay. Thank you.

7 All right. Court will be at ease.

8 (Note from jury marked for identification as
9 Court's No. 7.)

10 (6:36 p.m., in open court, jury present.)

11 THE COURT: Y'all may be seated.

12 Ladies and gentlemen: I just wanted to clear
13 up something. I have talked to your foreperson, but I
14 wanted to make sure all of you realized.

15 On your verdict form there is a one and a
16 two. We have it in small letters before that, if you
17 find guilty for number one or two, go on to number three,
18 and I just want to make sure you understand.

19 If you make your verdict on one or two -- and
20 I just want to make sure all of you understand that, that
21 it's not both of them, it's one or the other, and then go
22 on down the verdict form. All right?

23 I just wanted to make sure that that was
24 conveyed, because when I went back and looked in the
25 actual charge, which you have a copy of, it says, on the

1 two charges, the trafficking cocaine base 10 to 28 grams,
2 or, in the charge, but we didn't have it specifically on
3 the verdict form. I just wanted to make sure that's
4 clear for you.

5 All right? Thank you, ladies and gentlemen.
6 Thank you for your hard work. You may continue your
7 deliberations.

8 Court will now be at ease.

9 (At 6:38 p.m., deliberations resumed.)

10 (Recess taken.)

11 THE COURT: All right. Jury has reached a
12 verdict.

13 (6:57 p.m., in open court, jury present.)

14 THE COURT: Thank you. You may be seated.
15 Madame Forelady, has the jury reached a
16 verdict?

17 THE FOREPERSON: Yes.

18 THE COURT: Is it unanimous?

19 THE FOREPERSON: Yes.

20 THE COURT: All right. Please pass it to the
21 bailiffs.

22 All right. Will you please publish the
23 verdict. Will the defendant please stand.

24 THE CLERK: The State of South Carolina, in
25 the county of Charleston, in the Court of General

1 Sessions: Indictment numbers 2013-GS-10-04659 through
2 4661, State of South Carolina versus Kevin L. Middleton.
3 Question number one: As to the charge of trafficking
4 cocaine base of 10 to 28 grams, we, the jury, unanimously
5 find the defendant not guilty.

6 As to the charge of trafficking cocaine base
7 of 28 to 100 grams, we, the jury, unanimously find the
8 defendant guilty.

9 As to the charge of possession with intent to
10 distribute heroin, we, the jury, unanimously find the
11 defendant guilty.

12 As to the charge of possession with intent to
13 distribute cocaine, we, the jury, unanimously find the
14 defendant not guilty.

15 As to the charge of possession of cocaine,
16 we, the jury, unanimously find the defendant guilty,
17 signed, Madame Forelady, April 15, 2015.

18 Ladies and gentlemen of the jury: If this is
19 your verdict, please indicate so by raising your right
20 hand. Please let the record reflect that all jurors have
21 raised their right hand.

22 THE COURT: Thank you. You may be seated.
23 Does the defense request polling of the jury?

24 MR. WHIPPER: We'd like them to be polled.

25 THE COURT: Please poll the jury.

1 THE CLERK: Yes, sir, Your Honor.

2 Ladies and gentlemen of the jury: The way
3 the process works, I will start making my way down this
4 list. I will identify you by your juror number. When I
5 call out your juror number, please raise your right hand
6 so that I know it's you, and I will ask you two
7 questions. Please respond to each question
8 appropriately.

9 Starting with Madame Forelady, juror 259, is
10 this your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you. Juror 271, is this
15 your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Thank you. Juror 28, is this
20 your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you. Juror 182, is this
25 your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Juror 166, is this
5 your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you. Juror 95, is this
10 your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you. Juror 126, is this
15 your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Thank you. Juror 224, is this
20 your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Thank you. Juror 163, is this
25 your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Juror 133, is this
5 your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you. Juror 195, is this
10 your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you. Juror 192, is this
15 your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Your Honor, the panel has been
20 polled, and the verdict stands.

21 THE COURT: All right. Well, ladies and
22 gentlemen: Y'all were a hardworking jury, and I want to
23 thank you for taking the time. It was six-and-a-half
24 hours, and I've had other juries who give up a lot sooner
25 and just not worry about it, but y'all didn't do that.

1 Y'all took an oath to try to reach a verdict.
2 You had several questions, and you went through it and
3 you analyzed the evidence and reached a unanimous
4 verdict, and I would tell you that if the verdict was the
5 other way because it's obvious that you took the time to
6 do what you thought was right, and, as an officer of this
7 court, I appreciate that.

8 Now, ladies and gentlemen, throughout this
9 trial, I have told you not to speak to anyone about that.
10 That's over with now. You can speak to anyone you want
11 to, as much as you want or as little as you want to, and,
12 ladies and gentlemen, I've just got to remind you that
13 the service that you have given to the State of South
14 Carolina and the county of Charleston is so great
15 compared to what they're going to pay you.

16 So, I mean, it's really nothing compared to
17 the time that you put into it, and, ladies and gentlemen,
18 people say, well, what makes America great? Well, what
19 makes America great is people like y'all, who come out of
20 their normal routines of life, come together, you don't
21 know anybody else here, but you come and you analyze it,
22 and this is what we do in America.

23 We have -- only citizens, only free citizens
24 in America can say that another person is guilty. It's
25 not the prosecutors, it's not the police, but it's only,

1 other free citizens, and sometimes I tell people I've got
2 a great job because I get to sit between these two flags,
3 and these flags stand for something much greater than all
4 of us.

5 Thousands of people have died and bled for
6 that. You didn't have to do that, but you did all you
7 could do to uphold the ideals of freedom, and, again,
8 ladies and gentlemen, there were a lot of important
9 things going on in Charleston County this week, but I can
10 assure you there is nothing more important than making
11 sure that justice is done and protecting your fellow
12 citizens' rights and making sure that they have the right
13 to a fair trial.

14 Now, ladies and gentlemen, I wish I could
15 tell you you were free for the rest of the week, but we
16 have other juries we have to select, so I'm going to have
17 to -- and I've asked this question, but I have to ask you
18 that you be back here at 9:30 tomorrow morning for the
19 possibility of being on another jury. Normally -- they
20 just don't have that many jurors this week, and they have
21 two other trials. Normally, I would be able to release
22 you, but I can't do that, but as I send you out for the
23 evening, I would like to take the opportunity to thank
24 you and your families for giving up this time and your
25 service as jurors.

1 In just about 15 minutes I'm going to
2 sentence the defendant in this case. Y'all have done
3 y'all's job, and now it's time for me to do mine. If you
4 would like to stay and watch, you're welcome to do that.
5 Your job is over with. Now it's time to do mine, but, as
6 I said, you are more than welcome to stay, and the
7 bailiffs will lead you back around. Thank you for your
8 service.

9 (Jury dismissed.)

10 THE COURT: Any other post-trial motions?

11 MR. WHIPPER: Your Honor, defense would move
12 for a new trial. Fundamental basis for a new trial,
13 starting out, again, the issue raised earlier regarding
14 how did law enforcement get to [REDACTED] Leslie? I think
15 that's key, and I have to say that I think that may have
16 been the obstacle for getting the case tried on this
17 date.

18 I'm asking for a new trial on that motion,
19 and, of course, on that ground; and then secondly, of
20 course, another major concern is the suppression hearing
21 where we were not able to deal with the service of the
22 arrest warrant, and that goes through expectations of
23 privacy issue under U.S. v. Siegel as well as the knock
24 and announce. There are facts that showed that did not
25 happen, and, so on those grounds, we would ask for a new

1 trial, and, also, regarding admission of the evidence,
2 again, I think that Exhibit 10, there are questions about
3 the integrity of the material there, so that was an
4 issue.

5 I think that would cover the main grounds,
6 Your Honor.

7 THE COURT: Okay.

8 MR. WHIPPER: That would be it, Your Honor.

9 THE COURT: Thank you. Yes, sir, would you
10 like to respond?

11 MR. CORVEY: Your Honor, I think it was a
12 fair trial. I don't think that a new trial is warranted
13 based on the search warrant issue. Again, I think those
14 were matters were handled at pretrial. I also think the
15 Court ruled that there wasn't a sufficient showing that
16 the defendant had standing to challenge the search
17 warrant in this case regarding the issue Mr. Whipper
18 mentioned, regarding knock and announce. All the
19 testimony that they presented, it came out that there was
20 a knock, and there was.

21 I think certainly that would be a matter for
22 the jury had there been conflicting evidence, but there
23 was no conflicting evidence regarding that issue, and,
24 frankly, Your Honor, I think it's a just result.

25 THE COURT: Okay. Mr. Whipper, I'm going to

1 respectfully deny your motion. Of course you'll have the
2 requisite time to file the appropriate appeals. What I'm
3 going to do at this point in time -- we're going to break
4 for about 15 minutes, and then I'll sentence the
5 defendant at that time. All right?

6 So court is going to be in recess for 15
7 minutes.

8 MR. WHIPPER: Your Honor, I have some items I
9 would hand up if you would like --

10 THE COURT: Wait until -- and we'll all do it
11 all at one time. All right? Thank you.

12 (Recess taken.)

13 THE COURT: We have the verdict form?

14 MR. WHIPPER: I have it, Judge.

15 THE COURT: Mr. Whipper, your client doesn't
16 need to sign a verdict form when it's a jury verdict.
17 It's only when there is a plea.

18 All right. Mr. Corvey, would you like to
19 present the State's case?

20 MR. CORVEY: Yes, Judge. Thank you.

21 May it please the Court: You know, I think
22 this case really said a lot, but I think what it said
23 more are the charges that I still have pending on
24 Mr. Middleton, and, of course --

25 THE COURT: I can't consider those.

1 MR. CORVEY: I can't explain any of those at
2 all?

3 THE COURT: I can't comment on those at all
4 because he hasn't been convicted. He's an innocent man
5 on that.

6 MR. CORVEY: Well, Judge, as to his prior
7 record, to this point: 2005, a conviction for simple
8 possession of marijuana; 2010, a conviction for receiving
9 stolen goods, there's two counts of that, breach of trust
10 and obtaining under false pretenses; and a 2012
11 conviction for simple possession of marijuana.

12 Your Honor, there was kind of lengthy
13 discussions regarding a possible plea. We've had this
14 case on multiple trial dockets. I believe the State's
15 first offer was a minimum of 10, cap of 15, and then the
16 last offer was a 15-year offer, covering all of his
17 charges.

18 Now, Judge --

19 THE COURT: What is the range on the
20 trafficking in crack 28 to 100?

21 MR. CORVEY: Seven years and twenty-five
22 years, Your Honor, and a fine of 50,000.

23 THE COURT: How about for the other two, the
24 possession with intent cocaine?

25 MR. WHIPPER: I think, Judge, it's the

1 possession with intent to distribute heroin.

2 MR. CORVEY: It is, I think, fifteen years,
3 Your Honor, zero to fifteen years, and then for the
4 possession of cocaine, zero to three years, Judge.

5 THE COURT: I know that's three years. Okay.

6 MR. CORVEY: And, Your Honor, I think, again,
7 that this case really said a lot. I think -- we had a
8 number of people in this house. I think it's been clear
9 through the course of this trial that a number of people
10 decided to take responsibility for what they were doing
11 that night. Of course, I don't want to take anything
12 away from Mr. Middleton's right to ask for a trial, but I
13 think it's indicative of how strong the evidence was in
14 this to not take responsibility for your actions.

15 Your Honor, I would ask that you consider
16 something in the upward end of the sentencing range, in
17 the 20- to 25-year range. I think that would be an
18 appropriate outcome at the end of the case.

19 THE COURT: All right. Thank you.

20 Mr. Whipper, would you like to say anything,
21 or any of his family members?

22 MR. WHIPPER: Yes, Your Honor. At some point
23 I would at least like to hand these up to the Court to
24 see.

25 THE COURT: Yes, hand them up.

1 MR. WHIPPER: These are letters that reflect
2 his bond hearing.

3 THE COURT: Thank you. Well, it sounds like
4 he's been making good decisions since he's been in
5 prison, and certainly --

6 MR. WHIPPER: Your Honor, I just want to make
7 sure about his family status, Your Honor.

8 He's 28 years old, as you may have seen in
9 some of the documents. His eight-year-old son, and then
10 his family is here. The facts indicate that people were
11 involved in some lifestyle that probably most people
12 wouldn't recommend, and we know, Judge, that when you're
13 young, a lot of times you don't see the gravity of being
14 around like what we saw and heard from the witness
15 Mr. Ferguson, but Mr. Middleton didn't do anything to
16 delay this charge. It was a matter of him getting new
17 counsel, my coming in with my schedule.

18 THE COURT: And I recognize that, because
19 this case could have easily been continued until July
20 with a one word request.

21 MR. WHIPPER: Sentencing, I know, is one of
22 the hardest things that the Court is largely entitled to
23 impose. It's a final situation. All I can say is that
24 what you see here is, hopefully for Mr. Middleton, what
25 the future holds, that he will continue to develop

1 himself and be prepared to take his rightful place in the
2 community. He really does have a great family. His
3 father is here, his grandmother is here, his sister is
4 here, cousins, and they've always been here.

5 So there's been talk about what acts were
6 going on at that time, and there's never been a
7 situation -- as you can see, what I just said to his
8 mother, there has always been care and love. There's
9 always been support. You can see from his letters he
10 knows the difference between right and wrong. We would
11 have loved for him to have a different outcome, but it is
12 what it is.

13 I would just say to the Court that what you
14 see there in terms of what he's been doing indicates that
15 what sentencing does will probably be very successful
16 because, again, he hasn't wasted his time. He recognizes
17 that there is a future, that he has to be prepared to
18 take his place in the community once he's released,
19 whenever that is, and he recognizes that is a day he has
20 coming to him. He'll get another chance.

21 While he's been in jail, I'm sure Mr. Corvey
22 checked on him. He's been a good inmate, is cooperative;
23 so, Judge, I think what we have here is a person who has
24 to recognize that you have to control your life from A to
25 Z and avoid certain company. Don't take for granted that

1 it's "a boys will be boys" kind of a world. What we do
2 has consequences, so this is what's going on.

3 I ask the Court to be optimistic about this
4 when you consider what you're going to do, and I also
5 ask -- the Court has to have an obligation to protect,
6 and, you know, getting that done, Judge, getting that
7 done, a lot of times, starts having somebody change from
8 the inside out, so I hope the Court would allow that to
9 be successful.

10 I know that his parents would like to speak,
11 specifically his father. He's self-employed. He had an
12 accident, and this is how he lives now. He had to stop
13 working. He comes from a great family, and I know his
14 father very well. He's done a fine job in the community.
15 When he should gain his release, he's welcome to go back
16 there, that's for sure. We've got a working family here
17 who knows which way is up.

18 THE COURT: Please state your name for the
19 record.

20 THE WITNESS: My name is Timothy Elliott.

21 Your Honor, I'm Kevin's father. Not his
22 father, but I'm Kevin's stepfather. I stepped in to
23 raise Kevin and his sisters. I know most parents say
24 their kids are good. Kevin was a good boy until he got
25 introduced to drugs. I've been in a wheelchair for 20

1 years, and when Kevin stayed home, there wasn't a day go
2 by that he didn't come in there and exercise my legs and
3 help me out.

4 Since Kevin been in jail for two years, I've
5 been talking back and forth with him, and the reason that
6 I come up for this trial is because I wanted to make sure
7 he was innocent. I told him I was not going to back him
8 up if he was guilty.

9 We've lived in the community for 16 years.
10 Me and my wife have done investigation with these charges
11 he's charged with for two years to make sure he was
12 innocent before we came here. We talked with each and
13 every one of the guys who were in the house to make sure
14 he was innocent, and that's why I back him up with this
15 because I was not going to back him if he was not
16 innocent because I told him, I said, If you're guilty,
17 you're going to plead guilty, you hear me? And we
18 constantly, constantly talk, and by me knowing he's
19 innocent, I told him I would back him up.

20 Your Honor, the only thing I can ask you
21 right now is for grace and mercy because this boy has
22 made a 180-degree turn. Before Kevin got introduced to
23 the drugs, Kevin was one of the best boys you would ever
24 want to have as a son. When he got turned on to drugs,
25 he just changed. He turned. He changed, but now since

1 he's been in jail, he went to rehab. He got a GED.

2 He made a 360-degree turn when he got out of
3 jail, and all the time prison is not what it takes to
4 change people. Sometimes it just takes somebody going in
5 rehab, but I don't think the prison -- he's been in jail
6 for two years, Your Honor. I just ask you for some type
7 of leniency for this boy to get on with life so he
8 doesn't have to be in jail.

9 He went to the rehab like he wanted to. They
10 didn't make him do these things. He did these things on
11 his own. I didn't tell him to do nothing. He did these
12 things on his own, so I ask that if you find it in your
13 heart, Your Honor -- he's did two years in jail. Give
14 him a lenient sentence or whatever you can do.

15 I stepped up to the plate and tried to raise
16 him, even though a stepfather is still not like a father,
17 and he's been battling with this since he's been a child.
18 Since he's been a child, he's been battling with that.
19 His father is still living today, but he haven't seen his
20 father in over 25 years. Never had a phone call,
21 anything. If he needed something, I had to step up to
22 the plate in a wheelchair and do these things for him,
23 but this boy really is a good boy before he got
24 introduced to those drugs.

25 I'm telling you the God's truth: That boy

1 was a good boy before he got introduced to hanging out
2 with these guys that got him introduced to these drugs,
3 because I used to tell him, You're my only child. You
4 need to get outside. Go outside and play, because all he
5 wanted to do was stay in the house and play video games.
6 I pushed him out to try to get him out in the street
7 because I thought that was the thing to do.

8 But other than that, he's not lying and I'm
9 not lying. We did an investigation, and we figured out
10 it wasn't his stuff, because I told him, like my father
11 told me, if you want to get in trouble, if you're guilty,
12 I'm not going to back you up. If you're innocent, you
13 got me 100 percent, and I back him 100 percent because I
14 found out he was innocent, and that's why I give the
15 lawyer my money to defend him.

16 We know everybody that is involved with this.
17 We knew them, David, Allen, Ferguson -- we knew them all.
18 We talked to them, and every one of them said it wasn't
19 him. That's why I backed him up. I was not going to
20 back him because I told him, if he was guilty -- who I
21 am, my daddy being who he is, I'm not going to come to
22 court and back you if you're guilty. I told him that, so
23 that's why I backed him, and so I ask you, Your Honor,
24 from the bottom of my heart, if you can really be lenient
25 on my boy. He's really changed. I didn't force him into

1 it. His mother didn't force him into it. He made these
2 decisions by his self.

3 THE COURT: All right, sir.

4 THE WITNESS: So I ask you, if you can find
5 it in your heart to give him some type of leniency,
6 please, sir, please, sir, do.

7 THE COURT: Let me correct you on one
8 statement: You made the statement that you weren't his
9 real father. There may be somebody else out there who is
10 his biological father, but you're his real daddy. Don't
11 forget that. You've raised him, and you're his daddy,
12 based on what you're telling me.

13 Does anyone else want to speak on his behalf?
14 Yes, ma'am?

15 THE WITNESS: My name is Jamie Elliott. I am
16 the mother of Kevin Middleton. Just like my husband
17 said, Kevin has been a fine boy. I have never had any
18 trouble out of Kevin at all. Anything I ask Kevin to do,
19 he would do. He was always respectful to me. I raised
20 him up in church. My husband is a minister. I raised
21 all my children in a church, and I have never, ever had
22 any trouble out of my son.

23 I'm not saying he's perfect, because there is
24 not a perfect child, but as far as -- I always tell him,
25 respect carry you a long way. It will carry you a long

1 way. I always told him to have respect for the people in
2 the neighborhood, and everybody in the neighborhood who I
3 came into contact with, always, when they see me in the
4 street, they walk up and tell me what kind of a son I
5 had. He would cut the grass and do things around the
6 neighborhood.

7 I'm asking, Your Honor, if you can find it in
8 your heart to please find mercy. I'm just asking for
9 mercy. He got his GED, and he's still trying to get his
10 life on the right track and everything. I try to talk to
11 him every day so I can keep in contact with him. I'm the
12 type of mother, I always interact with my kids. I'm not
13 a mother that will allow her kids to go out and just do
14 what they want to do. I'm a hands-on mama. I always try
15 to make sure things are right with them.

16 Again, Your Honor, I ask if you could please
17 have mercy.

18 THE COURT: Thank you. Yes, ma'am?

19 THE WITNESS: Your Honor, my name is Rosalee
20 Nichols. I am Kevin Middleton's grandmother. Can you
21 hear me?

22 THE COURT: Yes, ma'am.

23 THE WITNESS: I'm his grandmother, and I am
24 one of those grandmothers that everybody will tell you,
25 and they tell me, I don't spare the rod. I know he's not

1 a bad person, because I do not spare the rod, and all of
2 my grand kids, down to my great-grand kids, I don't spare
3 the rod on them. I don't hide. I don't bite my tongue.
4 I just know exactly what is what and what the law is,
5 because I have started that. I worked with the law in
6 some way because I'm from the medical base on law
7 enforcement. I'm retired now.

8 Okay? If he come up and say, Well, I did not
9 do that, Grandma. I don't have anything to do with this,
10 Grandma, I believe him because they will not -- all of
11 them, they will not stand in front of me and lie because
12 they know I will really, really get upset. I don't spare
13 no rod, none at all, and I don't believe in -- I believe
14 in law enforcement, but I do not believe in them lying
15 and hiding, Your Honor.

16 I'm sorry to say that. You might think I'm a
17 bad person for saying that. I'm not disrespecting you,
18 but I don't believe in it, and if there is a God and a
19 God in you, you will have mercy for this family. They go
20 to church every Sunday. We all go to church every
21 Sunday, Sunday school. Aaron Elliott is our pastor. So
22 I am asking the Court, Your Honor, Kevin will change.
23 Just give him a chance.

24 THE COURT: Thank you, ma'am.

25 THE WITNESS: Thank you.

1 THE COURT: Anyone else? Mr. Whipper,
2 anything further?

3 MR. WHIPPER: Nothing further, Your Honor.
4 I'm sorry. Your Honor, Mr. Middleton did
5 want to say something.

6 THE COURT: Yes, Mr. Middleton?

7 THE DEFENDANT: Your Honor, first of all, I'd
8 like to apologize to my family and to the Court for
9 putting everybody through this, and I realize I was
10 younger back then, and I guess I was selfish too. I
11 didn't think about actions. I didn't talk about the
12 actions that I put on my family, and I just wanted to say
13 I'm sorry, because I'm not a bad guy, really.

14 Everybody acts like that's my daddy. That is
15 really my stepfather, and he raised me good. I call him
16 daddy and he call me his son. I just want to say I'm
17 sorry and wish that you have mercy on me. I made bad
18 decisions. I was young, and I know that there are
19 consequences. If knew that all this would happen, I
20 promise you, I wouldn't have set foot in that door.

21 I just want to say I'm sorry. I was raised
22 good. Granddaddy has passed along a missionary. I just
23 ask that you have mercy on me and give me another chance.
24 I'm not a bad person. The biggest habit I have is
25 smoking weed. I like to smoke weed, but since I've been

1 in jail, you can see I've been trying.

2 I went through the drug program at Turning
3 Leaf. Before I got locked up, all I thought every day
4 was about smoking weed, go to work, get money to smoke
5 weed. I had problems, so I went to the drug program and
6 then the Turning Leaf program, and I figured I need an
7 education, so I got my GED.

8 I'm not a bad person, Your Honor. I never
9 had to spend two years in jail. People with charges like
10 mine, that they don't get in trouble, if you're not in
11 trouble over a year, they bring you over in two years,
12 Your Honor, and if you could just find it in your heart
13 to have me mercy on me and give me another chance.

14 THE COURT: Thank you. The potential
15 sentence on the trafficking is 7 to 25 and a \$50,000
16 fine?

17 MR. CORVEY: I believe it's and/or, Your
18 Honor. I'm not so sure about --

19 MR. WHIPPER: I think it's "and".

20 THE COURT: This is his first drug
21 conviction?

22 MR. CORVEY: Yes, Your Honor.

23 THE COURT: And a fine of \$50,000.

24 In all these cases, it's always a tragedy,
25 and if I were to measure the gallons of tears that are

1 shed, there's always so many more gallons that are shed
2 than I can count, and I'm sorry for your loss in this
3 situation.

4 Mr. Middleton, what you were doing out there
5 was you were pedalling a lot of dope, and what he has
6 been the victim of, of getting into dope and drugs, he
7 was guilty of doing the same thing, and in this one
8 setting, he had enough drugs to effect and poison up to
9 125 other people in the community, and I guess that's why
10 the drugs spread so rapidly in our community is because
11 one person can be the source for so much pain.

12 Normally, in this situation, I would, I
13 guess -- he has a past record. It hasn't been real
14 serious, but it's serious enough that he knew he was into
15 something bad. I'm not going to max him out, I think,
16 and because these all happened at one particular sitting,
17 this sentence will run concurrent. It's not a life
18 sentence, but it's what I believe to be a fair sentence.
19 If you don't think it's fair, then you certainly have the
20 right to appeal it from this point forward.

21 On the first charge of the possession of
22 cocaine first, sentence is three years. On the
23 possession with intent to distribute heroin, first
24 offense, the sentence is ten years, but on the crack
25 cocaine, which there was a lot of crack cocaine -- and,

1 again, the poison was getting ready to spread through the
2 community -- the sentence is that you will be committed
3 to the State Department of Corrections for a period of 16
4 years. I can't waive any of that, and a \$50,00 fine.

5 All right? Thank you.

6 (At 8:01 p.m., the proceedings were
7 concluded.)

8 - - -

9 (Whereupon, the proceedings were concluded.)

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GKV20130402930

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013013149

ARREST WARRANT NUMBER

2013A1010202097

DATE OF ARREST

April 19, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 06 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1004659

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

KEVIN L MIDDLETON

DOB: [REDACTED]

B/M

Indictment for

Trafficking Cocaine Base

FILED

8/20/2013 8:49:07 AM

JULIE J. ARMSTRONG

CLERK OF COURT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & EC

By: [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

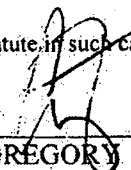
INDICTMENT

At a Court of General Sessions, convened on August 5, 2013, the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine Base

That in Charleston County, South Carolina, on or about April 19, 2013, the Defendant, KEVIN L MIDDLETON, knowingly did sell, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine Base, in excess of 10 grams; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GREGORY VOIGT
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By  DEPUTY CLERK

GKV20130402930

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013013149

ARREST WARRANT NUMBER

2013A1010202099

DATE OF ARREST

April 19, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. - 2013GS1004660

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

KEVIN L MIDDLETON

DOB: [REDACTED]

B/M

Indictment for

Possession With Intent to Distribute Heroin

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF C. S. & F.C.
By [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

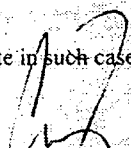
INDICTMENT

At a Court of General Sessions, convened on August 5, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Heroin

That in Charleston County, South Carolina, on or about April 19, 2013, the Defendant, KEVIN L MIDDLETON, did manufacture, distribute, dispense, deliver, purchase, or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Heroin; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GREGORY VOIGT
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P.C.S. & J.C.
By  DEPUTY CLERK

GKV20130402930

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013013149

ARREST WARRANT NUMBER

2013A1010202101

DATE OF ARREST

April 20, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

AUG 20 2013

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1004661

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

KEVIN L MIDDLETON

DOB: [REDACTED]

B/M

Indictment for

Possession With Intent to Distribute
Cocaine

FILED

8/20/2013 8:49:07 AM

JULIE J. ARMSTRONG

CLERK OF COURT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & E.C.

By: [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on Augts 5, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Cocaine

That in Charleston County, South Carolina, on or about April 19, 2013, the Defendant, KEVIN L. MIDDLETON, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue; to wit: Cocaine; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GREGORY VOIGT
ASSISTANT SOLICITOR

ATTEST: TRUE CO.
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By  DEPUTY CLERK

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of August, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of August, 2018.

RECEIVED
AUG 22 2018
SC Court of Appeals