

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHUNDREZ JERVINO DRINKARD,

APPELLANT

APPELLATE CASE NO 2019-001192

RECORD ON APPEAL

RECEIVED

FEB 14 2020

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 SHUNDREZ DRINKARD,)
)
 DEFENDANT.)
 _____)

2018-GS-23-00838 - 00839
2018-GS-23-1776A

TRANSCRIPT OF RECORD

JULY 8 - 9, 2019
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH

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

ATTORNEY FOR PLAINTIFF:

HOWARD L. STEINBERG, ASST. SOLICITOR

ATTORNEYS FOR DEFENDANT:

MORGAN E. CLEARY, ASST. PUBLIC DEFENDER
STUART B. SARRATT, ASST. PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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TRIAL TYPE: Criminal
PANEL ID: MCINTOSH
COURTROOM 101

DESCRIPTION: MCINTOSH

Sorted by: Random NUI

Trial

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
DX	1 Luciani, Edward J	142	W	M	()	()	()	WM
✓	2 Wischhusen, Lisa L	254	W	F	()	()	()	WF
DX	3 Tomkins, Sally J	229	W	F	()	()	()	WF
✓	4 Nash, David M Jr. (F)	170	W	M	()	()	()	WM
✓	5 Jones, Tammy R	121	B	F	()	()	()	BF
✓	6 Adkins, Whitney E	1	W	F	()	()	()	WF
✓	7 Colmenares, Douglas E	43	H	M	()	()	()	HM
SX	8 Schultz, Kenneth M	201	W	M	()	()	()	WM
✓	9 Thomas, Daniel P	226	W	M	()	()	()	WM
SX	10 Brown, Morgan R	26		M	()	()	()	WM
✓	11 Gault, Jennifer L	78	W	F	()	()	()	WF
✓	12 Dilks, Vanessa R	57	W	F	()	()	()	WF
○	13 Myers, Lawrence V	169	W	M	()	()	()	WM
DX	14 Shaffer, David A	204	W	M	()	()	()	WM
✓	15 Schweitzer, Scott J	202	W	M	()	()	()	WM
✓	16 Curran, Mary J	50	W	F	()	()	()	WF
DX	17 Morgan, Roxann	162	W	F	()	()	()	WF
DX	18 Richards, Evan K	188	W	M	()	()	()	WM
✓	19 Leopard, Ronnie L	136	W	M	()	()	()	WM
✓	20 Waits, April M (A)	236	W	F	()	()	()	WF
	21 Neeley, Nicholas G	171	W	M	()	()	()	
	22 Kelly, Kevin B Jr.	127	W	M	()	()	()	
	23 Crawford, Amanda N	47	W	F	()	()	()	
	24 Foss, Gregory S	75	W	M	()	()	()	

TRIAL TYPE : Criminal
PANEL ID : MCINTOSH
COURTROOM 101

DESCRIPTION : MCINTOSH

Called by: RANDOLPH

Trial 7

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	GRT	REMARKS
25 Stevenson, Kaitlyn R	218	W	F	()	()	()	
26 Gue, Patrick	92	B	M	()	()	()	
27 Bower, Veronica I	23	W	F	()	()	()	
28 Minnich, Jennifer W	158	W	F	()	()	()	
29 Childs, Tessa M	39	W	F	()	()	()	
30 Few, James T	69	W	M	()	()	()	
31 Harkins, Rebekah A	98	W	F	()	()	()	
32 Campbell, Paul W CX	29	W	M	()	()	()	WYM
33 Warren, Robert Z Jr.	240	W	M	()	()	()	
34 Bailey, Adam C	9	W	M	()	()	()	
35 Stewart, Thomas W Jr.	219	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

1 MONDAY, JULY 8, 2019:

2 (Whereupon court convened at 9:32 am)

3 **THE COURT:** All right. This is the Drinkard case,
4 trafficking cocaine, no greater than twenty-eight (28)
5 grams. Sir, I understand we're ready to go for trial?

6 **MS. CLEARY:** Your Honor, my client has come forward,
7 and he wants me to ask for a continuance ---

8 **THE COURT:** That's denied.

9 **MS. CLEARY:** Yes, Your Honor.

10 **THE COURT:** Tell me the basis for the continuance
11 request.

12 **MS. CLEARY:** Judge, my client tells me that he believed
13 he had hired Karl Allen as a private attorney, paid him some
14 money for it. He tells me that the last week and a half or
15 so Karl Allen's declined to represent him. He wants more
16 time to try to hire a private attorney.

17 He's stated he's not guilty ---

18 **THE COURT:** And we will go forward today.

19 **MS. CLEARY:** Yes, Your Honor.

20 **THE COURT:** All right. Any other issues we need to
21 deal with on that case?

22 **MS. CLEARY:** I believe there are some pretrial issues
23 from the State as well ---

24 **MR. STEINBERG:** Your Honor, there'll be some -- a
25 Jackson versus Denno hearing from the State.

ARRAIGNMENT

9

1 **THE COURT:** Okay.

2 **MR. STEINBERG:** There'll be an arraignment as well.

3 **THE COURT:** You have the new indictment?

4 **MR. STEINBERG:** Yes, Your Honor. Actually, the
5 original will be with the clerk of court. This will be for
6 trafficking crack cocaine.

7 By way of background, Your Honor, this defendant was
8 charged with trafficking in cocaine greater than one hundred
9 (100) grams. When it came back from the lab it turns out it
10 was just under one hundred (100) grams for powder cocaine
11 and fifty (50) grams for crack cocaine. That's why we have
12 the new indictment on the two charges.

13 **THE COURT:** Okay. So he's been arraigned on the ...

14 **MR. STEINBERG:** Trafficking in crack cocaine.

15 **THE COURT:** Okay. So today we're going to arraign him
16 on the trafficking cocaine and possession of a weapon during
17 the commission of a violent crime, is that correct? Or am I
18 just getting this wrong? The crack cocaine?

19 **MR. STEINBERG:** It should be for crack cocaine.

20 **THE COURT:** All right. Sir, would you raise your right
21 hand. Do you swear or affirm to tell the truth, the whole
22 truth, and nothing but the truth?

23 **MR. DRINKARD:** Yes.

24 **THE COURT:** Okay, sir. Ms. Cleary, would your client
25 wish that I read the indictment to him or does he waive me

ARRAIGNMENT

10

1 reading it?

2 **MS. CLEARY:** He'd appreciate it if the indictment was
3 read.

4 **THE COURT:** Okay. Sir, you are Shundrez Jervino
5 Drinkard? I know I probably mispronounced that, and I
6 apologize to you. But the grand jury has presented a true
7 bill. The indictment was reached as follows; Said Shundrez
8 Jervino Drinkard did in Greenville County on or about the
9 19th day of October, 2017 knowingly sell, manufacture,
10 deliver, or bring into the State of South Carolina or did
11 knowingly provide financial assistance, or otherwise aid,
12 abet, attempt, or conspire to sell, manufacture, deliver, or
13 bring into this State or was knowingly in actual or
14 constructive possession of more than twenty-eight (28)
15 grams, but less than a hundred (100) grams of cocaine base,
16 crack cocaine. This is in violation of code section 44-53-
17 375 of the Code of South Carolina laws in 1976 as amended.

18 All right, sir. Mr. Drinkard, do you plead guilty or
19 not guilty to this charge?

20 (Whereupon the defendant was speaking with his
21 attorney)

22 **MR. DRINKARD:** Not guilty.

23 **THE COURT:** I can't see -- I can't hear you.

24 **MR. DRINKARD:** Not guilty.

25 **THE COURT:** Not guilty. Thank you, sir. All right.

ARRAIGNMENT

11

1 We're going to go down and select a jury. Then we'll do the
2 Jackson/Denno hearing. And I don't know what time -- I
3 think that they said the jury's around 10:15/10:00, is that
4 right, to get qualified?

5 **MR. STEINBERG:** Yes, sir.

6 **THE COURT:** All right.

7 **MS. CLEARY:** Judge, the defense has an issue about some
8 videotapes. I wasn't sure if Your Honor would rather hear
9 it pretrial or an objection ---

10 **THE COURT:** Let's do that at the time we ---

11 **MS. CLEARY:** Yes, sir.

12 **THE COURT:** --- do the Jackson/Denno, if you don't
13 mind, please.

14 **MS. CLEARY:** Absolutely, Your Honor.

15 **THE COURT:** Very good. Thank you. All right.
16 Anything further on the Drinkard case?

17 **MR. STEINBERG:** No, sir, Your Honor.

18 (Whereupon court was in recess at 9:36 am)

19 (Whereupon court reconvened at 9:38 am)

20 **THE COURT:** Oh, just for the record in Mr. Drinkard's
21 case, thank you, the indictment number is 2018-GS-23-000838.

22 **MR. STEINBERG:** Yes, Your Honor.

23 **THE COURT:** Thank you. Sorry about that.

24 (Whereupon court was in recess at 9:38 am)

25 (Whereupon court reconvened at 11:27 am)

1 **THE COURT:** All right. First, you say there is a
2 Jackson/Denno issue we need to resolve?

3 **MR. STEINBERG:** There is a Jackson versus Denno. And I
4 want to put one thing on the record. This is, of course,
5 not a surprise. This case has four separate charges. One
6 of them is possession of stolen property.

7 **THE COURT:** Right.

8 **MR. STEINBERG:** It's actually a magistrate level
9 charge, but it was brought up with this case. The victim in
10 that case is the husband of an assistant solicitor. I
11 turned that information over to -- not only to opposing
12 counsel, but to her prior attorney/counsel -- prior public
13 defender. They're aware of this.

14 **THE COURT:** Any issue with regard to that?

15 **MS. CLEARY:** No issues. The handgun is not the subject
16 matter.

17 **THE COURT:** Very good. And you mentioned also,
18 counsel, you -- now you're Ms. Cleary, is that right?

19 **MS. CLEARY:** I am, Your Honor.

20 **THE COURT:** Ms. Cleary, you said there were some
21 technical issues that we needed to address, is that right?

22 **MS. CLEARY:** With authentication in regards to a video
23 is what we pled. Yes, Your Honor.

24 **THE COURT:** Okay. And with a particular video? What
25 is it?

1 **MS. CLEARY:** We believe it's something the State's
2 going to introduce into evidence. It's the video of a bag
3 being placed into a car.

4 **THE COURT:** Of a what?

5 **MS. CLEARY:** A bag being placed into a car.

6 **THE COURT:** A bag being placed in a car?

7 **MS. CLEARY:** Surveillance video.

8 **THE COURT:** Okay.

9 **MR. STEINBERG:** Your Honor, we have a surveillance
10 video of a bag held by this defendant being brought to a
11 car. The officers then searched the car, found that bag,
12 that's where the drugs are. That's what the case is about.

13 I'm not sure -- I'm not sure how to address this. We
14 have a surveillance that's been -- was seized, the videos
15 were downloaded. We have a witness present who said not
16 only did I see this, he's actually seen on camera. I don't
17 know what -- how else I can address this.

18 **THE COURT:** Did y'all read that case? I think it's
19 Judge Hill's issue was -- it came out last week or week
20 before about authentication? I mean, it's such a low
21 hurdle, it's going to be a tough matter. But what I'm going
22 to do is at the time when he tries to present this evidence,
23 if you don't think authentication has been properly
24 established, then raise your objection at that point.

25 **MS. CLEARY:** Absolutely, Your Honor.

1 **THE COURT:** And then we'll take it up outside the
2 presence of the jury, okay?

3 **MS. CLEARY:** Yes, Your Honor.

4 **THE COURT:** Now, you ready to proceed on the Jackson v.
5 Denno?

6 **MR. STEINBERG:** Yes, sir, Your Honor.

7 **THE COURT:** You ready to proceed?

8 **MS. CLEARY:** I am, Your Honor.

9 **THE COURT:** All right. Would you call your first
10 witness.

11 **MR. STEINBERG:** Your Honor, the State's first witness
12 in this case will be Jake Walters.

13 **THE COURT:** Let me stop for a second. I'm getting a
14 little ahead of myself. How long do you think the
15 Jackson/Denno's going to take?

16 **MR. STEINBERG:** I'm not sure, Judge. Maybe half an
17 hour or so. Maybe ---

18 **THE COURT:** You know what, let's go ahead and do jury
19 selection first. And then we can put the jury back in the
20 jury room and then do the Jackson/Denno, is that ---

21 **MR. STEINBERG:** Yes, sir.

22 **THE COURT:** --- okay with everybody?

23 **MR. STEINBERG:** Your Honor, you're not going to swear
24 the jury until after our ---

25 **THE COURT:** I'll handle all that.

1 **MR. STEINBERG:** Yes, sir.

2 **THE COURT:** All right. So we're going to bring up 35
3 people and then do jury selection. And we're going to pick
4 one alternate. Everybody in agreement with that?

5 **MS. CLEARY:** Yes, Your Honor.

6 **MR. STEINBERG:** Yes, sir.

7 **THE COURT:** Okay. And under the number of strikes,
8 five and five? Or let me look and see. Under 14-7-1110 it
9 looks like it would be five and five. And then on the
10 alternate, the defense would have two and the State would
11 have one. Does everybody agree to that?

12 **MR. STEINBERG:** Yes, sir, Your Honor.

13 **MS. CLEARY:** Yes, Your Honor.

14 **THE COURT:** All right. Very good. What I'm going to
15 do is just, when the jury gets in here, have you stand up
16 and announce your case.

17 **MR. STEINBERG:** Yes, sir, Your Honor.

18 **THE COURT:** Ms. Cleary, would you pronounce your
19 client's name for me?

20 **MS. CLEARY:** Sure. Shundrez Drinkard.

21 **THE COURT:** Jervino is the middle name? Jervino?

22 **MR. DRINKARD:** Yes, sir.

23 **THE COURT:** Okay. Am I pronouncing that right?

24 **MR. DRINKARD:** Yes, sir.

25 **THE COURT:** All right. Good.

JURY SELECTION

16

1 (Whereupon the jury pool entered the courtroom at 11:38
2 am)

3 **THE COURT:** Mr. Steinberg, would you call your case,
4 please.

5 **MR. STEINBERG:** Your Honor, this is the case of the
6 State versus Shundrez Jervino Drinkard. And I am the
7 prosecutor. My name is Howard Steinberg. Also with me at
8 the prosecution desk is Kela Henderson. She's working in a
9 paralegal role in my office. Also in this case will be the
10 lead officer, and it's Investigator David Picone.

11 **THE COURT:** Ms. Cleary, would you like to introduce
12 yourself and your staff, please.

13 **MS. CLEARY:** My name is Morgan Cleary. I'm the
14 attorney for Mr. Shundrez Drinkard. This is my co-counsel,
15 Stuart Sarratt.

16 **THE COURT:** Thank you. All right. Ladies and
17 gentlemen of the jury, we're going to go through further
18 voir dire or questions about this case to see whether or not
19 you'll be selected in this case. These questions are not
20 going to be as personal as before.

21 So if you would, just stand up, give us your jury
22 number and your response from where you are in the
23 courtroom. However, if you feel the absolute need to come
24 forward and speak to me more confidentially, you're
25 certainly welcome to do so.

JURY SELECTION

17

1 But the first of these questions, Mr. Drinkard, would
2 you stand up and face the jury panel, please, sir.

3 (Pause)

4 **THE COURT:** Thank you, sir. Thank you. All right.
5 Ladies and gentlemen, has anybody on the jury panel ever
6 been related by blood or marriage to Mr. Shundrez Jervino
7 Drinkard? If so, would you please stand.

8 (No response)

9 **THE COURT:** Has any member of the jury panel ever had a
10 close personal or social relationship with Shundrez Jervino
11 Drinkard? If so, would you please stand.

12 (No response)

13 **THE COURT:** All right. Ladies and gentlemen, the
14 following is a list of people who may testify in this trial.
15 I'm going to go through the entire list for both sides and
16 then I'll ask questions following up to those lists. If you
17 do not get a name, let me know, and I'll repeat it such that
18 you do.

19 Potential witnesses are Temika Powers, Jeffrey McCall,
20 David Picone, Jake Walters, Mike Rainey, Deputy Jason
21 Brooks, Deputy Kenneth Sandefur, Investigator Tracy King,
22 David Fowler, James Armstrong, Jared -- tell me that.

23 **MR. STEINBERG:** Sustakovich, Your Honor.

24 **THE COURT:** Sustakovich. I know that. Okay. Thank
25 you. Jared Sustakovich and Kara Bennick. Did everyone get

JURY SELECTION

18

1 those names? Is there any member of the jury panel who did
2 not get the names? If so, raise your hand.

3 (No response)

4 **THE COURT:** Very well. Ladies and gentlemen, has any
5 member of the jury panel ever been related by blood or
6 marriage to any of the potential witnesses I've just given
7 to you? If so, would you please stand.

8 (No response)

9 **THE COURT:** Has any member of the jury panel ever had a
10 close personal or social relationship with any of the
11 potential witnesses I've just given to you? If so, would
12 you please stand.

13 (No response)

14 **THE COURT:** All right. You've heard from the attorneys
15 as they introduced themselves. Ladies and gentlemen, has
16 any member of the jury panel ever been represented by any of
17 these attorneys here in the courtroom or any attorney who's
18 employed by the Thirteenth Solicitor's Office here in
19 Greenville County? If so, would you stand.

20 (No response)

21 **THE COURT:** Has any member of the jury panel ever been
22 related by blood or marriage or have you ever had a close
23 personal or social relationship with any of these attorneys
24 here in the courtroom or any attorney employed by the
25 Solicitor's Office here in Greenville County? If so, would

JURY SELECTION

19

1 you please stand.

2 (No response)

3 **THE COURT:** All right. Ladies and gentlemen, there are
4 multiple charges in this case. There's indictments true
5 billed for trafficking cocaine base, possessing, receiving
6 stolen goods, trafficking cocaine and possession of a weapon
7 during the commission of a violent crime. Has any member of
8 the jury panel read, heard or seen anything about the case
9 of the State of South Carolina versus Shundrez Jervino
10 Drinkard prior to today? If so, would you please stand.

11 (No response)

12 **THE COURT:** And as a follow-up to that, has any member
13 of the jury panel formed or expressed an opinion about any
14 issue or matter involved in the case of the State of South
15 Carolina versus Shundrez Jervino Drinkard? If so, would you
16 please stand.

17 (No response)

18 **THE COURT:** Is any member of the jury panel aware of
19 any bias or prejudice that they may harbor for or against
20 the State of South Carolina or its attorneys, or the
21 defendant or his attorneys? If so, would you please stand.

22 (No response)

23 **THE COURT:** Is there any member of the jury panel that
24 was a member of the Greenville County Grand Jury that issued
25 the indictments in this case? If so, would you please

JURY SELECTION

1 stand.

2 (No response)

3 **THE COURT:** And let me point out, ladies and gentlemen,
4 I'll remind you again if you're selected to serve, these
5 documents I have in my hand are called indictments. The
6 fact that this gentleman has been arrested, charged and
7 indicted is not evidence of his guilt. It does not raise
8 the presumption or inference of his guilt. Those are simply
9 the charging mechanisms by which the State of South Carolina
10 will bring a defendant such as this one before the court in
11 a trial for a determination of guilt or innocence.

12 Now, ladies and gentlemen, is there any member of the
13 jury panel who is a member of or a contributor to any group
14 which has as its primary purpose the promotion of law
15 enforcement or victim's rights? Examples, but certainly not
16 an exhaustive list, would be MADD, SADD or CAV. But is
17 there any member of the jury panel who's a member of or a
18 contributor to any group which has as its primary purpose
19 the promotion of law enforcement or victim's rights? Would
20 you please stand.

21 (No response)

22 **THE COURT:** Ladies and gentlemen, is there any member
23 of the jury panel who knows of any reason whatsoever why he
24 or she should not be selected to serve in the trial of this
25 matter with particular emphasis being placed about -- upon

JURY SELECTION

21

1 your ability to be fair and impartial to both the State of
2 South Carolina and to the defendant in this case? If you
3 know of any reason why you should not serve, would you
4 please stand. Yes, sir. What's your juror number?

5 **JUROR:** 29.

6 **THE COURT:** 29? You're Mr. Campbell?

7 **MR. CAMPBELL:** Yes, sir.

8 **THE COURT:** All right, sir. I'll be glad to hear from
9 you why you should not serve.

10 **MR. CAMPBELL:** My son is a South Carolina trooper.

11 **THE COURT:** Sir?

12 **MR. CAMPBELL:** My son is a South Carolina trooper.

13 **THE COURT:** Well, would the fact that your son is in
14 law enforcement make you unable to listen to the testimony
15 and evidence and make your decision based on that testimony
16 and evidence and according to the law as I give it to you at
17 the end of this case?

18 **MR. CAMPBELL:** I do not believe so.

19 **THE COURT:** All right. I'm going to ask you to have a
20 seat on the front row, if you would. I'm going to excuse
21 you from the trial of this matter. Or the back row would be
22 fine, too. All right.

23 Once we get jury selection done, Mr. Campbell, I'm
24 going to ask you to move forward. I'm going to let you stay
25 here and watch the proceedings, okay?

JURY SELECTION

1 **MR. CAMPBELL:** (Affirmative nod).

2 **THE COURT:** All right. Anyone else?

3 (No response)

4 **THE COURT:** Any additional voir dire from the State?

5 **MR. STEINBERG:** None, Your Honor.

6 **THE COURT:** From the defense?

7 **MS. CLEARY:** None, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen, back when

9 I began practicing law, which was a long time ago, when we
10 did jury selection we'd have somebody come before the court
11 who couldn't read or write. And we had a spindle with each
12 person's name placed in a little cylinder. And that spindle
13 would be spun around and the names would be randomly drawn
14 out by someone who could not tell what the names were.

15 Now we have a computer that will do that for us. Some
16 people say it's better. Some people, like I, don't
17 necessarily agree with that, but that's not my decision.

18 If your name is called in just a minute, I'm going to
19 ask that you get your personal belongings, come through the
20 bar and stand up here in front of the court reporter, face
21 the State, face the defense, and they'll make a
22 determination as to whether or not you will be selected to
23 serve in the trial of this matter. With that being said,
24 Madam Clerk.

25 **MADAM CLERK:** Yes, sir. Juror 142, Edward Luciani.

JURY SELECTION

23

1 (Whereupon juror 142, Edward Luciani, a white male,
2 came forward)

3 **MADAM CLERK:** What says the State?

4 **MR. STEINBERG:** Please present this juror.

5 **MADAM CLERK:** What says the defendant?

6 **MS. CLEARY:** Please excuse this juror.

7 **MADAM CLERK:** Sir, you may be seated. You have been
8 excused from this case.

9 Juror 254, Lisa Wischhusen.

10 (Whereupon juror 254, Lisa Wischhusen, a white female,
11 came forward)

12 **MADAM CLERK:** What says the State?

13 **MR. STEINBERG:** Please present this juror.

14 **MADAM CLERK:** What says the defendant?

15 **MS. CLEARY:** Please seat this juror.

16 **MADAM CLERK:** Ma'am, if you'll please have a seat in
17 the jury box.

18 Juror 229, Sally Tomkins.

19 (Whereupon juror 229, Sally Tomkins, a white female,
20 came forward)

21 **MADAM CLERK:** What says the State?

22 **MR. STEINBERG:** Please present this juror.

23 **MADAM CLERK:** What says the defendant?

24 **MS. CLEARY:** Please excuse this juror.

25 **MADAM CLERK:** Ma'am, you may be seated. You have been

JURY SELECTION

24

1 excused from this case.

2 Juror 170, David Nash.

3 (Whereupon juror 170, David Nash, a white male, came
4 forward)

5 **MADAM CLERK:** What says the State?

6 **MR. STEINBERG:** Please present this juror.

7 **MADAM CLERK:** What says the defendant?

8 **MS. CLEARY:** Please seat this juror.

9 **MADAM CLERK:** Mr. Nash, please have a seat in the jury
10 box.

11 Juror 121, Tammy Jones.

12 (Whereupon juror 121, Tammy Jones, a black female, came
13 forward)

14 **MADAM CLERK:** What says the State?

15 **MR. STEINBERG:** Please present this juror.

16 **MADAM CLERK:** What says the defendant?

17 **MS. CLEARY:** Please seat this juror.

18 **MADAM CLERK:** Ma'am, if you'll please have a seat in
19 the jury box.

20 Juror number 1, Whittney Adkins.

21 (Whereupon juror 1, Whittney Adkins, a white female,
22 came forward)

23 **MADAM CLERK:** What says the State?

24 **MR. STEINBERG:** Please present this juror.

25 **MADAM CLERK:** What says the defendant?

JURY SELECTION

25

1 **MS. CLEARY:** Please seat this juror.

2 **MADAM CLERK:** Ma'am, please have a seat in the jury
3 box.

4 Number 43, Douglas Colmenares.

5 (Whereupon juror 43, Douglas Colmenares, an Hispanic
6 male, came forward)

7 **MADAM CLERK:** What says the State?

8 **MR. STEINBERG:** Please present this juror.

9 **MADAM CLERK:** What says the defendant?

10 **MS. CLEARY:** Please seat this juror.

11 **MADAM CLERK:** Sir, please have a seat in the jury box.
12 Juror 201, Kenneth Schultz.

13 (Whereupon juror 201, Kenneth Schultz, a white male,
14 came forward)

15 **MADAM CLERK:** What says the State?

16 **MR. STEINBERG:** I beg the Court's indulgence.
17 (Pause)

18 **MR. STEINBERG:** Please excuse this juror.

19 **MADAM CLERK:** All right. Sir, you may be seated. You
20 have been excused from this case.

21 Juror 226, Daniel Thomas.

22 (Whereupon juror 226, Daniel Thomas, a white male, came
23 forward)

24 **MADAM CLERK:** What says the State?

25 **MR. STEINBERG:** Please present this juror.

JURY SELECTION

1 **MADAM CLERK:** What says the defendant?

2 **MS. CLEARY:** Please seat this juror.

3 **MADAM CLERK:** Sir, please have a seat in the jury box.

4 Juror 26, Morgan Brown.

5 (Whereupon juror 26, Morgan Brown, a white male, came
6 forward)

7 **MADAM CLERK:** What says the State?

8 **MR. STEINBERG:** Please excuse this juror.

9 **MADAM CLERK:** All right. Sir, you may be seated. You
10 have been excused from this case.

11 Juror 78, Jennifer Gault.

12 (Whereupon juror 78, Jennifer Gault, a white female,
13 came forward)

14 **MADAM CLERK:** What says the State?

15 **MR. STEINBERG:** Please present this juror.

16 **MADAM CLERK:** What says the defendant?

17 **MS. CLEARY:** Please seat this juror.

18 **MADAM CLERK:** Ma'am, please have a seat in the jury
19 box.

20 Juror 57, Vanessa Dilks.

21 (Whereupon juror 57, Vanessa Dilks, a white female,
22 came forward)

23 **MADAM CLERK:** What says the State?

24 **MR. STEINBERG:** Please present this juror.

25 **MADAM CLERK:** What says the defendant?

JURY SELECTION

27

1 **MS. CLEARY:** Please seat this juror.

2 **MADAM CLERK:** Ma'am, please have a seat in the jury
3 box.

4 Juror 169, Lawrence Myers.

5 (Whereupon juror 169, Lawrence Myers, a white male,
6 came forward)

7 **MADAM CLERK:** What says the State?

8 **MR. STEINBERG:** Please present this juror.

9 **MADAM CLERK:** What says the defendant?

10 **MS. CLEARY:** Please seat this juror.

11 **MADAM CLERK:** All right. Mr. Myers, please have a seat
12 in the jury box.

13 Juror 204, David Shaffer.

14 (Whereupon juror 204, David Shaffer, a white male, came
15 forward)

16 **MADAM CLERK:** What says the State?

17 **MR. STEINBERG:** Please present this juror.

18 **MADAM CLERK:** What says the defendant?

19 **MS. CLEARY:** Please excuse this juror.

20 **MADAM CLERK:** Mr. Shaffer, you've been excused from
21 this case. Please be seated.

22 Juror 202, Scott Schweitzer.

23 (Whereupon juror 202, Scott Schweitzer, a white male,
24 came forward)

25 **MADAM CLERK:** What says the State?

JURY SELECTION

28

1 **MR. STEINBERG:** Please present this juror.

2 **MADAM CLERK:** What says the defendant?

3 **MS. CLEARY:** Please seat this juror.

4 **MADAM CLERK:** All right. Sir, please have a seat in
5 the jury box.

6 Juror 50, Mary Curran.

7 (Whereupon juror 50, Mary Curran, a white female, came
8 forward)

9 **MADAM CLERK:** What says the State?

10 **MR. STEINBERG:** Please present this juror.

11 **MADAM CLERK:** What says the defendant?

12 **MS. CLEARY:** Please seat this juror.

13 **MADAM CLERK:** Ma'am, please have a seat in the jury
14 box.

15 Juror 162, Roxann Morgan.

16 (Whereupon juror 162, Roxann Morgan, a white female,
17 came forward)

18 **MADAM CLERK:** What says the State?

19 **MR. STEINBERG:** Please present this juror.

20 **MADAM CLERK:** What says the defendant?

21 **MS. CLEARY:** Please excuse this juror.

22 **MADAM CLERK:** All right. Ma'am, please have a seat.
23 You've been excused from this case.

24 Juror 188, Evan Richards.

25 (Whereupon juror 188, Evan Richards, a white male, came

JURY SELECTION

29

1 foward)

2 **MADAM CLERK:** What says the State?

3 **MR. STEINBERG:** Please present this juror.

4 **MADAM CLERK:** What says the defendant?

5 **MS. CLEARY:** Please excuse this juror.

6 **MADAM CLERK:** All right. Sir, you may be seated back

7 in the gallery. You've been excused from this case.

8 Juror 136, Ronnie Leapard.

9 (Whereupon juror 136, Ronnie Leapard, a white male,
10 came forward)

11 **MADAM CLERK:** What says the State?

12 **MR. STEINBERG:** Please present this juror.

13 **MADAM CLERK:** What says the defendant?

14 **MS. CLEARY:** Please seat this juror.

15 **MADAM CLERK:** Sir, please come have a seat in the jury
16 box.

17 All right. For alternate, juror 236, April Waits.

18 (Whereupon juror 236, April Waits, a white female, came
19 forward)

20 **MADAM CLERK:** What says the State?

21 **MR. STEINBERG:** Please present this juror.

22 **MADAM CLERK:** What says the defendant?

23 **MS. CLEARY:** Please seat this juror.

24 **MADAM CLERK:** All right. Ma'am, please be seated in
25 the jury box.

JURY SELECTION

30

1 **THE COURT:** Any motions directed to the jury selection
2 process from the State?

3 **MR. STEINBERG:** No, sir, Your Honor.

4 **THE COURT:** From the defense?

5 **MS. CLEARY:** No, Your Honor.

6 **THE COURT:** Very good. All right. Madam Clerk, do you
7 need for me to return them down to the jury ...

8 **MADAM CLERK:** Please. Yes.

9 **THE COURT:** All right. Everyone except Mr. Chapman,
10 I'm going to ask you to stay here, the rest of you, if you
11 don't mind, if you would go back to the jury selection room.
12 They'll give you further instructions at that point. Thank
13 you.

14 (Whereupon the remaining jurors exited the courtroom)

15 **THE COURT:** All right. Ladies and gentlemen of the
16 jury, I am going to ask that you go with our bailiff back to
17 the jury room and select someone who's going to be the
18 foreperson of the jury. The foreperson, the one, will
19 preside over the deliberations at the end of the case when
20 you're instructed to begin your deliberations and also the
21 person who's going to be in charge of communicating with the
22 Court if there's a need for communication.

23 Who is our alternate? You may vote, but you may not
24 serve as our foreperson. It doesn't have to be unanimous,
25 but by a simple majority. Once you select a foreperson, I'm

JURY SELECTION

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1 going to ask that person to write their name and their juror
2 number down on a sheet of paper that the bailiff will give
3 to you.

4 And then check with your fellow jurors to determine
5 whom, if anyone, would like to have pad and pen to take
6 notes with during the course of this trial. If anyone does,
7 if you'd just write that numeric figure of how many people
8 who do want pad and pen on the piece of paper by your name,
9 we'll know how many to have -- make available when we begin
10 the trial. But if you'd go with the bailiff now, please.

11 (Whereupon the jury exited the courtroom at 12:01 pm)

12 **THE COURT:** All right. Just from a scheduling
13 perspective, if we're going to run 30 minutes or so, seems
14 like after they come back we'll just let them go for lunch
15 and come back for opening statements after lunch. Anybody
16 have a problem with that?

17 **MR. STEINBERG:** No, sir, Your Honor.

18 **MS. CLEARY:** That's fine, Your Honor.

19 **THE COURT:** All right. Great. Would you -- let's go
20 ahead and have the Jackson/Denno, please.

21 **MR. STEINBERG:** Thank you, Your Honor. Your Honor, the
22 State's first witness will be Investigator Jake Walters.

23 **MADAM CLERK:** Sir, please come forward. If you'd
24 please pause at the end of the bench, place your left hand
25 on the Bible, raise your right hand.

1 Jacob Walters, being duly
2 sworn testified as follows;

3 **MADAM CLERK:** Please be seated. And please state your
4 name for the record.

5 INVESTIGATOR WALTERS: My name is Jacob Walters.

6 Direct Examination by Mr. Steinberg:

7 Q. Investigator Walters, on October 19th of 2017, the
8 morning hours, what caused you to come to Monroe Street in
9 Greenville County?

10 A. I was assisting Investigator Picone with a shooting
11 investigation.

12 Q. And when you got to this location who was riding in
13 your car, if anyone?

14 A. I was by myself.

15 Q. And when you pulled up what did you see and who did you
16 see?

17 A. When I pulled up to the house -- I had parked along the
18 side of it. And I got out, and I saw an individual in the
19 backyard of the house.

20 Q. And what was he near in the backyard of the house?

21 A. He was at a -- beside a car. And the car door was
22 open.

23 Q. Okay. Did you speak with him?

24 A. I did. I called him to me.

25 Q. And at that point was he your suspect in this shooting

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 case?

2 A. No. He was not a suspect in the shooting case.

3 Q. Okay. And did you speak with him?

4 A. I did.

5 Q. Was he in handcuffs?

6 A. No, sir.

7 Q. Did you advise him -- did you coerce him or intimidate
8 him?

9 A. No, sir.

10 Q. And at that point did you feel that he was a suspect
11 and you needed to Mirandize him?

12 A. No, sir.

13 Q. Okay. Where in relation to the house was this
14 conversation?

15 A. This was on the back corner of the house.

16 Q. Okay. Was there another uniform deputy with you?

17 A. Yes, sir, there was.

18 Q. Did he do anything to coerce or to put the defendant
19 into fear or anything?

20 A. No, sir.

21 Q. Okay. And what was your general conversation at this
22 point?

23 A. I explained to him why I was there and what we were
24 investigating.

25 Q. Okay. And what did he say was his reason for being

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 there?

2 A. He said this was a recording studio that he was hanging
3 out at.

4 Q. And was that, in fact, correct? Was there information
5 inside that would lead one to say that there might be some
6 ---

7 A. Yes, later on I learned that.

8 Q. Okay. And did he say that he was the owner of this
9 house?

10 A. No, sir.

11 Q. Were you present -- and after he made the statement
12 that he was not the owner of the house, did he make any
13 statements concerning why he was in the backseat of the
14 patrol -- that car?

15 A. No, sir, he did not to me.

16 Q. Okay. Did he make any statements to you at that time
17 before Investigator Picone showed up?

18 A. No, sir.

19 Q. Okay. And did he say who the owner of the house was?
20 Or the renter of the house, I should say?

21 A. No, sir. He did not tell me.

22 Q. Okay. Were you present when he was Mirandized?

23 A. No, sir. I was not there for that.

24 Q. Okay. Did the defendant make any other statements to
25 you during the time you were out with him at the side of the

JACOB WALTERS - CROSS-EXAMINATION BY MS. CLEARY

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1 car?

2 A. No, sir.

3 Q. Okay. Please answer any of opposing counsel's
4 questions.

5 **Cross-examination by Ms. Cleary:**

6 Q. Just very briefly. Was a pat-down performed on Mr.
7 Drinkard?

8 A. Yes, ma'am, it was.

9 Q. Was he instructed to stand, or sit, or lean against a
10 car? Any instructions as to how he was standing?

11 A. I just told him to hang out with the uniform patrol
12 deputy.

13 **MS. CLEARY:** No further -- nothing further.

14 **Redirect Examination by Mr. Steinberg:**

15 Q. What were your reasons for having a pat-down?

16 A. Because we were investigating a shooting incident. And
17 it appeared when I pulled up on-scene that he was placing
18 something in the car. He could have been retrieving
19 something from the car. So I wanted to ensure that he
20 didn't have any kind of weapons or anything on him.

21 In addition to that, I could smell an odor of marijuana
22 while I was out on-scene there.

23 Q. Okay. Was there any -- when you pulled up were there
24 any cameras visible on the outside of the building?

25 A. Yes, sir. There were several cameras visible from ---

JACOB WALTERS - REDIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Did that concern you?

2 A. Yes, sir.

3 Q. Please tell the Court why that concerned you.

4 A. That would alert anyone inside to the presence of law
5 enforcement and could allow them to arm themselves or
6 otherwise take evidence or anything else.

7 Q. And do you have prior experience on drug cases?

8 A. Yes, sir.

9 Q. And approximately how much experience do you have on
10 drug cases?

11 A. I spent nearly six years in the Directed Patrol Unit
12 where our primary focus was drugs and narcotics.

13 Q. Okay. How often have you come across surveillance
14 cameras or surveillance systems with drug houses?

15 A. Very frequently.

16 Q. Okay.

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

18 **THE COURT:** All right. Thank you, sir. You may step
19 down.

20 **MR. STEINBERG:** The next witness will be Investigator
21 Picone. David Picone.

22 **MADAM CLERK:** Sir, place your left hand on the Bible
23 and raise your right hand.

24 **David Picone,** being duly
25 sworn testified as follows;

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 MADAM CLERK: Thank you. Please be seated.

2 Direct Examination by Mr. Steinberg:

3 Q. Investigator Picone, please tell the Court your
4 involvement in this case, just briefly, so the Judge will
5 understand how we got to this location.

6 A. Okay. I believe it was October 12th of 2017. I was
7 given a case to follow up on for a shooting that happened.
8 Victim had been shot in the head. Location at that time was
9 unknown. It took me a couple of days to get with him
10 because of his injury to talk to him.

11 On the 19th of October, 2017 he came to my office, and
12 I obtained a statement from him. And he advised me that he
13 could direct me to the house where he was shot at. So I
14 loaded him into my patrol car as well as another
15 investigator.

16 He directed me to a house on Monroe Street and pointed
17 out this specific house. There was two pieces of property.
18 There was a house in the front and on the back. He directed
19 me to take the dirt drive. And the house in the back was
20 the house he was shot at.

21 Once I had that information I relayed that to
22 Investigator Walters and asked him to see if he could make
23 contact with anybody at the house while I returned -- while
24 I took the victim back to his house until I could get back
25 on-scene.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. And when you came back to Monroe Street did you speak
2 with the other investigators or other officers at the time?

3 A. Yes, I did.

4 Q. And did you see Shundrez Drinkard, the gentleman over
5 here, between the two attorneys, did you see him there?

6 A. He was there. Yes.

7 Q. And where was he when you spoke with him?

8 A. When I initially spoke with him it was after he was
9 placed under arrest. I talked to him in the back of a
10 patrol car.

11 Q. Okay. In fact, were you the one that told him he was
12 under arrest?

13 A. Yes, I did.

14 Q. Okay. So when you approached him did you Mirandize
15 him?

16 A. I did.

17 Q. Did you follow your sheriff's office policy in
18 informing him of his rights?

19 A. Yes, I did. I can't remember if it was myself or
20 somebody else, but I read Miranda rights off of a card.

21 Q. Okay. And did you record this conversation?

22 A. I did.

23 Q. And did you do anything to intimate Mr. Drinkard?

24 A. Not at all.

25 Q. Did he appear to understand?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. He did.

2 Q. And how do you know he appeared to understand? Just
3 tell the Court.

4 A. He didn't -- he didn't ask any questions, first of all.
5 He didn't appear to be under the influence of anything that
6 would distort his judgment or his thinking.

7 Q. Okay.

8 MR. STEINBERG: I'd have this marked for identification
9 purposes.

10 (Whereupon State's exhibit 1 was marked for
11 identification)

12 Q. And have you listened to an audiotape -- have you
13 listened to an audio recording of this?

14 A. I have.

15 Q. And is this audio recording the one -- State's exhibit
16 number 1, is this a conversation you had with the defendant,
17 Mr. Drinkard?

18 A. I had an audio -- audio recorder with me that I had
19 activated when I initiated contact with him and advised him
20 he was under arrest to include Miranda rights and the
21 conversation I had with him.

22 MR. STEINBERG: Your Honor, at this point I'm going to
23 play this and will ask opposing -- will ask the witness if
24 he has any questions.

25 THE COURT: Any objections?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MS. CLEARY:** No, Your Honor.

2 **THE COURT:** All right. Very good.

3 (Whereupon State's exhibit 1, CD, was played)

4 (Whereupon State's exhibit 1, CD, was stopped)

5 **MR. STEINBERG:** Your Honor, for the purpose of the
6 Jackson versus Denno, that's all we're going to play unless
7 opposing counsel thinks there's something else relevant at
8 that point.

9 **THE COURT:** Well, if she can -- she can request it ---

10 **MR. STEINBERG:** Yes, sir.

11 **THE COURT:** All right. Thank you, sir.

12 **Direct Examination by Mr. Steinberg Continued:**

13 Q. Did this defendant -- was he promised anything in
14 exchange for speaking?

15 A. No, he was not.

16 Q. And after he was done giving you his statement did you
17 place this video into evidence?

18 A. I did.

19 Q. Was he -- what was his demeanor during this
20 conversation?

21 A. I mean, he -- he denied going to the car. I mean, he
22 was talking with me. He wasn't acting like he was trying to
23 avoid any or he wasn't -- he wasn't scared, nothing like
24 that. I mean, it was a cordial conversation between me and
25 him. No yelling.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Thank you. Please answer any of opposing counsel's
2 questions.

3 MS. CLEARY: I don't have any questions, Judge.

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

5 A. Thank you, sir.

6 THE COURT: You can step down.

7 MR. STEINBERG: Your Honor, that's the State's case as
8 far as the Jackson versus Denno hearing. Miranda was
9 performed. He was informed immediately prior to him being
10 arrested.

11 MS. CLEARY: Nothing from the defense, Your Honor.

12 THE COURT: Nothing from the defense? I'll be glad to
13 hear your arguments, counsel.

14 MS. CLEARY: I beg the Court's indulgence.

15 (Pause)

16 MS. CLEARY: Well, I'm not sure how we can tell it
17 meets the voluntariness requirements if it's not on the body
18 camera footage itself. We just have a recording here. We'd
19 prefer to see it on camera to actually -- there's some
20 testimony about what his demeanor was. I would have
21 preferred to see actually what his demeanor was through the
22 camera footage.

23 We would ask to suppress on those grounds that we don't
24 know what his demeanor was like, what the officer's demeanor
25 was like. We're not able to tell because the officer didn't

1 wear body cameras, did not play a video for us and would
2 argue that it does not meet the requirements for a Jackson
3 v. Denno.

4 **THE COURT:** All right. Thank you.

5 **MR. STEINBERG:** Your Honor, I'd wish to be heard
6 further on this. Our witnesses in this case did not have
7 body cameras. Body cameras are not required. They were not
8 even in existence three to four years ago. Of course,
9 statements came in back then.

10 **THE COURT:** All right. I'm going to find that the
11 statement was voluntarily made after -- it was certainly
12 made in custody, but it was made after Miranda was given.
13 And it was no coercion.

14 The length -- there's no evidence that there's unduly
15 lengthy interrogation period. It was at the scene, which
16 would be a normal interrogation process and further followed
17 up at the court -- at the detention center, if necessary,
18 but it's not unusual. Nothing about this seemed to make it
19 -- to be coercive.

20 The defendant appeared or appears to me to be a fairly
21 mature person, but there's no evidence of that in this
22 hearing. No evidence of education, or physical condition,
23 or mental health of the defendant, or his experience, but
24 there's no police misrepresentations, threats, or promises
25 of leniency.

1 So, therefore, the State has met its threshold of
2 having the statement admitted into the trial. And it'll be
3 up to the jury to make the call at the end of the case.

4 **MR. STEINBERG:** Yes, sir.

5 **THE COURT:** Anything further from the State?

6 **MR. STEINBERG:** No, sir, Your Honor.

7 **MS. CLEARY:** No, sir, Your Honor.

8 **THE COURT:** Okay. Have they -- are they ready? How
9 long do you -- you know what, since it's 12:15, that was a
10 little faster, are you ready to do your opening statements?

11 **MR. STEINBERG:** Your Honor, I can do that. Yes, sir.

12 **THE COURT:** Ms. Cleary?

13 **MS. CLEARY:** I can do that, Your Honor.

14 **THE COURT:** Let's do that, opening statements, then
15 break for lunch. Does that ---

16 **MR. STEINBERG:** If you can give us just five minutes,
17 Judge.

18 **THE COURT:** Yeah. For the record, number 170 will be
19 the foreperson.

20 (Whereupon Court's exhibit 1 was marked)

21 (Pause)

22 **MR. STEINBERG:** Your Honor, the State's ready.

23 **MS. CLEARY:** Defense is ready.

24 **THE COURT:** All right. Very good. All right. If you
25 would, don't let anybody come in and out of the courtroom at

1 this juncture. Would you bring the jury in, please, sir.

2 (Whereupon the jury entered the courtroom at 12:19 pm)

3 **THE COURT:** All right. Sir, are you our foreperson?

4 **MR. FOREMAN:** Yes, sir.

5 **THE COURT:** Very good. If you would, each time we come
6 in and out of the courtroom, I'm sure the bailiff has
7 already told you, but if you'd use that seat. And if our
8 alternate would use that seat each time. It helps me to
9 keep up with some administrative matters. The rest of you
10 can sit in all the other available seats. There's no
11 particular assigned places for you to sit. Before we get
12 started, I'm going to ask our clerk to swear you in.

13 **MADAM CLERK:** All right. If you'll please stand and
14 raise your right hand for the oath. The proper response is
15 I will.

16 You shall well and truly try the case 2018-GS-23-0838,
17 the State versus Shundrez Jervino Drinkard, indicted for
18 trafficking cocaine and possession of a weapon during the
19 commission of a violent crime, 1776A for trafficking cocaine
20 base, crack cocaine, and 0839 for possessing or receiving
21 stolen goods and a true verdict rendered according to the
22 law and the evidence so help you God. I will?

23 **THE JURY:** I will.

24 **MADAM CLERK:** Thank you. Please be seated.

25 **THE COURT:** All right. Ladies and gentlemen, just to

1 give you -- let you know what the lineup's going to be,
2 we're going to do opening statements in just a moment. And
3 then we're going to break for lunch. And we'll come back
4 after the lunch break and continue with testimony.

5 Those of you who requested pads, do you have them?

6 (Affirmative nods)

7 **THE COURT:** Okay. If you would, when we break during
8 trial, leave your pads in the courtroom. But when we break
9 for lunch or overnight, if you'll take your pads back to the
10 jury room and leave them there and not keep them with you
11 during the break if you don't mind.

12 Now, ladies and gentlemen, I don't know if any of you
13 have ever been involved in a trial before, whether it be
14 civil or criminal such as this case. I would suspect,
15 however, that each and every one of you has watched on TV
16 something that purports to be a trial.

17 Let me quickly dispel any preconceived notions that you
18 may have about this process. Trials are certainly not
19 entertainment. They are a fundamental part of our
20 democracy. They're oftentimes very slow, very methodical
21 and very deliberate.

22 These attorneys, like all attorneys, when they're sworn
23 in take an oath to zealously represent their client's
24 interest before the court. And you can expect no less of
25 them in this trial.

1 With that being said, they're also officers of this
2 court. What that means is you can expect that they will be
3 ethical and courteous to one another, and to myself, and to
4 any witness who appears before this Court and that they will
5 be professional in doing so.

6 Now, ladies and gentlemen, what I am telling you now is
7 not the law that you will apply. I will charge you on that
8 at the end of the case when you're told to begin your
9 deliberations.

10 Those of you who are taking notes, let me caution you.
11 Some judges will not let jurors take notes. They want you
12 to pay attention. I feel like if you want to take notes,
13 you should be able to. However, don't become so engrossed
14 in your note-taking that you miss somebody's reaction to
15 questions on the stand.

16 At the end of the day you're going to be called upon to
17 determine the credibility or the believability of the
18 witnesses. And so if you're so engrossed in taking a note
19 that you miss a subtle reaction to a question or some of the
20 proceedings, you may miss something that would be helpful to
21 you in making that determination.

22 Also, Mr. Foreman, the fact that a matter may appear in
23 one of your juror's notes doesn't mean it trumps another
24 juror's memory of that particular issue. Some people are
25 better note-takers. Some people are better listeners. And

1 that's why they're called deliberations. Y'all have to hash
2 it out at the end of the day. And I'll certainly remind you
3 of that at the end of this process.

4 Now, ladies and gentlemen, I'll remind you that the
5 fact that this defendant has been indicted and charged is
6 not evidence of his guilt. It does not raise an inference
7 nor presumption of his guilt. These indictments are simply
8 the mechanism by which he will come before this Court in a
9 trial in a determination of his guilt or innocence.

10 In fact, the defendant in this case says I am not
11 guilty to any of the four charges against me. That means
12 that that places the burden on the State of South Carolina
13 to prove each and every element of all four charges against
14 this defendant by proof beyond a reasonable doubt before you
15 can find him guilty.

16 The defendant is presumed innocent. That presumption
17 will remain with him throughout the course of this trial
18 unless and until during your deliberations you determine
19 that the State has proven one or more of the charges against
20 him by proof satisfying you of proof beyond a reasonable
21 doubt.

22 Now, ladies and gentlemen, your purpose as jurors are
23 to find facts. You are in words of lawyers and judges the
24 sole judges of what the facts are. In other words, what
25 your verdict is going to be.

1 If I do anything throughout the course of this trial
2 that seems to indicate to you how you are to find facts or
3 the verdict you are to reach, I'm going to ask you and I'm
4 going to instruct you to disregard it. Our State
5 Constitution does not allow any trial judge to have an
6 opinion or to state or comment about the facts of the case.

7 You and you alone will determine what the facts in this
8 case are. In other words, your verdict. And you'll
9 determine what the facts are by the testimony and evidence
10 that you hear from this witness stand and any exhibits that
11 I allow into evidence in this matter.

12 The only true evidence that you may consider as
13 evidence are the responses of the witnesses to the questions
14 being asked and exhibits admitted into evidence. Questions
15 by the attorneys, opening statements by the attorneys,
16 closing statements by the attorneys, objections is not
17 evidence.

18 Now, ladies and gentlemen, the law that makes you the
19 sole judges of what the facts are in this case makes me the
20 sole judge of the law. You must accept the law as I give it
21 to you during the course of this trial and apply it as it's
22 given to you.

23 I will tell you that if I am incorrect or I make an
24 error at law, as they say, there's a Court of Appeals and a
25 Supreme Court who will correct my legal errors. However, in

1 performing your duties as jurors you must accept the law as
2 I give it to you. And you may not -- shall not be concerned
3 with what you think it should be, but only what it is.

4 Do not, ladies and gentlemen, begin your deliberations
5 until I instruct you to do so. That includes having
6 conversations with your fellow jurors or anyone else about
7 the testimony that's going on during the course of this
8 trial. You will have plenty of time to discuss this case
9 with your fellow jurors, but we do not want you to come to a
10 premature conclusion about what the facts are until you have
11 heard all the evidence, and you've heard the law that
12 applies in this case.

13 From this point forward you may not speak with anyone
14 about this case until you've been released from your duties
15 as jurors. Likewise, you may not look up anything about any
16 party or any matter involving this case or any issue that
17 you think may be helpful in this matter.

18 You may not look up anything about myself, the
19 attorneys, court staff. At the end of the case when you're
20 discharged, you can look up to your heart's desire.
21 Likewise, I don't think it's going to be an issue, but if
22 there is a news report in any form or fashion, you may not
23 read, hear or listen to it until after you have been
24 discharged from this case.

25 Now, as I told you, the burden of proof is on the State

1 of South Carolina where it remains at all times. And the
2 burden of proof is a reasonable doubt. And so let me give
3 you a brief definition of what a reasonable doubt is.

4 A reasonable doubt is the kind of doubt that would
5 cause a reasonable, sincere and conscientious person to
6 hesitate to act in an important matter in their own affairs.
7 As I told you, the State has the burden of proving the
8 defendant by proof beyond a reasonable doubt.

9 If you have ever sat on a civil case, the burden is by
10 what we call a preponderance or greater weight of the
11 evidence. In those cases, if the scales of justice tilt
12 ever so slightly in favor of the party having the burden,
13 they would have met that burden of proof. In criminal cases
14 the burden is much stronger. It is proof that leaves you
15 firmly convinced of the defendant's guilt.

16 Now, ladies and gentlemen, with that being said, there
17 are very few things in this world that we know with absolute
18 certainty. And the law does not require the State to
19 overcome every certainty that may appear in the case.

20 If at the end of this case when you're instructed to
21 begin your deliberations, if you are firmly convinced of the
22 defendant's guilt to one or more of the charges that he has
23 been indicted for, then it will be your duty to find him
24 guilty. On the other hand, if you think there is a real
25 possibility that the defendant is not guilty of one or more

1 of the charges for which he has been indicted, you must give
2 him the benefit of the doubt and find him not guilty.

3 Now, Mr. Foreman, ladies and gentlemen of the jury, in
4 every trial there are five phases. In just a minute the
5 State is going to make an opening statement. The defendant
6 may, but is not required to make an opening statement
7 because the burden is on the State.

8 What these attorneys tell you is helpful, and it shows
9 you what their contentions are in this matter, but it is not
10 evidence. At the end of the opening statements there'll be
11 the presentation of the testimony and the evidence.

12 Afterwhich, the attorneys will give you their closing
13 statements, I'll charge you on the law, and then you'll be
14 instructed to begin your deliberations. And until that time
15 you may not and shall not begin your deliberations in any
16 form or fashion.

17 Also, in the almost 40 years that I've been involved in
18 practicing law and as a judge, every trial that I was
19 involved with there were objections. Lawyers have an
20 ethical obligation to object anytime he or she feels like
21 there's improper evidence being tendered or the process is
22 not properly being followed.

23 The fact that there is an objection being raised may
24 not, Mr. Foreman, be subject of your jury's deliberations.
25 Or to the extent I let you see my ruling on that objection,

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1 my ruling, may not be the subject of your deliberations.
2 Just let it for the process -- excuse me -- let it for the
3 process that it is. It is just a -- always going to be an
4 objection in every trial that we have. I anticipate no less
5 in this case.

6 With that being said, the State ready to proceed with
7 opening statements?

8 **MR. STEINBERG:** Yes, sir, Your Honor.

9 **THE COURT:** Is the defense ready to proceed with
10 opening statements?

11 **MS. CLEARY:** Yes, Your Honor.

12 **THE COURT:** Any additions or exceptions to the charge?

13 **MR. STEINBERG:** None from the State, Your Honor.

14 **THE COURT:** From the defense?

15 **MS. CLEARY:** None from the defense.

16 **THE COURT:** All right, sir. Be glad to hear from you.

17 **MR. STEINBERG:** May it please the Court? Ladies and
18 gentlemen, good morning or good afternoon. My name, again,
19 is Howard Steinberg. I'm a prosecutor in Greenville. I'm
20 actually from Greenville originally.

21 Also at the State's table is Kela Anderson. She is --
22 we call them investigators in my office. They serve in a
23 paralegal role. The investigator is David Picone. He'll be
24 the lead officer in this case. He'll be one of the two
25 officers that are testifying for the majority of the time.

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1 A lot of times jurors have questions about how long
2 they're going to be here. I cannot tell you this. I will
3 not waste any of your time.

4 Some of the things that I will bring forward, you might
5 say, well, why is this relevant? Sometimes it might have a
6 relevance later. Sometimes it might have a legal relevance
7 that might not be very apparent. However, I expect this
8 trial to last approximately one full day, max a day and a
9 half depending on how the questioning goes.

10 Now this is a relatively simple case. It is
11 trafficking in crack cocaine over one hundred (100) grams
12 and trafficking in powder cocaine over twenty-eight (28)
13 grams, under one hundred (100) grams, the same for powder
14 cocaine, over twenty-eight (28) under one hundred (100)
15 grams.

16 Trafficking does not mean you're literally trafficking,
17 put it in traffic or transporting it. It means you're
18 either buying it, selling it, moving it, holding it. In
19 fact, the general definition -- the classic definition of
20 trafficking is that you simply possess it. You don't have
21 to be doing anything, you just have to have it in your
22 possession. That applies to the two drug charges.

23 Trafficking in cocaine is listed as a violent crime.
24 That's what -- he's charged of possession of a weapon during
25 the commission of a violent crime. He's also charged with

OPENING STATEMENTS - MR. STEINBERG

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1 possessing a firearm, being stolen property. And you're
2 going to hear from the victim in that case.

3 The facts in this case are that the deputies were
4 investigating an unrelated shooting case. And I want to say
5 from the very beginning, I want to be fair to this
6 defendant, the defendant is sitting in the middle, he is not
7 the suspect in our shooting case. The shooting case
8 happened at a different date at this location. And this
9 defendant is not our suspect. He is not involved.

10 Officers pull up to this location. The lead officer
11 who's present will testify that he got out, he saw this
12 defendant, he saw where this defendant was standing. At
13 that time does not know he had any drug involvement other
14 than he does smell marijuana. He also sees exterior
15 surveillance cameras. And he's going to tell you why this
16 was important to him.

17 The officers get a search warrant for both the house
18 and the cars that were there. Inside the cars they find a
19 combined weight of over one hundred (100) grams of powder
20 cocaine and crack cocaine. Broken down it's less than that.

21 They also find a stolen gun. They find it right where
22 this defendant, Mr. Drinkard, had been standing. In fact,
23 he was kneeling next to an open car door. It was a Dodge
24 Charger. And that's going to come into play in a little
25 while.

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1 He's arrested. That is where the case would end.
2 Officers would arrest him. They'd come to you with
3 basically to say what is the rational inference? A hundred
4 (100) grams of illegal drugs, an illegal pistol. There are
5 some more illegal items inside the car.

6 Who's responsible for it? The person kneeling right
7 next to it. That's where the whole case would end. This
8 case is a little bit different. This case -- those
9 surveillance cameras which were obviously not designed for
10 law enforcement, but that is to our benefit and to your
11 benefit because you get to see this defendant is, in fact,
12 running with this bag, this bag that later on was determined
13 to have a firearm, illegal drugs and some cash is in this
14 defendant's hand. This is a case of where the defendant is
15 literally holding the bag. We don't get those in most of
16 these cases.

17 I appreciate your time in here. Nobody wants to be
18 here for this case. You have other things you'd rather do.
19 But we do appreciate your time in this matter. Thank you.

20 **THE COURT:** Ms. Cleary.

21 **MS. CLEARY:** Thank you, Your Honor. Wrong place, wrong
22 time, wrong bag, wrong crime. Mr. Drinkard was in the wrong
23 place at the wrong time. He chose the wrong bag and the
24 State charged the wrong crime.

25 On October 19, 2017 Shundrez Drinkard was over at his

OPENING STATEMENTS - MS. CLEARY

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1 cousin's house. He hears a car pull up, looks outside.
2 It's a police car. Mr. Drinkard starts to get a little
3 nervous because he has a gun on him, and he doesn't know
4 where the gun came from. He didn't buy it at the Palmetto
5 State Armory or the South Carolina Gun Club. He doesn't
6 have paperwork tracing the gun's history.

7 If we're being frank here, the gun came from the
8 streets. Maybe it was clean. Maybe it wasn't. Mr.
9 Drinkard didn't know and he didn't want to take the risk.
10 So he decides to hide it.

11 The police are out in the yard. He doesn't have much
12 time. He grabs a bag from the -- from his cousin's house
13 and stashes the gun inside. He runs out the door and throws
14 the bag into a Dodge Charger.

15 Seconds later law enforcement approached Mr. Drinkard.
16 The car is searched. The bag is discovered. But Mr.
17 Drinkard's about to get in a whole lot more trouble than he
18 bargained for because inside the bag, tucked away in a
19 little red pouch were two bags of drugs. Hidden away in
20 another pouch, three bags, and Mr. Drinkard was charged with
21 trafficking.

22 The State has charged Mr. Drinkard with four separate
23 crimes, receiving stolen goods, possession of a weapon in
24 the commission of a violent crime, trafficking cocaine
25 between twenty-eight (28) and a hundred (100) grams, and

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1 trafficking crack between twenty-eight (28) and a hundred
2 (100) grams.

3 Both trafficking charges, and this is important, ladies
4 and gentlemen, require knowing or being willfully ignorant
5 that there were drugs in that bag. And that's why we're
6 here because Mr. Drinkard didn't know. He was in the wrong
7 place at the wrong time. He chose the wrong bag, and the
8 State charged the wrong crime.

9 The State has the burden of proof in this case, to
10 prove each and every element of each and every offense
11 beyond a reasonable doubt. This burden means that we don't
12 give them the benefit of the doubt or overlook their
13 mistakes. We make them do their jobs, prove their case.

14 The State would have you look at this case through a
15 set of blinders, narrowed in on Mr. Drinkard. I would ask
16 you to look at this case as a whole including what the State
17 missed. Throughout today's testimony ask yourself, what
18 simple steps could the State have taken to prove knowledge?
19 Not just guess at it.

20 At the end of today's trial I'm confident that you will
21 see this case for what it is, wrong place, wrong time, wrong
22 bag, wrong crime. And for that reason at the end of the
23 trial, I, Morgan Cleary, along with my co-counsel, Stuart
24 Sarratt, will ask you to find Mr. Drinkard not guilty.
25 Thank you.

1 **THE COURT:** All right. Mr. Foreman, ladies and
2 gentlemen of the jury, we're going to go ahead and break for
3 lunch right now because there's no sense in breaking up
4 testimony in the middle of it. I'm going to ask that you
5 leave your pads in the jury room as I suggested earlier and
6 be back at 2:15. We'll resume with testimony.

7 Mr. Foreman, at any time during the course of this
8 trial, if you need a break before I'm ready to call one, let
9 me know. Or if I call you back to the courtroom before
10 you're ready to come, let me know. Okay, sir? It's not an
11 endurance contest. With that being said, would you go with
12 the bailiff, and we'll excuse you for lunch.

13 (Whereupon the jury exited the courtroom at 12:39 pm)

14 **THE COURT:** All right. Mr. Drinkard, let me -- since
15 you have reported, your bond is no longer in effect because
16 that's what it's for, to ensure your appearance to this
17 trial. I'm not going to have you held during the course of
18 this trial. I'm going to let you come and go.

19 But let me tell you something so it's on the record
20 now. If you don't come back after lunch or at any time
21 during the course of this trial, it will proceed in your
22 absence. Okay, sir?

23 **MR. DRINKARD:** Yes, sir.

24 **THE COURT:** So I know you'll be here, but I have to say
25 that to everybody so it's on the record. Okay, sir?

JARED SUSTAKOVICH - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MR. DRINKARD:** Yes, sir.

2 **THE COURT:** With that being said, anything from the
3 State before we break?

4 **MR. STEINBERG:** No, sir, Your Honor.

5 **THE COURT:** From the defense?

6 **MS. CLEARY:** Nothing further.

7 **THE COURT:** All right. We'll see you at 2:15.

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

9 (Whereupon court was in recess at 12:41 pm)

10 (Whereupon court reconvened at 2:16 pm)

11 **THE COURT:** Please be seated. All right. Mr.
12 Steinberg, anything from the State before we bring the jury
13 in?

14 **MR. STEINBERG:** No, sir, Your Honor.

15 **THE COURT:** Ms. Cleary?

16 **MS. CLEARY:** No, Your Honor.

17 **THE COURT:** All right. Bring the jury in, please.

18 (Whereupon the jury entered the courtroom at 2:17 pm)

19 **THE COURT:** Mr. Steinberg, would you call your first
20 witness, please, sir.

21 **MR. STEINBERG:** Thank you, Your Honor. The State would
22 call Mr. Jared Sustakovich, please.

23 **MADAM CLERK:** Sir, if you'd please pause at the end of
24 the bench, place your left hand on the Bible and raise your
25 right hand. Sir, place your stuff right there. There you

JARED SUSTAKOVICH - DIRECT EXAMINATION BY MR. STEINBERG

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1 go. Left hand on the Bible, raise your right hand.

2 **Jared Sustakovich**, being

3 duly sworn testified as follows;

4 **MADAM CLERK:** Thank you. Please be seated. And would
5 you please state your name for the record.

6 **MR. SUSTAKOVICH:** Jared Sustakovich.

7 **MADAM CLERK:** Thank you.

8 **Direct Examination by Mr. Steinberg:**

9 Q. Mr. Sustakovich, please tell the jury what you do for
10 your living and where you work.

11 A. I'm in medical sales, basically covering the upstate of
12 South Carolina.

13 Q. Before we go any further, prior to this case and
14 outside of this case have you ever met me before?

15 A. I have.

16 Q. And does your wife work in the solicitor's office?

17 A. She does.

18 Q. What kind of cases does she normally prosecute?

19 A. Child sex crimes.

20 Q. And does she work in my division as far as you know?

21 A. She does not.

22 Q. Do I supervise her? Or does she supervise me? Or is
23 there any connection like that?

24 A. No.

25 Q. In 2017 did you own a pistol?

JARED SUSTAKOVICH - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. I did.

2 Q. What type of pistol did you own?

3 A. It was a Smith & Wesson M&P.

4 Q. And what caliber was that?

5 A. Nine millimeter.

6 Q. Was it stolen? And if so, what were the circumstances
7 by which it was stolen?

8 A. It was stolen out of my vehicle.

9 Q. And did you report it stolen?

10 A. I did.

11 Q. To which agency?

12 A. Greenville County.

13 Q. And did they come out and take a report?

14 A. They did.

15 **MR. STEINBERG:** I'm going to have a box -- pardon me, a
16 firearm marked. Your Honor, I'm going to present up a Smith
17 & Wesson pistol. There is a bolt through it. It is not
18 loaded. It has been inspected by the officers.

19 **THE COURT:** All right. Let me get you to do one thing.

20 **MR. STEINBERG:** Yes, sir.

21 **THE COURT:** Do not point it at anyone ---

22 **MR. STEINBERG:** Yes, sir.

23 **THE COURT:** --- during the course -- even though it has
24 been done. And, Mr. Foreman, ladies and gentlemen of the
25 jury, as you heard, the gun has been modified so it cannot

JARED SUSTAKOVICH - DIRECT EXAMINATION BY MR. STEINBERG

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1 fire, but it will not be pointed at anyone during this
2 process. All right, sir.

3 **MR. STEINBERG:** Thank you, Your Honor.

4 (Whereupon State's exhibit 2 was marked for
5 identification)

6 **MR. STEINBERG:** And for the record, there are -- there
7 is ammunition. I will not be handing that up.

8 **THE COURT:** What exhibit number is that?

9 **MR. STEINBERG:** This should be ...

10 **MADAM COURT REPORTER:** 2.

11 **MR. STEINBERG:** State's exhibit number 2.

12 Q. I'm going to hand you this firearm. Please tell me,
13 does this appear to be the caliber and the model number of
14 your Smith & Wesson?

15 A. Yes, sir.

16 Q. I'm going to ask you to read some things on here. In
17 addition to the words Smith & Wesson, what type of firearm
18 is this listed as?

19 A. M&P Shield.

20 Q. And did you look at the serial number at the time you
21 reported it and give that information to the officers?

22 A. I did.

23 Q. And prior to this trial did you look for the serial
24 number in that case?

25 A. Yes, sir.

JARED SUSTAKOVICH - CROSS-EXAMINATION BY MS. CLEARY

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1 Q. Please read the serial number, which is found on this
2 black imprint right there.

3 A. HVM4405.

4 Q. And was that the serial number off of your firearm?

5 A. Yes, sir.

6 Q. Do you remember approximately how much you paid for
7 this firearm?

8 A. Five hundred dollars or so.

9 Q. Had you informed the officers of that value?

10 A. Yes, sir.

11 Q. Thank you. Please answer any of opposing counsel's
12 questions.

13 A. Thank you.

14 **Cross-Examination by Ms. Cleary:**

15 Q. Mr. Sustakovich, just very briefly. What date was your
16 gun stolen?

17 A. Sometime in March of 2017. I don't know the exact
18 date.

19 Q. Thank you. I don't have anything further.

20 **MR. STEINBERG:** Nothing further from the State, Your
21 Honor. The State would ask that this witness be released
22 from ---

23 **THE COURT:** Any objection, Ms. Cleary?

24 **MS. CLEARY:** No objection.

25 **THE COURT:** Thank you, sir. You're excused.

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. Thank you.

2 MR. STEINBERG: Thank you, Mr. Sustakovich. The
3 State's next witness will be Investigator Mike Rainey --
4 Mike Rainey.

5 MADAM CLERK: Sir, please place your left hand on the
6 Bible and raise your right hand.

7 Michael Rainey, being
8 duly sworn testified as follows;

9 MADAM CLERK: Thank you. Please be seated.

10 MR. STEINBERG: Madam Clerk, we will need your scissors
11 ---

12 MADAM CLERK: Yes, sir. Sir, please state your name
13 for the record.

14 MR. RAINEY: Michael Rainey.

15 MADAM CLERK: Thank you.

16 **Direct Examination by Mr. Steinberg:**

17 Q. Mr. Rainey, please tell the Court who your employer is
18 and what your rank is.

19 A. Greenville County Sheriff's Office. I'm a sergeant
20 over the Computer Crimes Unit.

21 Q. And how many years do you have in law enforcement
22 total?

23 A. Twenty-four and some change.

24 Q. Have you had any particular training dealing with
25 computers and surveillance equipment?

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. Yes, I have.

2 Q. And in your experience have you had to download
3 surveillance videos in other cases?

4 A. Yes.

5 Q. Have you downloaded a video in this case?

6 A. Yes, I did.

7 Q. Did you provide it to the officer in this case?

8 A. Yes, I did.

9 Q. Did you discuss this case with Investigator David
10 Picone?

11 A. Yes.

12 Q. And did you go down to the Law Enforcement Center and
13 pick up any equipment in this case?

14 A. Yes, I did.

15 Q. What did you pick up? And what was your reasoning?

16 A. It was a Night Owl security DVR system. And it was to
17 retrieve video footage from inside that system.

18 Q. And did he tell you -- when I say he, I'm talking about
19 David Picone, ask for any particular date as far as this
20 case goes?

21 A. Yes, he did.

22 Q. Okay. And what date was that? Do you recall?

23 A. I believe it's in my report. I believe it was the --
24 October 12th -- 13th and 19th ---

25 Q. Okay.

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. --- the first time.

2 Q. You said the first time. Please tell the jury what
3 occurred in this case.

4 A. I received a copy of a search warrant to analyze the
5 video footage from this DVR. I responded down to the
6 Property & Evidence room, got the DVR system, run it back to
7 my lab. At which point was able to access the data footage
8 after getting in touch with tech support from Night Owl
9 because there was a locked password. So I had to obtain a
10 Firmware update to bypass the password. At which time I was
11 able to download the footage.

12 Several -- sometime later down the road Investigator
13 Picone obtained another search warrant and asked for an
14 additional date. At which time I got another footage.

15 Q. And did -- when you went to the evidence room did you
16 go to this case number as the -- seize a surveillance system
17 from this case number?

18 A. Yes.

19 Q. And were there any other surveillance systems included
20 in this case number?

21 A. Not to my recollection, no.

22 **MR. STEINBERG:** Madam Court Reporter, if we could get
23 the cords and mouse marked for identification at this point.

24 (Whereupon State's exhibit 3 was marked for
25 identification)

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MR. STEINBERG:** And the same for the surveillance
2 system.

3 (Whereupon State's exhibit 4 was marked for
4 identification)

5 **MR. STEINBERG:** Thank you.

6 Q. I'm going to show you State's exhibit number 3. Please
7 explain to the jury what this is.

8 A. Power cord, the mouse and the video connection to the
9 monitor.

10 Q. And I'm going to show you State's exhibit number 4.
11 Please identify this.

12 A. It's a Night Owl DVR system, 16 channel, HD-DVR.

13 Q. Tell us about the sticker that's on the front. What is
14 -- who applies this? And what does it indicate to you?

15 A. This is a Property & Evidence tag that our Property &
16 Evidence personnel place on a tag once it's received into
17 evidence. And it does have my handwriting on it.

18 Q. Does this appear to be the same surveillance system,
19 and cord, the mouse that you used in this case?

20 A. Yes.

21 Q. And did you download the surveillance video and watch
22 at least part of the video with Investigator Picone?

23 A. I did.

24 Q. And did it -- did it suffice for Investigator Picone or
25 did you have to do anymore searching?

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. The first time it was -- appeared to be fine. The
2 second time he asked for an additional date. So I went back
3 to Property & Evidence and downloaded the second date in
4 question.

5 (Pause)

6 **MR. STEINBERG:** Beg the Court's indulgence.

7 Q. And who did you give the video to -- the video disk to?

8 A. A copy of the disk was placed into Property & Evidence.

9 Q. Okay.

10 A. And also a copy was provided to Investigator Picone.

11 Q. And does the copy portray the same thing that was on
12 the original video?

13 A. Yes, it does.

14 Q. Okay. Did you download all the video that was
15 available on this for the October 19th date?

16 A. I can't recall. I know I downloaded the date for the
17 19th.

18 Q. Okay. Well, was there any video that's been either
19 altered or edited? Or did you do anything with the videos?

20 A. No.

21 Q. Did you add or subtract any videos?

22 A. No, I did not.

23 Q. Outside of that did you have any other role in this
24 case?

25 A. No, sir.

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. I'm going to play you a surveillance video ---

2 THE COURT: Just one second. Mr. Foreman, would you
3 take the jury back to the jury room, please, sir.

4 (Whereupon the jury exited the courtroom at 2:30 pm)

5 THE COURT: Mr. Steinberg, ---

6 MR. STEINBERG: Yes, sir.

7 THE COURT: --- has that -- has that exhibit been
8 admitted into evidence?

9 MR. STEINBERG: No, sir.

10 THE COURT: You may not publish any exhibit. You may
11 not show it to the jury unless it's been admitted into
12 evidence, okay?

13 MR. STEINBERG: Yes, sir.

14 THE COURT: That's the rule. And that goes to both
15 sides in this case, okay?

16 MS. CLEARY: Yes, Your Honor.

17 MR. STEINBERG: Yes, sir. My intention was to show
18 only one ---

19 THE COURT: No, sir.

20 MR. STEINBERG: --- small section ---

21 THE COURT: You will not publish it ---

22 MR. STEINBERG: Yes, sir.

23 THE COURT: --- until it is admitted into evidence.

24 You understand?

25 MR. STEINBERG: Yes, sir. I'm not going ---

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. STEINBERG

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1 **THE COURT:** Okay. That is the rule.

2 **MR. STEINBERG:** Judge, I'm not going to try to go

3 around your rule. I'm not going to do ---

4 **THE COURT:** Well, you will ---

5 **MR. STEINBERG:** --- anything like ---

6 **THE COURT:** --- not publish any of it until it's ---

7 **MR. STEINBERG:** Yes, sir.

8 **THE COURT:** --- been admitted into evidence, ---

9 **MR. STEINBERG:** Yes, sir.

10 **THE COURT:** --- okay, sir, for the third time.

11 **MR. STEINBERG:** Yes, sir.

12 **THE COURT:** All right. Bring the jury back.

13 (Whereupon the jury entered the courtroom at 2:32 pm)

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

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

16 **MR. STEINBERG:** Madam Court Reporter, if I could have
17 this marked as -- for identification. It's listed as item
18 MSR1.

19 (Whereupon State's exhibit 5 was marked for
20 identification)

21 **Direct Examination by Mr. Steinberg Continued:**

22 Q. Investigator Rainey, could you please tell the Court --
23 first of all, identify this by way of the case number and
24 the item, particularly the initials MSR.

25 A. This is a CD modified or marked with case number

MICHAEL RAINEY - CROSS-EXAMINATION BY MS. CLEARY

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1 012017186822 5 14 of 18 with the initials MSR, which are my
2 initials in my handwriting.

3 Q. Is that the DVD, or pardon me, CD for the surveillance
4 video in this case?

5 A. Yes.

6 Q. When you were done with both the video and the
7 surveillance system did you return them to the Law
8 Enforcement Center?

9 A. I did.

10 Q. Did you follow the sheriff's office and Property &
11 Evidence room protocols?

12 A. Yes, I did.

13 Q. Thank you. Please answer any of opposing counsel's
14 questions.

15 **THE COURT:** Cross-examination. What is the exhibit
16 number for that DVD, please, sir?

17 **MR. STEINBERG:** 5.

18 **THE COURT:** 5? Thank you.

19 **Cross-examination by Ms. Cleary:**

20 Q. Good afternoon. You mentioned that Detective Picone
21 asked you to look at certain dates on the footage. Did he
22 specify certain times as well?

23 A. No. I downloaded the entire day, I believe.

24 Q. Which dates were those?

25 A. I would have to look at my report, but I believe it was

MICHAEL RAINEY - REDIRECT EXAMINATION BY MR. STEINBERG

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1 the 12th, 13th and 19th the first occasion. And I believe
2 the second time was the 15th, I believe.

3 Q. So not the date before this incident, the 18th?

4 A. Those are the days that I was given.

5 **MS. CLEARY:** Beg the Court's indulgence.

6 (Pause)

7 **MS. CLEARY:** I don't have anything further.

8 **MR. STEINBERG:** One brief follow-up.

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

10 **Redirect Examination by Mr. Steinberg:**

11 Q. Were you investigating -- pardon me. Were you
12 downloading for both the attempted homicide, which has
13 nothing to do with Mr. Drinkard, and for this case or for
14 one or the other?

15 A. I was asked to download for this case. This case
16 number.

17 Q. Okay. Thank you.

18 **MR. STEINBERG:** No further questions.

19 **THE COURT:** May this witness be excused?

20 **MR. STEINBERG:** He may be excused from the State.

21 **MS. CLEARY:** No objections.

22 **THE COURT:** All right. Thank you, sir. You're
23 excused.

24 A. Thank you.

25 **MR. STEINBERG:** Your Honor, with permission of the

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 opposing counsel, I am going to release Tracy King. He will
2 come back if necessary. I don't believe his testimony is
3 going to be necessary at this point, though.

4 **THE COURT:** That's Tracy King?

5 **MR. STEINBERG:** Yes, sir.

6 **THE COURT:** All right. Thank you, sir. You're
7 excused. Subject to recall.

8 **INVESTIGATOR KING:** Yes, sir.

9 **MR. STEINBERG:** Your Honor, the next case -- the next
10 witness will be Investigator David Picone.

11 **MADAM CLERK:** Sir, please place your left hand on the
12 Bible, raise your right hand.

13 **David Picone,** being duly
14 sworn testified as follows;

15 **MADAM CLERK:** Thank you. Please be seated. And please
16 state your name for the record.

17 **INVESTIGATOR PICONE:** David Daniel Picone.

18 **Direct Examination by Mr. Steinberg:**

19 Q. Investigator Picone, please tell the Court where you're
20 from originally.

21 A. Originally -- well, I was born in Connecticut, but I
22 moved down to Spartanburg when I was five, so pretty much
23 down in South Carolina.

24 Q. And what's your highest level of education?

25 A. I've got a four year degree from Newberry College.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. What was the degree in?

2 A. History with a minor in sociology.

3 Q. And how long have you been in law enforcement?

4 A. Going on 13 years. About 12 and a half.

5 Q. And was it all with the Greenville County Sheriff's
6 Office?

7 A. It is.

8 Q. And what unit are you currently in?

9 A. Homicide investigator.

10 Q. And what unit were you in in October of 2000 -- pardon
11 me, October 19th of 2017?

12 A. I was still in homicide.

13 Q. Does homicide include other violent crimes?

14 A. Yeah. We investigate shootings, all death
15 investigations, murders, so ...

16 Q. Does it include non-death?

17 A. Yes.

18 Q. Okay. What caused you to be involved in this case?

19 A. At times in our investigations such as a shooting where
20 somebody didn't -- wasn't deceased, not every time we go out
21 to the call, depending on the status of the victim. In this
22 particular case I was assigned a victim, didn't have any
23 life threatening injuries. So went to the hospital, an
24 incident report was formulated. And then I followed up with
25 the investigation once he was able to speak with me.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 So the reason why we were at this house is on this
2 date, on the 19th of October I was finally able to get the
3 victim into the office and talk to him. I got a statement
4 about what occurred. And he was -- at the time of the
5 shooting he was not able to provide an accurate location to
6 deputies. So he told me he could ride with me and show me
7 where this incident location was.

8 So on this day we loaded him up in my patrol car. I
9 drive an unmarked patrol car, tinted windows. Myself and
10 another investigator drove him. He directed us to the
11 location on Monroe Street, pointed out the specific house.
12 And I left that location to take him back home and asked
13 another investigator if he could go to that residence and
14 attempt to make contact with somebody there so we could kind
15 of initiate an investigation there.

16 Q. Would you agree that Shundrez Drinkard is not the
17 suspect in your shooting?

18 A. He is not. I actually charged somebody else in the
19 case.

20 Q. Okay. When did that shooting occur?

21 A. I believe it was October 12 of 2019, so seven days
22 prior to this case right here.

23 Q. Okay. You already mentioned the street name. What was
24 the street number, if you remember, on [REDACTED] Street?

25 A. I believe it was [REDACTED].

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Okay.

2 A. I can't exactly -- remember the exact address.

3 Q. And what location in Greenville was this?

4 A. Coming out of downtown, the big bridge. It's over on
5 the west side of Greenville leading into the County, coming
6 out of downtown.

7 Q. How close to this, say yards, to the Pete Hollis
8 Bridge?

9 A. It's -- that's the bridge. I'm sorry. I couldn't
10 remember the name. Probably 50 -- 100 yards.

11 Q. Okay. And please tell the jury and the Court about the
12 -- about the residence, the physical layout of this
13 residence.

14 A. So on this particular location there's a house at the
15 front and there's a house at the back. There's a dirt
16 driveway that leads to the house in the back. He pointed
17 out that house as being the house where he was shot.

18 This house is a one story, very small, probably 900
19 square feet or so. It's got a wood deck in the front.
20 There were several cars in the back of the property. To the
21 right of the property there was an apartment complex that
22 people were living in. And to the left was like a field.
23 And there was video surveillance cameras on the exterior of
24 the house, all around.

25 Q. Now was there another house in front of this house?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. There was. Yes.

2 Q. Was that house at all involved in the search of this
3 house?

4 A. It was not.

5 Q. And what County did this occur?

6 A. Greenville County.

7 Q. When you got there and got out of the car did you
8 notice anything with your senses?

9 A. Yes. I've been doing this job for going on 13 years.
10 And I've had an ample amount of time in investigations and
11 uniform patrol. And I could smell the odor of marijuana
12 coming from the residence.

13 Q. Was there anything on the residence that concerned you?

14 A. The video cameras. Being that I was there shooting, or
15 excuse me, investigating a shooting, that was something I
16 was particularly interested in to see if there was anything
17 I could get off this camera system to further that
18 investigation.

19 Q. Were there any cameras on the inside of the residence?

20 A. There were not.

21 Q. On the outside of the residence?

22 A. Oh, yeah. Several.

23 Q. And after -- after you arrived did you speak with the
24 other officers, particularly Investigator Walters?

25 A. I did.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. And did you then speak with Investigator Tracy King?

2 A. I did.

3 Q. What did you request him to do?

4 A. Being that I was on the scene, once we got there, the
5 initial -- we wanted to see if we could make contact with
6 somebody. Being that there was a video surveillance --
7 cameras outside there, that was a very -- sparked my
8 interest for the shooting case. And then being that there
9 was a smell of marijuana coming from the residence, I asked
10 Investigator King to obtain a search warrant so we could
11 conduct a thorough investigation at this residence and
12 collect any evidence that would further that shooting.

13 Q. Did you ever get any evidence concerning the shooting
14 itself on those videos?

15 A. No, I did not.

16 Q. And did you, in fact, get a search warrant signed by a
17 judge?

18 A. We did.

19 Q. Did the search warrant include the residence you're
20 talking about?

21 A. It included the residence and the vehicles on the
22 property.

23 Q. Who was the -- I'm not going to say the word owner.
24 Who was the -- who was the occupant of this residence?

25 A. While I was there -- when we conducted a search we

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 found paperwork inside the residence for a subject named
2 David Fowler. We had found some home incarceration -- like
3 an ankle monitor box there. So we were able to confirm that
4 it was his ankle monitor as well as paperwork. And then his
5 wife, I believe, showed up on the scene and mentioned that
6 her husband was living there as well.

7 Q. Okay. Was this David -- was Mr. Fowler -- what was his
8 first name?

9 A. David.

10 Q. And what was his -- was he present when you were there?

11 A. He was never there or made contact with anybody at the
12 house. There was only two people there. And he did not
13 come to the house at all while we were there at all.

14 Q. Do you remember who the other person is besides Mr.
15 Drinkard?

16 A. I think his last name was Greer. I can't remember his
17 first name.

18 Q. Was he found in possession of any drugs?

19 A. He was not.

20 Q. Was he the homeowner of this residence?

21 A. He was not.

22 Q. And did you ever charge him with anything?

23 A. He was not charged with anything.

24 Q. Now, was Mr. Drinkard found in the residence or outside
25 the residence?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. He was actually found outside the residence.

2 Q. Okay. And when you got there what time -- where was he
3 when you got there?

4 A. He was -- I believe he was standing around either with
5 Investigator Walters or some other deputies who had come to
6 the scene, but he was not under arrest at that time.

7 Q. Did you conduct a search of the residence?

8 A. We did.

9 Q. And did you find all kind of drug paraphernalia inside
10 this residence?

11 A. Yeah. We found drug paraphernalia inside the
12 residence.

13 Q. And was the resident, Mr. Fowler, charged with
14 anything?

15 A. He was.

16 Q. And was he charged with anything found outside of the
17 actual residence itself?

18 A. He was not.

19 Q. And was Mr. Drinkard charged with anything found inside
20 the residence?

21 A. He was not.

22 Q. Were there any actual drugs, completed drugs found
23 inside the residence?

24 A. No.

25 Q. Did you later interview Mr. Fowler?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. I did with another investigator.

2 Q. Okay. Who actually seized the evidence? Which
3 investigator seized the evidence in this case?

4 A. Investigator Walters. He -- once we completed a search
5 of the residence, he took possession of everything and
6 transported it to Property & Evidence so he could maintain
7 chain of custody. He placed everything into Property &
8 Evidence by giving those items item numbers with his
9 initials.

10 Q. Involving the search of the house did you -- were you
11 present when the car was searched?

12 A. I was.

13 Q. And going to the Dodge Charger, was that car door
14 locked?

15 A. No. It was -- I believe there might have been one
16 other car door that wasn't locked, but that particular car
17 was -- I think the only one that was unlocked. We had to
18 call Pop-A-Lock out to actually unlock all the other
19 vehicles on the property. I think there was a total of four
20 cars.

21 Q. After -- did you find any drugs inside this car?

22 A. Yes.

23 Q. And following that did you go speak to Mr. Drinkard?

24 A. I did.

25 Q. And tell us about the conversation. Tell us where it

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 occurred and tell us where he was.

2 A. Once we found the drugs in the car, I advised Mr.
3 Drinkard that he was under arrest. And I read him his
4 Miranda rights. I'm sure most of you are familiar with that
5 as seen on TV. I read it to him off a card so I wouldn't
6 mistake any words or, you know, mess it up. So I read his
7 Miranda rights to him off this card.

8 He wasn't under the influence of any drugs or alcohol
9 at the time. Didn't appear like he didn't understand my --
10 the rights that I read to him. And then I basically
11 explained to him he's under arrest. And we had a
12 conversation about what was found inside the car.

13 Q. Was he coerced or intimidated by you in any way?

14 A. No. I didn't promise him anything, didn't threaten
15 him, didn't tell him if he told me anything I was going to
16 take him out of handcuffs. It was, you're under arrest,
17 let's talk about this.

18 Q. Let me ask you that. When you first approached him was
19 he handcuffed at that time or was he handcuffed afterwards?

20 A. I believe I told somebody to put him in handcuffs after
21 we found that. So he was back -- I think he was back in the
22 car with some handcuffs on. But I was the only person who
23 talked to him.

24 Q. Did you use an audio recording device in this case?

25 A. Yes. I use that in all my cases.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MR. STEINBERG:** Madam Court Reporter, I think this has
2 been marked.

3 (Whereupon State's exhibit 6 was marked for
4 identification)

5 Q. Investigator Picone, did you make a copy of the
6 recording?

7 A. I did.

8 Q. Are both the original and the copy accurate
9 representations of what occurred ---

10 A. Yes.

11 Q. --- in this case?

12 A. Yes.

13 Q. In fact, did you listen to part of that conversation
14 earlier today?

15 A. Yes.

16 Q. I'm going to show you State's exhibit number 6 --
17 State's exhibit number 1. What is this document?

18 A. This is a CD that has a case number on it, 2017-186822.
19 It's got the original copy. And then I have written
20 Shundrez Drinkard interview. This is my handwriting.

21 **MR. STEINBERG:** Your Honor, the State would move to
22 introduce State's exhibit number 1 into evidence.

23 **THE COURT:** Any objection?

24 **MS. CLEARY:** Renew previous objection.

25 **THE COURT:** That'd be admitted.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MR. STEINBERG:** Thank you, Your Honor.

2 (Whereupon State's exhibit 1 was admitted into
3 evidence)

4 **MR. STEINBERG:** And, Your Honor, the State would move
5 to publish this to the jury at this point.

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

7 (Whereupon State's exhibit 1, CD, was played for the
8 jury)

9 (Whereupon the CD was ended)

10 Q. Investigator Picone, what did Mr. Drinkard say
11 concerning his reason for being at this vehicle?

12 A. To place marijuana in the car.

13 Q. And what word did he use for marijuana?

14 A. Loud.

15 Q. And are you familiar with this term, loud?

16 A. Yes, I am.

17 Q. What does it mean?

18 A. Loud is basically a pretty potent strand, or form or
19 whatever of marijuana. Just a stronger form of the
20 marijuana.

21 Q. Was, in fact, any marijuana located in this overall
22 case?

23 A. Yes.

24 Q. Was it located inside the bag?

25 A. No.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Where was it located?

2 A. In his sock.

3 Q. Was he even charged with possession of marijuana in
4 this case?

5 A. No. It was a small amount. It would have been a 30
6 day misdemeanor charge.

7 Q. Okay. For the jury to understand, would that even be
8 handled in this court ---

9 A. No.

10 Q. --- if you made a charge of that? Now this happened on
11 the crime scene?

12 A. Yes.

13 Q. At that time had you watched the video?

14 A. I had not.

15 Q. So you asked these questions. Did you know that Mr.
16 Drinkard was found on this video holding the bag?

17 A. I did not at the time.

18 Q. Did you later find out whether he was on video?

19 A. I did.

20 Q. What was -- who made the decision to charge?

21 A. I did.

22 Q. And what was he charged with at the time?

23 A. He was charged with possessing a stolen firearm,
24 receiving -- possession of stolen goods. He was charged
25 with possession of -- possession of a weapon during a

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 violent crime, being that he was charged with trafficking.
2 And the total weight for the drugs -- when I field tested
3 it, which we normally do for drugs to determine whether or
4 not we're going to charge somebody because there's -- at
5 times we get fake drugs. So we have kits that we can use.
6 And certain drugs turn different colors.

7 In this case we use a swab, which it looked like
8 cocaine. So you take the swab -- and it'll turn blue if
9 it's cocaine. So we tested the cocaine. It turned blue.
10 So I charged him with trafficking cocaine. At that time it
11 was like a hundred and fifty-nine (159) grams, I believe.
12 So I did the total weight.

13 Q. And did you later get the result back from the lab?

14 A. Yes. There was a result later. Yes.

15 Q. Okay. Who retained custody of the drugs and the items
16 that were placed into Property & Evidence?

17 A. Investigator Walters.

18 Q. That also go for the firearm as well?

19 A. Yes. He took -- anything that was seized from the
20 residence, he took at one time to Property & Evidence.

21 Q. And I think you talked about the firearm on this video,
22 but if I'm wrong did you know that the firearm was stolen at
23 the time?

24 A. Yes, we did. Basically when we find a firearm we run
25 it through our dispatch by the serial number. If the gun is

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 reported stolen and the serial number has been provided to
2 law enforcement, then that serial number and that gun and
3 make will be placed onto what we call NCIC, which is the
4 National Crime Information Center so any law enforcement
5 agency in the United States of America can run that serial
6 number on a gun that they locate.

7 And if it's stolen it'll show up on this web base. And
8 that's how we verify it. And then what we'll do is we'll
9 send a hit to that agency to verify it's still stolen. And
10 in this case it was.

11 Q. Okay. I'm going to show you what's been marked as
12 State's exhibit number 2. I'm handing you only the
13 inoperable firearm. Is that the firearm?

14 A. Yes.

15 Q. And please read the serial number.

16 A. It is -- it's a Smithin, or excuse me, Smith & Wesson.
17 And serial number is Hotel Victor Mike 4405, which would be
18 HVM4405.

19 Q. Thank you. I'm going to show you -- did you see this
20 at the time?

21 A. Yes. I did see it on the scene.

22 Q. Was that the weapon that was seized?

23 A. Yes.

24 Q. And these other items here, what are these items?

25 A. There's no ammunition in this, so I'll show you. That

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 is what we call a magazine. Anybody who doesn't know what a
2 magazine is, you put your ammunition in there, and you put
3 it in the gun, that's what holds the bullets. And then four
4 live rounds of ammo, I believe they're 9 millimeter bullets,
5 four live rounds that were in this magazine, which was in
6 the gun.

7 Q. Was the surveillance system seized?

8 A. It was.

9 Q. And what was your concern and what did you do with the
10 surveillance system?

11 A. Two things. One is -- well, first, it was password
12 protected. So there was a concern we wouldn't be able to
13 get into it first of all. Once we were able to break the
14 code and get into the system, the concern was, one was the
15 shooting to see if there was anything for the shooting on
16 the date of that incident.

17 And two was once we're in there, now we can see if
18 there's video evidence of Mr. Drinkard running out of the
19 house with the bag, being that there was a camera facing
20 right at the back door. So you could see back door to the
21 car. There's no -- there's nothing that blocks your view,
22 nothing that would show him out of sight. So it's a pretty
23 good camera.

24 Q. And I'm going to show you this item right here. Is
25 this the item that was seized? I'm showing you State's

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 exhibit number 3 and State's exhibit number 4.

2 A. Yes. This was located inside the house.

3 Q. I'm also going to show you a DVD previously marked as
4 State's exhibit number 5, item MSR number 1. Have you
5 watched that video?

6 A. Yes.

7 Q. And what does it show?

8 A. It'll show the video footage from October 19th, 2017,
9 what we're here about today.

10 Q. Does it show continuous or is it in pieces?

11 A. It's in pieces. I think there was -- we know it's
12 multiple camera views. So in particular I was looking at
13 the one at the front where the deputies arrive at the house.
14 There's one at the side of the house that shows deputies
15 pulling in. And there's one at the back that shows the back
16 door where Mr. Drinkard ---

17 **MS. CLEARY:** Objection.

18 A. --- exits the house.

19 **MS. CLEARY:** Objection, Your Honor.

20 **THE COURT:** Okay. What is your objection?

21 **MS. CLEARY:** Object to any testimony about what's on
22 the video before it's been entered into evidence.

23 **THE COURT:** Overruled. Go ahead.

24 **MR. STEINBERG:** Thank you, Your Honor.

25 Q. Did you make a copy of that for any -- for emergencies

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 if anything was -- occurred to the original?

2 A. I got copies from Investigator Rainey. Yes.

3 Q. Okay. And have you watched this video recently to see
4 if this is an accurate representation ---

5 A. Yes, I have.

6 Q. --- of the scene?

7 A. Yes.

8 Q. And did you add or subtract any videos or video clips
9 from this?

10 A. No.

11 Q. Is what's on this video everything that was on -- that
12 was delivered to you from Investigator Rainey?

13 A. It is.

14 Q. Have you altered or edited the quality or anything
15 dealing with the length of this video?

16 A. No.

17 Q. And did you follow sheriff's office policy in how you
18 handled the items?

19 A. Yes.

20 Q. And did you obtain the search warrant from a magistrate
21 or a judge?

22 A. Yes.

23 Q. To obtain the videos in this case?

24 A. That's correct. Yes.

25 Q. After viewing these videos did you have any reason to

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 charge anyone else for the drugs found outside of the house?

2 A. No. It shows Mr. Drinkard in possession of the items
3 that he's charged with.

4 Q. Did you find any reason on this video or outside your
5 investigation to charge anyone else in this case with drugs?

6 A. No.

7 Q. And ---

8 **MR. STEINBERG:** The State would move to introduce
9 State's exhibit number -- exhibit 5 into evidence at this
10 time.

11 **MS. CLEARY:** Objection, Your Honor. I have a matter of
12 law to take up.

13 **THE COURT:** I'm sorry?

14 **MS. CLEARY:** I have a matter of law.

15 **THE COURT:** Okay. Mr. Foreman, would you take your
16 jury to the jury room, please, sir.

17 (Whereupon the jury exited the courtroom at 3:02 pm)

18 **THE COURT:** All right. Ms. Cleary.

19 **MS. CLEARY:** Thank you, Your Honor. Your Honor, this
20 was the trial issue I mentioned before. The objection would
21 be lack of foundation. I don't think an appropriate
22 foundation has been established to authenticate this video.
23 The -- I don't take any issues with what the investigators
24 themselves did. I'm not saying they tampered with it or
25 altered it or anything like that.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 My issue is this video came from David Fowler's house.
2 There's been some testimony about David Fowler having his
3 paperwork there, have his wife show up, having his ankle
4 monitor there. David Fowler was actually the one who could
5 provide the password and could provide knowledge about the
6 inner-workings of the video, whether it was working properly
7 at the time it was seized.

8 I have some concerns that there's been no foundation
9 laid to it as to whether the video was working at the
10 appropriate time, whether there were any issues with it or
11 whether it was tampered with prior to being seized by law
12 enforcement.

13 I also noted -- the only issue I had with the officer's
14 testimony is there was testimony by Officer Rainey, I
15 believe, that a program had to be installed to break into
16 the video and overcome the password. There was not a lot of
17 testimony as to what this program did, if there were any
18 modifications that had to be made or anything like that.

19 So I would argue that the -- there's been a lack of
20 foundation, the video's not been properly authenticated and
21 should not be entered into evidence.

22 **THE COURT:** I'll note your objection. And I'm going to
23 find that there has been sufficient authentication both from
24 this witness and Jared Sustakovich as well. So it has
25 properly been authenticated.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 MR. STEINBERG: Thank you, Your Honor.

2 THE COURT: And so it'd be admitted.

3 (Whereupon State's exhibit 5 was admitted into
4 evidence)

5 MR. STEINBERG: Do you have anymore questions before we
6 bring the jury back in?

7 MS. CLEARY: Oh, I do not. I apologize. I do not.

8 THE COURT: Will you bring the jury back, please, sir.

9 (Whereupon the jury entered the courtroom at 3:05 pm)

10 Direct Examination by Ms. Steinberg Continued:

11 Q. Investigator Picone, if you could look over your
12 shoulder. We'll have to turn off the lights in just a
13 second. There are multiple files on this disk. Are these
14 all the disks that occurred that -- all the files that are
15 on this disk or on this -- are from this case?

16 A. Yes.

17 Q. Did you leave any off of this disk?

18 A. No. That's what was in Property & Evidence.

19 Q. I'm going to show you the top disk, which is listed as
20 channel 2, CH02, ending 104801.

21 (Whereupon State's exhibit 5, CD, played for the jury)

22 Q. I'm going to stop it at the three second mark. What
23 generally does this show you?

24 A. Do you have a pointer? It makes it ...

25 Q. What's that?

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. Do you have something you can point?

2 Q. Yeah.

3 A. So I can kind of articulate for you.

4 So I talked about the camera at the back. This is the
5 back of the residence. This is going to be a camera that's
6 over the back door. And these are the -- backyard. This is
7 the field that was over here, apartments surrounded by a
8 fence and kudzu. They have one, two, three cars right here.
9 This is going to be the Dodge Charger that we're talking
10 about in just a moment.

11 Q. Which door was unlocked?

12 A. You'll see him opening this back door right here.

13 Q. Are you talking about the ---

14 A. The back ---

15 Q. --- driver's side back door?

16 A. Yeah. Driver's side back door.

17 Q. Okay. I'm going to replay -- continue to play this
18 video. Who is that?

19 A. Shundrez Drinkard.

20 Q. Is that the individual sitting at the defense table
21 today?

22 A. That is.

23 Q. And what did he have in his hand when he approached?

24 A. As he's coming around the back of the corner area, you
25 see a bag he's holding down. And he opens the back door.

DAVID PICONE - DIRECT EXAMINATION BY MR. STEINBERG

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1 You can see him lean in as he's placing something in there.

2 At this time is when Investigator Walters, they're
3 already on-scene, pulled up. He actually is making contact
4 with him. You can see him look over. And now he's walking
5 towards where Investigator Walters is going to be seen on
6 video.

7 Q. Specifically, does he have that same bag in his hand?

8 A. No, he does not. I'll also point out the fact that
9 this is October 19th, and it shows that. And that's the
10 time, too.

11 Q. Are we done with that video?

12 A. Yeah. There's nothing else on this video.

13 Q. I'm going to bring you to another video that says
14 channel 4, 104931.

15 A. Okay.

16 Q. Let me stop you. And you tell the jury the vantage
17 point. What does this show?

18 A. Yeah. So the first camera showed directly out to the
19 backyard. This camera shows if you're facing the house and
20 on the left side of the house. So the driveway comes
21 around, dirt driveway.

22 And as you can see, the cars are back here. And the
23 cars would be able to drive through here. So this is like
24 the very back of the house. So this -- you'd be able to see
25 subject walking this way in just a moment.

DAVID PICONE - CROSS-EXAMINATION BY MS. CLEARY

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1 Q. Replaying at the four second mark.

2 A. But as you can see, that's the back door. Comes out of
3 the back door. Clear image of him holding the bag, way
4 clearer than the other one. And then, I mean, we're talking
5 ten seconds later the investigator is already making contact
6 with him. And as you can tell by -- it's just a casual
7 conversation at this point.

8 Q. I'm going to stop playing at the 43 second mark. After
9 viewing these videos in the past and today did you have any
10 reason to charge anyone else in this case for the drugs
11 found inside the car?

12 A. Absolutely not.

13 Q. If more information came of light at any point from the
14 past or any point in the future, could you make charges?

15 A. Yes.

16 Q. Thank you. I have no further questions. I'll get the
17 video out of here. Please answer any of opposing counsel's
18 questions.

19 A. Yes, sir.

20 MS. CLEARY: Thank you.

21 THE COURT: Yes, ma'am.

22 **Cross-examination by Ms. Cleary:**

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. So this house belonged to David Fowler, right?

DAVID PICONE - CROSS-EXAMINATION BY MS. CLEARY

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1 A. That's correct.

2 Q. There was paperwork belonging to him in the house?

3 A. There was.

4 Q. His ankle monitor?

5 A. Yes.

6 Q. And the paperwork was actually dated two weeks before
7 this incident?

8 A. Yes.

9 Q. There was a Dodge Charger in the yard, right?

10 A. There was.

11 Q. It belonged to his mother?

12 A. I don't know exactly who, but I know the last name was
13 Fowler.

14 Q. And his wife actually showed up during the
15 investigation?

16 A. She did.

17 Q. There were drugs found inside the house?

18 A. There was drug paraphernalia.

19 Q. Drugs found on a whisk?

20 A. Yes.

21 Q. And David Fowler was charged with those drugs?

22 A. He was.

23 Q. Charged with manufacturing crack, third?

24 A. That's correct.

25 Q. Third offense?

DAVID PICONE - CROSS-EXAMINATION BY MS. CLEARY

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- 1 A. Yes.
- 2 Q. You were the officer who reviewed the video footage?
- 3 A. I am.
- 4 Q. You reviewed the video footage from October 19th?
- 5 A. That's correct.
- 6 Q. Not from October 18th?
- 7 A. No.
- 8 Q. On the video you see Mr. Drinkard leave the house?
- 9 A. Talking about the 19th? Yes.
- 10 Q. With the backpack?
- 11 A. That's correct.
- 12 Q. This is the backpack in the Dodge Charger?
- 13 A. Yes.
- 14 Q. You don't see him carrying the drugs in his hands?
- 15 A. No, it's in the bookbag.
- 16 Q. We only saw a few seconds of footage, right?
- 17 A. Yeah. We saw him leave, the entirety that he left the
- 18 back of the house and placed the bookbag in the car.
- 19 Q. We didn't see footage from hours earlier when he first
- 20 arrived at the house?
- 21 A. No.
- 22 Q. Or who carried the backpack into the house?
- 23 A. No.
- 24 Q. Or carried the drugs into the house?
- 25 A. No.

DAVID PICONE - CROSS-EXAMINATION BY MS. CLEARY

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1 Q. You've been a police officer for more than 12 years,
2 you said?

3 A. That's correct.

4 Q. You know how to investigate your case?

5 A. That's correct.

6 Q. How to search a car?

7 A. Yes.

8 Q. Even though you didn't smell marijuana coming from the
9 car?

10 A. No.

11 Q. You smelled it coming from the residence?

12 A. Yes, but the car was on the search warrant.

13 Q. You also know how important forensics can be to a case?

14 A. They can be, yes.

15 Q. You know how to check for fingerprints?

16 A. I don't check for fingerprints, but I know forensics
17 does, yes.

18 Q. But you know how to pick up the phone and call
19 forensics if you want to check for fingerprints?

20 A. If -- if an item needs to be fingerprinted, yes.

21 Q. And at no point did you check for fingerprints in this
22 case?

23 A. No, because he was already in possession of the items.

24 And usually DNA or fingerprints are used to place somebody
25 at the crime scene or find out who was at the crime scene

DAVID PICONE - CROSS-EXAMINATION BY MS. CLEARY

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1 that wasn't found there.

2 Q. So that's a no, you didn't check the drugs for
3 fingerprints?

4 A. I did not.

5 Q. Also didn't check the drugs for DNA?

6 A. The drugs? You're not going to find anything on drugs.

7 Q. And nothing in the backpack was tested for DNA?

8 A. No.

9 Q. And you asked Mr. Drinkard for consent for DNA?

10 A. I did.

11 Q. But you asked it to compare his DNA to the gun?

12 A. I did.

13 Q. And he denied it?

14 A. He did.

15 Q. But there's more than one way to get someone's DNA
16 other than consent, right?

17 A. There is. But at that time I was using that as more of
18 a tactic. Like I said, he was already in possession of the
19 firearm.

20 Q. So that's a yes? You could get a warrant for his DNA?

21 A. I could, but I didn't feel I needed to.

22 **MS. CLEARY:** I beg the Court's indulgence.

23 (Pause)

24 **MS. CLEARY:** Nothing further.

25 **THE COURT:** Thank you. Redirect.

DAVID PICONE - REDIRECT EXAMINATION BY MR. STEINBERG

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1 MR. STEINBERG: Just briefly.

2 Redirect Examination by Mr. Steinberg:

3 Q. You said there were no drugs in the house and then you
4 said there were drugs on the whisk. Was there a measurable
5 amount of drugs on the whisk?

6 A. No. It was basically drugs that had dried on this
7 whisk. And the whisk was used to make crack cocaine.

8 Q. When you say whisk, are you talking about the general
9 kitchen whisk?

10 A. Yeah. It was very small that you would normally see
11 mixing up a bowl.

12 Q. Going to the issue involving the video and the amount
13 of videos. On the date in question, October 19th, are there
14 any other videos that were not presented that you have?

15 A. No.

16 Q. And concerning the fingerprints and DNA, in your
17 experience have you sent items in the past for
18 fingerprinting and DNA?

19 A. All the time.

20 Q. And on cases where there was -- I use the term serum.
21 There's no serum. There's no blood, or saliva or other body
22 serums. Do you normally get DNA?

23 A. No. I can't give you the exact numbers, but me talking
24 with the lab who does DNA and stuff, they always -- it's a
25 very limited percent.

DAVID PICONE - REDIRECT EXAMINATION BY MR. STEINBERG

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1 Q. And can you get DNA off of drugs themselves?

2 A. You cannot.

3 Q. Okay. There was some other things in the bag. Were
4 those sent for DNA testing at the time?

5 A. No.

6 Q. Do you have the right to send it at a later date if you
7 found it necessary?

8 A. Yes.

9 Q. And at the time did you have the videotape observed?
10 Did you watch the videotape?

11 A. Not -- not at the exact date this happened, no.

12 Q. In light of the -- in light of the video do you see any
13 reason to send anything for testing?

14 A. Not at all. He's in possession of it. There's -- like
15 I said, DNA and fingerprints are to place somebody at a
16 crime scene or, I mean, basically to place somebody at the
17 crime scene they're, you know, a lot of times we don't get
18 video that shows the actual suspect at the crime scene. So
19 we use DNA to find out who we're looking for.

20 Q. Does DNA or fingerprinting show when someone held
21 something, when someone held an item?

22 A. No, it does not. I mean, we could have got DNA from
23 the person who packaged the baggies.

24 Q. Okay.

25 (Pause)

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 MR. STEINBERG: No further questions at this time.

2 **THE COURT:** Thank you, sir. You may step down.

3 **MR. STEINBERG:** Your Honor, this witness is still going
4 to be on standby for recall if necessary.

5 **THE COURT:** All right, sir.

6 **MR. STEINBERG:** The State's next witness will be
7 Investigator Jake Walters.

8 **MADAM CLERK:** Sir, please place your left hand on the
9 Bible, raise your right hand.

10 **Jacob Walters**, being duly
11 sworn testified as follows;

12 **MADAM CLERK:** Thank you. Please be seated. And please
13 state your name for the record.

14 INVESTIGATOR WALTERS: My name is Jacob Walters.

15 Direct Examination by Mr. Steinberg:

16 Q. Investigator Walters, could you please tell the Court
17 what you are -- who your employer is and what your position
18 is in that agency?

19 A. I work for the Greenville County Sheriff's Office. I'm
20 a master deputy on uniform patrol.

21 Q. And how long have you been in law enforcement?

22 A. I've been here 11 years.

23 Q. And just generally, what is your experience in law
24 enforcement?

25 A. I started out in uniform patrol and I moved to directed

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 patrol after approximately two years in uniform patrol.
2 Directed patrol is kind of like a street crimes unit. You
3 deal with a lot of drugs, and prostitution and gambling. I
4 was in that position for about six years. And I transferred
5 to the Violent Crimes Unit where I investigated robberies,
6 homicides, kidnappings, violent crimes. I was there for
7 about two and a half years.

8 Q. How long have you been in the Directed Patrol Unit?

9 A. Almost six years.

10 Q. And during that time period did you have contact with
11 drug dealers?

12 A. Quite a few.

13 Q. And did you seize illegal drugs to include cocaine and
14 crack cocaine?

15 A. Very frequently.

16 Q. Did you search drug houses?

17 A. Yes, sir.

18 Q. Are you familiar with the paraphernalia and equipment
19 used in drug houses?

20 A. Very familiar.

21 Q. What was your role when you showed up? What was your
22 reasoning for showing up at this location on Monroe Street?

23 A. I was responding to assist Investigator Picone. He was
24 investigating a shooting incident. And the victim pointed
25 out the house to him where the incident took place. So I

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 went there to this house to try to make contact with anybody
2 there to see if we could locate any potential witnesses, or
3 even potential suspects or maybe find some items of
4 evidence, just the very beginning stage of the
5 investigation.

6 Q. And when you arrived there what did you determine?

7 A. When I arrived on the scene, I pulled in the driveway,
8 I immediately noticed cameras on the front of the house,
9 which caused me a lot of concern because anyone inside could
10 be alerted to law enforcement response, that we were coming
11 to this house and could gain an advantage against us. So I
12 drove around to the side of the house where I could see the
13 back door in case anybody was trying to run away, or ditch
14 any evidence or anything like that.

15 Q. What do the surveillance cameras concern you for as far
16 as drugs?

17 A. It also -- again, it alerts people to whoever is
18 outside their house. And a drug dealer is someone that's
19 involved in drug activity, sees law enforcement responding,
20 can destroy evidence or ---

21 **MS. CLEARY:** Objection ---

22 A. --- run.

23 **MS. CLEARY:** --- to speculation.

24 **THE COURT:** Overruled. Go ahead.

25 A. They have the opportunity to get an advantage against

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 us and destroy evidence or escape the scene.

2 Q. Are you familiar with the smell of marijuana?

3 A. Yes, sir.

4 Q. Did you smell marijuana near the car?

5 A. Not near the car. I could smell it when I got out and
6 was standing beside the house.

7 Q. Would your car have been visible to someone if they
8 were either looking out the front or while looking at a
9 surveillance camera?

10 A. Yes.

11 Q. What kind of car do you have?

12 A. At that time it was a -- an unmarked Chevy Impala.

13 Q. What color is it?

14 A. It's blue. It's dark blue. Has dark tinted windows.

15 Q. Okay. How many cars were in this, I guess, driveway or
16 lot?

17 A. The backyard, there were three cars.

18 Q. And what about the side of the car -- side of the
19 residence?

20 A. Don't remember on the side of the residence.

21 Q. When you pulled up where was this defendant, Mr.
22 Drinkard?

23 A. I saw Mr. Drinkard standing beside a Dodge Charger by
24 the back rear driver's door. The driver's door was open. I
25 saw him kind of crouch down. And then I saw him stand up

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 and close the door. And then I got out of my car, and I
2 called for him to come over and talk to me about why I was
3 there.

4 Q. Which car door was he near?

5 A. It was the rear driver's side door.

6 Q. Of which car?

7 A. Of the Dodge Charger.

8 Q. At the time he walked over to you did you know if there
9 were any drugs either in the car or on his person?

10 A. I had no idea.

11 Q. When you got close enough to talk to him did you look
12 at his facial features or hear him talk? Hear his speech?

13 A. Yes.

14 Q. Please tell us in your words how you would describe his
15 demeanor.

16 A. I noted he was exceptionally nervous. He was almost
17 shaking. And his voice kind of quivered when he spoke to
18 me. He was very concerned that I was there.

19 Q. What, if anything, did he say to you at that time?

20 A. I just explained to him that I was there following up
21 on a shooting investigation. I asked if he lived there. He
22 said, no, that it was a recording studio of sorts. I
23 believe he said it was his cousin's house.

24 Q. Was he handcuffed at that time?

25 A. No. We were just talking with each other.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Was he charged with anything at that time?

2 A. No, not at that point.

3 Q. Did Investigator Picone provide you with a search
4 warrant?

5 A. He did.

6 Q. And did you execute the search warrant?

7 A. I did assist with that.

8 Q. When you first went in the house -- did you have a
9 search warrant when you first entered the house?

10 A. No. While I was speaking with Mr. Drinkard it looked
11 like someone else was inside the house and tried to close
12 the door. So this caused me a great deal of concern.

13 Number one, we're there investigating a shooting incident.
14 There are cameras where they can see where I'm at and what
15 I'm doing.

16 Number two, the odor of marijuana led me to believe
17 there could be potential evidence of other crimes happening
18 inside the house. So for my safety and for the preservation
19 of evidence, other deputies and I on-scene conducted what's
20 called a protective sweep where we'll go inside the house.
21 We'll secure anybody that's inside. It's not a search.
22 It's securing anybody inside to prevent any kind of
23 potential harm or destruction of evidence.

24 Q. You follow the sheriff's office policy dealing with
25 protective searches?

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. Yes.

2 Q. And did you seize any evidence as part of the
3 protective search?

4 A. No.

5 Q. How long did the protective search or protective sweep
6 last?

7 A. It only takes a couple of minutes.

8 Q. When you went back in with a search warrant did you
9 search for evidence of either the shooting or drugs?

10 A. Yes.

11 Q. And did you locate any actual drugs inside the
12 residence?

13 A. No. There were no actual drugs inside of the
14 residence.

15 Q. Did you search the car?

16 A. I did search the car.

17 Q. Were the cars listed in the search warrant as being
18 something that you were allowed to search?

19 A. Yes.

20 Q. And were the cars locked at the time?

21 A. Two of the cars were locked. The Dodge Charger, one of
22 the doors was unlocked.

23 Q. When you went back to the Dodge Charger what was in the
24 backseat? Or the backseat area, I should say?

25 A. Looked like there was a phone in the backseat. And I

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 could see a black bag on the floor and a paint can.

2 Q. This black bag, did you take it into evidence?

3 A. I did.

4 Q. And did you search it at the time?

5 A. I did.

6 Q. And what did you find inside this black bag?

7 A. There were several plastic bags of a white substance

8 that appeared to be cocaine or cocaine base. We field

9 tested it. And it did test positive for those things.

10 There was also a handgun that was found in that bag. There

11 were also razor blades, plastic bags and digital scale.

12 Q. Did you take the drugs into evidence?

13 A. I did.

14 Q. In what container or what form were they in when you

15 obtained them?

16 A. They were in the bag -- they were packaged in plastic

17 bags and in that black bag.

18 Q. And when you took them into custody, you maintained

19 control over these items?

20 A. Yes, sir.

21 Q. How do you handle drugs as they are brought into the

22 evidence room? How do you package them? How do you secure

23 them?

24 A. If possible I try to leave them in the packaging that I

25 found them in, in the plastic bag, if they're packaged that

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 way. But then I'll put them into another bag. And I'll put
2 the case number, the date, my name. And then I'll heat-seal
3 the bag so that it is now sealed.

4 Q. Okay. I'm going to show you some items. I'm going to
5 have to have Madam Court Reporter mark them. I'm going to
6 show you what's listed as JW5. Whose initials are JW?

7 A. Those are my initials.

8 **MR. STEINBERG:** I'd ask this be marked as a State's
9 exhibit.

10 Q. I'm going to hand up -- I'm going to hand to the court
11 reporter JW4, JW3. I'm going to hand up to you JW1.

12 (Whereupon State's exhibits 7, 8, 9, 10 and 11 were
13 marked for identification)

14 Q. I'm going to hand you these items. If you would
15 identify State's exhibit 10, State's exhibit 11, State's
16 exhibit 9, 8 and 7. Please take a look at these and tell
17 the jury what those items are.

18 A. Items -- State's exhibit 7, 9, 10 and 11 appear to be
19 cocaine and cocaine base. These are items from the black
20 backpack. State's exhibit 8 appears to be -- looks like
21 marijuana. This was seized from Mr. Drinkard's person.

22 Q. The items of cocaine or crack cocaine, where were they
23 located?

24 A. Those were in the black bag that were found in the
25 Dodge Charger.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. These items, did you follow the sheriff's office and
2 the Property & Evidence room's policies dealing with seizing
3 of illegal contraband?

4 A. Yes, sir.

5 Q. Generally, what is the policy? And please tell the
6 jury your steps.

7 A. When you seize these items you seal them so that they
8 can be preserved in the condition that you found them. And
9 then they are turned into Property & Evidence. It's a
10 secure location where it's very -- restricted access where
11 nobody can just access it and do anything with this
12 evidence.

13 Q. Do even you have access to this?

14 A. No. I can't access it.

15 Q. When you brought these items to the Law Enforcement
16 Center in the evidence room, how did you seal the items?

17 A. In plastic bags with a heat seal.

18 Q. Okay. I'm going to show you -- I'm not going to show
19 you all of them, but tell me if there's going to be a
20 difference in any of these. State's exhibit number 7, for
21 example, the outside bag, is that something you provide or
22 is that something that somebody else did?

23 A. This outside bag is not mine.

24 Q. Okay. Tell us about the interior bag.

25 A. The interior bag is what I would place the potential

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 drugs into. And then that is what I heat-seal and turn into
2 Property & Evidence.

3 Q. And is heat-sealing the standard way in which you
4 determine that something's not been tampered with?

5 A. Yes.

6 Q. Okay. This -- not the interior bag that you marked,
7 but the mark -- the baggy itself, did you provide that or is
8 that already inside the -- inside the car? I'm talking
9 about the hand-tied item.

10 A. The hand-tied item, that's how I got it.

11 Q. Okay. And have you reviewed the paperwork for the
12 evidence?

13 A. Yes, sir.

14 Q. I'm going to show you some additional items. I'm going
15 to show you a black bag. I want you to look at it and look
16 at the contents.

17 (Whereupon State's exhibit 12 was marked for
18 identification)

19 Q. I'm going to show you what's been marked as State's
20 exhibit 12. What is this?

21 A. This is the black bag that Mr. Drinkard was carrying
22 out to the car.

23 Q. I'm going to ask you to look inside. Are there items
24 from inside -- that were inside this bag when you located
25 it?

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. Yes.

2 Q. Are there items that were found inside the house that
3 were placed into this?

4 A. Yes.

5 Q. Do you know who placed it inside the bag?

6 A. That would have been me.

7 Q. Okay. So was everything -- to be fair to the
8 defendant, was everything inside this bag from inside the
9 car or was some of it from inside the house?

10 A. Today some of this stuff is from the house.

11 Q. Okay. Have you reviewed your report?

12 A. Yes, sir.

13 Q. Have you reviewed the photographs in this case?

14 A. Yes, sir.

15 Q. Okay. I'm going to show you a Cartier box, red Cartier
16 box.

17 **MR. STEINBERG:** I'll have it marked for identification.

18 (Whereupon State's exhibit 13 was marked for
19 identification)

20 Q. I'll show you what's been marked as State's exhibit
21 number 13. What is this? And where did you locate this?

22 A. This is a red box labeled Cartier. This was found
23 inside the black backpack.

24 Q. And what was inside this box?

25 A. The bags of potential cocaine or cocaine base.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. That was found inside the bag when it was inside the
2 car?

3 A. Yes.

4 Q. And is that in your report?

5 A. Yes.

6 MR. STEINBERG: I'm going to present to the court
7 reporter a purple Crown Royal bag.

8 (Whereupon State's exhibit 14 was marked for
9 identification)

10 Q. What is this? And where did you find it?

11 A. This is a purple Crown Royal bag. This was found
12 inside the black backpack that contained nine hundred
13 dollars (\$900.00) in cash money.

14 Q. And did you seize this cash?

15 A. I did.

16 Q. And why did you seize cash?

17 A. This was quite clearly proceeds of drug sales and
18 activity.

19 Q. How close was this to the -- to the drugs?

20 A. This was in the bag with the drugs.

21 Q. And you heard discussion of a firearm. Where was this
22 firearm found?

23 A. The firearm was also in the bag with the drugs and the
24 money.

25 Q. And do you handle firearms for seizing purposes

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 differently than you handle these other items?

2 A. Yes.

3 Q. Let me ask you to look through State's exhibit number
4 12 and see if there's anything else that was found inside
5 the bag at the time you seized it?

6 A. So at the time I seized the bag this was not in it.

7 This was from the house. This was also in the house. This
8 would have been in the house. This would have been in the
9 house. This was also in the house. This was in the house.

10 A couple of magazines, these were also in the house. Some
11 loose rounds of ammunition in the bottom that would have
12 been in the house also.

13 Q. Okay. And the -- for the benefit of both the Appellate
14 Courts and for opposing counsel, ---

15 **MR. STEINBERG:** Madame Counselor, if you wish to come
16 look at these items?

17 **MS. CLEARY:** Yes, sir.

18 (Pause)

19 Q. Was the defendant, Shundrez Drinkard, charged with
20 anything related to these items?

21 A. No. These items were separate from the incident with
22 Mr. Drinkard.

23 Q. When you place the evidence into custody do you have a
24 clerk that you deal with there?

25 A. Yes.

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1 Q. And do they have any -- do any of the clerks there have
2 anything to do with the checking of evidence or do anything
3 besides securing it?

4 A. No. They just will secure the evidence.

5 Q. Do you know which particular clerk you dealt with?

6 A. I don't remember her name.

7 Q. Okay. But was it a clerk that's normally assigned to
8 the ---

9 A. Yes. It would be on my paperwork.

10 Q. Okay. And have you reviewed your paperwork prior to
11 ---

12 A. Yes, sir.

13 Q. We discussed a Crown Royal bag a few minutes ago. How
14 often have you had to seize Crown Royal bags in your
15 experience?

16 A. Quite frequently.

17 Q. And what do you normally find in Crown Royal bags
18 unless it's coming from a liquor distributor?

19 A. Have very often found drugs, and money, and other items
20 or paraphernalia inside these bags.

21 Q. I'm going to show you what appears to be a black box
22 listed as Digitz and a black box listed as Triton T3.

23 (Whereupon State's exhibits 15 and 16 were marked for
24 identification)

25 **MR. STEINBERG:** I'm also going to hand up, Madam Court

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Reporter, a bag listed as fold top sandwich bags.

2 (Whereupon State's exhibit 17 was marked for
3 identification)

4 **MR. STEINBERG:** I'm not sure how Madam Court Reporter
5 wants to mark these, two white bags with steel items inside.

6 (Whereupon State's exhibits 18 and 19 were marked for
7 identification)

8 Q. Investigator Walters, I'm going to ask you to look at
9 State's exhibits number 19 and number 18. What are those
10 items?

11 A. These are razor blades.

12 Q. Why were razor blades seized?

13 A. These were in the black backpack with the drugs.

14 Q. What is the purpose of razor blades in the drug world?

15 A. It would be to cut up that crack cocaine. It looks
16 like a cookie. It's round like a cookie. They call it a
17 cookie. And use razor blades to cut it up and then
18 distribute it.

19 Q. I'm going to show you State's exhibit number 17. What
20 is that? And what is its use in the drug trade?

21 A. This is a box of sandwich bags. Once you cut up the
22 crack, you would put it in here and tear it off and tie it
23 up.

24 Q. And I'm going to show you State's exhibit number 15 and
25 16. What are they? And where were they located?

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. These are digital scales that were located inside the
2 backpack with the drugs. These would be used to weigh out
3 drugs so people can ensure they're getting their proper
4 amounts for what they're paying.

5 Q. What happened to the currency in this case? You said
6 nine hundred dollars (\$900.00). Where is that kept? Is
7 that kept in physical form or do you deposit it?

8 A. It would have been deposited.

9 Q. Okay. And how much money did you say it was?

10 A. Nine hundred dollars (\$900.00) that was in this bag.

11 **MR. STEINBERG:** Your Honor, with the exception of the
12 suspected drugs, the State would move all those items into
13 evidence. I can count the numbers for the benefit of the
14 court reporter.

15 **THE COURT:** If you'll do it for the record, please,
16 sir.

17 **MR. STEINBERG:** Certainly. State's exhibit number 19,
18 State's exhibit number 18, State's exhibit number 13, number
19 14, 15, 16 and 17. Not introducing ---

20 **THE COURT:** Just -- how about 12?

21 (Pause)

22 Q. Before I do that, I'm going to show you State's exhibit
23 number 12. These loose rounds, were they in there at the
24 time of the ---

25 A. No.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 **MR. STEINBERG:** Okay. With opposing counsel's
2 understanding, I'll be removing those.

3 (Pause)

4 **MR. STEINBERG:** With opposing counsel's agreement,
5 we're going to remove the loose rounds. We're going to put
6 them in a bag in a second. State would move State's exhibit
7 number 12 into evidence at this time.

8 **THE COURT:** Any objection to any of those?

9 **MS. CLEARY:** No objection, Your Honor.

10 **THE COURT:** All right. 12, 13, 14, 15, 16, 17, 18, 19
11 are admitted.

12 (Whereupon State's exhibits 12, 13, 14, 15, 16, 17, 18
13 and 19 were admitted into evidence)

14 Q. I'll bring your attention to State's exhibit number 2.
15 I'm going to show you a firearm that has a bolt through it.
16 Do you remember seizing this firearm?

17 A. Yes, sir.

18 Q. And where was it located?

19 A. This was in the backpack with all the drugs.

20 Q. Did it have a holster?

21 A. I don't recall it being in a holster.

22 Q. I'm going to show you this magazine. Please tell me
23 the inscription on the bottom.

24 A. The inscription on the bottom, it says Smith & Wesson
25 M&P.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. And what is the caliber listed on the side?

2 A. It's a 9 millimeter.

3 Q. Okay. And I'm going to show you this baggy.

4 A. These are four rounds of live 9 millimeter ammunition.

5 Q. Did you seize a firearm from this incident?

6 A. I did.

7 Q. And did you handle it pursuant to sheriff's office
8 policy?

9 A. Yes, sir.

10 Q. I'm going to ask you to read, it's already been done
11 once, just for safety sake, please read the serial number.

12 A. The serial number on this is HVM4405.

13 Q. And was that the firearm found inside the black bag?

14 A. Yes.

15 **MR. STEINBERG:** The State would move the firearm into
16 evidence along with the magazine and the rounds.

17 **THE COURT:** Any objection?

18 **MS. CLEARY:** No objection.

19 **THE COURT:** Admitted.

20 (Whereupon State's exhibit 2 was admitted into
21 evidence)

22 Q. Did you take possession of the surveillance video ---

23 A. I did.

24 Q. --- in this case?

25 A. Yes.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. And it's marked as State's exhibit number 4 -- State's
2 exhibit number 4. Is this the surveillance equipment you
3 seized?

4 A. It is.

5 Q. Did you also seize State's exhibit number 3, the cords
6 and the mouse?

7 A. Yes.

8 **MR. STEINBERG:** The State would move State's exhibits 3
9 and 4 into evidence.

10 **THE COURT:** Any objection?

11 **MS. CLEARY:** No objection.

12 **THE COURT:** It's admitted.

13 (Whereupon State's exhibits 3 and 4 were admitted into
14 evidence)

15 Q. Have you since seen the video from this case? The
16 surveillance video? Were you actually in the courtroom
17 earlier today ---

18 A. Yes.

19 Q. --- when the video was played?

20 A. Yes, sir.

21 Q. Were you seen in that video?

22 A. Yes, you can see me on that video.

23 Q. Have you watched the other clips on this video?

24 A. Yes.

25 Q. Okay. Does it show outside, parts of this location?

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. It does.

2 Q. Did you take any photographs in this case?

3 A. I did take photographs.

4 **MR. STEINBERG:** Madam Court Reporter might be getting
5 tired of me, but I'll have to ask another item to be
6 introduced. Pardon me, to be marked for identification.

7 (Whereupon State's exhibit 20 was marked for
8 identification)

9 Q. I've handed up a CD. Please identify this CD.

10 A. This is a CD marked with photos of [REDACTED] Street.

11 Q. And have you watched these CDs in preparation for this
12 trial?

13 A. I have.

14 Q. And who took all the photographs on that CD?

15 A. I took these pictures.

16 Q. Do they accurately show the incident in question?

17 A. Yes, they do.

18 **MR. STEINBERG:** The State would move State's exhibit
19 number 20, CD of photographs from [REDACTED] Street, into
20 evidence.

21 **THE COURT:** Any objection?

22 **MS. CLEARY:** I would object to cumulative evidence. I
23 believe that some of these photographs are -- haven't seen
24 them, photographs, some of them are duplicates, some of them
25 show more than I think is necessary ---

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 **THE COURT:** I'll note your objection. I'm going to
2 admit the exhibit.

3 (Whereupon State's exhibit 20 was admitted into
4 evidence)

5 **THE COURT:** Are you going to publish those?

6 **MR. STEINBERG:** Yes, sir, Your Honor.

7 **THE COURT:** Let's do this. Let's take a quick break
8 for the afternoon.

9 **MR. STEINBERG:** Yes, sir.

10 **THE COURT:** And then we'll come back. You can step
11 down, but you can't talk to anybody about your testimony.

12 A. Yes, sir.

13 **THE COURT:** Would you take the jury back to the jury
14 room, please, sir.

15 (Whereupon the jury exited the courtroom at 3:50 pm)

16 **THE COURT:** All right. Let's take about a ten minute
17 recess.

18 **MR. STEINBERG:** Yes, sir.

19 (Whereupon court was in recess at 3:51 pm)

20 (Whereupon court reconvened at 4:08 pm)

21 **THE COURT:** Mr. Steinberg, before we get started,
22 anything from the State that we need to address? Oh, Ms.
23 Cleary's not in here.

24 **MR. STEINBERG:** Yes, sir.

25 (Whereupon Ms. Cleary entered the courtroom)

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 **THE COURT:** Sorry.

2 **MR. STEINBERG:** Your Honor, nothing from the State. I
3 do want to, before the jury is present, I want to take the
4 items that are not introduced that were found inside the
5 house, to avoid confusion, I'm going to put them in this
6 bag, bring it back here so you know what I'm doing when I
7 come up there now.

8 **THE COURT:** Sure. That's not a problem. Do you have a
9 problem with that, Ms. Cleary?

10 **MS. CLEARY:** No problem, Judge.

11 **THE COURT:** And for the record, that black bag had
12 several live rounds that were found inside the house, but
13 were not part of the charge for this defendant. But they
14 were placed in the bag somehow during the arrest process.
15 And so they are to be put in the brown paper bag that the
16 actual backpack came in.

17 (Pause)

18 **THE COURT:** All right. Anything from the defense
19 before we get started?

20 **MS. CLEARY:** No, Your Honor.

21 **THE COURT:** All right. Would you bring the jury in,
22 please, sir.

23 (Whereupon the jury entered the courtroom at 4:11 pm)

24 **THE COURT:** Mr. Steinberg.

25 **MR. STEINBERG:** Thank you, Your Honor.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 THE COURT: Yes, sir.

2 Direct Examination by Mr. Steinberg Continued:

3 Q. I'm going to show you State's exhibit number 20,
4 Investigator Walters. I want you to identify basically what
5 is on this disk. In this format, what does it look like it
6 appears to be?

7 A. These appear to be photographic files.

8 Q. Okay. I'm going to put it on the icon mode. And while
9 it's loading up on there, before I enlarge to greater, what
10 are these photographs of?

11 A. This is the incident location at [REDACTED] Street.

12 Q. Okay. For the benefit of the court reporter, I'm going
13 to pull up a couple of these, I'm going to give them by
14 name. One ending in 2541, will you please tell the jury
15 what angle is this?

16 A. This is standing in the front yard of the house looking
17 at the front door.

18 Q. Showing you 2542.

19 A. This is where I pulled my car up at. So you're looking
20 at the front of the house. And then as you're facing the
21 house, this is the left side of the house.

22 Q. I'm going to show a gold car.

23 A. That's the gold Crown Vic in the backyard. And ---

24 Q. I'm going to show you this car next to it.

25 A. That's the Dodge Charger.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. Is that the Dodge Charger where you found the drugs in
2 the black bag?

3 A. Yes.

4 Q. I'm going to show you 2543. What is this?

5 A. This is the side of the house that I pulled up on.

6 Q. And you earlier said there were three vehicles. I'm
7 going to try to increase this, if at all possible. How many
8 vehicles are there, in fact?

9 A. There are actually four.

10 Q. Okay. And outside of the blue Charger were any of them
11 unlocked?

12 A. No. All the others were locked.

13 Q. I'm going to show you 2545 for the benefit of the jury.
14 What does this angle show?

15 A. So if I continue on the left side of the house and come
16 around, this is the back of the house. You're looking at
17 the back door.

18 Q. Just by way of example, what is 2549?

19 A. I'm standing at the back of the house. And that's a
20 camera mounted on the house.

21 **MR. STEINBERG:** I beg the Court's indulgence.

22 (Pause)

23 Q. Did you take photographs of the inside of the
24 residence?

25 A. Yes, I did.

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 Q. They're on this DVD?

2 A. Yes.

3 Q. The pictures are loading up right now, slowly. I'm
4 going to ask you some questions. Did you take pictures of
5 the inside of the car?

6 A. Yes, I did.

7 Q. I'm going to show you photograph number 2593. Which
8 car is this?

9 A. This is the Dodge Charger that the drugs were in.

10 Q. And who was the owner of this car? What was the
11 relationship to the car?

12 A. The subject that lived at this house or had been
13 staying here, David Fowler, I believe this car was
14 registered to his mother.

15 Q. I'm going to show you the photograph 2598. Please tell
16 me what this picture is.

17 A. So as I open up the back door, this is that back side
18 driver's door. You're looking at the backseat floor. You
19 can see a paint can. And it's hard to see, but the black
20 bag is beside ---

21 Q. I'm going ---

22 A. --- paint ---

23 Q. --- to increase this. What is this ---

24 A. That's the backpack.

25 Q. --- on the right side?

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 A. That's the black backpack.

2 Q. I'm going to show you, maybe, a clearer view, 2599.

3 A. Right there.

4 Q. Did you -- at the point you looked at this, does it --
5 was it in the same position as when you located it?

6 A. Yes. This is how I found it.

7 Q. Did you then open it up in that location?

8 A. Not yet.

9 Q. Okay. Well, raised the next question. 206 -- pardon
10 me. 2600, what is this?

11 A. So that's when I opened the bag and I saw this box of
12 sandwich bags and this red Cartier box.

13 Q. Okay. Was it in that position when you first unzipped
14 it?

15 A. Yes.

16 Q. Opening up to 2601. What is this?

17 A. Looks like two bags of the white substance. Looks like
18 crack cocaine.

19 Q. This was at the top of the -- this was at the top of
20 the black bag?

21 A. Yes.

22 Q. And 2602?

23 A. That's the sandwich bags.

24 Q. And 2604?

25 A. You can see the digital scale. You can see the butt of

JACOB WALTERS - DIRECT EXAMINATION BY MR. STEINBERG

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1 the handgun and the Crown Royal bag.

2 Q. Okay. In case the jury's not familiar with this,
3 please tell them why you took the photograph 2606. What is
4 this?

5 A. This is the digital scale opened up. This is where you
6 would weigh the product.

7 Q. I'm going to show you 2608. Please identify that.

8 A. That's the money from the Crown Royal bag.

9 Q. And how much did you say it wound up being?

10 A. Nine hundred dollars (\$900.00).

11 Q. What is this item? It appears to be a white baggy.

12 A. This is this -- white plastic bags with the razor
13 blades.

14 Q. Was there any marijuana found in this bag?

15 A. No, sir.

16 Q. Okay. I'm going to show you 2611. What is this
17 firearm?

18 A. That's the handgun, the stolen handgun we recovered.

19 Q. And, apparently, where was this in the -- in the bag?

20 A. It was buried in the bag underneath all the other
21 stuff.

22 Q. Okay. I'm going to show you 2617. Please identify
23 what this is, both the container or the portion of the
24 container that it's in -- when I say container, I mean the
25 black bookbag and what the item is that you seized.

JACOB WALTERS - CROSS-EXAMINATION BY MS. CLEARY

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1 A. So this black bag has a smaller pouch on the outside of
2 it. When I opened that up, that's a picture of it, there
3 were three other bags of what appeared to be crack cocaine.

4 Q. Get a shot of that. Let me show you the next
5 photograph, which is 2618. Are those from inside the
6 smaller pouch?

7 A. Yes.

8 Q. Was the phone found inside the bag or was it on the
9 backseat?

10 A. Just sitting on the seat.

11 Q. You take photographs of the VIN numbers and the VIN
12 plates, both VIN numbers and the VIN plates from those
13 vehicles?

14 A. I did.

15 Q. Were you present when the defendant was interviewed by
16 Investigator Picone?

17 A. No. I wasn't there for his interview.

18 Q. Were you still in the vicinity -- I don't mean right
19 next to him, but were you in the same general vicinity at
20 the time?

21 A. When Investigator Picone talked to him on-scene, yes.

22 Q. Okay. Please answer any of opposing counsel's
23 questions.

24 **Cross-examination by Ms. Cleary:**

25 Q. Officer Walters, you testified that Mr. Drinkard told

JACOB WALTERS - CROSS-EXAMINATION BY MS. CLEARY

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1 you he was at his cousin's house using it as a recording
2 studio, right?

3 A. Yes.

4 Q. And you actually did find some recording equipment
5 found in the house, right?

6 A. There was some recording equipment there.

7 Q. And you took a picture of this?

8 A. Yes.

9 Q. Is that the picture?

10 A. Yes, ma'am.

11 Q. You testified that when you spoke to Mr. Drinkard he
12 appeared exceptionally nervous.

13 A. Yes, ma'am.

14 Q. I think that he was visibly shaking.

15 A. Yes, ma'am.

16 Q. Shaking's an obvious sign of nervousness. Would you
17 agree that sweating is also a sign of nervousness?

18 A. Yes, ma'am.

19 Q. But DNA was not sought in this case?

20 A. No, ma'am.

21 **MS. CLEARY:** Permission to approach and retrieve?

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

23 Q. Earlier Detective Picone testified there's no way DNA
24 could be found on the drugs. How about on this container?

25 A. Could be possible.

JACOB WALTERS - CROSS-EXAMINATION BY MS. CLEARY

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1 Q. Did anyone call forensics to see if there was any DNA
2 on the container?

3 A. Not to my knowledge.

4 Q. How about fingerprints on this nice flat surface?
5 Anyone check for fingerprints?

6 A. It's a textured surface. You wouldn't be able to get
7 fingerprints from that.

8 Q. But no one called forensics to try?

9 A. They wouldn't have even tried that textured surface.

10 Q. How about the inside of the box? Is that a textured
11 surface?

12 A. Can I look at it?

13 Q. Of course.

14 **MS. CLEARY:** Permission to approach the witness?

15 **THE COURT:** Um-hum (affirmative).

16 A. It's somewhat smooth. It would be very questionable.
17 It's also paper. It could absorb any oils that would come
18 from your fingers.

19 Q. But, again, no one bothered to call forensics?

20 A. No.

21 **MS. CLEARY:** I beg the Court's indulgence.

22 (Pause)

23 **MS. CLEARY:** I don't have anything further.

24 **THE COURT:** Redirect.

25 **MR. STEINBERG:** Very briefly.

JACOB WALTERS - REDIRECT EXAMINATION BY MR. STEINBERG

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1 Redirect Examination by Mr. Steinberg:

2 Q. Opposing counsel used the term bothered. Is it a
3 bother for you to submit items for testing if you feel it's
4 necessary?

5 A. It is not a bother at all.

6 Q. If you felt it necessary, would you have sent it for
7 testing?

8 A. If it's necessary, yes. I've done it in other drug
9 cases where there has been a question or doubt about who was
10 in possession of it. In this case it was very obvious.

11 Q. Well, please tell the jury why it's very obvious who
12 was in possession of it.

13 A. I saw him standing by the car there. When I arrived
14 on-scene he was closing the door when I pulled up. And then
15 we later retrieved the video that showed him carrying the
16 bag out to the car.

17 Q. In light of that did you feel a need to send anything
18 for further testing?

19 A. No, not with -- not with that evidence.

20 Q. The defense attorney asked a question about him
21 sweating. Do you have the right to just reach over and take
22 a swab without his permission at that point?

23 A. No. I can't just take that from him.

24 Q. Opposing counsel asked you some questions concerning
25 what he said when he was brought in front of you. Did he

JACOB WALTERS - RECROSS-EXAMINATION BY MS. CLEARY

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1 mention ownership of the gun?

2 A. No, he did not.

3 Q. Did he mention anything about having drugs on him?

4 A. No. He didn't say he had any drugs on him.

5 Q. When did he bring out this information about the
6 marijuana?

7 A. Not until he spoke with Investigator Picone.

8 MR. STEINBERG: That's all the questions I have.

9 **Recross-examination by Ms. Cleary:**

10 Q. In regarding the ---

11 MS. CLEARY: Briefly, Your Honor.

12 Q. Regarding the other drugs that were found, I believe
13 you testified on direct that there were no other drugs found
14 in the house?

15 A. Correct.

16 Q. Are you not counting the residue that was found on the
17 whisk?

18 A. There was some residue found.

19 Q. And the drugs that were found in the measuring cups?

20 A. Some residue left from that.

21 MS. CLEARY: Nothing further.

22 THE COURT: May this witness be excused?

23 MR. STEINBERG: Yes, sir.

24 THE COURT: Thank you, sir.

25 MR. STEINBERG: I ask that he be excused with right to

JAMES ARMSTRONG - DIRECT EXAMINATION BY MR. STEINBERG

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1 recall, but I don't think that will be necessary.

2 **THE COURT:** Okay. Call your next witness, please, sir.

3 **MR. STEINBERG:** Thank you, Your Honor. Ms. Henderson,
4 if you'll get Mr. Armstrong. The State calls chemist James
5 Armstrong.

6 **MADAM CLERK:** Sir, please place your left hand on the
7 Bible and raise your right hand.

8 **James Armstrong,** being
9 duly sworn testified as follows;

10 **MADAM CLERK:** Thank you. Please be seated. Please
11 state your name for the record.

12 **MR. ARMSTRONG:** James William Armstrong.

13 **MADAM CLERK:** Thank you.

14 **Direct Examination by Mr. Steinberg:**

15 Q. Mr. Armstrong, before we get started I'm going to move
16 these items from the witness stand. Mr. Armstrong, could
17 you please tell the Court and the jury what you do for a
18 living.

19 A. I'm employed by Greenville County in the Department of
20 Public Safety Forensics Division and Crime Laboratory where
21 I have a dual responsibility as a forensic drug chemist and
22 a firearm examiner.

23 Q. And have you taken any courses in drug analysis?

24 A. Yes, sir, I have.

25 Q. Please tell the jury some of the names of the more

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1 prominent courses you've taken.

2 A. Well, specifically with the drug analysis part, I have
3 a Bachelor of Science Degree in Chemistry from Erskine
4 College. I've trained in the area of drug identification
5 approximately one year under the direction of a lab
6 supervisor.

7 I've attended numerous instrumental schools which
8 include instruments sponsored by Thermo Scientific and
9 Agilent Technologies where we do all the testing on the
10 unknown substances. And I have testified in Federal, State
11 and local courts at least 165 times as an expert in the
12 field.

13 Q. And are your lab results peer reviewed? And if so,
14 what does peer review mean?

15 A. Yes, sir. I'm under the local peer review, which means
16 another chemist will actually review the notes to verify
17 that all the -- we're trying to eliminate typographical
18 mistakes and that the data is actually legitimate.

19 Q. And have you been qualified in State or Federal court
20 as a chemist or a drug identification expert?

21 A. Yes, sir, I have.

22 Q. Approximately how many times, if you know?

23 A. No fewer than 165.

24 Q. Do you have any equipment that you use that is unique
25 to drug identification?

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1 A. We have two main instruments we use in analysis. And
2 it depends on the outcome of one, then we use the second
3 one. The first one is the inferior transform infrared
4 spectrometer. The second one is a gas chromatograph mass
5 spectrometer.

6 Q. Do you have any specialized scales? And if so, how
7 often do we calibrate them?

8 A. We have balances that are inspected by an outside
9 company that comes at least twice a year. And before we use
10 those balances we actually calibrate and verify they're
11 working properly every day before we use them.

12 Q. And did you do that in this case?

13 A. Yes, sir.

14 **MR. STEINBERG:** I would move to qualify Mr. Armstrong
15 as an expert in chemistry and drug analysis.

16 **THE COURT:** Any voir dire?

17 **MS. CLEARY:** No, Your Honor. No objection.

18 **THE COURT:** Do you stipulate to his expertise?

19 **MS. CLEARY:** Yes, Your Honor.

20 **THE COURT:** All right. Ladies and gentlemen, this
21 expert or this witness will be stipulated to be an expert in
22 the field of drug identification and analysis. Is that ---

23 **MR. STEINBERG:** Yes, sir.

24 **THE COURT:** Usually, ladies and gentlemen, witnesses
25 are limited to what they can testify to to what they saw,

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1 they heard, they smelled, they felt. However, a person,
2 because of their education, or experience, or a combination
3 of the two, may become qualified in an area if it's helpful
4 to you, the jury, and allowed to give their opinion in the
5 area of their expertise.

6 In this case it's stipulated that Mr. Armstrong is an
7 expert in the field of drug identification analysis. And
8 he'll be allowed to give his opinion in that area. I'll
9 charge you that expert opinion just like any other testimony
10 you'll hear in this case, you may accept it, you may reject
11 it, or give it as much weight as you think it deserves. All
12 right, sir.

13 **MR. STEINBERG:** Thank you, Your Honor.

14 **THE COURT:** Um-hum (affirmative).

15 **Direct Examination by Mr. Steinberg Continued:**

16 Q. What type of testing do you use when you conduct
17 examinations of crack cocaine and powder cocaine?

18 A. One of the first tests I do is we physically examine it
19 to make sure it is a powder or a rock-type form, then do a
20 chemical spot test to give me an idea what I may or may not
21 have. A spot test is just presumptive. And it kind of
22 leans us to what instrumentation we need to run to confirm
23 the drug.

24 Q. And did you do that in this case?

25 A. Yes, sir, I did.

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1 Q. I want to ask you about the Property & Evidence room.
2 Where is that located in reference to where your building
3 and where you're located?

4 A. My office is in the basement of the Law Enforcement
5 Center. And the Property & Evidence room is also located
6 just a little further down in the basement of the Law
7 Enforcement Center as well.

8 Q. And do you have access to go into the evidence room or
9 do you have to have somebody to take the evidence out for
10 you?

11 A. No, sir. Someone has to bring the evidence out for me
12 to examine.

13 Q. How do you determine that the evidence has not been
14 tampered with?

15 A. When we receive the packages such as drug evidence, it
16 has to be sealed by the officer before we receive it. And
17 if it is not sealed, we make notations on the evidence that
18 it was not properly sealed at the time of analysis.

19 Q. Okay. Was there any policy -- problems in this case?
20 Were there any issues concerning the way the evidence was
21 handled?

22 A. No, not that I know of.

23 Q. Okay. Well, did you -- you say not that you know of.
24 Did you expect -- inspect the bag just to see if they were
25 tampered with?

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1 A. Well, the items that I received, nothing was tampered
2 with.

3 Q. Okay. And you take it from this case with the same
4 case number?

5 A. Yes, sir.

6 Q. Okay. I'm going to hand you some items.

7 **THE COURT:** Would you identify the exhibit numbers,
8 please, sir.

9 **MR. STEINBERG:** Yes, sir. I'm going to try to get them
10 in numerical order.

11 Q. I'm going to show you State's exhibit 7, 8, 9, 10 and
12 11. Would you please tell us generally what are these items
13 and where you got them.

14 A. Generally State's exhibit number 7 was my item number
15 JW5, which is a bag containing powder substance. And I
16 received it from the Property & Evidence room in the
17 basement of the Law Enforcement Center.

18 State's exhibit number 8 is item number JW4. It is a
19 bag containing plant material. And I did receive it from
20 Property & Evidence as well.

21 State's exhibit number 9 is item number JW3. It's a
22 bag containing a rock substance. I received it from
23 Property & Evidence.

24 And State's exhibit number 10 was my item number JW2.
25 It is a bag containing rock substance. And I received it

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1 from Property & Evidence as well.

2 And State's exhibit number 11, my item number JW1,
3 which was three bags containing powder substance. I
4 received it from Property as well.

5 Q. I'm going to ask you to look at both the interior and
6 exterior bags. This bag on the outside, all of these, the
7 largest bag that's making the enclosure, are your signatures
8 on -- initials on this?

9 A. Yes, sir, they are.

10 Q. On all of them?

11 A. All of them.

12 Q. And how were these sealed?

13 A. The outer bag has my initials and the date. And I put
14 a double heat-seal, one above and one below my initials, so
15 they could not be tampered with.

16 Q. And I'm going to ask you to look at the bag inside that
17 has a white, almost label on it. It has JW1. Is this the
18 -- was this the heat-sealed bag that you had to open up?

19 A. Yes, sir, it is.

20 Q. If it had been opened up prior to you, what would you
21 have done with the items?

22 A. If it had been opened up prior to me there would have
23 been notation on the actual evidence that it was not sealed
24 at the time of analysis. Because when the bag is sealed
25 when I receive it, when I cut it open I place my initials

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1 and the date which I'd actually opened the item.

2 Q. And is that the case for all the pieces of evidence
3 that are in front of you right now?

4 A. Yes, sir, it is.

5 Q. Did you make a report in this case following your
6 examination?

7 A. Yes, sir, I did.

8 Q. And do you have a copy of the report?

9 A. I do.

10 Q. I don't want to steal your report.

11 A. That's fine.

12 Q. Okay.

13 **MR. STEINBERG:** I would have this report marked as a
14 State's exhibit.

15 (Whereupon State's exhibit 21 was marked for
16 identification)

17 Q. I'm going to show this to the defense attorney, but I
18 want you to identify -- what is the title of this document?

19 A. Drug Analysis Report.

20 Q. Please identify what have been marked as State's JW1,
21 which is -- JW1, which is also marked as State's exhibit
22 number 11. What did you determine that State's exhibit, I
23 mean, JW1 to be?

24 A. It is three bags containing powder substance. And I
25 found it to be -- contain cocaine with a weight of eighty-

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1 two point two nine (82.29) grams.

2 Q. And I'm going to bring your attention to what's listed
3 as JW2, State's exhibit number 10. What is that?

4 A. JW2 is a bag containing rock substance. And I found
5 that it contained cocaine base with a weight of twenty-six
6 point eight eight (26.88) grams.

7 Q. And State's exhibit number 9, which is listed as JW3,
8 what is that?

9 A. JW3 is a bag containing rock substance. And I found it
10 contained cocaine base with a weight of thirty-two point one
11 six (32.16) grams.

12 Q. State's exhibit number 8, which is JW4, what did you
13 determine that to be?

14 A. I found that the bag contained plant material. I found
15 it contained marijuana with a weight of zero point three six
16 (0.36) grams.

17 Q. And finally State's exhibit number 7 listed as JW5,
18 what is JW5?

19 A. And JW5 is a bag containing powder substance. And I
20 found it contained cocaine with a weight of twelve point
21 five oh (12.50) grams.

22 MR. STEINBERG: Your Honor, at this point I would move
23 to introduce as evidence State's exhibits -- is that 31 or
24 21?

25 MADAM COURT REPORTER: 21.

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1 **MR. STEINBERG:** State's exhibit 21, State's exhibit 7,
2 8, 9, 10 and 11.

3 **THE COURT:** Any objection?

4 **MS. CLEARY:** No objection.

5 **THE COURT:** Admitted.

6 (Whereupon State's exhibits 7, 8, 9, 10, 11 and 21 were
7 admitted into evidence)

8 **MR. STEINBERG:** I beg the Court's indulgence.

9 (Pause)

10 **MR. STEINBERG:** The State has no further questions for
11 Mr. Armstrong.

12 **THE COURT:** Cross-examination.

13 **MS. CLEARY:** I have no further questions for him
14 either.

15 **THE COURT:** May this witness be excused?

16 **MR. STEINBERG:** Your Honor, this witness may be
17 excused.

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

19 A. Thank you.

20 **THE COURT:** How long is your next witness?

21 **MR. STEINBERG:** Your Honor, the State is resting at
22 this point.

23 **THE COURT:** Very good. All right. Mr. Foreman, ladies
24 and gentlemen of the jury, the State has advised that it
25 rests, which means that it's presented its case in chief.

1 I'm going to go ahead and break court for the day. I have
2 some administrative matters I need to take up outside of
3 your presence. Is there any reason anybody on the jury
4 can't be here at 9:30 in the morning?

5 **THE JURY:** (Negative nods).

6 **THE COURT:** Very good. All right. If you'll be back
7 in your jury room at 9:30. If you'll leave your notepads in
8 the jury room, we'll see you then. Okay. Hope you have a
9 good evening.

10 (Whereupon the jury exited the courtroom at 4:40 pm)

11 **THE COURT:** Any motions?

12 **MS. CLEARY:** Motion for a directed verdict, Judge.

13 **THE COURT:** Okay.

14 **MS. CLEARY:** On specifically the two trafficking
15 charges and the possession of a weapon during the commission
16 of a violent crime. I can start with the trafficking
17 charges if Your Honor would like to hear a brief argument.

18 **THE COURT:** Sure.

19 **MS. CLEARY:** I think Your Honor probably can guess what
20 the crux of my argument is going to be, and that's the
21 knowledge element.

22 The State's presented a lot of information that he had
23 the bag with him. We don't disagree with any of that. The
24 issue is I don't think the State has established enough
25 evidence to prove that he had knowledge of the drugs inside

1 the bag. There's been -- the way to tell that would have
2 been to take fingerprints, to take DNA from the contents of
3 the bag, particularly the box and the packaging that the
4 drugs came in.

5 All of the officers I questioned testified that none of
6 that was done, forensics was never called. Therefore, I
7 don't think they have enough evidence to prove knowledge.

8 The argument for the possession of a weapon during the
9 commission of a violent crime, I believe State v. Whitesides
10 establishes there must be a nexus, a link between the
11 firearm and the violent crime.

12 First of all, if they can't prove the trafficking, they
13 can't prove the violent crime.

14 **THE COURT:** Say that again.

15 **MS. CLEARY:** There must be a nexus, a link between the
16 crime and the firearm. That's in State v. Whitesides.

17 First of all, if they can't prove the trafficking, they
18 can't prove the commission -- weapon in the commission of a
19 violent crime. But more to the issue of the nexus, I
20 believe they have to establish that the gun was used in
21 furtherance to help him commit the crime. There has been
22 zero testimony and zero evidence as to that other than the
23 gun was physically present in the bag near the drugs.

24 Nothing -- I didn't hear anything about him waiving it.
25 I didn't hear anything about him threatening people with it

1 or having a reputation he carries a gun with him to protect
2 his drugs. Therefore, we'd argue for a directed verdict on
3 that charge as well.

4 **THE COURT:** Mr. Steinberg.

5 **MR. STEINBERG:** Your Honor, he is in possession of the
6 bookbag that had the loaded firearm with drugs on top of it,
7 with the bags on top of it. This is a classic case of
8 possession of a weapon during the commission of a violent
9 crime.

10 If the Legislature wanted us to have any more
11 requirements, they would have put it on us. He doesn't have
12 to be waiving it around. He has to possess it. That's the
13 crux of this crime. He possessed the drugs. He possessed
14 the firearm in the exact same bag.

15 **MS. CLEARY:** And if I may very briefly. State v.
16 Whitesides actually addresses that issue and says mere
17 possession is not enough. There must be a nexus between the
18 firearm and crime.

19 **THE COURT:** Well, in regards to the knowledge aspect,
20 the charge of constructive possession that it's under his
21 control and the presumption that he has knowledge of what it
22 is, I think this is a question of fact for the jury. The
23 cases are replete that -- the nexus between guns and drug
24 trafficking. The fact that the gun was inside the bag with
25 the drugs, I think, establishes that nexus in and of itself.

1 And so with that being said, I respectfully deny your
2 motion.

3 **MS. CLEARY:** Yes, Your Honor.

4 **THE COURT:** All right. Now, sir, would you mind
5 standing. Would you raise your right hand. Do you swear or
6 affirm to tell the truth, the whole truth and nothing but
7 the truth?

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

9 **THE COURT:** Okay, sir. You can put your hand down.
10 And you can be seated if you'd like. All right.

11 Mr. Drinkard it's time I need to explain certain of
12 your rights. If you do not understand anything I've
13 explained -- I explain to you or go over with you, would you
14 please let me know?

15 **MR. DRINKARD:** Yes, sir.

16 **THE COURT:** Okay, sir. I assume that your attorney or
17 attorneys have explained to you your rights under the Fifth
18 Amendment to the United States Constitution prior to you
19 coming to court today, is that correct?

20 (Whereupon Ms. Cleary was speaking to the defendant)

21 **MR. DRINKARD:** Yes, sir.

22 **THE COURT:** Yes, sir. Okay. Well, let me make sure
23 that you do understand what those are. First, we've reached
24 that stage in the trial where the State says it rests. So,
25 therefore, at this juncture or beginning tomorrow morning

1 you have a right to present a defense.

2 You have the right to claim the protections that are
3 afforded to every citizen by the United States Constitution
4 under the Fifth Amendment, which in pertinent part says the
5 following. It says that no person can be compelled in any
6 criminal case to be a witness against himself. In other
7 words, Mr. Drinkard, your lawyer can't make you get on the
8 stand and testify. The State can't make you get on the
9 stand and testify. I cannot. No one can.

10 If you wish not to testify, that is your Constitutional
11 right. And if you do not testify, I will charge the jury at
12 the end of the case that they cannot and shall not consider
13 your failure to testify whatsoever because that's your right
14 under the Fifth Amendment and because the State bears the
15 burden of proving your guilt by proof beyond a reasonable
16 doubt. Okay, sir?

17 Now, in the event you wish to testify, you'll be
18 subject to direct examination by your attorneys. You'll be
19 also subjected to cross-examination by the State.
20 Obviously, the State would want to impeach you to try to
21 make sure that the jury doesn't believe your testimony in
22 this case. Okay, sir?

23 Mr. Steinberg, are there any prior criminal record that
24 you would seek to impeach him on?

25 **MR. STEINBERG:** No, sir, Your Honor.

1 **THE COURT:** All right. But even so, the purpose of
2 cross-examination in any case, whether it be a defendant or
3 another witness, is to try to discredit their testimony so
4 the jury won't believe them. So you'll be subjected to
5 cross-examination.

6 Now, if you decide to testify or if you decide not to
7 testify, that is a personal decision that you and you alone
8 must make. But you must do so knowingly, freely and
9 intelligently knowing your rights under the Fifth Amendment
10 and knowing the consequences to you if you decide to take
11 the stand to testify. Okay, sir?

12 I would encourage you to conference with your attorneys
13 in making this decision. If you'd like to speak with other
14 people such as family members in making this decision,
15 you're free to do so. But at the first thing in the morning
16 when we begin trial, you're going to have to make your
17 decision as to whether or not you wish to testify. Okay,
18 sir?

19 **MR. DRINKARD:** Yes, sir.

20 **THE COURT:** Do you have any questions about anything
21 that I've explained to you?

22 **MR. DRINKARD:** No, sir.

23 **THE COURT:** Did you explain [sic] everything that I
24 explained to you?

25 **MR. DRINKARD:** Say again ---

1 **THE COURT:** Did you understand everything ---

2 **MR. DRINKARD:** Oh, yes, sir. I do understand.

3 **THE COURT:** Okay. Very good. All right. Remember in
4 the morning you have to make that call. Okay, sir?

5 **MR. DRINKARD:** Yes, sir.

6 **THE COURT:** All right. Mr. Steinberg, before we break
7 for the afternoon, anything further from the State?

8 **MR. STEINBERG:** Nothing from the State, Your Honor.

9 **THE COURT:** Ms. Cleary, from the defense?

10 **MS. CLEARY:** Nothing further, Your Honor.

11 **THE COURT:** All right. Thank you so much. We'll see
12 you tomorrow. Mr. Drinkard, I'll remind you that if you
13 don't show up for trial tomorrow ---

14 **MR. DRINKARD:** I'll be here in the morning.

15 **THE COURT:** --- it'll be in your absence, okay?

16 **MR. DRINKARD:** I'll be here in the morning.

17 **THE COURT:** I know you will. And I say it to
18 everybody, so please do not take offense, okay?

19 **MR. DRINKARD:** I understand.

20 **THE COURT:** All right. Thank you.

21 (Whereupon court was in recess at 4:48 pm)

1 Tuesday, July 9, 2019:

2 (Whereupon court reconvened at 9:38 am)

3 THE COURT: All right. Ms. Cleary, does your client
4 intend to testify?

5 MS. CLEARY: He does not, Your Honor.

6 THE COURT: Do you have any witnesses to call?

7 MS. CLEARY: I do not, Your Honor.

8 THE COURT: All right. I think what I'll do then is
9 bring the jury in and let you -- I'll say, present your
10 case. And you say, the State -- defense rests. And then
11 we'll send them back out and do a charge conference.

12 MS. CLEARY: Yes, Your Honor.

13 THE COURT: Sounds good.

14 (Whereupon the jury entered the courtroom at 9:40 am)

15 THE COURT: Good morning.

16 THE JURY: Good morning.

17 THE COURT: I hope you had a nice evening. We're ready
18 to proceed with the defense side of the case. Ms. Cleary.

19 MS. CLEARY: The defense rests, Your Honor.

20 THE COURT: The defense rests. Okay. Ladies and
21 gentlemen, if you'll recall at the beginning of the case I
22 told you there are various parts -- five parts of a trial.
23 You have opening statements, you have the presentation of
24 the evidence. The State has presented its case. The
25 defense says it rests.

1 So we have ended the second phase of the trial, which
2 leaves us to the closing arguments by the attorneys. I will
3 need to have a few minutes with them to go over what law I'm
4 going to charge with them, make sure we're all in agreement
5 what the law is and how it should be charged to you.

6 And then we'll bring you back out here for closing
7 arguments by the attorneys. And then I'll charge you on the
8 law. And then afterwhich we'll let you begin your
9 deliberations. But, Mr. Foreman, if you'll go back to the
10 jury room for a few minutes, we'll bring you back out.

11 (Whereupon the jury exited the courtroom at 9:41 am)

12 **THE COURT:** All right. Gentleman, the question I had
13 with my law clerk is any lesser included to the trafficking
14 charges? Mr. Steinberg, what's your feeling on that?

15 **MR. STEINBERG:** Your Honor, I would say no. There's
16 case law that says unless the weight has been an issue, in
17 fact, ---

18 **THE COURT:** PWID certainly wouldn't be a part. I'm
19 thinking of simple possession. I remember something that
20 says it's not part of -- it's not a lesser included.

21 **MR. STEINBERG:** It's not a lesser included unless there
22 is a dispute about where it's located. For example, let's
23 say the drugs are found in four different places and this
24 defendant is only holding one bag, both is in one bag. I
25 don't think lesser included is appropriate for any amount of

1 trafficking or any amount of PWID ---

2 **THE COURT:** Okay. And I would tend to agree. Ms.
3 Cleary.

4 **MS. CLEARY:** We agree, Your Honor.

5 **THE COURT:** Okay. Well, good. Let me go check with my
6 law clerk because I have her checking that out right now.
7 I'll be right back. And if you'll just hang tight, I'll be
8 ready to go -- have either one of y'all tried a case with
9 Judge Hill back when he was a circuit court judge?

10 **MS. CLEARY:** No, Your Honor.

11 **MR. SARRATT:** I did.

12 **MR. STEINBERG:** Yes, sir.

13 **THE COURT:** Yeah, I know -- Mr. Sarratt, I know you
14 have. But I shamelessly plagiarized his charge. And so
15 basically my charge would be in three phases. One would be
16 just the general rules that define control, the duties of
17 jurors. And that would include reasonable doubt, what is
18 evidence, what is not evidence.

19 I give the circumstantial evidence charge out of State
20 versus Logan. Credibility of the witnesses, expert
21 testimony, multiple charges, presumption of innocence,
22 reasonable doubt, intent, failure of the defendant to
23 testify, and in this case a statement by the defendant,
24 okay, since that was what we -- not really a whole lot of it
25 in there, but I think because we did a Jackson/Denno ---

1 **MR. STEINBERG:** Yes, sir.

2 **THE COURT:** --- it would be appropriate.

3 Then I go to the law of trafficking cocaine,
4 trafficking cocaine base, possession of a weapon in the
5 commission of a violent crime and receiving or possession of
6 stolen goods. Then I go over some considerations for their
7 deliberations and the verdict form, okay? You're more than
8 welcome to step up here and look at my basic charge if you
9 want to.

10 **MR. STEINBERG:** Yes, sir.

11 **THE COURT:** If not, I'll give you copies of the
12 substantive law.

13 **MS. CLEARY:** And, Your Honor, before we go into the
14 jury instructions, just for the record, the defense renews
15 its directed verdict motion ---

16 **THE COURT:** Thank you. I appreciate you bringing that
17 up. All right. That is denied.

18 (Whereupon court was in recess at 9:45 am)

19 (Whereupon court reconvened at 9:54 am)

20 **THE COURT:** All right, guys. We're just having a
21 little bit of printer problems right now, so I'm sorry.
22 We're getting Judge Simmons to run it off for us.

23 **MR. STEINBERG:** Yes, sir.

24 **THE COURT:** If y'all just bear with me. I didn't want
25 y'all to think I was sitting back there just drinking

1 coffee. Did y'all have a chance to look through the charge
2 sufficiently?

3 MR. STEINBERG: Yes, sir.

4 THE COURT: The other parts of it?

5 MR. STEINBERG: I think so.

6 MS. CLEARY: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. STEINBERG: Judge, I have a few requests to charge.
9 I think opposing counsel does as well.

10 THE COURT: You do?

11 MR. STEINBERG: Yes, sir.

12 THE COURT: All right. Pass them up.

13 MR. STEINBERG: I'm passing up the requests to charge.
14 Opposing counsel already has a copy of it. The first is on
15 the receiving/selling stolen property. We have not seen
16 what your charge is on that. If your charge covers this, I
17 have no objection.

18 The next one is six items dealing with requests to
19 charge involving the drugs. I think some of them might
20 overlap with yours, but I do wish you to instruct the jury
21 that trafficking is -- in cocaine is a violent crime. You
22 do not need to say crack cocaine because that's not what the
23 warrant ---

24 THE COURT: I got that.

25 MR. STEINBERG: And crack cocaine ---

1 **THE COURT:** I have that -- yes, sir.

2 **MR. STEINBERG:** Okay. And crack cocaine is otherwise
3 known as cocaine base. And pretty much everything else, I
4 think, may have been covered by ---

5 **THE COURT:** All right.

6 **MR. STEINBERG:** --- very well may be covered by what
7 you already have printed out.

8 **MS. CLEARY:** I also have two proposed jury instructions
9 unless Your Honor would like to consider the State's first.

10 **THE COURT:** Just one second.

11 **MS. CLEARY:** Yes, sir.

12 (Pause)

13 **THE COURT:** All right. If you'd pass those forward,
14 please, ma'am.

15 **MS. CLEARY:** Yes, Your Honor. The first one is an
16 inclusion on the possession of a weapon during the
17 commission of a violent crime charge, specifically that
18 there has to be proof between possession of the violent
19 crime nexus. There's also additional information there
20 that's directly quoted from State v. Whitesides.

21 And the second is directly quoted from State v. Myles
22 regarding the requirement that the State have to prove the
23 knowledge element of trafficking, that he knew or was
24 willfully ignorant there were drugs in the bag, or was in
25 possession of drugs.

1 **MR. STEINBERG:** Your Honor, I'd like to be heard on
2 that at the appropriate time.

3 **THE COURT:** All right.

4 (Pause)

5 **THE COURT:** All right, sir. I'd be glad to hear from
6 you.

7 **MR. STEINBERG:** Thank you, Your Honor. As to the
8 possession of a weapon during the commission of a violent
9 crime, the case that the opposing counsel relies on does not
10 say it has to be a shooting, possessing, I mean, pointing.
11 It just requires that you have the firearm.

12 In this case you have a firearm in a bag with drugs.
13 That is all that is needed. I do not need to show any
14 additional amount of nexus between them. And I think if the
15 jury hears those instructions, that will disregard the rest
16 of the State versus Whitesides, which says merely possessing
17 it, if it's -- essentially part of the crime is enough. And
18 so I would object to that selection of the charge.

19 As far as the second charge involving the drugs, I
20 actually don't disagree with opposing counsel. I think with
21 that read in conjunction with my part, with what I
22 submitted, is a correct statement of the law.

23 **THE COURT:** Let me say this. The possession, I'm not
24 going to charge that because I think it adds an element that
25 is not necessarily required in this case. The intent charge

1 is part of my regular intent charge that I have and will be
2 included in my regular charge. And your request on
3 receiving, Mr. Steinberg, I have that.

4 **MR. STEINBERG:** Yes, sir.

5 **THE COURT:** I'm going to have it printed out if ever we
6 can get a printer to work.

7 **MR. STEINBERG:** Yes, sir.

8 **THE COURT:** And I'll let you look at it. And once you
9 do, if you have any specific objections to what I intend to
10 charge, then we'll hear those. It's kind of not fair for me
11 to ask you to comment until you look at it, I think.

12 **MS. CLEARY:** Yes, Your Honor.

13 **THE COURT:** All right. So let me go back and see where
14 we are.

15 **MR. STEINBERG:** Yes, sir.

16 (Whereupon court was in recess at 10:00 am)

17 (Whereupon court reconvened at 10:03 am)

18 **MR. STEINBERG:** Judge, myself and opposing counsel
19 would like to address this. We want to make sure there's no
20 problem during closing arguments.

21 You have the correct language as far as where evidence
22 comes from. Opposing counsel, Ms. Cleary, made a statement
23 during her opening arguments that if she repeats in closing
24 arguments, I'll have to object to. It's my client grabbed
25 the wrong bag. He picked up the wrong bag. He put the gun

1 in it and he ran out.

2 There's been no testimony about that. I don't think
3 that comes in. I'm going to address that in my closing
4 argument. I have worded it and reworded it so I'm not going
5 to ---

6 **THE COURT:** What do you mean you're going to address it
7 in the argument? You think you're going to be able to
8 address it and she's not?

9 **MR. STEINBERG:** Well, she's already raised it. I am
10 now forced unless -- Your Honor, I have to address it. I
11 think we have a case where Ms. Cleary, certainly not
12 intentionally, assumed her client was going to testify.

13 So she gives a statement, which is testimony. It did
14 not come in ---

15 **THE COURT:** It is not testimony. The only testimony is
16 from the witness stand. Her statements is not evidence, nor
17 is it testimony.

18 **MR. STEINBERG:** And that's my point, Judge. The jury's
19 heard it. I cannot unring the bell.

20 **THE COURT:** Well, ---

21 **MR. STEINBERG:** Clearly cannot unring the bell ---

22 **THE COURT:** If you -- you also can open the door, okay,
23 sir?

24 **MR. STEINBERG:** Yes, sir.

25 **THE COURT:** And so, Mr. Steinberg, I think you have --

1 I understand what you're saying, but I think you need to
2 tread very carefully because if you open the door, she's
3 going to walk right through it.

4 And so -- also, you have to be careful about bringing
5 up argument that could suggest that the defendant should
6 have testified in violation of his Fifth Amendment rights.

7 **MR. STEINBERG:** I'm very familiar with that, Judge.
8 I'll actually reword this and reword my closing arguments so
9 I don't say it. I actually say the defendant does not have
10 to testify. He's free like everyone else not to testify.
11 But I can't just let this go where the defense attorney has
12 been able to speak to it.

13 **THE COURT:** You know what, I'm going to let you make
14 your argument. She's going to make her objection if she
15 feels like she needs to. And then we'll address it at the
16 time, okay?

17 **MR. STEINBERG:** Okay. Yes, sir.

18 (Pause)

19 **THE COURT:** All right, guys. Y'all look at the charges
20 as I give them to you, please. And let's get ready to go.
21 That jury's sitting out too long.

22 (Whereupon Court's exhibit 2 was marked)

23 (Pause)

24 **MR. STEINBERG:** Your Honor, there's no objection to the
25 State, I mean, with the verdict form or for your proposed

1 charge.

2 **THE COURT:** Thank you, Mr. Steinberg. Ms. Cleary.

3 **MS. CLEARY:** No objections, Your Honor.

4 **THE COURT:** Okay. Very good. I made your proposed
5 charges Court exhibits, as a single exhibit. So we'll have
6 the State's requests and the defense's requests made as one
7 exhibit.

8 **MS. CLEARY:** Thank you.

9 **MR. STEINBERG:** Yes, sir.

10 **THE COURT:** But I'm not going to charge either one of
11 them, okay?

12 **MR. STEINBERG:** Yes, sir.

13 **THE COURT:** All right. Thank you. All right. Mr.
14 Steinberg, you ready to go?

15 **MR. STEINBERG:** Yes, sir. Are you going to charge that
16 trafficking -- that crack cocaine is also known as cocaine
17 base?

18 **THE COURT:** I'll handle that. Thank you.

19 **MR. STEINBERG:** Yes, sir.

20 **THE COURT:** If you'll look at the verdict form, it says
21 that on it. If you'll look at it, okay?

22 **MR. STEINBERG:** Yes, sir.

23 **THE COURT:** All right.

24 **MS. CLEARY:** Your Honor, when we were looking at the
25 big book of the broad instructions, there was an instruction

1 in there regarding the defendant's failure to testify.

2 **THE COURT:** Yep.

3 **MS. CLEARY:** Would it be too much to ask to say his
4 decision to testify or not to testify instead of failure? I
5 just think failure has a negative ---

6 **THE COURT:** I will handle that, okay?

7 **MS. CLEARY:** Thank you, Your Honor.

8 **THE COURT:** I think you guys are getting overly
9 technical, ---

10 **MS. CLEARY:** Yes, Your Honor.

11 **THE COURT:** --- quite frankly. All right? Bring the
12 jury in. Stop them right quick. Let me make sure we're
13 clear on the record. Mr. Steinberg, are you going to open
14 up and close, and you're going to have the last argument
15 since you presented no evidence, correct?

16 **MS. CLEARY:** Yes, Your Honor.

17 **MR. STEINBERG:** Yes, sir.

18 **THE COURT:** All right. I just wanted to make sure.
19 Okay. Sorry about that.

20 (Whereupon the jury entered the courtroom at 10:13 am)

21 **THE COURT:** All right. Ladies and gentlemen, thank you
22 for your patience. The delay is all my fault. I was having
23 problems with printing out my charge. So we had a delay in
24 getting that taken care of. It's not the attorneys' fault,
25 but it's mine. The State ready with closing arguments?

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1 **MR. STEINBERG:** Yes, sir, Your Honor.

2 **THE COURT:** Is the defense ready?

3 **MS. CLEARY:** Yes, Your Honor.

4 **THE COURT:** All right. Mr. Steinberg.

5 **MR. STEINBERG:** May it please the Court?

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

7 **MR. STEINBERG:** Good morning, ladies and gentlemen.

8 **THE JURY:** Good morning.

9 **MR. STEINBERG:** I told you this was a simple and
10 straightforward case. I hope it has been so far. We're
11 going to talk about some of the facts, some of the evidence
12 and some of the law in this case. I'm going to very briefly
13 show you some items.

14 And everything at this table is yours. This is your
15 evidence for you to consider. I'm going to show you some
16 selections, but it is yours. Everything on there is for you
17 to look at.

18 I told you simple case, this might be the most simple,
19 straightforward trafficking case I've ever prosecuted, maybe
20 this Court has ever seen. The drugs are literally found in
21 the defendant's hand as he is running away from a drug
22 house, caught holding the bag.

23 There is no actual or legal defense to this. He's in
24 clear possession of these drugs, crack cocaine, also known
25 as cocaine base, and powder cocaine.

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1 Possessing this amount of drugs is called trafficking.
2 It means that you are delivering it, or distributing it, or
3 transporting it, or that you have a certain amount, in this
4 case, over twenty-eight (28) grams. If you have over
5 twenty-eight (28) grams, and we're well over twenty-eight
6 (28) grams, that is trafficking.

7 The closest thing to a defense is not even really a
8 defense. It's really, as best we can look at this, well,
9 maybe it's somebody else's drugs also. The drugs that he's
10 holding, maybe they're not his drugs. He's holding someone
11 else's drugs. That's not really a defense.

12 We know somebody else is involved. This is cocaine.
13 Both the crack and the powder are both cocaine. These are
14 drugs that Mr. Drinkard did not grow, harvest, transfer into
15 different formats, transfer into the United States. Other
16 people are involved.

17 At issue here is October 19th, 2017 this defendant
18 grabbed a bag full of drugs and tried to run out of the
19 house and hide these items. Mr. Drinkard is literally
20 holding this bag as he leaves the drug house. That is
21 possession of over twenty-eight (28) grams.

22 You heard a number of questionings concerning
23 fingerprints, and DNA, and forensics. This is not a CSI
24 defense in our lingo here in the courthouse. The CSI
25 defense is what you use when you don't otherwise have a very

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1 viable or believable argument.

2 You can say, well, what about more testing? Couldn't
3 we have done additional testing or some other testing?
4 Well, you don't always run tests. You have to run tests in
5 certain cases.

6 You can run tests if you have the right evidence. Here
7 you've heard there's no serum, there's no blood, saliva,
8 that kind of thing. It does not exist. So you're hoping
9 for almost limited evidence.

10 Now you don't run tests for no reason because they cost
11 money in both time and actually people's -- people to
12 testify. It also enlarges the chain of custody. We don't
13 want a large chain of custody. We don't want to send things
14 to SLED in Columbia or DC. We don't want to do any of these
15 things unless it's necessary. If this was necessary, we do
16 send it. The officers were very clear, we have sent things
17 in the proper cases.

18 But the most important thing I want to bring up with
19 you today is you have to be useful and necessary. You've
20 heard -- these officers were very clear. Investigator
21 Picone still here said, you will not get fingerprints or DNA
22 off of these drug bags. He was -- could not have been more
23 clear about that.

24 We don't submit testing -- things for testing unless
25 it's needed. Because what do these tests show? It shows

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1 that someone did at some point in time, some place hold
2 drugs. It doesn't show when or where. It just shows
3 whether.

4 In this case we're well past whether. We know this
5 defendant held it. He grabbed it and ran. It was in his
6 hands. He didn't know we had it on video, but, of course,
7 we do have it on video. The drugs left with Mr. Drinkard as
8 did the gun. We don't need any additional testing for that.

9 Now, the defendant has advanced us of a story. It came
10 in through opposing counsel. And the Judge is going to
11 instruct you that evidence only comes in through the stand
12 or is here on the table. I'm going to address that even
13 though it is not what is truly in evidence.

14 He [sic] said -- I think the words were, wrong bag,
15 wrong time, wrong location, something along those lines. If
16 you consider the story that Mr. Drinkard grabbed the bag and
17 ran out, put his gun in it unknowingly, let's talk about
18 that.

19 When you're caught holding a hundred and forty
20 something grams of crack and cocaine, you've got to have a
21 story. His first story did not work, which was, I just put
22 marijuana back there, loud back there. You've got to pump
23 the story.

24 If you're inside this apartment and you have a gun and
25 you want to avoid the consequences of having this gun, why

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1 not just leave it in the apartment? There are photographs
2 of this apartment. You can look at this apartment. You
3 could have just left it in the apartment. You could have
4 put it in a pocket and ran away.

5 You don't have to put it in a bag and run and try to
6 hide the bag. That's a little bit more work than the
7 average criminal's going to be doing.

8 Also, Mr. Drinkard had a different story. You have
9 that story. It's on tape. He said, it is not my gun. He
10 specifically said, this is not my gun. He said, I'm putting
11 marijuana back. He's not all that clear. He calls it loud
12 at one point. He says, the stuff I had stank. That's,
13 obviously, an inference that it was marijuana. He is trying
14 to distance himself from his bag, his gun, his drugs.

15 You have the photographs. The officers showed all the
16 photographs that the -- I believe it was the bag and the
17 Cartier Box. The Cartier box where you cannot get, per the
18 officers, fingerprints or DNA off of this type bag. These
19 are on top. The firearm was below it.

20 The firearm was not just put in there. That's a story
21 that does not work. It doesn't work when you look at common
22 sense. It doesn't work when you look at the photographs.

23 Let's talk about David Fowler. Mr. Fowler's name came
24 up. He is the -- either the owner or the lead occupant of
25 this house where the drugs were found. He was charged with

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1 the items found inside the house even though he was not
2 home. There's cocaine residue, cocaine residue on some of
3 the items. That's why he was charged.

4 And the car's registered, not to him, but to a family
5 member. He may have some involvement in this. Mr. Fowler
6 may face some liability in this case. You've heard he's not
7 testified.

8 However, Mr. Fowler is not the one that was running
9 from this house with the bag when the police came up. It is
10 this defendant, Mr. Drinkard. That is why Mr. Drinkard is
11 on trial today. So those are defenses.

12 Let's summarize some of these facts. The evidence
13 shows that the defendant possessed the drugs, clearly over
14 ninety-eight -- over twenty-eight (28) grams. It is cocaine
15 -- is found, eighty-two (82) grams. And then twelve (12)
16 grams, that's ninety-four (94) grams.

17 And then crack cocaine, cocaine base, is found at
18 twenty-six (26) grams and thirty-two (32) grams. That's
19 fifty-eight (58) grams, fifty-eight (58) plus grams. We're
20 well over the limit.

21 We also have a gun -- guns, and money, and drugs all in
22 the same world. They work in the same orbit. That is the
23 connection.

24 The fact that you have this weapon -- all this evidence
25 is yours. Sometimes the judge might say I'll send back the

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1 firearm without the ammunition or vice versa. That'll be up
2 to the Judge's decision. But all of the evidence is yours
3 to look at.

4 The defendant's argument was apparently, I just ran
5 away and put that gun in there. It's just not working, not
6 with all this evidence in this case, and not with the
7 application of common sense. Is he running away to hide a
8 gun?

9 People do not let drugs leave their possession. A drug
10 dealer, in this case a drug trafficker, is not going to let
11 somebody else run away with his drugs. That's -- that would
12 strain the imagination, particularly this amount of drugs.
13 It's not a small amount.

14 So this defendant sees the deputies pull up front. He
15 either saw them through the window or saw them through the
16 surveillance system, which you heard exists. The defendant
17 left. Let's talk about the defendant leaving.

18 That is not loud, which is his first story. He is
19 putting something in a very specific area. He goes past a
20 gold car and runs to the unlocked door.

21 The next video clip. Watch how he's moving. He is not
22 just walking. You can see he's running. He's not running
23 to the back with loud. He is running with a black bookbag
24 with a Crown Royal bag used by drug dealers to hold money,
25 nine hundred dollars (\$900.00), a stolen Smith & Wesson

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1 pistol, digital scales, razor blades and over one hundred
2 (100) grams of illegal drugs. There is no potential of
3 possible defense. That addresses the trafficking charge.

4 Trafficking is essentially you possess this amount of
5 drugs. The other charge related to it is possession of a
6 weapon during the commission of a violent crime.

7 Trafficking in cocaine is a violent crime. You do not have
8 to be shooting the gun. You do not have to be doing
9 anything with the gun other than having it as part of the
10 crime.

11 If you find it's totally unrelated to this crime,
12 totally unrelated, then do not convict. I tell you, do not
13 convict. However, if you find that it's in the same bag, I
14 guess, millimeters or inches just south of the drugs, then
15 you do convict for possession of a weapon during the
16 commission of a violent crime.

17 Now the final charge, the possession of a stolen
18 property charge requires that the State prove that the
19 suspect knew or reasonably should have believed that the
20 pistol was stolen. Absent a confession -- and you're not
21 going to have a confession in a lot of these cases. You
22 have to look at the circumstances.

23 This is not a guy who just happened to buy something
24 and bought it off of a dealer or bought it either from the
25 internet or something. This is a defendant who is

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1 possessing a fairly recently stolen pistol, has it in a bag
2 with drugs, and, most importantly, he really wants to
3 distance himself from the cops with that.

4 Even his own story is, I wanted to get away with that.
5 I wanted to move that away because I didn't know where it
6 came from. The pistol's valued at five hundred dollars
7 (\$500.00) and was identified by the owner, Mr. Sustakovich.

8 That is this case, ladies and gentlemen. I'm not going
9 to present anymore evidence to you. It's all for you to
10 look at, the photographs, if needed. You just ask us. You
11 just say which photographs you want. You can look at all of
12 them or you can tell us which ones you want, and we'll be
13 certain to play them for you. That is this case.

14 Officers were looking for one crime, which Mr.
15 Drinkard's not responsible for, they stumble on another
16 crime. When they show up at the front of the house, the
17 suspect sprints out the back door to the one unlocked car.
18 What inference do you draw from that? He is seen trying to
19 hide. Not just place, but hide a bag full of drugs, a lot
20 of drugs, money, and a gun, and scales.

21 He is found by Investigator Walters. He tells a story,
22 which is evidently wrong, to Mr. Walters -- Investigator
23 Walters. The only marijuana that existed was found on his
24 person. Did not charge that, very minor. But we saw what
25 he did because we had something that he didn't know we had.

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1 We had a video. Now you have that video.

2 I will not take anymore of your time. All this
3 evidence is yours. The law is clear, you cannot possess
4 twenty-eight (28) grams or more, you're not allowed to
5 possess cocaine or crack cocaine at all, but you most surely
6 cannot possess more than twenty-eight (28) grams because
7 that alone makes it illegal and makes it trafficking. The
8 State of South Carolina, the people of South Carolina, and
9 the officers, and I thank you for your time in this matter.
10 Thank you.

11 **THE COURT:** Ms. Cleary.

12 **MS. CLEARY:** May it please the Court?

13 Wrong place, wrong time, wrong bag, wrong crime.
14 What's interesting about this case is the State and the
15 defense are largely in agreement on what happened. You saw
16 the video. You can see Mr. Drinkard run out of the house
17 with the bag, hide the bag in a Dodge Charger seconds before
18 law enforcement approach. No argument on that.

19 The problem is that the State sees this video and dusts
20 their hands of this case. Drugs in the bag, he's got the
21 bag, throw the cuffs on him, let's get home before rush
22 hour. But that's not what the law requires.

23 The State has already talked to you a little bit about
24 what they have to prove in order to prove the trafficking
25 charges. But I want to emphasize for you, they are required

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1 to prove that Mr. Drinkard knew there were drugs in the bag.

2 And that's why we're here because he didn't know.

3 And that makes sense, right? Because we don't want
4 people getting in trouble for things that they don't even
5 know is there.

6 But the State will tell you he had to have known. Why
7 else would he hide the bag? Why else did he look so
8 nervous? But you know the answer to that. A gun that came
9 from the streets. A gun that ended up being stolen. A gun
10 with an unknown past is a dangerous thing to be caught with.
11 What if it was used in a crime? What if it was used to hurt
12 someone? That's a heck of a risk for someone to take.

13 So he grabbed the bag and he hid it in the Dodge
14 Charger seconds before law enforcement approached. You saw
15 how fast it was for law enforcement to show up. He barely
16 had ten, 20 seconds before they approached him. He didn't
17 have time to carefully go through the bag. And he paid
18 dearly for that mistake.

19 The State has played you Mr. Drinkard's interview,
20 pointed out that Mr. Drinkard said he was putting marijuana
21 in the car. That's not true. We'll admit that.

22 The State also told you why he would lie. The officer
23 got up and testified it was a small amount of marijuana.
24 They didn't even charge him with it. I think they even said
25 it had been handled in a lower court.

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1 Of course that's what he's going to say happened
2 because, again, he doesn't want to get charged with that
3 gun. The gun that with an unknown history could have been
4 used in a crime. That's what he wanted to hide.

5 The State has told you that that's not what happened,
6 that he had way more to hide than that. But do they know
7 that's what happened? Or are they guessing?

8 Some of the drugs were found in a red box, a box with a
9 nice flat surface. Great. Well, let's go get some
10 fingerprints. I asked Deputy Picone and Officer Walters did
11 anyone check this box for fingerprints? Same answer both
12 times. No and no. But did you see how they fought with me
13 for a simple yes or no question?

14 We got to hear from Officer Picone how it's not their
15 job to check for fingerprints. It's forensic's job. But
16 then Officer Walters is suddenly an expert in fingerprints.
17 The textured surface, he said, very unlikely that they would
18 find fingerprints on it. Okay. Well, didn't Officer Picone
19 just tell us that we're not even the ones who tape for
20 fingerprints? Why didn't you just pick up the phone and
21 call forensics?

22 And inside the box, a flat, smooth surface. What
23 happens when you open up a box? You touch the inside of it.
24 Still, fingerprints were not taken, forensics was not
25 called.

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1 So what about DNA? Officer Picone told us, there's no
2 way DNA can be found on the drugs. What about that box I
3 just showed you? Did you check for DNA there? Officer
4 Walters said, no.

5 And Officer Walters made sure you knew how nervous Mr.
6 Drinkard was. He was shaking, visibly nervous. You know
7 what else nervous people do? Sweat. You know what sweat
8 comes in contact with? The items that he would have
9 touched. And yet forensics was not called, DNA was not
10 taken.

11 Now why am I making such a big deal about forensics?
12 What the State called the CSI defense. According to the
13 State, forensics was no big deal. Again, he's on video,
14 drugs in the bag, let's all go home. They're guessing at
15 knowledge. That's why it's a big deal. They have to prove
16 knowledge, not just guess at it. How do you prove
17 knowledge? You find out what he touched. How do you do
18 that? You call forensics.

19 Now you might be asking yourself, all right, well, who
20 brought the drugs into the house? Who brought in the bag?
21 The box? The items that were found in the bag? Who brought
22 them into the house? Great questions. I wish I could tell
23 you.

24 But I asked the officers, did anyone look at the
25 footage from the day before this happened? No. Did anyone

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1 look for the person who brought the bag into the house? The
2 box? The drugs? No. They didn't investigate this. The
3 State only showed you a few seconds of footage. Showed you
4 exactly what they wanted you to see and not a second more.

5 And if it sounds like I'm being hard on the government
6 here, it's because I am. This is their case. Their
7 charges. Their burden of proof. They're the ones who
8 brought us all here today and put Mr. Drinkard on trial.
9 And it's their job to prove every element of every charge
10 beyond a reasonable doubt.

11 Now, let me talk about the other two charges for a
12 minute. Receiving stolen goods, pretty straightforward.
13 You can't possess stuff you knew or should have known was
14 stolen.

15 Possession of a weapon during the commission of a
16 violent crime is a bit trickier because there has to be a
17 nexus between the crime and the firearm. As to that there's
18 been zero testimony and zero evidence.

19 But more importantly, because he did not know the drugs
20 were there and cannot be found guilty of trafficking, he
21 cannot be found guilty of possession of a weapon in
22 commission of that trafficking. So has the State met their
23 burden today? Have all your questions been answered?

24 Earlier in the trial I asked you to think about what
25 simple steps the State could have taken to prove knowledge,

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1 not just guess at it. You know the answers to that question
2 now. Could have called forensics. They could have looked
3 for DNA, looked for fingerprints. They could have played
4 the tapes further back. Look for who brought the items into
5 the house, who's carrying the bag, who's carrying the drugs,
6 who's carrying that little box right there. But because
7 they didn't, there are unanswered questions here. Questions
8 that should cause you to hesitate to act.

9 And if you're in the jury room and you find yourself
10 hesitating, you have the answer to another question, the
11 question of whether you should convict Mr. Drinkard for
12 being at the wrong place, at the wrong time with the wrong
13 bag. Don't convict him of the wrong crime. Find Mr.
14 Drinkard not guilty. Thank you.

15 **THE COURT:** All right. Mr. Foreman, ladies and
16 gentlemen of the jury, now comes time for me to charge you
17 on the law that I must apply in this case. And I'll tell
18 you in advance that I'm not smart enough to do it off the
19 top of my head. So some of it will -- a good bit of it will
20 be read to you. And I apologize to you in advance.

21 If you are like me, somebody reads to me, basically
22 puts me to sleep. And I apologize to you. I'll try to
23 break it up so that you're not hurt too badly, but I'm going
24 to let you know that in advance.

25 Ladies and gentlemen, my charge will be in three

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1 phases. The first part will be the general rules that
2 define and control your duties as jurors. I'll then charge
3 you on the substantive law that applies in this case. And
4 then I'll give you some considerations about your
5 deliberations.

6 And then, Mr. Foreman, I'll go over the verdict form
7 with you and explain to you how to fill it out. Okay, sir?
8 If at any time you don't understand, please let me know and
9 I'll rephrase it or repeat as many times as I need to.

10 Let me remind you that the indictments are simply the
11 mechanism by which this defendant has been charged. They
12 will not go back with you to the jury room. They are not --
13 it is not evidence in this case.

14 Now, ladies and gentlemen, I told you at the beginning
15 of this case that you are the finders of the facts. You're
16 the judges of what the facts are in this case. In other
17 words, what your verdict's going to be.

18 To the evidence as you find it to be, you must apply
19 the law as I give it to you now. You may not and shall not
20 be concerned with what you think it should be, but only what
21 it is. If I'm incorrect, I will be corrected down in
22 Columbia by the Court of Appeals or the Supreme Court.

23 Also, ladies and gentlemen, you may not and shall not
24 be influenced by any personal likes or dislikes, opinions,
25 prejudice, or undue sympathy that you may have for one side

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1 of this case or the other. What that simply means is that
2 you are to decide this case based on the testimony, and the
3 evidence, and according to the law as I give it to you now.
4 And if you recall when you took your oath, you swore or
5 affirmed to do just that.

6 Also, ladies and gentlemen, if I have done anything
7 throughout the course of this trial that seems to indicate
8 to you how you are to find facts, I'm going to ask you and
9 instruct you as well to disregard that. I have no opinion
10 on the facts. I'm not allowed to have an opinion on the
11 facts. You and you alone determine what they are. And
12 you'll do that by evaluating and weighing the evidence that
13 you've heard in this case.

14 Now, when I say weighing the evidence, obviously, you
15 can't take it back and weigh it yourself. It's a literal --
16 in the literal sense it is a mental exercise. You should
17 use your good sense, your common experiences, and your sound
18 judgement in going through and talking about the evidence
19 and discussing it with your fellow jurors to hopefully reach
20 a unanimous verdict.

21 Now, ladies and gentlemen, the only evidence that you
22 may consider as evidence is the testimony that you heard
23 from the witness stand, the responses. The questions asked
24 is not evidence, but the responses to those questions is
25 evidence and the exhibits that I have allowed to come into

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1 evidence is evidence. And that's the only real evidence
2 that you may consider when you go through and decide whether
3 or not the State has met its burden of proof as to the
4 various charges in this case.

5 So that leads me to what is not evidence. First, I'll
6 remind you that the arguments of the attorneys, whether it
7 be in opening statements or their closing statements, is
8 helpful, but it's not evidence. They've not been sworn in.
9 They've not been subjected to cross-examination. It is not
10 evidence.

11 Also, their questions that they asked is not evidence,
12 responses to those questions is. The objections that they
13 have raised in this case is not evidence. Suffice it to
14 say, that's simply the process that is followed in every
15 case that comes before this Court. Mr. Foreman, if any of
16 your jurors try to insist on the fact that there was an
17 objection and my ruling on that objection, it'll be your job
18 to make sure that is not part of the jury's deliberations.
19 Okay, sir?

20 **MR. FOREMAN:** (Affirmative nod).

21 **THE COURT:** All right. Also, ladies and gentlemen,
22 anything that you may have heard when court is not in
23 session is not evidence. Therefore, I'll remind you the
24 responses on the witness stand and the exhibits are the only
25 things that you may consider in determining whether or not

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1 the State has met its burden of proof.

2 In South Carolina we recognize two types of evidence.

3 We have direct evidence and we have circumstantial evidence.

4 And I'm going to give you a definition of each.

5 Direct evidence is evidence that directly proves the
6 existence of a fact and does not require deduction nor an
7 inference. In other words, it immediately establishes the
8 question at issue.

9 And, for example, if the issue in the case was whether
10 or not I threw a rock at a car and my law clerk testified
11 that she saw me throw the rock at that car, that would
12 immediately establish that issue. You don't have to
13 speculate. You don't have to infer or deduce anything from
14 that.

15 Circumstantial evidence is a little trickier, but this
16 is what it is. It's a proof of a chain of facts and
17 circumstances indicating the existence of a fact. In other
18 words, it does require deduction. It does require an
19 inference.

20 Circumstantial evidence and direct evidence are on
21 equal footing in our State. The law does not give anymore
22 weight to one or the other. However, if you are going to
23 infer a fact from the evidence, you cannot engage in
24 speculation, or conjecture, or surmise.

25 Crimes, ladies and gentlemen, may be proven by

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1 circumstantial evidence just like they may be proven by
2 direct evidence. The law makes no distinction between the
3 weight or the value to be given either direct or
4 circumstantial evidence.

5 However, to the extent the State relies on
6 circumstantial evidence, all of the circumstances must be
7 consistent with each other and when taken together point
8 conclusively to the guilt of the accused beyond a reasonable
9 doubt. If the circumstances merely portray the defendant's
10 behavior as suspicious, then the State has failed to meet
11 its burden of proof. And the State has the burden of
12 proving the defendant guilty by proof beyond a reasonable
13 doubt whether or not it uses direct evidence, circumstantial
14 evidence or a combination of -- or both of those.

15 Now, ladies and gentlemen, in deciding what the facts
16 are or what your verdict is going to be, you must consider
17 all the evidence that's been presented in this case. And in
18 doing this you must decide which testimony that you want to
19 believe and whether or not there's any testimony you wish to
20 disbelieve.

21 You have a right to disbelieve all, or part, or none of
22 any witness' testimony who's appeared before you. You have
23 a right to believe all of the witness' testimony.

24 In making this decision in what we call the credibility
25 of the witnesses, you may consider the following factors.

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1 And certainly this is not an exhaustive list. You may ask
2 yourself was the witness able to see, or hear, or know the
3 subject of their testimony.

4 You may ask yourself how well they're able to recall
5 the subject of their testimony when they're on the witness
6 stand and what their demeanor was like when they were on the
7 witness stand. In other words, how they acted while they're
8 on the stand. You can ask yourself if there was some reason
9 a witness would want to give testimony that would help or
10 hurt one side or the other or whether or not that witness
11 had a bias or prejudice towards one side of the case or the
12 other or had a bias against any issue involving the case.

13 You can ask yourself how reasonable the witness'
14 testimony was considered in light of all the evidence in the
15 case and whether that witness' testimony had been
16 contradicted by what was said by that witness at another
17 time or by any other witness in the case or by any other
18 evidence in the case. Now, Mr. Foreman, those are simply
19 some factors that you may consider in determining the
20 credibility or the believability of the witnesses and the
21 testimony in this case.

22 You do not check your common sense at the door when
23 you're sworn in. And you should not do so in this case.
24 You should use those things in your day-to-day lives that
25 you find indicative of truthfulness and indicative of lack

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1 of truthfulness when you make this determination of
2 believability or credibility of the evidence. Certainly one
3 thing you may not do, however, is add up the witnesses who
4 may have appeared for one side or the other in making this
5 determination.

6 Now, ladies and gentlemen, you've heard testimony from
7 a witness or witnesses who have been described and qualified
8 as experts. As I told you during the trial, normally
9 witnesses may not give their opinion. However, if it's
10 helpful to you, the jury, if a person, because of their
11 education, experience has become educated in a field,
12 they're allowed to give their opinion in that area.

13 Expert testimony is like any other testimony you'll
14 hear in this case or that you heard in this case. You may
15 accept it, you may reject it or give it as much weight as
16 you think it deserves.

17 Now, Mr. Foreman, there are four different charges in
18 this case. There are three different indictments. Two have
19 been charged on one and two other indictments. Each charge
20 will stand on its own with the exception of the commission
21 of -- possession of a weapon during the commission of a
22 violent crime. I'm going to tell you more about that in a
23 minute. But you will decide each of these charges
24 independent of your decision on the other charges with the
25 exception of the weapon's charge. Okay, sir? And I'll

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1 explain that to you as we go.

2 In this case, ladies and gentlemen, the defendant has
3 said I am not guilty. He has pled that in front of open
4 court. And, therefore, the presumption of innocence has
5 attached to him and it resides with him right now unless and
6 until you, the jury, determines that he is guilty of one or
7 more of the charges for which he has been charged and
8 indicted.

9 And I'll tell you that it is an important rule of law
10 in South Carolina that a person charged with committing a
11 criminal offense is never required to prove himself
12 innocent. And I'll charge you that no matter what the
13 seriousness of the charge is that a person will always be
14 presumed to be innocent of the crime for which he has been
15 indicted unless guilt has been proven by the State by proof
16 satisfying you of guilt beyond a reasonable doubt.

17 Now, this presumption of innocence does not end when
18 you begin your deliberations, but it accompanies the
19 defendant throughout the trial until you, the jury, reach a
20 verdict based on guilt beyond a reasonable doubt. It is
21 said in the law that the presumption of innocence is like a
22 robe of righteousness placed around the shoulders of the
23 defendant where it remains until it has been stripped from
24 his shoulders by evidence satisfying you of guilt beyond a
25 reasonable doubt.

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1 Now, ladies and gentlemen, presumption of innocence is
2 not a mere legal theory. It's not just a nice legal phrase.
3 It is a substantial right which every defendant is entitled
4 unless and until you, the jury, are satisfied of guilt
5 beyond a reasonable doubt.

6 So that leads me to what is the definition of a
7 reasonable doubt? A reasonable doubt is the kind of doubt
8 that would cause a reasonable, sincere, honest, and
9 conscientious person to hesitate to act in an important
10 matter in their own affairs. Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of the
12 defendant's guilt.

13 Ladies and gentlemen, there are very few things in this
14 world that we know with absolute certainty. And in criminal
15 cases the law does not require proof that overcomes every
16 possible doubt.

17 If, based on your consideration of the evidence, you
18 are firmly convinced of the defendant's guilt to one or more
19 of the charges for which he is before this Court, it'll be
20 your duty to find him guilty of one or more of those
21 charges. On the other hand, if you think there is a real
22 possibility that the defendant is not guilty, you must give
23 him the benefit of the doubt and find him not guilty.

24 A reasonable doubt may arise from the evidence or from
25 the lack of the evidence. And a defendant is entitled to

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1 every reasonable doubt that may arise in the case. Now,
2 ladies and gentlemen, what that simply means is this. If
3 upon any issue of fact essential to a conviction in a
4 verdict of guilt of the offense for which he has been
5 charged, if you have any reasonable doubt as to how that
6 issue should be resolved, it is your duty to resolve it in
7 favor of the defendant.

8 Ladies and gentlemen, in order to establish criminal
9 liability, criminal intent is required to be proven. For
10 example, the mental state required to be proven by the State
11 for a particular crime might be purpose, intent, knowledge,
12 recklessness, or criminal negligence.

13 Criminal intent must be proven by the State by proof
14 beyond a reasonable doubt. Criminal intent is always a
15 matter that must be determined by you, the jury, from the
16 circumstances shown to have existed surrounding the
17 situation.

18 There is no way to prove intent through a mathematical
19 certainty. There's no way medical science can dissect a
20 person's brain to determine what they had in mind. So the
21 law says a criminal intent may be inferred from the
22 circumstances shown to have existed.

23 Now, ladies and gentlemen, that's how you make the
24 determination of whether or not the element requiring intent
25 is present. It is not necessary to establish intent by

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1 direct and positive evidence, but intent may be established
2 by inference in the same way as any other fact by taking
3 into consideration the acts of all the parties and all the
4 facts and circumstances of the case.

5 Criminal intent is a mental state. It's a conscious
6 wrongdoing. It is up to you to determine what the intendant
7 -- what the defendant intended to do based on the
8 circumstances shown to have existed in this case.

9 Criminal intent may arise from an action or a failure
10 to act. It may arise from negligence, recklessness, or an
11 indifference to duty or to the consequences that is
12 considered by the law to be the equivalent of criminal
13 intent.

14 Now, ladies and gentlemen, Mr. Foreman, I'll instruct
15 you that the defendant's decision not to testify is not a
16 consideration for you, the jury. You shall not consider
17 that. It may not be considered and deliberated at all.
18 That is every citizen's right under the Fifth Amendment to
19 the United State's Constitution. And, Mr. Foreman, if
20 anyone tries to raise that issue, it'll be your job to make
21 sure it's not part of the jury's deliberations. Okay, sir?

22 **MR. FOREMAN:** (Affirmative nod).

23 **THE COURT:** Now, ladies and gentlemen, in this State --
24 in this case a statement alleged to have been made by the
25 defendant has been admitted into evidence in this case.

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1 While the Court has determined that the statement is
2 admissible, I instruct you that you make the ultimate
3 decision of whether or not the defendant made the statement.

4 If the defendant did make the statement, you must
5 determine whether the statement was made by the defendant
6 voluntarily and of his own free will. This means that the
7 statement was not caused by pressure, force, fear, threats,
8 coercion, or intimidation, or by hope or a promise of
9 leniency or a reward of any kind.

10 In determining whether the statement was voluntary you
11 should consider both the characteristics of the defendant
12 and the details of the questioning. Some of the factors you
13 must consider are the age of the defendant, the defendant's
14 education or lack of education, the defendant's mental
15 ability or capacity, the defendant's IQ or intelligence, the
16 defendant's background and environment, the place and length
17 of detention, the nature of the question -- questioning and
18 the advice or lack thereof to the defendant of his
19 constitutional rights including, but not limited to the
20 right to remain silent, that any statement could be used
21 against him in court of law, the right to have a lawyer
22 present, that if he could not afford a lawyer a lawyer would
23 be appointed for him at no cost and that he could stop
24 making a statement at any time. You must carefully consider
25 all the surrounding circumstances before you give any weight

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1 to an alleged statement.

2 The State has the burden of proving beyond a reasonable
3 doubt that the alleged statement was voluntary. If you
4 determine that it was voluntary, you may give the statement
5 any further consideration you may deem proper. You must
6 decide what weight, if any, should be given to the alleged
7 statement. If you determine the alleged statement was not
8 the free and voluntary statement of the defendant, you
9 should not consider the statement at all.

10 Now, Mr. Foreman, ladies and gentlemen, fortunately
11 that's the longer part of my charge. And those are a
12 completion of the general rules that define and control your
13 duty as jurors.

14 I'm glad to give you a break of if you'd like to
15 continue, Mr. Foreman, I'll go to the substantive law and
16 then some considerations for your deliberations. Would you
17 check with your jury to see what you want to do, please,
18 sir.

19 (Pause)

20 **MR. FOREMAN:** Let's continue.

21 **THE COURT:** I knew that's what you were going to say.

22 (Laughter)

23 **THE COURT:** It's kind of like getting a whippin' over
24 here. All right.

25 Ladies and gentlemen, this is the substantive law that

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1 applies in this case. Understand this, there are two
2 trafficking charges. One is trafficking cocaine or what's
3 traditionally known as powder cocaine. And there's also a
4 trafficking charge for cocaine base, which is also known as
5 crack cocaine.

6 The trafficking in cocaine is considered under or
7 classified under our law as a violent crime. And I'll tell
8 you more about that as it relates to the possession of a
9 weapon during the commission of a violent crime, okay, sir?

10 This is the law of trafficking in cocaine and powder
11 cocaine. The defendant is charged with trafficking in
12 cocaine. The State must prove beyond a reasonable doubt
13 that the defendant knowingly sold, manufactured, cultivated,
14 delivered, purchased, brought into this State, provided
15 financial assistance or otherwise aided, abetted, attempted
16 or conspired to sell, manufacture, cultivate, deliver,
17 purchase, or bring into this State, was in knowingly -- was
18 knowingly in actual or constructive possession, knowingly
19 attempted to become in actual or constructive possession of
20 cocaine. That's a mouthful.

21 The State must prove beyond a reasonable doubt that the
22 amount of cocaine, if any, or any mixture containing cocaine
23 was twenty-eight (28) grams or more, but less than one
24 hundred (100) grams.

25 To deliver means to actually, constructively or attempt

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1 to transfer the drug. Distribute means to deliver other
2 than by administering or dispensing a drug. Manufacture
3 means to produce, prepare, convert, process, plant,
4 cultivate, grow, or harvest a drug naturally or chemically.
5 Manufacturing includes any packaging or repackaging of the
6 drug or labeling or re-labeling of the drug's container.

7 Possession of more than twenty-eight (28) grams, but
8 less than one hundred (100) grams creates an inference that
9 the defendant possessed the cocaine with the intent to
10 traffic the cocaine. This inference does not relieve the
11 State from proving beyond a reasonable doubt that the
12 defendant had the intent to traffic the cocaine. It is
13 simply an evidentiary fact to be taken into consideration by
14 you along with the other evidence in this case and to be
15 considered the weight you decide it should have.

16 Now, Mr. Foreman, ladies and gentlemen of the jury, if
17 you find that the defendant is guilty of trafficking in
18 cocaine, the powder cocaine, you may next consider whether
19 or not he is also guilty of possession of a weapon during
20 the commission of a violent crime. And that is the only
21 charge that you may consider the possession of a weapon
22 charge with.

23 In other words, the powder cocaine trafficking charge
24 can only lead to the possession of a weapon of the
25 commission -- possession of a weapon during the commission

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1 of a violent crime if you find him guilty of that charge.
2 If you found him not guilty of the trafficking in powder
3 cocaine, you may not consider the weapon's charge. If you
4 find him guilty of the trafficking in cocaine base, you may
5 not consider the trafficking charge. Only the powder
6 cocaine. Okay, sir? And if you have any doubts about that
7 later, please let me know, and I'll explain it to you again.

8 This is the law of possession of a weapon during the
9 commission of a violent crime. The defendant is charged
10 with the possession of a weapon during the commission of or
11 attempt to commit a violent crime. The State must prove
12 beyond a reasonable doubt that the defendant was in
13 possession of a firearm or visibly displayed what appeared
14 to be a firearm during the commission of a violent crime.

15 A firearm means any machine gun, automatic rifle,
16 revolver, pistol, or any weapon which will, is designed to,
17 or may be readily converted to expel a projectile.

18 In order to find the defendant guilty of possession of
19 a weapon during the commission of a violent crime you must
20 first find the defendant guilty of either committing the
21 violent crime or attempting to commit the violent crime. In
22 this case, there's no charge of attempting. So only if you
23 find him guilty of committing -- committing a violent crime.
24 And in this case, trafficking in cocaine, powder cocaine, is
25 classified as a violent crime.

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1 The next charge will be trafficking in cocaine base or
2 crack cocaine. The defendant is charged with trafficking in
3 crack cocaine. The State must prove beyond a reasonable
4 doubt that the defendant knowingly sold, manufactured,
5 cultivated, delivered, purchased, brought into this State,
6 provided financial assistance or otherwise aided, abetted,
7 attempted or conspired to sell, manufacture, cultivate,
8 deliver, purchase, or bring into this State, was knowingly
9 in actual or constructive possession, knowingly or attempted
10 to become in actual or constructive possession of crack
11 cocaine. The State must also prove beyond a reasonable
12 doubt that the amount of crack cocaine was twenty-eight (28)
13 grams or more, but less than one hundred (100) grams.

14 Deliver means to actually, constructively, or attempt
15 to transfer the drug. Distribute means to deliver other
16 than by administering or dispensing a drug. Manufacture
17 means to produce, prepare, convert, process, plant,
18 cultivate, grow, or otherwise harvest a drug naturally or
19 chemically. Manufacturing includes any packaging or
20 repackaging of the drug or labeling or re-labeling of the
21 drug's container.

22 Possession of more than twenty-eight (28) grams, but
23 less than one hundred (100) grams creates an inference that
24 the defendant possessed the crack cocaine with the intent to
25 traffic the crack cocaine. This inference does not relieve

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1 the State from proving beyond a reasonable doubt that the
2 defendant had the intent to traffic crack cocaine. It is
3 simply an evidentiary fact to be taken into consideration by
4 you along with the other evidence in this case and to be
5 given the weight you decide it should have.

6 Finally, ladies and gentlemen, the defendant is charged
7 with receiving stolen goods. Ladies and gentlemen, the
8 defendant's charged with receiving stolen goods. The State
9 must prove beyond a reasonable doubt that the defendant
10 bought, received, or possessed goods, chattels, or other
11 property and that the defendant knew or had reason to
12 believe that the property was stolen.

13 Whether the defendant knew or had reason to believe
14 that the property was stolen may be shown by direct or
15 circumstantial evidence. The State may prove that the
16 defendant knew or had reason to believe that the property
17 was stolen by showing that the defendant knew facts that
18 would make a reasonable person believe that the property was
19 stolen.

20 Mr. Foreman, that is the substantive law. And I know
21 that's a lot of information that I'm throwing at you. At
22 any time you need me to repeat or go over any aspects of my
23 charge, I'll be more than glad to do so. I do not send it
24 back to you, the jury, because I want you to focus on what
25 the facts are and not concentrating on what the law is,

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1 okay?

2 Ladies and gentlemen, finally, you don't serve as
3 jurors to be partisans or advocates for one side of this
4 case or the other. If you recall, when we went through the
5 voir dire or the questioning process, you either expressly
6 or by your silence impliedly represented that you could be
7 fair to the State and impartial to the State and you could
8 be fair to this defendant and impartial to this defendant.

9 You do not have one side or the other to reward or
10 punish. You are to make your decision based on the
11 testimony and the evidence and according to the law. If you
12 do that, you will have performed your duties as jurors.

13 The definition of deliberations is this; It is a
14 careful consideration weighing up with a view to a decision.
15 Now, I'll submit to you that regardless of what you may
16 think about our judicial system that the genius of the
17 system is it allows 12 men and women such as yourselves, who
18 come from different backgrounds, who have different
19 educations and different life experiences to listen to the
20 testimony, to listen to the evidence, to listen to the law,
21 to ultimately go back and deliberate and hopefully come to a
22 unanimous decision.

23 Now, we call them deliberations for a reason. You are
24 not to be in a hurry. This is an important case for the
25 State. This is an important case for this defendant. And

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1 they do not get a second bite at the apple. This is their
2 only day in court.

3 I'm going to ask you when you're told to go back to the
4 jury room that you listen to everyone's points and their
5 points of view. Let each juror describe why they have a
6 particular feeling about an issue in the case and discuss
7 that openly, and honestly, and courteously with one another.
8 Do not rush to a decision, but take your time to walk
9 through and consider all the evidence in this case.

10 Do not be afraid to change your opinion as to the
11 weight of the evidence if your deliberations with your
12 fellow jurors convinces you that's the right thing to do.
13 On the other hand, do not change a firmly held conviction as
14 to the weight of the evidence simply to appease your fellow
15 jurors. In other words, simply to come to a verdict.

16 Now, Mr. Foreman, once the jury has reached a verdict
17 on these charges it'll be your duty to fill out the verdict
18 form. Before that, if the jury has any questions, if you
19 would write that question down on a piece of paper, knock on
20 the door, our fine bailiffs will bring you into the
21 courtroom and we'll respond accordingly. Okay, sir?

22 Now, let me ask the State, do you have a clean computer
23 in the back that they can look at this evidence on or do
24 they need to come back in the courtroom?

25 **MR. STEINBERG:** Judge, I don't know, but the clerk

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1 might be able to answer this better.

2 **MADAM CLERK:** Yes, sir, I have one. It's in your
3 office right now.

4 **THE COURT:** Oh, it is?

5 **MADAM CLERK:** Yes, sir.

6 **THE COURT:** Okay. So you will have a computer back
7 there that you can look at any of this evidence as many
8 times as you'd like to.

9 Now, never tell me, the bailiff, or anyone where the
10 jury stands numerically on its decisions, like six/six,
11 eight/four, whatever. Never tell us. It's nobody's
12 business but you, the jury's. Okay, sir? But if you have a
13 question, write it down, sign it, and we'll come back and we
14 will review it with you.

15 Now, when the jury goes over and you start to go over
16 the different charges, whatever order you want to do them
17 in, it's up to you. I have to put them in some order on
18 this verdict form. And the options in the order in which
19 they appear is of no consequence because it has to be one
20 way or the other.

21 But the first charge on the verdict form is that of
22 trafficking in powder cocaine, twenty-eight (28) grams or
23 more or less than one hundred (100) -- but less than one
24 hundred (100) grams. Your first option under that would be
25 as to this charge, we find the defendant not guilty. If

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1 that is your decision unanimously, you'll simply make a
2 check mark by the -- on the line by that option.

3 The next option is you find him guilty of this charge.
4 If that is your unanimous decision, you'll check that. If
5 you find the defendant guilty of trafficking in powder
6 cocaine, and only if you find him guilty of trafficking in
7 powder cocaine, may you consider the next charge, which is
8 possession of a weapon during the commission of a violent
9 crime. The options in that would be not guilty or guilty.
10 And you'll check the ones that the jury unanimously agrees
11 on.

12 The next charge would be trafficking in cocaine base or
13 crack cocaine. Again, your options would be not guilty or
14 guilty. You'll simply check the applicable decision of the
15 jury.

16 And, finally, possession or receiving stolen goods.
17 And it's not guilty or guilty, again. And you will check
18 the applicable decision by the jury.

19 Once you do so, Mr. Foreman, you'll need to sign your
20 name. I'm going to ask that you get the verdict form and
21 you crease it and fold it over. Do not give it to anybody.
22 You keep it in your possession. And I'll ask the bailiff to
23 bring it to me once you come back in the courtroom. Okay,
24 sir?

25 **MR. FOREMAN:** (Affirmative nod).

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1 **THE COURT:** Now, with that being said, that concludes
2 my jury charge. Are there any additions or exceptions from
3 the State?

4 **MR. STEINBERG:** No, sir, Your Honor.

5 **THE COURT:** From the defense?

6 **MS. CLEARY:** None, Your Honor.

7 **THE COURT:** Very good. All right. Mr. Foreman, I'm
8 going to ask that you go back to your jury room. I'm going
9 to ask that our alternate get her personal belongings and
10 come back to the courtroom.

11 In just a minute the verdict form and all the exhibits
12 will be brought to you, and you'll be told to begin your
13 deliberations. Do not begin until you get the verdict form
14 and all the exhibits. Okay, sir?

15 **MR. FOREMAN:** (Affirmative nod).

16 **THE COURT:** Very good.

17 (Whereupon the jury exited the courtroom at 11:08 am)

18 **THE COURT:** All right. Let me thank counsel for your
19 preparation and presentation of the case. Y'all both did a
20 very find job. If y'all would, go over and make sure y'all
21 have all the exhibits. Then we'll give them to the bailiff.

22 Mr. Bailiff, if you would, will you get this verdict
23 form and the exhibits. And once they do, tell them to begin
24 their deliberations. Okay, sir?

25 **MR. STEINBERG:** Your Honor, I have a question -- we

1 have actually already looked at the evidence. Do you send
2 back -- the drugs back to them?

3 **THE COURT:** Sir?

4 **MR. STEINBERG:** Do you send the drugs back to them?

5 **THE COURT:** Yep.

6 **MR. STEINBERG:** And the firearm, do you also send the
7 firearm and ammunition back to them?

8 **THE COURT:** I'd take it back there.

9 **MR. STEINBERG:** Yes, sir.

10 **THE COURT:** That's the exhibits.

11 (Pause)

12 **THE COURT:** All right. Guys, if y'all would hang tight
13 or not go very far.

14 **MR. STEINBERG:** Yes, sir.

15 **THE COURT:** Just give my law clerk your number, ---

16 **MR. STEINBERG:** Yes, sir.

17 **THE COURT:** --- so we can get you back here.

18 (Whereupon the jury began deliberations at 11:12 am)

19 (Whereupon court was in recess at 11:12 am)

20 (Whereupon court reconvened at 1:44 pm)

21 **THE COURT:** Please be seated. The jury says they have
22 a verdict. And I know the lawyers know, but for everybody
23 in the gallery in the courtroom, if you would react like you
24 should, civilly, in the courtroom, I'd appreciate it. Would
25 you bring the jury in, please, Mr. Bailiff.

VERDICT OF THE JURY

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1 (Whereupon the jury entered the courtroom at 1:45 pm)

2 **THE COURT:** All right. Mr. Foreman, my understanding
3 is the jury's reached a verdict. Is that correct?

4 **MR. FOREMAN:** We have.

5 **THE COURT:** Is it unanimous?

6 **MR. FOREMAN:** It is.

7 **THE COURT:** Would you pass the verdict form to the
8 bailiff, please, sir.

9 (Pause)

10 **MADAM CLERK:** Your Honor, in the case of the State of
11 South Carolina versus Shundrez Jervino Drinkard,

12 (A) Trafficking cocaine twenty-eight (28) grams or more, but
13 less than one hundred (100) grams, as to the charge of
14 trafficking cocaine twenty-eight (28) grams or more, but
15 less than one hundred (100) grams, indictment 2018-GS-23-
16 0838, we, the jury, unanimously find the defendant guilty.

17 (B) Possession of a weapon during the commission of a
18 violent crime, as to the possession -- the charge of
19 possession of a weapon during the commission of a violent
20 crime, indictment number 2018-GS-23-0838, we, the jury,
21 unanimously find the defendant guilty.

22 (C) Trafficking cocaine base, crack cocaine, as to the
23 charge of the trafficking cocaine base, crack cocaine,
24 twenty-eight (28) grams or more, but less than one hundred
25 (100) grams, indictment number 2018-GS-23-1776A, we, the

VERDICT OF THE JURY

205

1 jury, find the defendant guilty.

2 (D) Possessing or receiving stolen goods, as to the
3 charge of possessing or receiving stolen goods, indictment
4 number 2018-GS-23-0839, we, the jury, unanimously find the
5 defendant guilty. These are signed by our foreperson, David
6 Nash.

7 Ladies and gentlemen, if you agree these are the
8 verdicts you reached in your deliberation room, would you
9 please raise your right hand.

10 (Whereupon all jurors raised their right hand)

11 **MADAM CLERK:** Thank you.

12 **THE COURT:** And let the record reflect that all twelve
13 raised their hand in the affirmative.

14 All right, Mr. Foreman, ladies and gentlemen of the
15 jury, the Court is never concerned with what your verdict is
16 but that you followed the process. I've watched you
17 variously throughout the trial, and I've watched all of you
18 pay attention to the testimony, and evidence, and my charge
19 on the law.

20 I want to thank you for your willingness to do your
21 civic duty and sit on the jury. I'd like to say that you're
22 done for the week, but you're not. I know that it's not the
23 news you want to hear. Do they need to call back in after
24 6:00?

25 **MADAM CLERK:** Yes, sir.

SENTENCE OF THE COURT

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1 **THE COURT:** And I'm not sure how many he's going to
2 bring in. I think it's just me doing trials tomorrow. So I
3 don't know if he's going to bring the whole panel back, both
4 judges. So you may not be called in. But if you'd call in
5 after 6:00 we'd greatly appreciate it. And you're excused
6 for the day.

7 If you want to take your notes with you, you may. If
8 not, you can leave your pads in the jury room, and the
9 bailiffs will take care of it. Thank you very much.

10 (Whereupon the jury exited the courtroom)

11 **THE COURT:** All right. Mr. Steinberg, would you
12 prepare me the sentencing sheets, please, sir.

13 **MR. STEINBERG:** Yes, sir.

14 (Pause)

15 **MR. STEINBERG:** He has no record, Your Honor.

16 (Whereupon Court's exhibit 3 was marked)

17 **THE COURT:** Ms. Cleary, I'll be glad for you to come
18 around with your client, please, ma'am.

19 (Pause)

20 **THE COURT:** I'll be glad to hear from you.

21 **MS. CLEARY:** Thank you, Your Honor. Mr. Drinkard is 32
22 years old. This charge is about two years old. He also has
23 no record. He was an employee of Samsung for about five and
24 a half years.

25 **THE COURT:** How long ago was that?

SENTENCE OF THE COURT

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1 **MR. DRINKARD:** I left there in 2016. Then I started --
2 it was Windstream downtown ---

3 **THE COURT:** Where?

4 **MR. DRINKARD:** Windstream downtown.

5 **THE COURT:** Windstrom?

6 **MR. DRINKARD:** Windstream. Right down -- the tallest
7 building down here. They do communication services for
8 businesses and so forth.

9 **THE COURT:** Okay.

10 **MR. DRINKARD:** I was going back to Samsung, but then
11 when the charges showed, I could never get back.

12 **THE COURT:** All right. How long -- were you with them
13 until you were arrested on these charges?

14 **MR. DRINKARD:** With Windstream?

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

16 **MR. DRINKARD:** I was with them a year and a half. And
17 I had left there, and I was out of work for a couple of
18 months. And so -- and then this happened. So I got like
19 temporary jobs. I can get those, but a lot of the times
20 it's just -- it's harder with the way it would show.

21 **THE COURT:** How much time has he been in jail?

22 **MR. STEINBERG:** He served less than a day in jail down
23 at ---

24 **THE COURT:** Sir?

25 **MR. STEINBERG:** He served less than a day in jail, sir.

SENTENCE OF THE COURT

1 **THE COURT:** Less than a day?

2 **MS. CLEARY:** He also has significant family support
3 back there for him.

4 **THE COURT:** Okay. I'll be glad to hear from anybody
5 you want to speak. Mr. Drinkard, do you have anything you
6 want to say?

7 **MR. DRINKARD:** Not much. I just ask for some kind of
8 leniency. I mean, I'm not a bad person. I don't get in
9 trouble, obviously. And I just -- I don't want to lose my
10 life.

11 And with this situation being that -- how it was shown,
12 even with that video, that video, you know, it's evidence,
13 but it doesn't show who I am. It doesn't show -- doesn't
14 show that -- like that's not me. I'm not someone that was
15 hiding drugs. I mean, I just had some time off work.

16 **THE COURT:** I got you.

17 **MS. CLEARY:** Given that he has no record, I feel very
18 comfortable asking for the minimum in this case.

19 **MR. STEINBERG:** Judge, if I could be heard.

20 **THE COURT:** I'm going to ask if you have any member --
21 does Mr. Drinkard have any members of his family want to be
22 -- they want to speak?

23 **MS. DRINKARD:** My name is Cassandra Drinkard. I'm
24 Shundrez's mother. And I don't know how we got here today.
25 Shundrez has never given me any trouble and any problem. I

SENTENCE OF THE COURT

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1 think it's from the type of people that he associate with.
2 He think he can just hang around anybody, but in this world
3 today, you can't.

4 Shundrez was born -- I had him at seven months. He
5 weighed three pounds, 11 ounces. His life started out as a
6 challenge, but he made it. I don't know how we got here
7 today, but I ask for mercy.

8 This is my youngest son. He's the one at the house
9 with me. And I just ask for mercy and consideration. I'm
10 sure he has learned his lesson from this. It's easy for
11 somebody to say these things that happened, but it's
12 something that -- when it happened. Thank you.

13 **THE COURT:** Yes, ma'am. What is your name, please,
14 ma'am?

15 **MS. DRINKARD:** My name is Shandra (ph.) Drinkard. I'm
16 Shundrez's aunt, you know, more like a baby brother to me.
17 He's been a lot of help. He's helped me with my children.
18 He's helped me with everything.

19 He does -- he's a good child. He's just -- wrong
20 people. I just ask that you take that into consideration
21 and that he just made a bad mistake and a split decision
22 that landed him here, but it's not him that should be here.
23 It's not him.

24 **THE COURT:** Yes, ma'am. Thank you.

25 **MS. DRINKARD:** Just take that into consideration.

SENTENCE OF THE COURT

1 **THE COURT:** Does everyone agree that on the
2 distribution or the trafficking charges it's a minimum of
3 seven, non-suspendable, up to 25 and a fifty thousand dollar
4 (\$50,000.00) fine?

5 **MS. CLEARY:** Yes, Your Honor.

6 **MR. STEINBERG:** Yes, sir.

7 **THE COURT:** All right. Yes, sir. I'll be glad to hear
8 you.

9 **MR. GREER:** My name is Charles Greer. That's my best
10 friend. My name was mentioned by one of the witnesses
11 because I was there that day. We've been friends for over
12 20 years. That's my kids' godfather. Probably the closest
13 person to me.

14 We work. We've always worked. You can ask anybody
15 there that knows us. We don't get in trouble. Records, we
16 don't have any records. Only thing that got my friend here
17 today is being loyal. And I know that might not change what
18 the sentence was or the verdict, but that man is not what
19 those charges just said he was at all. Never has been.

20 And as far as like his mom, I've been knowing him since
21 I was a child. He's the baby, and he's always been the man
22 of the house. Like always there for his mama, his sister,
23 his siblings, for me.

24 My dad died in 2015. I went to sleep at seven in the
25 morning, because he died overnight. When I woke up and came

SENTENCE OF THE COURT

211

1 out of my bedroom, Shundrez was sitting on my living room
2 couch and had been sitting there since 8:00 in the morning.
3 He's not a person that these charges show at all.

4 And like I say, again, he's just loyal. And at this
5 point I just -- I really -- I wish I could tell y'all a
6 thousand -- a thousand paragraphs and give y'all, you know,
7 a five-page speech about how this is not what, you know, it
8 came out to be.

9 But just like they said, just any type of leniency.
10 Like that man, he doesn't even have any children yet. So
11 just anything. But I'd appreciate it, though.

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

13 **MR. COOPER:** My name is Quintin Cooper.

14 **THE COURT:** What's your name, please?

15 **MR. COOPER:** Quintin Cooper.

16 **THE COURT:** Okay.

17 **MR. COOPER:** That's my best friend just like him. It
18 always just been us for 20 plus years. And everything he
19 said was -- honestly, that dude always been working. We
20 always play sports, see each other every day.

21 And like he said, them charges, that's not really him.
22 We good people, like brought up good. Just like my best
23 friend, you know. But I can't even really talk about it,
24 but that's my best friend. And that's not him. So if you
25 could like give him leniency, mercy.

SENTENCE OF THE COURT

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

2 **MR. EADES:** My name is Charles Eades (ph.). He's like
3 my therapist. We all love him. You know what I'm saying?
4 Like they say, you know, wrong place, wrong time. It could
5 happen to any of us. You know what I'm saying? But that's
6 a good man right there. We all love him, and we're going to
7 be here for him. That's all.

8 **THE COURT:** Thank you, sir. All right. Is that
9 through from the defense side of things, Ms. Cleary?

10 **MS. CLEARY:** The only thing I want to note for the
11 record is that my client is obviously very emotional.
12 Sometimes I go through these pleas and my clients, they
13 present as not a big deal, not something to be taken
14 seriously, just a part of life. I think it's pretty clear
15 that Mr. Drinkard does not feel that way.

16 This is, obviously, his first time to prison. And it's
17 going to have an impact on the rest of his life. And we
18 would just ask Your Honor for mercy here.

19 **THE COURT:** Mr. Steinberg, other than what you've
20 proven during the case, anything new?

21 **MR. STEINBERG:** Just very briefly. Your Honor, the
22 defendant should get credit for the fact that he has no
23 record. That is a big factor.

24 I'd also ask the Court to consider when you come up
25 with your sentence that this was only six grams shy of a 25

SENTENCE OF THE COURT

213

1 year mandatory minimum. I'm not asking for 25. I'm not
2 asking for anything like that.

3 I want Your Honor to realize that this was -- when you
4 look at the cocaine and crack cocaine combined, he's in that
5 -- he's traveling in that circle. He's also traveling with
6 a loaded firearm. You saw the firearm. You saw the
7 ammunition. We'd ask you to consider that in your
8 sentencing.

9 Finally, I do not inform the Court of my plea offer
10 unless the judge asks. I do want to inform the Court the
11 State did make an appropriate plea offer to resolve this.

12 **THE COURT:** All right. Under the circumstances of this
13 case, under the trafficking charges I'm going to sentence
14 him to seven years and a fifty thousand dollar (\$50,000.00)
15 fine.

16 Under indictment 1776, under 00838 seven years. All
17 these will be concurrent, credit for one day. I did not put
18 a fine on that even though it's somewhat mandatory. I just
19 referenced the other one. I think ---

20 **MR. STEINBERG:** Yes, sir.

21 **THE COURT:** --- a hundred thousand dollar (\$100,000.00)
22 fine ---

23 **MR. STEINBERG:** Yes, sir.

24 **THE COURT:** --- is just excessive.

25 Under the weapons charge, under indictment 0838, the

SENTENCE OF THE COURT

214

1 sentence is five years, credit for one day. All this,
2 again, concurrent. And then 30 days under the stolen goods
3 charges.

4 Mr. Drinkard, you will have ten days excluding today to
5 appeal the sentence and the jury's verdict, okay, sir? Good
6 luck to you.

7 **MR. DRINKARD:** Thank you.

8 **MR. STEINBERG:** Thank you, Your Honor.

9 (Hearing Ended at 2:00 pm)

10 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th - 9th day of July 2019.

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

October 12, 2019


Circuit Court Reporter

WITNESSES

David D Picone

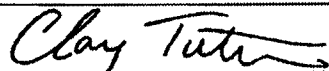
Greenville County Sheriffs Office

10/19/2017

ARREST WARRANT NUMBER

2017A2330209575

2017A2330209576

**ACTION OF GRAND JURY
TRUE BILL****FOREMAN GRAND JURY***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury**Date:***DOCKET NO. 2018-GS-23-**
HLS

000028

The State of South Carolina**County of Greenville****COURT OF GENERAL SESSIONS****February** TERM 2018**THE STATE****vs.****SHUNDREZ JERVINO DRINKARD**✓ Indictment for
2359 and 0549**TRAFFICKING COCAINE AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME****VIOLATION § 44-53-0370 and 16-23-0490**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 TRAFFICKING COCAINE AND
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on
 County present upon their oath:

the Grand Jurors of Greenville

FEB 13 2018

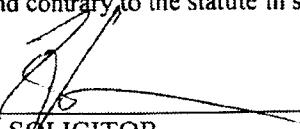
COUNT I
TRAFFICKING COCAINE

That SHUNDREZ JERVINO DRINKARD did in Greenville County, on or about the 19th day of October, 2017, knowingly sell, manufacture, deliver or bring into the State of South Carolina, or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams but less than 100 grams of Cocaine. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

COUNT II
POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

That SHUNDREZ JERVINO DRINKARD did in Greenville County, on or about the 19th day of October, 2017, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Trafficking Cocaine. This is in violation of §16-23-0490 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.


 SOLICITOR

BAR # 14082

WITNESSES

David D Picone

Greenville County Sheriffs Office

10/19/2017

ARREST WARRANT NUMBER

2017A2330209577

**ACTION OF GRAND JURY
TRUE BILL***Clay Tuttle***FOREMAN G.***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury**Date:***DOCKET NO. 2018-GS-23-**
HLS

000007

The State of South Carolina**County of Greenville****COURT OF GENERAL SESSIONS****February TERM 2018****THE STATE****vs.****SHUNDREZ JERVINO DRINKARD****Indictment for****3425****POSSESSING OR RECEIVING STOLEN GOODS****VIOLATION § 16-13-0180**

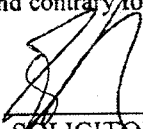
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSING OR RECEIVING STOLEN GOODS

At a Court of General Sessions, convened on **FEB 13 2018** the Grand Jurors of Greenville
County present upon their oath:

That SHUNDREZ JERVINO DRINKARD did in Greenville County, on or about the 19th day of October,
2017, receive, buy or possess stolen goods, chattels, or other property, to wit: handgun, belonging to JARED
SUSTAKAVICH, such goods being valued at less than Two Thousand Dollars. SHUNDREZ JERVINO
DRINKARD knew or had reason to believe the goods, chattels, or property to be stolen. This is in violation
of §16-13-0180 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.


SOLICITOR

BAR # 14082

WITNESSES

David D Picone

Greenville County Sheriffs Office

10/19/2017

(DP)

DIRECT PRESENTMENT

B/M DOB: 11/26/1986 SSN: 248-65-2569

**ACTION OF GRAND JURY
TRUE BILL***Clay Tuttle*

FOREMAN GRAND JURY

*Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury**Date:*DOCKET NO. 2018-GS-23-
HLS

001776A

The State of South Carolina**County of Greenville****COURT OF GENERAL SESSIONS****March****TERM 2018****THE STATE****vs.****SHUNDREZ JERVINO DRINKARD****Indictment for**

0392 ✓

**TRAFFICKING COCAINE BASE
(CRACK COCAINE)****VIOLATION § 44-53-0375**

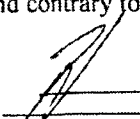
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on **MAR 20 2018** the Grand Jurors of Greenville
County present upon their oath:

That SHUNDREZ JERVINO DRINKARD did in Greenville County, on or about the 19th day of October, 2017, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams but less than 100 grams of Cocaine Base (Crack Cocaine). This is 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.

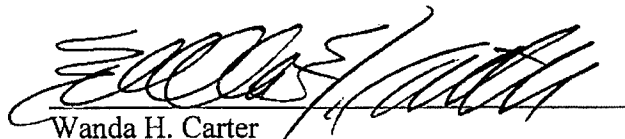

SOLICITOR

BAR # 14082

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,

A handwritten signature in black ink, appearing to read "Wanda H. Carter", written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

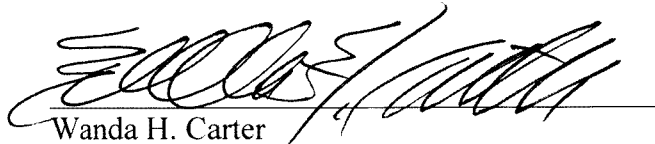
ATTORNEY FOR APPELLANT

This 14th day of February, 2020.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of February, 2020.

RECEIVED

FEB 14 2020

SC Court of Appeals