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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKEY DEAN TATE,

APPELLANT

APPELLATE CASE NO. 2019-001856

RECORD ON APPEAL

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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #3 (BODY CAMERA VIDEO)

STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF YORK	)	2018-gs-46-03992
	)	
	)	
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RICKY DEAN TATE,	)	
DEFENDANT.	)	
_____	)	

October 21-24, 2019
Rock Hill, South Carolina

B E F O R E:

THE HONORABLE JOCELYN J. NEWMAN, JUDGE.

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

MARINA HAMILTON, ESQ.
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Attorney for the Plaintiff

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JIM MORTON, ESQ.
Attorney for the Defendant

Penny M. Johnson
Official Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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2	Photograph	61	91
3	Body Cam Video	61	100
4	Diagram	61	110
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All Exhibits were retained by the Clerk of Court for York County.

P R O C E E D I N G

THE COURT: We are soon to begin the trial of The State of South Carolina vs. Ricky Dean Tate, indictment numbers 2018-GS-46-03992, 3993 and 2019-GS-46-00695 and 96.

Are you Ricky Dean Tate?

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Tate, I understand you have a motion for the Court?

MR. BELTON: Your Honor, not to interrupt him, certainly, he can make whatever motion he wants, but I do want to put on the record that I've advised him not to go into the facts of his case, just to protect myself. Certainly, he wants to make a motion, but I advised him to make the motion and stop there and not go into the facts of this case.

THE COURT: Okay.

You understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Tell me what you want me to know.

THE DEFENDANT: Ma'am, I don't trust this lawyer right here. He's been my attorney for 14 months and I ain't seen him nothing but eight times. He ain't spoke to me about my case, none of that. Every time he talk to me, he only telling me what the prosecutor say. And my police report is

1 fabricated, all the evidence in it is fabricated. And I
2 don't trust him. He been my attorney and ineffective
3 assistance of counsel. And I've been trying to get in front
4 of somebody to tell them this, but they keep going and they
5 won't do it. I don't feel comfortable with this man. I'm
6 just being honest. This man been my lawyer for 14 months,
7 ma'am, on the street. I done seen this lawyer eight times.
8 And every time I seen him -- I been in here for 30 days and
9 I ain't seen him nary time until now.

10 THE COURT: Okay.

11 THE DEFENDANT: I don't trust him. So I would like
12 another attorney, somebody that's going to try to help me,
13 not somebody that's down with the prosecutor. That's the
14 way I feel. You know, I don't feel like coming here,
15 because 14 months, I ain't seen this man but eight times and
16 he ain't never told me nothing about my case. He ain't
17 never sat me down and say this is how we're going to do your
18 case or this -- he ain't never did that.

19 THE COURT: Okay.

20 THE DEFENDANT: So that's how I feel at this moment,
21 ma'am. And I don't want to show out and get in trouble or
22 nothing, but I don't feel safe and comfortable with this
23 man. And he been calling my family for the last two weeks
24 telling them about the solicitor offered me eight years last
25 year. I'm facing 40 years. And he trying to get them to

1 get me to plead guilty, all of them. He been talking to my
2 family without my knowing and everything. I feel like he
3 know -- it's just too much. He got too comfortable with me
4 and I don't like that. Because he ain't even talk to me.
5 He talking to my family more about the case than he talk to
6 me and I don't -- I don't want him as my attorney, ma'am.

7 THE COURT: I got you. So the last time you were in
8 court was October 2nd?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Earlier this year. Before Judge McKinnon,
11 right? And at that time, Judge McKinnon told you that you
12 could hire another lawyer, right?

13 THE DEFENDANT: He told me that, but he -- he told me
14 that. See, when he was talking then -- see, listen, I gave
15 my attorney then a note, but he didn't tell him I gave him
16 the note then. See, what he did is he read the note and I'm
17 sitting -- the Judge denied my bond. I see him and the
18 prosecutor run up to the Judge, so I'm kind of wondering
19 what they doing. Him and the prosecutor got up and walked
20 up to the thing and said something to the Judge. So when
21 the Judge said it, I'm not even catching on to what they
22 said.

23 So last Monday, a John O'Leary came to see me, an
24 attorney. He came to see me and he was like your family
25 talked to me and they trying to hire me as your lawyer. He

1 said, Well, I'm going to get your records.

2 So the next day, they called -- he tells me the
3 Prosecutor Marina had called the secretary, Ms. Cricket, and
4 told her not to -- that she don't need to represent me
5 because it wouldn't be no continuous and I'm going to court
6 with Belton and all this. My family got the text messages
7 of this. The secretary from O'Leary's office sent it to my
8 family's phone. I made them do that. I said, Look I'm
9 going to court and I want you to send this text message from
10 John O'Leary's office so I can have all this proof.

11 I feel like they in cahoots. I don't know why this
12 woman want Belton on my case so bad. He's been on my case
13 for 14 months. And I've been trying to get this man off my
14 case, but it seems like won't nobody listen to me. I don't
15 feel comfortable with this man. 14 months, he ain't did
16 nothing, Your Honor. I ain't talked to this man, period.
17 Every time he talk to me, he only telling me, Ricky, you
18 facing a life sentence --

19 THE COURT: You said that part already. I got that
20 part.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: But where I was going is, you were here,
23 Judge McKinnon said great, you can get another lawyer if you
24 want to. Get one today.

25 THE DEFENDANT: He didn't say that.

1 THE COURT: Well, he said you can get another one,
2 right?

3 THE DEFENDANT: Yes, ma'am, and I been trying --

4 THE COURT: Except whether you got a new lawyer or kept
5 the same lawyer, the trial was going to be today, October
6 21st, right? You were aware of that?

7 THE DEFENDANT: And I been trying, ma'am.

8 THE COURT: Okay.

9 THE DEFENDANT: I been trying to get one.

10 THE COURT: Okay. And you didn't and -- for whatever
11 reason, you didn't, but the trial is going forward today.

12 Now, are you prepared to represent yourself.

13 THE DEFENDANT: I got a lawyer, ma'am. I hired a
14 lawyer, but they told me today -- the man, matter of fact,
15 he came to see me this morning, Mr. Hemphill. Because I
16 been trying to talk to -- I got another lawyer, I hired an
17 attorney.

18 THE COURT: Well, where is he? Because the trial is
19 right now.

20 THE DEFENDANT: They sent him away.

21 THE COURT: Who sent him away?

22 THE DEFENDANT: They said he couldn't represent me. He
23 been here.

24 THE COURT: Who is they?

25 THE DEFENDANT: I guess the prosecutor. I don't know.

1 I don't know who. He came to see me. He came to see me and
2 said he was going in front of Judge Hall.

3 THE COURT: How do you know that anyone sent him away?

4 THE DEFENDANT: I mean, that's what he said. I don't
5 know, ma'am. I'm just going on what my family tells me.
6 They told me -- he came to see me this morning. Hemphill
7 came to see me here in the county this morning and told me
8 that my trial was today. He was going down to see would
9 they let him represent me.

10 THE COURT: Well, I doubt he said that because it's not
11 up to any of these attorneys as to whether he's allowed to
12 represent you. He can represent you if he chooses to do
13 that. He wouldn't have said see if they let me represent
14 you because it's not up to them. He's been practicing law a
15 long time. He would know it's not up to these attorneys
16 whether he represents you. That's why I ask, how do you
17 know somebody sent him away if you haven't talked to him
18 since he left?

19 THE DEFENDANT: He was given a retainer to represent me
20 through my family. And I knew last -- I knew this week that
21 he was coming Monday, to this day and see me. He came to
22 see me this morning and told me that he was coming down here
23 to see could he represent me. And I called my family back
24 and they said that Mr. Pride said that they wouldn't let him
25 represent me. Now, they done paid him the money, so I don't

1 think they be telling no lie if they done paid him his
2 money.

3 THE COURT: Right, that's why I'm trying to figure out
4 who they is. They won't let him represent you. Who is
5 they?

6 THE DEFENDANT: I mean, I don't know. I've been in my
7 cell. All I can do is tell you is that the lawyer came to
8 see me this morning, Pride Hemphill, and explained to me
9 that look -- he talked to me and he said, Well, I've been
10 retained by your family to represent you, but I don't know
11 if the Judge is going to let me represent you with this
12 short time. He say it something about -- they said he was
13 supposed to get a letter or something in. He was like, How
14 can I get a letter to you and you in here? So he was like,
15 I'm going to go down here and see will they let me represent
16 you. So I called my family back and they said that Mr.
17 Pride say that they say he couldn't represent me.

18 THE COURT: Okay.

19 THE DEFENDANT: So, I mean, I don't know. I'm just
20 going on what they said. I mean, I don't think they lying
21 to me because they done paid him their money. So I don't
22 see why he would come all the way down from Columbia, you
23 know what I mean. So I don't know.

24 THE COURT: So then if Mr. Pride said that somebody
25 wouldn't let him represent you, that means he does not

1 represent you.

2 THE DEFENDANT: He came to represent me. I mean, he
3 was paid to come.

4 THE COURT: Well, representing you is being here to
5 represent you at the trial of the case.

6 Are you prepared to represent yourself.

7 THE DEFENDANT: No, ma'am. I want an attorney. I want
8 an attorney that is going to help me in my case, not
9 somebody that's against me.

10 THE COURT: Right. And you went through that with
11 Judge McKinnon, though, on October 2nd. And so, you have
12 the choice -- listen, you can choose whoever you want to
13 represent you. You can either have appointed counsel or if
14 you're not happy with appointed counsel, you go out and hire
15 somebody to represent you, but if you do that, they need to
16 be here right now because now is the trial.

17 THE DEFENDANT: I'm right here with you. I mean, ain't
18 nothing I can do. I mean, they just sent him off. I mean,
19 what do I do? I know this lawyer is ineffective assistance
20 of counsel and I don't want him on my case, but, I mean --

21 THE COURT: Let's take a break, I'm going to try to
22 reach Mr. Pride and see what he says.

23 THE DEFENDANT: Thank you, ma'am. That's all I ask.

24 THE COURT: We'll take about ten minutes.

25 (WHEREUPON, a short break was taken.)

1 THE COURT: All right, folks, during that break, I was
2 able to reach Mr. Pride, his office. I spoke to him on
3 speaker phone with my law clerk in the room. Mr. Pride told
4 me that he did, in fact, come to the courthouse this morning
5 from Columbia, that he was paid a sum of money by Mr. Tate's
6 family. It is not his full retainer. It is not -- the sum
7 of money was not what he would charge to defend a criminal
8 case such as this. It was a small sum of money paid to him
9 for purposes of getting him to leave Columbia and drive to
10 York to speak to folks and determine the case status and if
11 it's something he could intervene and assume representation
12 in, et cetera.

13 And he, after evaluating the situation, declined to
14 accept the case. And therefore, he does not represent Mr.
15 Tate. That Mr. Pride, this morning did not have any
16 conversations with anyone from the Solicitor's Office. Did
17 speak to Mr. Tate's family members. And I don't know
18 whether I asked him whether he spoke to Mr. Belton, but
19 there were no conversations with the prosecutor this
20 morning, at least. But that he does not represent Mr. Tate,
21 has not been paid to represent Mr. Tate and is not Mr.
22 Tate's lawyer.

23 Where that leaves us, Mr. Tate, is your decision as to
24 whether you would like to proceed in this trial representing
25 yourself or whether you would like to keep services of Mr.

1 Belton, who has prepared to try this case today.

2 THE DEFENDANT: I guess I'll keep him then.

3 THE COURT: So you're going to proceed to trial with
4 Mr. Belton as your counsel, correct?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. We are ready to then select a
7 jury for the trial of this case.

8 Anything before we bring the jury panel up?

9 MR. BELTON: Your Honor, I would like to request the
10 rap sheets of jurors that the State has possession of. We
11 would like to be able to view those.

12 MS. HAMILTON: I mean, I would say it's work product.
13 Someone in our office is tasked with this and paid to do
14 this as a task and I don't know if I can hand this over
15 under NCIC rules. I don't think I'm allowed to hand that
16 over at this point, Your Honor.

17 MR. BELTON: Well, Your Honor, we don't have the
18 capability to do that kind of work product. It's the work
19 product of the tax payers of South Carolina of which Ricky
20 Tate is one, of which we are others. We should have access
21 to that. I think Mr. Tate's rights, certainly, in a case
22 this serious, a case where a man is looking at going to jail
23 the rest of his life needs to be afforded every opportunity
24 that he can. Certainly, we need to be apprised of all of
25 the information that the State can avail themselves of that

1 we can't.

2 We're not going to share it with anybody else, but in
3 order to select a fair and impartial jury, I think it's
4 incumbent on the State through the court to share with us
5 the information that they have. We're not talking about
6 going out and investigating and looking at jurors and what
7 they wear and what kind of car they drive, but, certainly,
8 their rap sheets, which we can't do would provide us
9 information. And out of a sense of fairness, we think we
10 deserve that.

11 MS. HAMILTON: Your Honor, we have to go through
12 courses and training and we are individually certified under
13 the FBI and NCIC to be able to do these things. They could
14 go through that proper procedure, pay to do that and to be
15 certified, yet, they did not. And there have been many a
16 trial before this where they do not have this information
17 and they proceed perfectly fine. So, Your Honor, I would
18 request since we are certified and under a duty to not hand
19 over these particular items that Your Honor does not require
20 us to do so.

21 THE COURT: Frankly, arguably, all work done by either
22 office is done on behalf of the State for the benefit of the
23 tax payers, et cetera. That makes it no less work product
24 than anything else. And it's not information that goes to
25 Mr. Tate's guilt or innocence, certainly. That motion is

1 respectfully denied. I mean, each of the jurors is
2 qualified to serve. You know they have, that I know of, no
3 convictions that carry --

4 MR. BELTON: And in that regard, Your Honor, I'd also
5 like to make another motion in that we believe it's
6 violative of the South Carolina Constitution, the United
7 States Constitution for jurors to be disqualified from
8 serving because they have a prior conviction that may have
9 resulted in a penalty of more than a year.

10 You have people who are down there on that jury pool, I
11 know a couple of them came forward and spoke to the Judge in
12 a colloquy that you had, who had prior convictions for
13 penalties that may have resulted in a sentence for more than
14 a year. We're not sure what those are, but under the due
15 process clause of the Fourteenth Amendment, we submit that
16 that is deny Ricky Tate his right to a fair trial because
17 somebody had a conviction in 1990 for failure to stop for a
18 blue light. And we think that violates his due process
19 rights under the South Carolina and the United States
20 Constitution. We make a motion therefore that he's not
21 being given the advantage of a fair and impartial jury.

22 THE COURT: That motion is also respectfully denied.
23 I'm not prepared to deem that portion of the South Carolina
24 unconstitutional. Maybe some appellate court will, but not
25 me, not here today.

1 Anything else?

2 MS. HAMILTON: Nothing from the State, Your Honor.

3 MR. BELTON: We were going to pick a jury and then do
4 some pretrial motions?

5 THE COURT: Yes.

6 MR. BELTON: Okay.

7 THE COURT: So then we are ready for the jury panel.

8 MR. BELTON: Your Honor, before you bring in the jury
9 panel, did we have an opportunity to talk about the voir
10 dire questions and what's accepted or not accepted or any
11 objections to the voir dire?

12 THE COURT: We did not, I apologize.

13 Any objection from the Defense to the State's voir
14 dire?

15 MR. BELTON: One second, Your Honor.

16 (Pause.)

17 MR. BELTON: No, Your Honor. As a matter of fact,
18 those three are incorporated in ours.

19 THE COURT: Does the State have any objections to the
20 Defendant's requested voir dire?

21 MS. HAMILTON: I don't have any objection, but I
22 believe number two and number three are kind of covered when
23 you ask can they be fair and impartial. I believe those two
24 are covered, so I don't believe those need to be asked. The
25 State's opinion on that, I don't know what your colloquy is,

1 but...

2 MR. BELTON: I disagree, Your Honor, particularly on a
3 case like this where there are several elements to each one
4 of the crimes charged. I think it's a fair and very
5 reasonable question to ask the jury do they understand that
6 each and every element because, certainly, it's quite
7 plausible that they could find that there is enough evidence
8 on one element, but not enough on the other. So i think we
9 have a right to know do they understand that the law says
10 each and every element of a crime is charged.

11 THE COURT: I'm on the fence about that because chances
12 are, because they are not legal scholars, necessarily, that
13 they do not understand that. They don't know that. That is
14 something that would be instructed to them. So the bigger
15 question is whether they can follow the instructions given
16 by the Court. The Court will tell you what the law is, do
17 you have any problem following those instructions, but not
18 do they understand that everything must be proven beyond a
19 reasonable doubt. They don't, in fact, understand that
20 probably. Those would be part of the instructions and my
21 question would be can they follow the Court's instructions.
22 Regardless of what they believe the law to be, can they take
23 the law as I give it to them and follow those instructions.

24 So that's the way that I would ask it. I will give you
25 another opportunity to object after I've asked the question

1 if you don't like the way it was worded.

2 Anything else?

3 MR. BELTON: Are you rewording number two, Your Honor,
4 number two and three, or are you not going to ask them?

5 THE COURT: I will ask them about following the Court's
6 instructions on the law. I may include elements of that --
7 you know, if they can follow the instructions -- for
8 example, if I instructed you that the Defendant is not
9 required to prove anything or if I instruct you that the
10 State must prove each and every element of each crime
11 charged beyond a reasonable doubt, is there any problem
12 following that. Just sort of reword it and turn it around a
13 little bit.

14 MR. BELTON: Thank you.

15 THE COURT: Anything else?

16 MS. HAMILTON: Nothing from the State, Your Honor.

17 THE COURT: Now, we're ready to for the jury panel.

18 MR. BELTON: Your Honor, just one amendment to mine
19 while we're bringing in the jury. It's number eight. I
20 know I added something in there about law enforcement is on
21 number four. But number eight, I failed to put in there are
22 you related by blood or marriage to anybody who works in the
23 York County Sheriff's Office. Because many of these DEU
24 agents, or any agency in York County -- it's my
25 understanding, the DEU agents represent multiple agencies

1 around York County. If you would just add that if there's
2 no objections from the State. Just amend mine to include
3 number eight.

4 THE COURT: Okay.

5 (WHEREUPON, jury panel enters the courtroom.)

6 THE COURT: Good afternoon, folks. You are here for
7 jury selection in the trial of the case of The State of
8 South Carolina vs. Ricky Dean Tate. I'm going to ask you
9 certain questions that determine your qualifications to
10 serve as jurors for the trial of this particular case.
11 They're different from the questions I asked you this
12 morning. They're more specific to this case. But before I
13 do that, I'm going to have the clerk place you under oath.

14 THE CLERK: Please stand, raise your right hand.

15 Do each of you swear to the tell the truth, the whole
16 truth and nothing but the truth, so help you God?

17 ALL: I do.

18 THE CLERK: Thank you. Please be seated.

19 THE COURT: All right. As I've said, this case is the
20 State of South Carolina vs. Ricky Dean Tate. Mr. Tate is
21 charged with the crimes of -- let's see, the indictments
22 allege that on or about May 16th, 2018, in York County, Mr.
23 Tate manufactured, distributed, dispensed, delivered or
24 purchased some quantity of crack cocaine and some quantity
25 of heroin, or that he possessed those drugs with the intent

1 to manufacture, distribute, dispense, deliver them, and that
2 he did so within a half mile of Rawlinson Road Middle
3 School.

4 My first question is, does anybody know anything about
5 these charges or think that they know anything about these
6 charges? If so, please stand.

7 (There was no response.)

8 THE COURT: Mr. Tate, would you stand and face the jury
9 panel?

10 (Defendant stands.)

11 THE COURT: Is any member of the jury panel related by
12 blood, connected by marriage or have any close personal
13 relationship with Mr. Tate? Do you believe that you know
14 him at all? If so, please stand.

15 (There was no response.)

16 THE COURT: Thank you, sir. You may have a seat.

17 (Defendant is seated.)

18 THE COURT: Mr. Tate is represented by counsel in this
19 matter.

20 Gentlemen, would you stand and face the jury panel and
21 introduce yourselves, please?

22 MR. BELTON: My name is Montrio Belton. I'm an
23 attorney. I have an office downtown Rock Hill, the Law
24 Office of Montrio Belton.

25 MR. MORTON: My name is Jim Morton. I'm also an

1 attorney in downtown Rock Hill.

2 THE COURT: Is any member of the jury panel related by
3 blood, connected by marriage, have a close personal
4 relationship with either of these gentlemen? Are you
5 currently represented by either of them, or have you been
6 represented by them in the past? Do you know any of their
7 coworkers or employees? If so, please stand.

8 (There was no response.)

9 MR. MORTON: Your Honor, I do want to point out, I'm
10 with a firm called Morton & Gettys.

11 THE COURT: All right. Same question, any member of
12 the jury panel know Mr. Morton, know any of the employees of
13 his office, have any interaction with him at all? If so,
14 please stand.

15 (There was no response.)

16 THE COURT: This case is being prosecuted by the York
17 County Solicitor's Office.

18 Ladies, would you stand and introduce yourselves to the
19 jury panel?

20 MS. HAMILTON: I'm Marina Hamilton with the York County
21 Solicitor's Office.

22 MS. HOLT: Amber Holt, I'm with the 16th Circuit York
23 County Solicitor's Office.

24 THE COURT: Any member of the jury panel related by
25 blood, connected by marriage, have any close personal

1 relationship with either of these ladies? Have you been
2 represented by them in the past? Are you currently
3 represented by them? Do you know any employees of the York
4 County Solicitor's Office? If so, please stand.

5 (There was no response.)

6 THE COURT: All right. There are several --
7 Yes, ma'am, your name and juror number, please?

8 POTENTIAL JUROR: Erica Angleborn, Number 8. I know B.
9 J. Barrowclough and his family.

10 THE COURT: Do you socialize with him?

11 POTENTIAL JUROR: Our kids went to school together.

12 THE COURT: Would the fact that you have that
13 relationship with Mr. Barrowclough affect your ability to
14 give both the State and the Defendant a fair and impartial
15 trial in this case?

16 POTENTIAL JUROR: No.

17 THE COURT: Thank you. You may have a seat.

18 There are several potential witnesses who may testify
19 in this case. And the question is the same as to each of
20 them, and that is whether you're related by blood, connected
21 by marriage or have any close personal relationship with
22 them or think that you know them at all. And I'll ask you
23 to stand.

24 Those witnesses are: Officer Ryan King of the York
25 County Drug Enforcement Unit; Officer Christopher Rowe of

1 the York County Drug Enforcement Unit; Officer Matthew
2 Earls, York County Drug Enforcement Unit; Officer Brooks
3 Felmet, Rock Hill Police Department; Brandi Eades; Jimmy
4 Stiles of York County Evidence Room; Pete Mitchum, York
5 County Evidence; Holly Tobias, a drug chemist; Eric Faulker,
6 drug analysis ARC lab of Rock Hill; Pete Skidmore, Sr., a
7 private investigator; Teresa Scoggins, York County Deputy
8 Clerk of Court; Officer D. Burkhart of the York County Drug
9 Enforcement Unit; Officer J. Rainier, York County Drug
10 Enforcement Unit; Officer D. Gabby, York County Drug
11 Enforcement Unit; Officer J. J. Yates, York County Drug
12 Enforcement Unit; Captain Marvin Brown, Commander of the
13 York County Drug Enforcement Unit; Officer J. Todd, and
14 these are all -- all the rest of them are from the York
15 County Drug Enforcement Unit: Officer R. Irvin, Officer V.
16 Holland, Officer C. Lorensio, Officer J. Baird, Officer S.
17 Ramsey, Officer D. Sierra.

18 Any member of the jury panel know any of those
19 potential witnesses at all?

20 Yes, ma'am, your name and juror number?

21 POTENTIAL JUROR: 110. Did you say Randy or Brandi
22 Eades?

23 THE COURT: Brandi, with a B.

24 POTENTIAL JUROR: Yeah, she was the school resource
25 officer at the school I teach at two years ago.

1 THE COURT: Do you socialize with her at all?

2 POTENTIAL JUROR: No.

3 THE COURT: No personal relationship with her?

4 POTENTIAL JUROR: Well, I worked with her for a year
5 two years ago. She was the school resource officer at the
6 school that I teach at.

7 THE COURT: Would the fact that you have that
8 relationship with her affect your ability to give both the
9 State and the Defendant a fair and impartial trial in this
10 case?

11 POTENTIAL JUROR: No, ma'am.

12 THE COURT: Thank you. You may have a seat.

13 Yes, ma'am.

14 POTENTIAL JUROR: Jordan Taylor, my juror number is
15 216. I know Keith Skidmore. He's one of my friend's dads.

16 THE COURT: Okay. So do you socialize with him at all?

17 POTENTIAL JUROR: No.

18 THE COURT: I mean, like at a family cookout or
19 anything like that?

20 POTENTIAL JUROR: Like, if I saw him around, then,
21 yeah.

22 THE COURT: But you don't spend time with him?

23 POTENTIAL JUROR: No, no, no, no.

24 THE COURT: I didn't want to make it weird, that's why
25 I said like Fourth of July or something, a family thing.

1 POTENTIAL JUROR: Right.

2 THE COURT: Would the fact that you are friends with
3 his son -- son?

4 POTENTIAL JUROR: Daughter.

5 THE COURT: Daughter. Would that affect your ability
6 to give both the State and the Defendant a fair and
7 impartial trial in this case?

8 POTENTIAL JUROR: No, ma'am.

9 THE COURT: Thank you. You may have a seat.

10 Is any member of the jury panel related by blood,
11 connected by marriage or have any close personal friends who
12 are employed by the 16th Circuit Public Defender's Office or
13 you have any friends who are attorneys, private criminal
14 defense attorneys? If so, please stand.

15 Yes, ma'am, your juror number one more time?

16 POTENTIAL JUROR: 110.

17 THE COURT: And who?

18 POTENTIAL JUROR: One of my best friend's husband is a
19 criminal defense lawyer in Florida.

20 THE COURT: Do you have any legal training at all?

21 POTENTIAL JUROR: No.

22 THE COURT: Would the fact that you know an attorney
23 affect your ability to give both the State and the Defendant
24 a fair and impartial trial in this case?

25 POTENTIAL JUROR: No, ma'am.

1 THE COURT: Thank you. You may have a seat.

2 Has any member of the jury panel or any of your close
3 friends or relatives ever been charged with or convicted of
4 a drug-related offense? If so, please stand. You, your
5 friends or family either charged with or convicted of a drug
6 offense?

7 Your juror number, please?

8 POTENTIAL JUROR: 203. My sister was convicted of
9 selling pills, I guess.

10 THE COURT: Was that in South Carolina or somewhere
11 else?

12 POTENTIAL JUROR: South Carolina.

13 THE COURT: Would the fact that you have that
14 relationship and had that experience with your sister affect
15 your ability to give both the State and the Defendant a fair
16 and impartial trial in this case?

17 POTENTIAL JUROR: No, ma'am.

18 THE COURT: Thank you. You may have a seat.

19 Yes, ma'am, in the green jacket. Give me your juror
20 number first.

21 POTENTIAL JUROR: 243. My niece was convicted of
22 drug-related murder case in another state.

23 THE COURT: Would the fact that you've had that
24 experience with your niece affect your ability to give both
25 the State and the Defendant a fair and impartial trial in

1 this case?

2 POTENTIAL JUROR: Thank you. You may have a seat.

3 Ma'am, in the pink?

4 POTENTIAL JUROR: I'm Juror 225. My ex and a lot of
5 his family have been convicted of drug charges.

6 THE COURT: Would that affect your ability to give both
7 the State and the Defendant a fair and impartial trial in
8 this case?

9 POTENTIAL JUROR: No, ma'am.

10 THE COURT: Thank you.

11 Yes, sir.

12 POTENTIAL JUROR: Brian Jenkins, Juror Number 105. My
13 brother was convicted of drug offenses years ago in Indiana.

14 THE COURT: Would that affect your ability to give both
15 the State and the Defendant a fair and impartial trial in
16 this case?

17 POTENTIAL JUROR: No, ma'am.

18 THE COURT: Thank you. You may have a seat.

19 Yes, sir.

20 POTENTIAL JUROR: Jason Saylor, 191. I got a
21 possession of marijuana charge in 1998 in Asheville, North
22 Carolina, when I was in college.

23 THE COURT: Would that affect your ability to give both
24 the State and the Defendant a fair and impartial trial in
25 this case?

1 POTENTIAL JUROR: No, ma'am.

2 THE COURT: Thank you. You may have a seat.

3 All right. Has any member of the jury panel or any of
4 your friends or family ever dealt with drug addiction? If
5 so, please stand. You, your close friends or family?

6 POTENTIAL JUROR: Do I need to stand up again?

7 THE COURT: Yes.

8 POTENTIAL JUROR: 225.

9 THE COURT: And would that affect your ability to give
10 both the State and the Defendant a fair and impartial trial?

11 POTENTIAL JUROR: No, ma'am.

12 THE COURT: Thank you.

13 Yes, sir.

14 POTENTIAL JUROR: 105, Brian Jenkins. My brother is an
15 alcoholic.

16 THE COURT: Would that affect your ability to give both
17 the State and the Defendant a fair and impartial trial in
18 this case?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: Thank you. You may have a seat.

21 Has any member of the jury panel or any of your family
22 members ever worked in law enforcement or any field like law
23 enforcement, like being a security guard or something like
24 that? If so, please stand.

25 All right. Let's start in the front. Your juror

1 number, sir?

2 POTENTIAL JUROR: 25. My dad worked in corrections
3 from like 1995 to late 2000 in York.

4 THE COURT: Would that affect your ability to give both
5 the State and the Defendant a fair and impartial trial in
6 this case?

7 POTENTIAL JUROR: No, ma'am.

8 THE COURT: Thank you. You may have a seat.

9 Yes, sir.

10 POTENTIAL JUROR: Number 100. My aunt and uncle were
11 officers in the '90s.

12 THE COURT: Here or somewhere else?

13 POTENTIAL JUROR: Here.

14 THE COURT: Would that affect your ability to give both
15 the State and the Defendant a fair and impartial trial in
16 this case?

17 POTENTIAL JUROR: No, ma'am.

18 THE COURT: Thank you. You may have a seat.

19 In the green jacket?

20 POTENTIAL JUROR: Number 213. My uncle retired from
21 West Virginia State Police.

22 THE COURT: Would that affect your ability to give both
23 the State and the Defendant a fair and impartial trial in
24 this case?

25 POTENTIAL JUROR: No, ma'am.

1 THE COURT: Thank you. You may have a seat.

2 Yes, ma'am.

3 POTENTIAL JUROR: Rachelle Hermann, Number 95. My
4 brother is a retired police officer in the State of Alabama
5 and my nephew currently is a police officer in the State of
6 Alabama.

7 THE COURT: Would that affect your ability to give both
8 the State and the Defendant a fair and impartial trial in
9 this case?

10 POTENTIAL JUROR: No, ma'am.

11 THE COURT: Thank you. You may have a seat.

12 Yes.

13 POTENTIAL JUROR: Number 48. My uncle in New York
14 State and I had a nephew that was down here in Rock Hill.

15 THE COURT: Is your nephew currently working in Rock
16 Hill?

17 POTENTIAL JUROR: No.

18 THE COURT: How long ago?

19 POTENTIAL JUROR: About eight years ago.

20 THE COURT: Would that affect your ability to give both
21 the State and the Defendant a fair and impartial trial in
22 this case?

23 POTENTIAL JUROR: No.

24 THE COURT: Thank you. You may have a seat.

25 POTENTIAL JUROR: Andrew Moon, 148. My son is a

1 security guard in Columbia.

2 THE COURT: Would that affect your ability to give both
3 the State and the Defendant a fair and impartial trial in
4 this case?

5 POTENTIAL JUROR: No.

6 THE COURT: Thank you. You may have a seat.

7 POTENTIAL JUROR: Brian Jenkins, 105. My uncle once
8 removed is employed by the DEA currently and I have a great
9 uncle and two other uncles and one aunt that are all
10 employed by the CIA.

11 THE COURT: Would that affect your ability to give both
12 the State and the Defendant a fair and impartial trial in
13 this case?

14 POTENTIAL JUROR: No, ma'am.

15 THE COURT: Thank you. You may have a seat.

16 Yes, ma'am.

17 POTENTIAL JUROR: Jonetta Sandifer, Number 190. I
18 worked at York County Detention Center from '94 to '99.

19 THE COURT: Would that affect your ability to give both
20 the State and the Defendant a fair and impartial trial in
21 this case?

22 POTENTIAL JUROR: No.

23 THE COURT: Thank you. You may have a seat.

24 POTENTIAL JUROR: I just thought of something. My
25 niece is married to a York County officer.

1 THE COURT: And you are 225?

2 POTENTIAL JUROR: Yes, ma'am.

3 THE COURT: Would that affect your ability to give both
4 the State and the Defendant a fair and impartial trial?

5 POTENTIAL JUROR: No, ma'am.

6 THE COURT: Thank you.

7 Has any member of the jury panel already expressed or
8 formed any opinion about the issues in this case? If so,
9 please stand.

10 (There was no response.)

11 THE COURT: Now, your job as jurors -- one of your jobs
12 will be to take the law as I give it to you. Get rid of
13 whatever idea you think you have about what the law is, take
14 the law as I give it to you and apply that law to the facts.

15 Does any member of the jury panel think they will be
16 unable to do that? For example, if I were to tell you that
17 the State must prove each and every element of its case
18 beyond a reasonable doubt, is there any reason you would not
19 be able to follow that? Or if I were to tell you that the
20 Defendant is not required to prove anything and is presumed
21 innocent until proven guilty, is there any reason you would
22 be unable to follow those instructions for any reason? If
23 so, please stand.

24 (There was no response.)

25 THE COURT: Is any member of the jury panel or any

1 member of your family involved in any group concerning
2 victims' rights? Mothers Against Drunk Driving, Sister
3 Care, or any similar organization. Are you involved in it
4 as a volunteer? Have you contributed money to it or
5 anything like that? If so, please stand.

6 (There was no response.)

7 THE COURT: Is there any member of the jury panel who's
8 a member of or contributor to a group with its primary
9 concern being law enforcement rights? Such as the State
10 Troopers Association or a similar organization. If so,
11 please stand.

12 (There was no response.)

13 THE COURT: Any member of the jury panel or any member
14 of your immediate family personally involved in or a
15 contributor to or a promoter of an organization like
16 Narcotics Anonymous or Alcoholics Anonymous or some similar
17 organization? If so, please stand.

18 Yes, sir, your juror number again?

19 POTENTIAL JUROR: 105.

20 THE COURT: Yes, sir.

21 POTENTIAL JUROR: I believe my brother is still
22 involved in Alcoholics Anonymous.

23 THE COURT: Would that affect your ability to give both
24 the State and the Defendant a fair and impartial trial in
25 this case?

1 POTENTIAL JUROR: No.

2 THE COURT: Thank you. You may have a seat.

3 Is any member of the jury panel a member of the grand
4 jury which issued the indictments in this case? If so,
5 please stand.

6 (There was no response.)

7 THE COURT: Does any member of the jury panel know of
8 any reason whatsoever why they cannot be fair and impartial
9 to both the State and the Defendant as a juror in this case?
10 If so, please stand.

11 (There was no response.)

12 THE COURT: Any additional questions from the State?

13 MS. HAMILTON: None from the State, Your Honor.

14 THE COURT: Any from the Defense?

15 MR. BELTON: Your Honor, just only if any member of
16 their immediate family provides any financial support to
17 organizations like Troopers Association. You asked any
18 juror member, but not members of their immediate family.

19 THE COURT: Oh, I'm sorry.

20 I asked you if you support the Troopers Association,
21 but that includes your immediate family. So if any member
22 of the jury panel or any member of your immediate family has
23 given financial support, volunteered for or otherwise
24 supported an association such as the State Troopers
25 Association, the Fraternal Order of Police or anything like

1 that? If so, please stand. I intended to include your
2 family members.

3 (There was no response.)

4 THE COURT: Anything else from the Defense?

5 MR. BELTON: No, Your Honor.

6 THE COURT: All right. We are now ready to select a
7 jury.

8 Madam Clerk, using the numbers on the left, Number 30
9 on the list should be removed or excluded from jury
10 selection in this case. I don't know we'll get that far
11 anyway.

12 JURY SELECTION

13 THE CLERK: When I call your name, please bring all
14 your belongings and come stand up --

15 THE COURT: Y'all have an issue?

16 MR. BELTON: Just for clarity, what are we five and ten
17 or five and five? I think it's five and five, Your Honor.
18 Certainly, I would like ten, but I think it's five and five.

19 THE COURT: Right, five and five.

20 Now, let's do this.

21 THE CLERK: Number 149, Sandra Moran.

22 (Juror Number 149, a white female, came forward.)

23 THE CLERK: What say you for the State?

24 MS. HOLT: Please present the juror.

25 THE CLERK: Defense?

1 MR. MORTON: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. MORTON: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box.

5 Number 25, Joseph Campo.

6 (Juror Number 25, a white male, came forward.)

7 THE CLERK: What say you for the State?

8 MS. HOLT: Please present the juror.

9 THE CLERK: Defense?

10 MR. MORTON: Please seat the juror.

11 THE CLERK: Please have a seat in the juror box.

12 Number 148, Andrew Moon.

13 (Juror Number 148, a white male, came forward.)

14 THE CLERK: What say you for the State?

15 MS. HOLT: Please present the juror.

16 THE CLERK: Defense?

17 MR. MORTON: Please dismiss this juror.

18 THE CLERK: You're excused from this case.

19 Number 181, Tina Robinson.

20 (Juror Number 181, a white female, came forward.)

21 THE CLERK: What say you for the State?

22 MS. HOLT: Please present the juror.

23 THE CLERK: Defense?

24 MR. MORTON: Please swear this juror.

25 THE CLERK: Please have a seat in the jury box.

1 Number 216, Jordan Taylor.

2 (Juror Number 216, a white female, came forward.)

3 THE CLERK: What say you for the State?

4 MS. HOLT: Please excuse the juror.

5 THE CLERK: You're excused from this case.

6 Number 158, Ryan Nyberg.

7 (Juror Number 158, a white male, came forward.)

8 THE CLERK: What say you for the State?

9 MS. HOLT: Please present the juror.

10 THE CLERK: Defense?

11 MR. MORTON: Please swear the juror.

12 THE CLERK: Please have a seat in the jury box.

13 Number 227, Jennifer Trippi.

14 (Juror Number 227, a white female, came forward.)

15 THE CLERK: What say you for the State?

16 MS. HOLT: Please present the juror.

17 THE CLERK: Defense?

18 MR. MORTON: Please excuse this juror.

19 THE CLERK: You're excused from this case.

20 Number 22, Vanessa Breg.

21 (Juror Number 22, a white female, came forward.)

22 THE CLERK: What say you for the State?

23 MS. HOLT: Please present the juror.

24 THE CLERK: Defense?

25 MR. MORTON: Please swear this juror.

1 THE CLERK: Please have a seat in the jury box.
2 Number 214, Sonia Sweat.
3 (Juror Number 214, a white female, came forward.)
4 THE CLERK: What say you for the State?
5 MS. HOLT: Please present the juror.
6 THE CLERK: Defense?
7 MR. MORTON: Please swear this juror.
8 THE CLERK: Please have a seat in the jury box.
9 Number 95, Rachelle Hermann.
10 (Juror Number 95, a white female, came forward.)
11 THE CLERK: What say you for the State?
12 MS. HOLT: Please present the juror.
13 THE CLERK: Defense?
14 MR. MORTON: Please excuse this juror.
15 THE CLERK: You're excused from this case.
16 Number 206, Shane Spitzer.
17 (Juror Number 206, a white male, came forward.)
18 THE CLERK: What say you for the State?
19 MS. HOLT: Please present the juror.
20 THE CLERK: Defense?
21 MR. MORTON: Please swear the juror.
22 THE CLERK: Please have a seat in the jury box.
23 Number 105, Brian Jenkins.
24 (Juror Number 105, a white male, came forward.)
25 THE CLERK: What say you for the State?

1 MS. HOLT: Please present the juror.

2 THE CLERK: Defense?

3 MR. MORTON: Please dismiss this juror.

4 THE CLERK: You're excused from this case.

5 Number 203, Caroline Smith.

6 (Juror Number 203, a white female, came forward.)

7 THE CLERK: What say you for the State?

8 MS. HOLT: Please present the juror.

9 THE CLERK: Defense?

10 MR. MORTON: Please swear the juror.

11 THE CLERK: Please have a seat in the jury box.

12 Number 253, Stephanie Davisson.

13 (Juror Number 253, a white female, came forward.)

14 THE CLERK: What say you for the State?

15 MS. HOLT: Please present the juror.

16 THE CLERK: Defense?

17 MR. MORTON: Please swear this juror.

18 THE CLERK: Please have a seat in the jury box.

19 Number 145, Bradley Mitchell.

20 (Juror Number 145, a white male, came forward.)

21 THE CLERK: What say you for the State?

22 MS. HOLT: Please present the juror.

23 THE CLERK: Defense?

24 MR. MORTON: Please swear this juror.

25 THE CLERK: Please have a seat in the jury box.

1 Number 243, Kathryn Wilson.

2 (Juror Number 243, a white female, came forward.)

3 THE CLERK: What say you for the State?

4 MS. HOLT: Please present the juror.

5 THE CLERK: Defense?

6 MR. MORTON: Please dismiss this juror.

7 THE CLERK: You're excused from this case.

8 Number 191, Jason Saylor.

9 (Juror Number 191, a white male, came forward.)

10 THE CLERK: What say you for the State?

11 MS. HOLT: Please excuse this juror.

12 THE CLERK: You're excused from this case.

13 Number 35, Freida Collier.

14 (Juror Number 35, a white female, came forward.)

15 THE CLERK: What say you for the State?

16 MS. HOLT: Please present the juror.

17 THE CLERK: Defense?

18 MR. MORTON: Please swear the juror.

19 THE CLERK: Please have a seat in the jury box.

20 Number 244, Rowena Woods.

21 (Juror Number 244, a black female, came forward.)

22 THE CLERK: What say you for the State?

23 MS. HOLT: Please present the juror.

24 THE CLERK: Defense?

25 MR. MORTON: Please swear the juror.

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

2 THE COURT: Let's do one alternate.

3 THE CLERK: Number 97, Robert Holcomb.

4 (Juror Number 97, a white male, came forward.)

5 THE CLERK: What say you for the State?

6 MS. HOLT: Please present the juror.

7 THE CLERK: Defense?

8 MR. MORTON: Please swear this juror.

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

10 THE COURT: Folks who were not selected for service on
11 this case, I'm going to send you back to the jury assembly
12 room for further instructions.

13 (Remaining jury venire exits the courtroom.)

14 THE COURT: Folks who were selected for service on this
15 case, we're actually going to start the trial tomorrow
16 morning. I have certain matters of law that I need to talk
17 to the attorneys about outside of your presence. And it's a
18 little after 3:30, so I'm going to give you the rest of the
19 afternoon off and we'll start fresh tomorrow morning. I
20 want you to be back in your jury room at 9:30 tomorrow
21 morning to start the trial of the case.

22 When you leave here, some court personnel are going to
23 show you where to report to in the morning, where the jury
24 room is, how to get there, et cetera, so that you'll know
25 how to get back there in the morning.

1 And I'll tell you this every time you leave the
2 courtroom and that's don't discuss the case amongst
3 yourselves or with anyone else. Don't do any research about
4 the case. Everything that you learn about the case must
5 come from within this courtroom. So you can't do any
6 research about anything that you think would be important to
7 know or to figure out, try to -- you can't try to look up
8 the attorneys or me or deputies, bailiffs or anything. And
9 you can't discuss the case with anyone. You should just
10 leave here and pretend like you are not on jury duty. In
11 fact, it helps to not even tell people that you got selected
12 for a jury because then the very next question is what kind
13 of case is it and they want to talk about it. And you can't
14 talk about it.

15 So just go on and live your lives and pretend that you
16 are not on jury duty. Be back in your jury room 9:30
17 tomorrow morning. You will go out this back door here and
18 they'll show you where to go. We'll see you tomorrow
19 morning.

20 (WHEREUPON, the jury exits the courtroom at 3:35 p.m.)

21 THE COURT: All right. Ready to hear whatever motions
22 you have.

23 Any from the State?

24 MS. HAMILTON: Just standard, Your Honor, any
25 sequestration of their witnesses that they intend to call in

1 this case.

2 THE COURT: Any objection to that?

3 MR. BELTON: No, and reciprocal.

4 THE COURT: Okay.

5 MS. HAMILTON: We will appoint a case agent tomorrow,
6 Your Honor. We just have not done so yet.

7 Additionally, we would ask if Rule 5 has been complied
8 with in this case by the Defense?

9 MR. BELTON: And, likewise, we -- Rule 5 has been
10 complied with and we would ask the same for the State.

11 MS. HAMILTON: Same for the State, Your Honor.

12 THE COURT: Okay.

13 MS. HAMILTON: Additionally, we just wanted to put on
14 the record that the life without parole was put on the table
15 ten days prior to today. He was served with notice on
16 February 13th, 2019. And I believe that is all the State
17 has to cover. We are ready and willing to answer to the
18 Defendant's motions.

19 THE COURT: Any dispute as to the time of service of
20 the notice of intent to seek like without parole?

21 MR. BELTON: We were properly served.

22 THE COURT: Okay. Let me hear Defense motions.

23 MR. BELTON: Yes, Your Honor. I do have a number of
24 them. I'm going to start with -- Your Honor, some months
25 ago, some weeks ago, you should have received an e-mail from

1 me --

2 THE COURT: Let me interrupt. I keep forgetting this.
3 I should have asked. They're not sworn in.

4 Were there any objections to jury selection?

5 MS. HAMILTON: No objections from the State, Your
6 Honor.

7 MR. BELTON: No objections from the Defense.

8 THE COURT: Wonderful.

9 Now, continue, Mr. Belton.

10 MR. BELTON: Thank you. Several months ago, you should
11 have received an e-mail -- I had filed a motion on behalf of
12 Mr. Tate to reveal a confidential informant in this case. I
13 was told by the State that I wasn't entitled to this
14 confidential informant because my client was not the subject
15 of this investigation at this trailer.

16 I just want to put on the record here and have the
17 State stipulate, obviously, officers will come here and
18 testify that we don't want any squirrelled officers on the
19 stand or not answering the questions when they're asked,
20 that we all are clear that Mr. Tate was not the subject of
21 that investigation, that buys were being done at that house
22 and Mr. Tate was not part of those buys.

23 THE COURT: Okay. I don't know what e-mail you're
24 referring to.

25 MR. BELTON: I'm sure the State does. It was several

1 months ago, so I don't expect you to remember it, but,
2 essentially, we did not move forward. Even though it's
3 still pending, I'm prepared to withdraw the motion to reveal
4 the confidential informant to us. And as a result of that,
5 there was a stipulation from the State that officers would
6 indicate that Mr. Tate was not part of the reason why the
7 officers were at that house. They were there for somebody
8 else, not Mr. Tate. And I just -- sometimes when officers
9 are on the stand, they want to give the full story and I
10 just want to make sure that Mr. Tate is not part of that
11 full story.

12 MR. HAMILTON: Your Honor, we do not intend to bring up
13 the basis for the search warrant. We are going to ask that
14 not be brought up also in court. We have conveyed to him we
15 are not bringing -- it was just a lawful execution of a
16 search warrant, end of story, Your Honor. We're not going
17 into the details of the search warrant. We're not going
18 into the confidential informant within that search warrant.
19 We're not going into any details. We are staying within the
20 parameter of this was a lawful execution of a search
21 warrant, Your Honor.

22 MR. BELTON: Your Honor, absolutely not. And that was
23 not my understanding of the stipulation. I have a right to
24 ask why were the officers there and that there were prior
25 drug activity and things going on there in that house and my

1 client, in fact, was not a part of that activity, was not a
2 part of the search warrant and why the officers were
3 initially there.

4 So, certainly -- so I do intend to ask were you all
5 there for other individuals who had been part of previous
6 drug buys at that house and that's who you were there to get
7 for selling crack out of that house and that did not include
8 Mr. Tate. I think I have a right to ask that. That has
9 nothing to do with whether or not -- this confidential
10 informant.

11 THE COURT: I don't know how the confidential informant
12 is involved. Did information from the CI form the basis of
13 probable cause for the search warrant?

14 MS. HAMILTON: Yes, Your Honor, on buys from that
15 house.

16 THE COURT: So the Defense is not contesting the
17 validity of the search warrant?

18 MR. BELTON: No. And, obviously, I don't know who the
19 CI is, so I can't testify the validity of the search
20 warrant. And part of my not contesting the validity of the
21 search warrant is that they were -- the State, from my
22 understanding, stipulated that Mr. Tate was not part of it.
23 But I think the jury has a right to know why the police was
24 there. Certainly, it was a lawful search warrant, but a
25 lawful search warrant for what.

1 MS. HAMILTON: I do not believe we need to get into the
2 logistics of the search warrant. It was a lawful execution
3 of the search warrant. Otherwise, they would be preventing
4 us to go into detail to that as we're not going to go into
5 detail of the nature of that search warrant either.

6 These were prior dealings way down the road that he's
7 trying to get into regarding someone not related to this
8 case. I don't know how he's going to bring this up. We're
9 not asking our officers and I'm not stipulating to my
10 officers to testify to that, I'm just saying it's a lawful
11 search warrant.

12 What I stipulated to is I would not bring up the
13 confidential information. I did not plan to enter a
14 confidential informant on the stand. My officers are not
15 going to -- I mean, I guess if he ask them, that may come up
16 and we could argue it at the appropriate time, but I don't
17 believe that he needs to go into past dealings of someone
18 not a party to this case from gosh knows when these deals
19 happened. I don't know how he's going to get into that, but
20 I believe it's totally separate from this. This guy was in
21 the wrong place at the wrong time when a lawful execution of
22 a search warrant was going on in a home. And that's our
23 position, Your Honor.

24 MR. BELTON: Your Honor, just quickly, with the Court's
25 indulgence, I know you don't know the story, so let me tell

1 you the story and tell you why I think this is important.
2 There had been some -- according to the police report, there
3 had been some undercover buys at this house. Those
4 undercover buys did not involve Mr. Tate. They involved the
5 residents of the location. On May 16th, Mr. Tate went to
6 this residence. That happened to be, coincidentally, the
7 day that DEU decided -- drug enforcement unit decided to
8 execute the search warrant. Mr. Tate happened to be there
9 when they executed the search warrant.

10 Once they executed the search warrant, they found
11 drugs. There were seven total people that ended up in this
12 house. One person was outside, six was in the inside. They
13 ended up arresting the three people that they came there on
14 distribution arrest warrants for. They also arrested Mr.
15 Tate with the drugs that were found in the house. This is
16 -- it's no secret. It's a mere presence case. It's a
17 constructive possession case.

18 Well, I think we have a right for the jury to know that
19 this was a known drug house and it was known as a drug house
20 by law enforcement. That's why they were there. They were
21 there to serve a search warrant and arrest the residents of
22 the property for distributing crack out of that house.

23 And now, if we're saying we're not going to stipulate
24 to that, then I have a right to know who the CI is because
25 we have a right to investigate that CI because maybe we want

1 to call the CI to say have you ever gone in this house and
2 bought any crack cocaine from Ricky Tate from this house.
3 That was the basis of the search warrant. So we have a
4 right to know that.

5 So I think the Judge understands -- the Court
6 understands what I'm saying that if we -- thank you.

7 THE COURT: I didn't expect you to stop mid sentence.

8 MR. BELTON: Well, I --

9 THE COURT: I understand.

10 MS. HAMILTON: There's so many -- I'm trying to --
11 there's many parts of the argument he's making, so I don't
12 know where to begin on this. He said the search warrant was
13 executed on Ricky Tate and they need to understand the
14 search warrant -- the confidential informant within that
15 search warrant who bought from Mr. Tate. That's not what
16 happened. This is a confidential informant on someone that
17 is not Mr. Ricky Tate.

18 MR. BELTON: I didn't say that.

19 THE COURT: Yeah, I don't believe he --

20 MS. HAMILTON: I thought he said bought from Ricky
21 Tate.

22 MR. BELTON: He Did not buy from Ricky Tate.

23 MS. HAMILTON: Okay. So our position, Your Honor,
24 would be that if we're going to go into past dealings of
25 some guy who is the basis of this search warrant, then we

1 need to go into the past dealings back then of the
2 Defendant.

3 THE COURT: That's not what I understand the intent to
4 be, the past dealings of the CI and all of that. The point
5 is that it's potentially suggestively exculpatory that the
6 police have gone on a valid search warrant to a known drug
7 house that Mr. Tate was not the -- the basis of that search
8 warrant, they weren't looking for him and that it is, in
9 fact, a known drug house and there are other people in there
10 doing other things that's absolutely appropriate.

11 MS. HAMILTON: He can ask them, but I am not going to
12 elicit that from my witnesses. He's asking me to get my
13 witnesses to talk about the search warrant. He can ask my
14 witnesses --

15 THE COURT: No, he said he's going to ask something.

16 MR. BELTON: I don't want the witnesses -- if we don't
17 have the information about who's the CI, I can't go out and
18 bring the CI. The police officers are the only ones who can
19 testify as to why they were there. I just want to ensure
20 and have some insurance that she's going to talk to those
21 police officers and they're going to answer the questions
22 when they're asked and they're going to answer them
23 truthfully. That's all I'm asking. Because I have no way
24 of impeaching them if they are not truthful.

25 MS. HAMILTON: I don't know how to address this until

1 we are in the moment and the questions are asked by the
2 Defense. I don't know what he's looking for out of me. I'm
3 going to ask my officers the questions I have to ask them.
4 If he wants to cross them as to the substance of what he
5 wants to cross them on. I cannot predict how he wants to
6 answer those questions. I do not know. So I don't know
7 what to say really in response to what he wants me to
8 stipulate my officers in saying.

9 THE COURT: Don't talk about the CI, he's not going to
10 test the validity of the search warrant. I assume there
11 will be some questions about other people in the house and
12 why -- not specifically why because the CI told me to go to
13 the house, but their purpose for being there --

14 MR. BELTON: Right.

15 THE COURT: -- not the CI tipping them off to go there,
16 but their purpose for being there and their purpose not
17 being this Defendant. No one should elicit testimony about
18 a confidential informant.

19 MR. BELTON: Your Honor, because what's important in
20 this is, Mr. Tate was the only one that was arrested out of
21 the new drugs that were found in the house and that's what
22 this whole thing is about. This was a constructive
23 possession charge where our belief is everybody in there
24 should have been charged. So that's the issue.

25 THE COURT: Understood.

1 MS. HAMILTON: There was actually another arrest of the
2 guy who lived there for drugs in there.

3 THE COURT: Their point is it's a known drug house,
4 police go there. There are lots of people there, they
5 arrest him and maybe someone else, but why didn't they
6 arrest everybody? How do they know it's him and he's not
7 guilty? That's the point.

8 Next motion.

9 MR. BELTON: Your Honor, I've got a client that wants
10 to talk. My advice to him, again, for the record is for him
11 not to address the Court, but he wants --

12 MR. MORTON: Can you give us just one second so we can
13 talk to him?

14 THE COURT: Absolutely.

15 (Pause.)

16 THE COURT: Yes, sir.

17 MR. BELTON: Your Honor, during the execution of the
18 search warrant, they went there because they had warrants on
19 three people who were in the house. They had warrants on --
20 I don't want to mispronounce -- his last name is Tolbert and
21 I think his first name may be Tyrequs. They had secondly a
22 warrant on a young lady by the name of Brandi Eades,
23 E-A-D-E-S. The third person they had a warrant on was a
24 gentleman by the name of Herman Leach. They had active
25 warrants on them.

1 Now, there were two other individuals who had
2 outstanding warrants, who just happened to be there. They
3 got arrested as well, but those three are who they went
4 there looking for. Mr. Tate, again, just happened to be
5 there.

6 Two of those, Mr. Tolbert and Ms. Eades have -- what
7 their charges are or the reason why they went there, I don't
8 know. Where I'm going with this is, if there's any deal the
9 prosecutor has made with them to come in and testify -- and,
10 at least, one of them, Ms. Eades, has appeared on the
11 witness list, we're entitled to know any deal that has been
12 cut with them in exchange for their testimony.

13 MS. HAMILTON: None whatsoever, Your Honor.

14 THE COURT: Okay. There it is.

15 MR. BELTON: All right. We talked about when Your
16 Honor met with us in chambers this morning, Mr. Tate gave a
17 post-arrest -- well, there were several statements. One was
18 given -- or several statements were given during the arrest.
19 The video, I don't know how much of the video the State
20 intends to show, but it was about -- almost an hour,
21 approximately an hour-long video. Obviously, everybody is
22 handcuffed, they're sitting in the living room, people are
23 talking, to include Mr. Tate. Mr. Tate on that video admits
24 that he is -- he was there smoking marijuana, he had
25 marijuana, et cetera, Your Honor. I just want to know if

1 the State intends to show that part of the video and if so,
2 then we need to have a Jackson V. Denno.

3 MS. HAMILTON: I intend to cut it off -- I know that
4 the Defense has watched the video. I intend to end it when,
5 I think, one of the officers puts the camera down on a table
6 close by. The rest is just talking and you really can't
7 make out, so we don't plan to get into any of that, Your
8 Honor.

9 MR. BELTON: And I am familiar with the video and I do
10 know what segment of that where one body cam is put down
11 where it faces everyone. I don't -- I know that it is pre
12 the specific statement I'm talking about when he admits to
13 smoking a blunt and those things. I don't know if he made
14 any other statements before that, but I will definitely
15 watch that tonight and just make sure there are any -- I
16 don't think there are any other statements prior to that
17 that would be of concern to us, but I will watch it and just
18 verify that.

19 Secondly, Your Honor, there were some -- Mr. Tate was
20 succinctly arrested on a driving under suspension charge and
21 was in jail in Rock Hill and I am unclear of how he
22 interacted with law enforcement to give a statement. But,
23 nevertheless, he does give a statement. It's about a
24 40-minute statement. And in that statement, there were some
25 statements made by Mr. Tate that if the State intends to use

1 any of those statements against him, I would like to have a
2 Jackson V. Denno on those.

3 MS. HAMILTON: We do not intend to bring those in, Your
4 Honor.

5 MR. BELTON: So am I understanding that none of that
6 interview that was done with law enforcement?

7 MS. HAMILTON: No.

8 MR. BELTON: Well, that clears that up. That's easy on
9 that one.

10 Your Honor, then any other Lyle issues that she intends
11 to bring in, any Lyle issues that are out there in terms of
12 Mr. Tate's conduct in the community that she -- through DEU
13 or anybody she wants to bring in?

14 THE COURT: Yes, ma'am.

15 MS. HAMILTON: I don't intend to bring in any prior bad
16 acts other than if he takes the stand, he will be subject to
17 any convictions and can be, of course, impeached on those.
18 But I don't think of anything other than the marijuana issue
19 that they have brought up that actually is corresponding
20 with this, where he has marijuana, like, in his hand when he
21 does this, Your Honor. I don't know if that would qualify,
22 if that's what you're speaking of.

23 MR. BELTON: We don't intend to move to suppress the
24 marijuana, Your Honor.

25 MS. HAMILTON: No, Your Honor.

1 THE COURT: Okay.

2 MR. BELTON: Your Honor, since she indicated for that,
3 there's probably a good seg-way to his criminal record. If
4 he were to take the stand, what convictions would qualify
5 for impeachment?

6 MS. HAMILTON: Beg the Court's indulgence, I'll pull
7 that up right now.

8 THE COURT: Yes, ma'am.

9 MS. HAMILTON: Your Honor, he has nine felonies that
10 carry over a year that I would be bringing up.

11 THE COURT: And specifically, what crimes he was
12 convicted of and when?

13 MS. HAMILTON: He was convicted in 1999, but served a
14 20-year sentence and was released, I believe 2017, 7/16.
15 That is a distribution of crack second. PWID crack second,
16 trafficking crack more than two grams, second offense. And
17 I don't know -- I'm trying to look and see what he got on
18 his proximities, Your Honor, but I also believe those would
19 qualify. Yes.

20 MR. BELTON: Your Honor, I know that she's looking for
21 those and, certainly, we can give her an opportunity to pull
22 the sentencing sheets on them. The reason why I asked that
23 question, I don't know what the laws were in 1999 when he
24 was convicted of these, but, for instance, proximity, that
25 would have been ten years. He did 19, that means he would

1 have done all ten of those. And, certainly, that's more
2 than ten years beyond that ten-year statute.

3 So I would argue that all of the -- there were about
4 nine things that he pled guilty to in 1999. My argument is
5 all of those don't qualify. I think the trafficking would
6 qualify, you know, obviously, because it would have carried
7 -- and I think that's what he was on supervised release for.

8 So only the ones that he was on the supervised release
9 for is what qualifies for impeachment purpose because the
10 other ones, he would have done the time and the ten years
11 post-conviction, post-release would have already run.

12 THE COURT: Right. And that's why I need to know
13 specifically what crime, what the sentence was, when it was.

14 MS. HAMILTON: Yes, Your Honor. I have his sentence
15 being on June 8th -- let me see. 9/22/1999, he was
16 sentenced to 20 years on possession of crack with intent to
17 distribute. Same with trafficking crack cocaine, 10 to 28
18 grams --

19 THE COURT: That was 20 years?

20 MS. HAMILTON: Yes, Your Honor. Additionally, 20 years
21 on another possession -- let me make sure I have the right
22 indictments. There are two of those. So I have -- it's so
23 hard to read this handwriting, Your Honor, but I believe it
24 is two that he served the 20 years on, which is the
25 distribution, both distributions. He had a distribution and

1 PWID crack second, Your Honor, and then he had trafficking
2 crack more than two grams, second offense. All of those, he
3 was sentenced to 20 years on, Your Honor.

4 THE COURT: Are those the only three you intend to
5 introduce?

6 MS. HAMILTON: Those are what I have for enhancement
7 purposes. I believe he actually got 20 years on the other
8 PWID cracks. I have five counts of them, Your Honor. I
9 have not pulled those, but I can have that verified tomorrow
10 morning, Your Honor. But I have two currently in hand that
11 I know he was convicted the 20 on, the trafficking, second
12 offense, and possession with intent to distribute crack
13 cocaine.

14 THE COURT: Okay. You need to know for sure. I need
15 to know for sure.

16 MS. HAMILTON: Yes, Your Honor.

17 THE COURT: Because we're not just talking about
18 enhancement, we're talking about 609.

19 MS. HAMILTON: Yes.

20 THE COURT: Right. You mentioned enhancement, which is
21 not the issue. So before morning, verify that, ensure that
22 you have the right indictment numbers so that you're not
23 duplicating and we'll talk about that first thing tomorrow.

24 Mr. Belton, what else?

25 MR. BELTON: Your Honor, according to the police

1 report, there were two individuals, one, Mr. Tolbert,
2 Tyrequs Tolbert, and secondly, Ms. Brandi Eades, who gave
3 statements to law enforcement. I don't know how those
4 statements were given. I certainly believe the statement
5 they have complied with Rule 5, but just for purposes of the
6 record, there are no written statements or audio statements
7 or video statements from Ms. Eades or -- Mr. Tolbert is not
8 being called as a witness, but I guess there could be
9 something in there that's exculpatory that if it's anything
10 beyond the work product, we would like it.

11 THE COURT: Yes, ma'am.

12 MS. HAMILTON: There is not, Your Honor. No written
13 statements from Tyrequs Tolbert or Brandi Eades, Your Honor.

14 MR. BELTON: Audio or video? Because they were at the
15 police department.

16 MS. HAMILTON: No, Your Honor.

17 THE COURT: Okay.

18 MR. BELTON: Your Honor, this is just more for my
19 edifice because I've been in front of three different judges
20 here recently and we've tried a couple cases and judges do
21 it differently. As a result of State v. Beattie, tell us
22 how you understand it if Mr. Tate decides to testify.

23 THE COURT: Come on, now, it feels like a pop quiz.

24 MR. BELTON: It is, Your Honor, and I can't quite
25 figure out the law, so I just want to know what game we're

1 playing before we start, just what the rules are. I know
2 how it's been done, if we introduce, they would close in
3 full, we would close in full and they get to rebut. But if
4 we don't offer anything, then they do everything, then we go
5 last. Is that --

6 THE COURT: No.

7 MR. BELTON: Oh, you doing it differently. Can you
8 just tell us tomorrow so we'll know?

9 THE COURT: Yes. I need to reread that case.

10 MR. BELTON: Thank you so much.

11 THE COURT: Anything else?

12 MR. MORTON: Your Honor, the solicitor has indicated
13 that one of her potential witnesses may be Ms. Eades. I
14 think she has prior record that I would rather go ahead and
15 bring it up now just to -- I don't want to run into any
16 trouble by asking her something that's not within the rules.
17 She, as I understand it -- and Ms. Hamilton can tell me if
18 I'm wrong, she had a 2015 shoplifting.

19 MS. HAMILTON: I was going to hand you over prior to
20 her testimony, you are entitled to that.

21 MR. MORTON: Okay.

22 MS. HAMILTON: So I'll hand that over.

23 MR. MORTON: Terrific.

24 THE COURT: Yes, sir.

25 MR. MORTON: She has a -- it looks like a shoplifting

1 from November of 2012?

2 MS. HAMILTON: I would assume so. I was just going to
3 let them review that and -- I mean, I'm going to ask her
4 about all of her record on the stand. I'm plan on bringing
5 out the whole thing, so cover it before you do.

6 MR. MORTON: Okay. Sounds good.

7 THE COURT: Sounds good.

8 MR. MORTON: Thank you, Your Honor.

9 THE COURT: Anything from the State?

10 MS. HAMILTON: Nothing from the State.

11 MR. BELTON: Nothing at this time from the Defense.

12 THE COURT: See y'all at 9:30 tomorrow. Thank you.

13 (WHEREUPON, court was adjourned for the day.)

14 OCTOBER 22, 2019

15 (WHEREUPON, State's Exhibit Nos. 1 through 21 were
16 marked for identification.)

17 THE COURT: Good morning.

18 MR. BELTON: Your Honor, before we bring in the jury,
19 we have a couple of matters.

20 THE COURT: I figured.

21 MR. BELTON: You'd be disappointed if we didn't, Your
22 Honor.

23 THE COURT: I wouldn't say that.

24 Yes, sir.

25 MR. BELTON: Your Honor, one of the issues we raised

1 yesterday, if Mr. Tate were to testify, what charges he
2 would be able to be impeached on. And I think Ms. Hamilton
3 has that.

4 THE COURT: Ms. Hamilton.

5 MS. HAMILTON: Your Honor, he has all separate PWIDs,
6 possession with intent to distribute crack, 20 years, also,
7 that sentencing date was 9/22/99. Would you like the
8 indictment number for the record?

9 THE COURT: Yes.

10 MS. HAMILTON: It is 1999-GS-46-1634. Then the next
11 one is going to be possession with intent to distribute
12 crack cocaine, that is indictment number, same as the last
13 one, but ending in 2412. Same sentencing date, same
14 sentence.

15 Next one, also, is possession with intent to distribute
16 crack cocaine. Same sentencing date. Indictment number
17 same as the last ones ending in 2405. Also, 20 years.

18 And then the trafficking crack cocaine, ten to 28
19 grams, second. Same indictment at the beginning, last
20 number is 2771. Sentencing date is the same as the others,
21 9/22/99.

22 THE COURT: And what was the sentence?

23 MS. HAMILTON: 20 years, Your Honor.

24 THE COURT: Just those four?

25 MS. HAMILTON: Four, Your Honor.

1 THE COURT: Okay. Mr. Belton.

2 MR. BELTON: Your Honor, certainly, I have no objection
3 to the authenticity of those documents. The only challenge,
4 as I read the understand the statute, it indicates that the
5 ten years start to run post either release -- the ten years
6 start to run based on his release or supervised whatever.
7 Obviously, I think we're within that 20-year period, so just
8 for the record, I don't think we have any objection to that
9 because we're within the 10-year period, whether it's by
10 doing the time and 10 years running or on supervised
11 released.

12 THE COURT: Correct.

13 MR. BELTON: Just to make sure we're clear, unless he
14 testifies, none of that comes in, correct?

15 THE COURT: Correct.

16 MR. BELTON: My other issue is, Your Honor, my
17 understanding -- and we were just informed this morning that
18 law enforcement has moved to a new uniform. It's,
19 obviously, a SWAT-looking type uniform. I think our courts
20 have been clear of the perception that we give jurors,
21 particularly when defendants -- and I think this is a case
22 where a man is facing life without parole, that out of an
23 abundance of caution, I think we had security in here
24 yesterday. Lieutenant Hager was here, he was in plain
25 clothes. The officer here was here. He was in a regular

1 police uniform. I just have some concerns about a SWAT-type
2 uniform right behind Mr. Tate.

3 My understanding, they have the leg brace that they can
4 put him on with a stun gun. I've worked with Mr. Tate for
5 14 months. There's nothing in his history of any type of
6 violence or anything. He, certainly, was in court
7 yesterday. Your Honor, just the perception of a SWAT-type
8 uniform sitting right behind my client just gives this image
9 that he's some violent guy to the jurors. I would like the
10 Court to see if we can reposition or why we can't have
11 Lieutenant Hager back in here or somebody who's in a regular
12 police uniform or something to that effect.

13 MS. HAMILTON: Your Honor, these are there main
14 uniforms. This is what every police officer now wears.
15 This is what we have. This is the security we have in the
16 courthouse right now. These are their police uniforms.
17 This is what he will eventually be in. He just has not
18 gotten it.

19 So, Your Honor, we would ask for court security, as is
20 in most courtrooms, that we allow the officers to be in here
21 for protection. And that is all we ask, Your Honor.

22 THE COURT: Any response, Mr. Belton?

23 MR. BELTON: Your Honor, again, we've got a man that's
24 facing life without parole. And I understand this is their
25 uniform, but they're not lawyers. They're not the Court. I

1 understand they understand security, but we, Ms. Hamilton,
2 myself, Your Honor, we understand the law. We understand
3 what the Supreme Court has said about this and we understand
4 the perception.

5 So I'm not asking them to lessen their court security,
6 that's not what I'm asking. I'm just asking them to
7 position themselves or get other officers in here or
8 something where this perception that a gentlemen here in his
9 uniform doing what he's being instructed to do, who looks
10 like a SWAT guy protecting or defending the world against
11 this big, bad criminal here who has a stun thing on his leg.
12 He has it on here now where they can tase him at any point
13 -- or can be put on there -- yeah, it's on there. It's
14 sticking up out of his leg now.

15 THE OFFICER: Your Honor, there's no stun gun. It's
16 just a leg brace.

17 MR. BELTON: Okay, my apologies if I misspoke. There's
18 something on his leg here. I guess it's a brace where he
19 can't run.

20 MS. HAMILTON: Your Honor, if I may?

21 THE COURT: Yes.

22 MS. HOLT: They have changed these uniforms. And most
23 recently, we had some issue in the parking lot where there
24 was a kitten stuck in an engine, they came out in these
25 uniforms. So it's not any different uniform than they come

1 to get a kitten out of an engine. I mean, they came in the
2 exact same uniform that he's wearing right now. So it's not
3 in any relation to Mr. Tate whatsoever, other than that's
4 just the uniform they have now.

5 MR. BELTON: Your Honor, again, that's a false
6 equivalency to equate a man facing life without parole to a
7 kitten in an engine in a car. I'm not even going to address
8 that. No disrespect to my colleague.

9 Again, Your Honor, whatever your position is,
10 obviously, we would like for -- again, we had proper court
11 security in here yesterday, that was more than enough. Why
12 can't we have that when we have trials going on? We have
13 officers who have plain clothes. As a matter of fact, I
14 see, at least, one officer here that I know that's a sworn
15 officer who's in here that's more than sufficient. They
16 have officers in their office that's more than sufficient.

17 And our fallback position is that, at least, you
18 instruct the jury that hey, this is their regular normal
19 uniform and they're not to impute his appearance on any
20 danger that Mr. Tate poses. So if you are not inclined that
21 we go back to what it looked like yesterday, at least,
22 instruct the jury on the front end that don't impute his
23 uniform onto Mr. Tate. That's not the position we want,
24 but...

25 MS. HAMILTON: I do want to point out. This is my

1 investigator from my office. He is not with the York County
2 Sheriff's Office. So I don't think him being -- I don't
3 want to put him in a position where he now has to be court
4 security.

5 MR. BELTON: The point I was making, he, at least, at
6 one point was a sworn officer and I assume he may still be.
7 I wasn't trying to put him in that position. I was just
8 making the point that yesterday, we did have Lieutenant
9 Hager in here. He's a sworn officer, carries a gun, has
10 handcuffs and badge and we were fine. We have another
11 officer here who's over court security, who has a gun, has a
12 badge in a regular police uniform.

13 THE COURT: Well, right, but that is the older uniform
14 and if you fast forward ten days, he will be in the same
15 uniform.

16 MR. BELTON: I understand. We were told that this
17 morning. I understand that. And this is no disrespect to
18 these officers, I just think it's not good for our client.
19 So my job here today is to represent Mr. Tate.

20 THE COURT: Okay. Because it is the new uniform, I'm
21 going to allow them to remain as they are. This is the
22 uniform -- you know, it was referred to many times and even
23 before I entered the courtroom, I heard there was a
24 SWAT-style uniform in here. And just seeing it now, it's
25 not what I pictured, what I envisioned when describing it as

1 a SWAT-style uniform. In fact, it looks to me to be a very
2 similar uniform to the older one with a vest on the outside.

3 And it may be customary in York County, I don't know,
4 to have plain clothes officers in the courtroom. I don't
5 know that. I do know that in many, many other counties
6 around the State, there are uniformed officers in very
7 similar uniforms positions all throughout the courtroom
8 regardless of the nature of the charge, whether it is a
9 shoplifting or a murder. Of course, in murder cases, there
10 are going to be more of those officers than a shoplifting,
11 but that is simply court security. And as the jurors enter
12 and leave the courthouse, they will see other uniformed
13 officers around the building. So in my mind, it is simply
14 security and not directed specifically at Mr. Tate.

15 I was also concerned before coming out here about the
16 positioning of the officers. And I would be more concerned
17 if there were one sitting directly behind him or in the
18 aisle next to him, you know, hovering over him because he
19 posed some security risk. But to have an officer between
20 the State and the Defense, another one here -- I mean, I
21 know the jurors don't know what that door goes to, but to
22 have these other officers to my left along this wall, I
23 don't think poses any particular problem.

24 As to instructing the jury, I actually think that will
25 highlight it, it will bring it to their attention and make

1 them question it where they might otherwise not have thought
2 anything about it. So I hate to bring the issue to their
3 attention if they weren't thinking about it to begin with,
4 particularly, if I instruct them, you know, to pay attention
5 to the uniforms, then they will sit and look at the uniforms
6 and compare and contrast and it might raise questions in
7 their mind that they otherwise would not have had, so I
8 decline to give the jury any instruction about the uniforms
9 as well.

10 Any additional issues?

11 MR. BELTON: No, Your Honor.

12 THE COURT: Are we ready for the jury?

13 Anything from the State?

14 MS. HAMILTON: I think we have covered everything we
15 were going to cover yesterday.

16 THE COURT: Okay. Bring the jury.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: Good morning, folks. We're now ready to
19 begin the trial of the case. I'm going to give you some
20 sort of preliminary remarks, but before I do that, I'm going
21 to have the clerk place you under oath one more time.

22 THE CLERK: Can y'all please stand and raise your right
23 hand.

24 You shall well and truly try, and true deliverance make
25 between the State of South Carolina and the Defendant at the

1 bar, whom you shall have in charge and a true verdict give,
2 according to the evidence and the law, so help you God?
3 Please respond by saying "I will".

4 ALL: I will.

5 THE CLERK: Thank you.

6 THE COURT: All right, ladies and gentlemen, the case
7 we're about to try is the case of State of South Carolina
8 versus Ricky Dean Tate. Before we begin this trial, I want
9 to tell you that this trial will probably be different from
10 what you might expect. Many people do not have the chance
11 to attend actual court sessions as you are doing now and may
12 think from watching television or movies or reading books
13 that trials are always full of intense action, high drama
14 and riveting circumstances.

15 And while all these things may be true at times, this
16 trial is not for entertainment. It is a fundamental part of
17 our democracy, an effort to make sure that justice is done
18 between the parties before the Court. Making sure that
19 justice is done is often slow, deliberate and repetitive,
20 the opposite of what you may have seen on television or in
21 movies or read in books. This courtroom is a place of
22 honor, dedicated to the protection and preservation of
23 citizens' right through what many have called the greatest
24 justice system every created.

25 The attorneys appearing before you are advocates for

1 the parties they represent, but first and foremost, they are
2 officers of the court sworn to uphold the integrity and
3 fairness of our judicial system and to help you in
4 understanding the evidence. You should expect them to be
5 professional, competent and ethical in the representation of
6 their client's interest. Remember that you have just taken
7 an oath to try this case and reach a fair and just verdict
8 and you are also expected to be professional, reasonable and
9 ethical. Thank you for accepting the most important
10 responsibility of jury service and your contribution today
11 to our justice system.

12 What I will now say is intended to serve as an
13 introduction to the trial of this case. These remarks are
14 not a charge on the law in this case. I will instruct you
15 on the law applicable to this case at the end of the trial
16 before you retire to consider your verdict. This is merely
17 an explanation of the procedure that we will follow in the
18 trial of this case so that you may better understand what
19 may be happening. You may not take notes during the trial
20 of this case.

21 The Defendant is charged with four indictments filed in
22 the court with the crimes of possession with intent to
23 distribute crack cocaine, possession with intent to
24 distribute heroin, possession with intent to distribute
25 crack cocaine within proximity of a school and possession

1 with intent to distribute heroin within proximity of a
2 school. The elements of those crimes will be explained to
3 you later.

4 The indictments are simply the charges by which the
5 case is brought into court. They are not in any sense
6 evidence of the allegations they contain. The Defendant has
7 pled not guilty to each of these indictments. The State,
8 therefore, has the burden of proving each of the elements of
9 each of the indictments beyond a reasonable doubt. It will
10 be your duty, ladies and gentlemen, to decide whether the
11 State has met that burden.

12 Your purpose as jurors is to find and determine the
13 facts. You are the sole judges of the facts. If at any
14 time, I make any comment regarding the facts, you must
15 disregard it. You are to determine the facts from the
16 testimony you hear and the other evidence introduced in
17 court. It is up to you to determine the inferences which
18 you feel may properly be drawn from the evidence. It is
19 especially important that you perform your duty of
20 determining the facts diligently and conscientiously
21 because, ordinarily, there is no way to correct an erroneous
22 determination of the facts by a jury.

23 On the other hand and with equal emphasis, the same law
24 that makes you the judges of the facts makes me the judge of
25 the law. The law as given by the Court is the only law you

1 may consider. You must accept it and follow it even though
2 you may disagree with it. I cannot tell you what the facts
3 are and you cannot disagree with me about what the law is or
4 what the law should be. Your job is to take the law as I
5 give it to you and apply it to the facts as you find them
6 from the testimony of the witnesses and any other evidence
7 that is introduced. After doing that, you will render your
8 verdict under the solemn oath that you just took as jurors.

9 Until I advise you to begin your deliberations, you
10 must not discuss the case with anyone, including your fellow
11 jurors, friends, family members and anyone involved in the
12 case. This includes discussions face-to-face and those by
13 telephone, e-mail, texts, blogs or any other method of
14 communication.

15 You may not use a computer, cell phone or other
16 electronic device with communication capabilities at any
17 time while in the courtroom or during deliberations. During
18 breaks for meals or overnight, of course, you may use those
19 devices, however, you must not at any time use those devices
20 to get or send information about the case. This includes
21 information about a party, a witness, an attorney or a court
22 officer. News accounts about the case, research on any
23 topics raised, any topics you think would be helpful in
24 deciding the case or any testimony presented by any witness.

25 During the trial, do not read, listen to or watch any

1 news reports about the case. This includes anything that
2 may be in the newspapers or on the internet, radio or
3 television. You must not consider anything you may have
4 read or heard about the case outside of the courtroom
5 whether before or during the trial. After the case is
6 submitted to you, you must discuss it only in the jury room
7 with your fellow jurors.

8 The attorneys and parties in this case have been
9 advised that they are not to talk to you at all. So if you
10 see anyone involved in the case and they don't even say
11 hello to you, they're not being unfriendly, they're simply
12 following my instructions. It is important that you keep an
13 open mind and not decide any issue in the case until all of
14 the evidence has been presented, the parties have made their
15 closing arguments and I have instructed you on the law in
16 this case. It is your solemn responsibility to determine
17 the guilt or innocence of the Defendant and your verdict
18 must be based solely on the evidence as it is presented to
19 you in this trial and on the law as I instruct you during
20 and at the close of the trial.

21 Now, in just a moment, the solicitor will make what is
22 called an opening statement in which the solicitor will
23 explain to you the issues in this case, or, at least, what
24 the solicitor thinks the issues are in this case. The
25 attorney for the Defendant may also make an opening

1 statement, although he is not required to do so.

2 What the attorneys tell you during their opening
3 statements is not evidence in this case. It is only their
4 contention as to what the issues are. The evidence in this
5 case will be presented to you by the testimony of sworn
6 witnesses from the witness stand and by exhibits that may be
7 introduced into evidence.

8 Now, from time to time during the trial, you may hear
9 one of the lawyers say something like, Your Honor, I believe
10 we have a question of law or a matter of law or Your Honor,
11 may we approach the bench. Or sometimes, I, myself, might
12 find it necessary to excuse you from the courtroom for a
13 short while so the attorneys and I can discuss the matter of
14 law.

15 The reason for this is because you are the judges of
16 the facts in this case and sometimes when I'm discussing
17 matters of law with the attorneys, it may be necessary for
18 me to make some comment as to the facts in connection with
19 my ruling as to whether a particular law applies or does not
20 apply. I'm not supposed to tell you what I think the facts
21 are, so I'll excuse you from the courtroom for a short while
22 while these discussions take place so that you will not in
23 any way be influenced by anything that I might say or do in
24 connection with the facts.

25 In determining what the facts are in this case, you

1 must decide whether or not the testimony of the witness is
2 believable. It will be my responsibility to rule as a
3 matter of law as to whether certain testimony is admissible
4 or not. Once the testimony is admitted, whether or not you
5 believe it is solely for you to determine.

6 In deciding whether to believe a witness, you have the
7 right to consider the interest of any witness, the bias of
8 any witness, the prejudice of any witness, the opportunity
9 for the witness to have seen the matters and things about
10 which the witness may testify and the way the witness acts
11 on the witness stand. You have a right to consider anything
12 that is in the record that will help you evaluate the
13 testimony of the witnesses. That means that it is your duty
14 to pay close attention to the witnesses, to observe them, to
15 listen to them and to pay close attention to the attorneys
16 and the Court. Do not let your thoughts wander, but give
17 strict attention to the testimony in this case so that at
18 the end of the trial, after the arguments of counsel and my
19 charge to you on the law, you will then be in a position to
20 determine what the facts are and to apply the law to those
21 facts and thus render your verdict.

22 It will be the added duty of the foreperson to preside
23 in the jury room and be the jury's spokesperson here in
24 court, but I will give further instructions about that
25 later.

1 Now, in order to preserve everyone's rights, I will
2 give the attorneys an opportunity to object to anything that
3 I have just told to you -- said to you.

4 Any objections from the State?

5 MS. HAMILTON: Nothing from the State.

6 THE COURT: From the Defense?

7 MR. BELTON: No, ma'am, Your Honor.

8 THE COURT: Okay.

9 MR. BELTON: May we approach the bench?

10 THE COURT: Sure.

11 MR. BELTON: Are you finished with the jury
12 instruction?

13 THE COURT: I am.

14 (WHEREUPON, a bench conference was held in the presence
15 of the jury, but outside the hearing of the jury.)

16 THE COURT: All right. Folks, we're now ready to begin
17 the trial of the case. I'll call on the State for their
18 opening statement.

19 MS. HAMILTON: Thank you, Your Honor. May it please
20 the Court?

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT

23 MS. HAMILTON: Good morning. I just want to start off
24 by letting you know this is a brand new courtroom for us.
25 So I would just ask humbly for your patience for the Defense

1 and myself. We are figuring out this technology. This is
2 all new to us, so if we have some hiccups, we apologize in
3 advance.

4 I just want to let you know we're here today because
5 the Defendant, Mr. Ricky Tate, is charged with possession
6 with intent to distribute crack cocaine, possession with
7 intent to distribute heroin and possession with intent of
8 those drugs to distribute within proximity of a school. The
9 school in this particular case being Rawlinson Road Middle
10 School.

11 On the afternoon of May 16th, 2018, officers were going
12 to execute a lawful search warrant on a home at [REDACTED] Leach
13 Road within York County. You will hear from Officer Rowe,
14 who is first to go in the door of that residence with the
15 SWAT unit and also the Drug Enforcement unit. He enters
16 that residence and as he goes into that door, he sees Mr.
17 Ricky Tate running down the hallway and you will hear him
18 say in a red T-shirt. He runs down the front hallway from
19 the front bedroom into the rear bedroom.

20 As soon as Mr. Tate gets in that bedroom, Officer Rowe
21 will tell you he sees a throwing motion towards the window.
22 Unfortunately, for Mr. Tate, that window had a screen on it
23 with a fan, like an indoor fan, and then a screen behind it.
24 So it looked like it was an open window. Unfortunately, for
25 Mr. Tate, it was not an open window and the crack cocaine

1 that was in Mr. Tate's hand hits that window, bounces off
2 the screen and as Officer Rowe will testify, he finds on the
3 ground underneath that window.

4 Additionally, Mr. Tate turns around, you'll see a bag
5 of marijuana drop down from his hands. And that's when
6 officers take him into custody. There are a few other
7 people in that bedroom. You will see them on the video.
8 You will be able to see everything that goes on in that
9 video and how this execution of the search warrant takes
10 places.

11 You will hear from Officer Earls, who was second into
12 the door. He comes into the door behind Officer Rowe. And
13 as he goes down that hallway behind Officer Rowe, who was
14 led by Mr. Tate, he sees a bag of pills in the hallway.
15 Nobody else is in that hallway. This is the hallway that
16 Mr. Tate had just run through. He finds a bag of pills.
17 Those do test positive for heroin.

18 You will also hear in this trial from someone who was
19 in that home, the homeowner, Ms. Brandi Eades. She was
20 standing, as you will see in the video, right next to Mr.
21 Tate when he goes and throws something at that window and
22 drops that crack cocaine on the ground. You will hear from
23 her today. She will tell you the nature of this home. It's
24 no secret this was a drug home. People go to sell drugs,
25 she will say, to use drugs and to buy drugs. This was a

1 drug home. She will tell you the nature of the house and
2 she will tell you that those pills -- I mean, that crack
3 cocaine that was in front of that window was definitely not
4 there when she stood up moments before Mr. Tate runs into
5 that room.

6 And lastly, you will hear from Ms. Holley Tobias. She
7 works in our drug lab. Ultimately, she tested these drugs
8 that were found on scene during the execution of this search
9 warrant. She will tell you that the crack and pills
10 recovered on that afternoon of May 16th of 2018 did test
11 positive for crack cocaine, 2.74 grams, and the pills,
12 they're blue pills, you will see them in evidence and you
13 will hear from her also tested positive for heroin. That
14 measuring, I believe, 0.51 grams of heroin.

15 This is a simple case, ladies and gentlemen, simple.
16 You will be shown the evidence. You will assess the
17 evidence. At the conclusion, we ask that you find the
18 Defendant guilty. Your role today is the fact finders, but
19 I just want to instruct you on the law and explain to you --
20 as the Judge will instruct you at the end, explain to you
21 what the law is in this case regarding possession with
22 intent to distribute and the proximity.

23 So again, the Defendant, Mr. Ricky Tate, is charged
24 with possession with intent to distribute crack and heroin.
25 So under that statute, possession with intent to distribute,

1 there is a requirement for three different elements that we
2 must prove. The first one is possession. And we kind of
3 know what possession is in common sense. Y'all probably all
4 know what possession is. Either you have it in your hand,
5 that's actual possession, it's actually on your person,
6 you're touching it.

7 There's also something called constructive possession.
8 And I'd like to -- that is, essentially, what we're dealing
9 with in this case and I'd like to give you an example. This
10 is when there's no physical touching of that object at the
11 moment that he is caught, but that is in his custody and
12 control as it was moments before in his actual possession
13 and he drops it and when it's found, it's in his
14 constructive possession.

15 An example of that would be you place your cell phone
16 on a table -- you're out to dinner and you place your cell
17 phone right over here. You still have custody and control
18 of that item. You know it's there and you have the ability
19 to pick that cell phone up and put it back into your hands
20 because it is in your possession and it is your object.
21 That is what we're dealing with in this case. Our argument
22 is that the Defendant knew of these drugs. He had the
23 ability to exercise control as they are right at his feet at
24 that window and he had actual possession of them before he
25 dropped them and threw them into that window.

1 As with the heroin that is the same circumstance.
2 We're going to say it's constructive possession in this
3 case. He had custody and control and he had actual
4 possession before he dropped those drugs in that hallway.

5 The next element that we must prove is that he
6 possessed those drugs with the intent to distribute. There
7 is under the law two different inference levels. And what
8 we call those is -- I'm going to read the statute,
9 possession of one or more grams of crack gives rise to a
10 permissive inference that the possession was with the intent
11 to distribute.

12 In this case, what we're dealing with is 2.74 grams,
13 that's two times inference level. This means that you can
14 infer an intention to distribute the drugs found when the
15 weight of that particular drug is over one gram. And that
16 is what we have in this case.

17 Additionally, you can take in to the totality of the
18 circumstances other evidence of distribution. You're going
19 to hear that this is a drug home. You can take those
20 circumstances into account as a whole in finding that intent
21 to distribute. As with the heroin, there's the same
22 circumstances, but there's a different inference level on
23 this case. And that's what we call possession of two or
24 more grains, which is equal to 0.29 grams of heroin gives
25 rise to a permissive inference of that possession was with

1 the intent to distribute those drugs. In this case, the
2 Defendant had possession of 0.51 grams, that is equal to
3 7.87 grains. So that is significantly higher than the
4 inference level which is two or more grains.

5 And the next one is we have to just prove that this
6 was, in fact, crack and was, in fact, heroin. As I stated,
7 you will hear from Ms. Tobias and she will testify that the
8 substances found were, in fact, heroin and crack cocaine.

9 And the last charges, I just want to let you know those
10 are possession with intent to distribute drugs within
11 proximity of a school. The Defendant -- we actually show
12 that he had knowledge he was within a half mile radius of a
13 place, in this instance, a school, in this case, Rawlinson
14 Road Middle School, and that he did have that substance
15 within that half mile and intended to distribute within a
16 half of that school.

17 You will hear from officers as to the instance and as
18 to the fact that this was a school that you could not miss.
19 It is Rawlinson Road Middle School on Main Street. It is
20 visible from the road and they will testify as to that.
21 When I state radius, a half mile radius, that is not a
22 driving distance, that is going to be, as we call it, as the
23 crow flies, a straight line across. That is a half mile.
24 In this case, it's approximately point four-sevenths of a
25 mile, just under a half a mile.

Your role today is important. Your role today is as the fact finders in this case. You are going to listen to the evidence presented to you. You're going to piece together everything, photos, videos, officers' testimony. And it's my burden to prove these elements of the crime that I just went over beyond a reasonable doubt.

Beyond a reasonable doubt is not beyond any and all doubt. It is not a hundred percent certainty. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. And that's what we are trying to do in this case.

Ladies and gentlemen, I ask that you listen and weigh all the evidence presented to you throughout this trial carefully. I'll stand back before you at the end of this trial and ask that you find Mr. Tate guilty of these charges of possession with intent to distribute crack and heroin and possession of those drugs within proximity of a school.

Thank you.

THE COURT: Mr. Morton.

OPENING STATEMENT

MR. MORTON: Good morning. My name is Jim Morton. And myself, along with Montrio Belton represent Mr. Ricky Tate. And we are honored to be in here in this courtroom, this new courtroom that we are all in for the first time to do that.

We listened carefully, and I know you did to the

1 Judge's instructions to you, which you will hear again many
2 times over about burdens of proof, presumption of innocence,
3 that everybody who comes into this courtroom is presumed to
4 be innocent. Everybody is presumed to be innocent. Some
5 people just have to fight a little harder for it. Some
6 people have to come in this courtroom and fight for it. And
7 that's what we intend to do on behalf of Ricky Tate.

8 You will see and the prosecutor will show you and we
9 will question what you will see on a police video tape of
10 them rushing into a house that's a known crack house. They
11 were there to serve warrants on people who were selling
12 crack from that house and people who were, in fact, in that
13 house with crack, in that house with crack in their bedroom,
14 with heroin in the bathroom. You will find that and you
15 will see that.

16 You have also heard the Judge say that you, as the
17 ladies and gentlemen of the jury, have the obligation to
18 determine whose it was and the State has an obligation to
19 prove to you whose it was and why it was there. Ricky Tate
20 did not live there. Ricky Tate was at the wrong place at
21 the wrong time. You will heard from, at least, some of the
22 people who were there come and say it wasn't mine, it wasn't
23 my boyfriend's, it wasn't my girlfriend's. It was Ricky
24 Tate's.

25 Your job, ladies and gentlemen, is to listen to all the

1 evidence, the State, who will through the police and through
2 the prosecutors, who documented what they did and what
3 didn't happen. They claim that they found this amount of
4 drugs in these particular places. We want you to hold them
5 to their burden to show you that.

6 They have -- will come in here -- you will have
7 questions. The Judge has told you that in South Carolina,
8 you're not allowed to write questions down as you sit here
9 and listen to evidence and to the testimony. Some states
10 allow that, I think. South Carolina does not under the
11 theory that while you're writing, you may be missing what
12 you're hearing from the testimony on the stand. So it's
13 your obligation to listen to the witnesses and their
14 testimony on the stand and to be thinking of questions. You
15 can't write them down, and we know you will, but when you
16 have a question in your mind, think about it. The Judge
17 will tell you when you can discuss that at the end of this
18 case when you go back to the jury room, when you're
19 presented with all the evidence to be able to consider.

20 The police when they came in, they had -- I told you
21 they had warrants on people, not Ricky Tate, they had
22 warrants on people in that house for selling crack out of
23 that house. And they're going to come in here and they're
24 going to say there was -- that it was not theirs, that it
25 was Ricky Tate's. The tape will show, the video will show

1 that when the police went in, they found heroin on the
2 ground outside of a bathroom door and they found a woman by
3 the name of Robin Towery inside the bathroom with the same
4 color heroin, blue heroin inside in a spoon in the bathroom
5 --

6 MS. HAMILTON: Objection, Your Honor. May we approach?

7 THE COURT: Yes.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury, but outside the hearing of the jury.)

10 MR. MORTON: There will probably be lots of bench bar
11 conferences that we have like that where lawyers get up and
12 talk to the Judge about the evidence in this case. You're
13 to consider not what I say, as the Judge told you, consider
14 the evidence that you hear from the witness stand. Listen
15 to the evidence that you hear from the witness stand and
16 that you see with your own eyes.

17 As I've said before, you will have questions about the
18 evidence in this case. You remember those questions.
19 That's your duty, that's your obligation. As I said before,
20 everybody is presumed innocent, some people just have to
21 fight a little harder for it. You think of the questions
22 that you have in your mind when you hear what has been
23 presented and what's not presented to you. And you ask
24 yourselves, is that enough to find someone guilty beyond a
25 reasonable doubt?

1 We ask you and we will ask you again at the close of
2 this case that it is not. This is a serious case with
3 serious consequences for Ricky Tate. And we ask you to take
4 your job seriously, and we know you will, to ask those
5 questions, to follow the law as the Judge will give it to
6 you, to give this man his day in court, the fairness that he
7 deserves. Thank you so much.

8 THE COURT: The State can call its first witness.

9 MS. HAMILTON: The State calls Officer Christopher
10 Rowe.

11 CHRISTOPHER ROWE, after being duly
12 sworn, testified as follows:

13 MS. HAMILTON: May it please the Court, Your Honor?

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION

16 BY MS. HAMILTON:

17 Q Good morning, Officer Rowe. Would you please state
18 your full name?

19 A Christopher Edward Rowe.

20 Q And what is your occupation?

21 A I'm employed with the Rock Hill Police Department. I'm
22 currently assigned to the York County Multi-jurisdictional
23 Drug Enforcement Unit as a narcotics investigator.

24 Q What kind of work do you do in that position?

25 A The primary function of the drug enforcement unit is

1 identify those responsible for the sale of illegal drugs.

2 The drug unit also investigates matters of organized crime,
3 prostitution and also compliance of ABC laws.

4 Q And how many years were you a police officer prior to
5 joining specifically the drug enforcement unit?

6 A I've been employed with the Rock Hill Police Department
7 since March of 2010. I've been assigned to the drug
8 enforcement unit since March of 2016.

9 Q Were you employed in your present capacity on May 16th,
10 2018?

11 A Yes, ma'am.

12 Q So what I want to do is I want to draw your attention
13 to that afternoon. What, in particular, were you doing
14 around 3:30 on May 16th, 2018?

15 A We were executing a narcotics search warrant at [REDACTED]
16 Leach Road, which is in Rock Hill, York County, South
17 Carolina.

18 Q And were you with other officers while executing that
19 search warrant?

20 A Yes, ma'am.

21 Q And I want to show you what's been marked for
22 identification purposes as State's Exhibit 1 and 2.

23 MS. HAMILTON: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25 BY MS. HAMILTON:

1 Q Would you please take a moment to look at those?

2 A (Witness complies.)

3 Q Do you recognize those photos?

4 A Yes, ma'am.

5 Q How do you recognize these photos?

6 A These are overviews of the area of [REDACTED] Leach Road and
7 Highway 5 or West Main Street in Rock Hill.

8 Q So are you familiar with these locations?

9 A Yes, ma'am.

10 Q And do these photographs, aerial photographs fairly and
11 accurately depict the roads and location of buildings as
12 they appeared on the afternoon of May 16th, 2018?

13 A They do.

14 Q And are there any material alterations or deletions on
15 that map that you can see?

16 A No, ma'am.

17 MS. HAMILTON: Your Honor, the State offers Exhibits
18 No. 1 and 2 into admission into evidence.

19 THE COURT: Any objection?

20 MR. BELTON: No objection.

21 THE COURT: State's 1 and 2 are admitted without
22 objection.

23 MS. HAMILTON: Thank you, Your Honor.

24 So I would ask the Court if we could publish to the
25 jury?

1 THE COURT: Yes, ma'am.

2 MS. HAMILTON: This might take me a moment. Beg the
3 Court's indulgence.

4 (WHEREUPON, State's Exhibit Nos. 1 and 2 were admitted
5 into evidence.)

6 (Pause.)

7 BY MS. HAMILTON:

8 Q Okay. So Officer Rowe, I am showing you what is
9 State's Exhibit No. 1. Could you please show me on this map
10 -- and I'm going to make it available so that you can
11 circle. Okay. Looking at this map and the overview, could
12 you please circle on this map where [REDACTED] Leach Road is
13 located?

14 A (Witness complies.)

15 Q Okay. Thank you. And can you please circle Rawlinson
16 Road Middle School on this map?

17 A (Witness complies.)

18 Q Perfect. Now, I'm going to go to the next exhibit.

19 THE COURT: Let's pause real quick.

20 Are y'all's monitors on?

21 ALL: No.

22 THE COURT: Okay. Continue.

23 MS. HAMILTON: They're all on? We're good?

24 THE COURT: Y'all are free to look up here, too.

25 BY MS. HAMILTON:

1 Q Now, Officer Rowe, this is State's Exhibit No. 2 that
2 we're looking at. Now, this is a closer visual of [REDACTED]
3 Leach Road. Could you please circle that residence on this
4 map?

5 A (Witness complies.)

6 Q Great. Thank you. Now, that is the residence that you
7 executed the search warrant on that day?

8 A Yes, ma'am.

9 Q And looking at this overview, I just want you to give
10 an idea to the jury where on this photo that you entered
11 this residence. Do you see the entrance that you entered
12 into?

13 A You cannot see the door in this particular photograph,
14 but it was the side door in this area where we entered the
15 residence.

16 Q So now what I would ask is you to just describe to us
17 what happened as you entered that residence on [REDACTED] Leach
18 Road.

19 A Sure. Myself and other officers who were assigned to
20 [REDACTED] Leach Road proceeded toward that location. We were in
21 a gray van. We arrived on scene. Lieutenant Rainier was
22 driving the van, the front seat passenger was another
23 investigator and then there were several other people in the
24 back.

25 When we got there, we began to exit the vehicle to

1 approach the front of the house. Actually, the van door
2 locked on us, the back end door did, so I proceeded through
3 the front passenger seat with the other investigators that
4 had already exited the vehicle.

5 We approached the front door of the house. We knocked
6 and announced our presence, police, search warrant, police,
7 search warrant, at which point, we opened the front door,
8 which was unsecured at that time and we began to enter the
9 residence to clear it and detain anybody that was within the
10 residence.

11 Q So could you kind of give us a visual of what you saw
12 as soon as you entered that residence?

13 A Sure. Immediately, upon opening the door, the
14 Defendant, Ricky Tate, in this case was wearing a red shirt.
15 He was standing in the kitchen. And you'll see some
16 pictures later, but the kitchen kind of -- and there's a
17 back hallway. He was standing in that area of the kitchen
18 and he began to run on foot along the back hallway to a rear
19 bedroom.

20 Q And did you have a visual of him?

21 A Yes, ma'am. As soon as I recognized Mr. Tate was
22 fleeing to the back of the house, I began to run after Mr.
23 Tate and continued to chase him to a back bedroom, at which
24 point, Mr. Tate entered that bedroom and I would shortly
25 thereafter enter it as well.

1 Q And when he got into that bedroom, what did you see
2 happen?

3 A Sure. As soon as I came into the bedroom, there were
4 three other individuals in the bedroom as well as Mr. Tate.
5 Mr. Tate was facing -- there's an exterior window in this
6 particular bedroom. He was turned toward the window, his
7 right arm was making a throwing motion as if he was
8 attempting to throw something toward the bottom left of the
9 exterior window. He then turned toward me, facing toward
10 me, at which point, once he was almost completely turned
11 toward me, a bag, which was later found to contain
12 marijuana, fell from his left hand or he dropped it from his
13 left hand.

14 Q So at what point did you believe that he had thrown
15 something?

16 A I mean, it was a clear throwing motion. As soon as I
17 entered the room, his right -- like I said, it was very
18 evident that he was attempting to throw something. What he
19 was attempting to throw, I wasn't sure at that time.

20 Q With his right hand, you stated?

21 A Yes, ma'am.

22 Q And what hand did you see him drop the marijuana from?

23 A His left hand.

24 Q So once you saw him make that throwing motion -- oh,
25 let me go back. You said there's other people in that

1 bedroom. Were those other people anywhere near that bedroom
2 window?

3 A The bedroom is relatively small. It's a single-wide
4 trailer, so it was relatively small. The other individuals,
5 I believe two of them were on the bed, if I recall
6 correctly, and another female was standing up. All those
7 individuals, I gave them verbal commands to show me their
8 hands and keep their hands up and they complied with all the
9 verbal commands that I gave them. Mr. Tate was the only one
10 that didn't necessary comply with the orders that he was
11 given. And he was eventually taken to the ground and
12 handcuffed.

13 Q Okay. So going back to the throwing motion towards
14 that window. Did you observe anything on the ground next to
15 the Defendant that would confirm his attempt to throw
16 something out that window?

17 A So we did find a bag that contained crack cocaine
18 later. Initially, during the initial search, I didn't see
19 the actual object, but it was clear that he was attempting
20 to throw something. And it was located just where Mr. Tate
21 was standing.

22 The screen door on this particular window, the exterior
23 of the screen had two screws on the left side of the
24 exterior screen, so it would have prevented anything from
25 going outside the window, which was the area that he was

1 attempting to throw that had a small box fan in the window,
2 so there was only small gaps on either side of the window.

3 Q And we stated that there were other people within that
4 bedroom. Could you identify those, kind of who was laying
5 where, who was --

6 A One of the females was Brandi Eades. The second
7 female, I don't recall her name, and then there was a male
8 subject, Tyreque Tolbert, I believe was his name.

9 Q Where was he located?

10 A Mr. Tolbert was laying face down on the bed, almost
11 like he had been sleeping, when we came in. I believe Ms.
12 Eades was standing in the corner of the room. I can't
13 recall -- I know there was two females. One was sitting on
14 the bed and one was standing up in the corner.

15 Q So the only person you saw make movements was Mr. Tate?

16 A Yes, ma'am.

17 Q What did you do next once -- you stated you got in the
18 bedroom, you saw that motion. You then took Mr. Tate into
19 custody. What did you proceed to do at that point?

20 A Sure. So at that point, obviously, I only had a set or
21 two of handcuffs on me. So Mr. Tate was placed in
22 handcuffs. I requested additional officers to come assist
23 me with that room to handcuff the other individuals that
24 were in there. They shortly, thereafter, came and assisted
25 me with that.

1 Once everybody was handcuffed, we asked for consent to
2 search their persons. Each person was searched and then
3 they were brought out into the living room where we could
4 read them the search warrant that we had for the house as
5 well as their Miranda rights.

6 Q And when you secured each person in that room by
7 handcuffing them, did you make sure there was nothing in
8 their hands when you were handcuffing them?

9 A Yes, ma'am. Both Mr. Tate and Mr. Tolbert were both
10 searched. I searched both of them. They both gave consent
11 to search their persons. And they did not have anything on
12 them other than some personal effects, money, lighters, just
13 miscellaneous personal effects. The two females in the
14 room, I did ask them if they had anything on them. Both of
15 them denied it. I searched their pockets, kind of
16 preliminary search of them as well as their hands to make
17 sure they didn't have anything.

18 Q So once you got everyone secured, where did you take
19 them? Where was everybody taken?

20 A Everybody was taken back to the main living area, or
21 the living room.

22 Q And you stated that you eventually recovered the crack
23 cocaine, correct?

24 A Yes, ma'am. After we brought everybody back out to the
25 living room, I proceeded outside to check outside the window

1 to make sure -- because at that point, I didn't realize
2 there was a screen that was preventing anything from going
3 out of the window, so I went outside to check to see if
4 anything had been thrown out, if there was anything that was
5 clearly freshly laying on the ground outside of the window.

6 Q Did you find anything outside that window?

7 A There was trash, but nothing illegal.

8 Q And the only thing you found next to that window was
9 what?

10 A Was the bag of crack.

11 Q I want to ask you about your body camera that afternoon
12 of May 16, 2018. Did you have a body camera on you that
13 afternoon?

14 A Yes, ma'am.

15 Q And what activated your body camera that afternoon?

16 A It's activated by physically depressing the button.
17 There's a large circle button on the front of the device,
18 you depress it twice and it activates the camera.

19 Q And what type of camera and recording system is your
20 body camera?

21 A It's Axon Body 2, I believe.

22 Q And have you received training on the operation of that
23 body camera?

24 A Yes, ma'am.

25 Q And on the afternoon of May 16, 2018, that body camera

1 was activated, correct?

2 A It was.

3 Q So I'm going to hand you what has been marked as
4 State's Exhibit No. 3 for identification purposes.

5 MS. HAMILTON: May I approach the witness?

6 THE COURT: Yes.

7 BY MS. HAMILTON:

8 Q Just take a moment to look at that.

9 A (Witness complies.)

10 Q Do you recognize that item?

11 A I do.

12 Q And what is that?

13 A It's a copy of the body camera footage from that day.

14 Q And how do you recognize this DVD?

15 A I reviewed this video on October 18th and initialed and
16 dated it.

17 Q So you had an opportunity to review this video prior to
18 today?

19 A Yes, ma'am.

20 Q And are the videos that you viewed on that DVD a fair
21 and accurate depiction of the events that occurred at [REDACTED]
22 Leach Road on May 16th, 2019?

23 A Yes, ma'am, they are.

24 Q And has that tape been altered or edited in any way
25 since you removed it from the camera system that night?

1 A I have no way of doing such.

2 MS. HAMILTON: Your Honor, the State would offer
3 Exhibit No. 3 into admission into evidence.

4 THE COURT: Any objection?

5 MR. BELTON: No objection.

6 THE COURT: State's 3 admitted without objection.

7 MS. HAMILTON: Thank you, Your Honor. May I publish to
8 the jury?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, State's Exhibit No. 3 is admitted into
11 evidence.)

12 (Pause.)

13 THE COURT: I was going to say we could take a little
14 break.

15 MS. HAMILTON: Could we?

16 THE COURT: Ladies and gentlemen, let's take a short
17 break while we figure this out. Don't discuss the case
18 amongst yourselves. Go on back to your jury room, we'll
19 have you back shortly.

20 (WHEREUPON, the jury exits the courtroom.)

21 (WHEREUPON, a short break was taken.)

22 (WHEREUPON, the jury enters the courtroom.)

23 THE COURT: All right, folks, I think we've got our
24 technical difficulties worked out. As I keep telling you,
25 this is a new courtroom. This is the first trial in this

1 courtroom. We are all sort of the guinea pigs. So there's
2 been little glitches, there will probably be more. I
3 appreciate your patience.

4 You can continue with your direct -- well, you were
5 playing the video.

6 BY MS. HAMILTON:

7 Q So this again is State's Exhibit No. 3 that we are
8 viewing, the body cam, correct?

9 A Yes, ma'am.

10 (WHEREUPON, State's Exhibit No. 3 was published to the
11 jury.)

12 BY MS. HAMILTON:

13 Q Officer Rowe, I want to ask you, in this photo, when
14 you saw the Defendant making that throwing motion towards
15 the window, did you see anything on the ground after he
16 threw something at that window?

17 MR. BELTON: Objection, Your Honor, she's leading the
18 witness.

19 THE COURT: Sustained. Rephrase your question.

20 BY MS. HAMILTON:

21 Q Do you see anything under that window?

22 A Yes, ma'am. It's kind of hard to tell. I can't draw
23 circles on this screen I don't think, but at the base of the
24 kind of drapery there, just below the left side of the
25 window, you can kind of make out the bag of crack cocaine

1 that was recovered. And then the bag of marijuana is just
2 beside the mattress.

3 Q Is that a better visual for you?

4 A Yes, ma'am.

5 (WHEREUPON, the video was continued.)

6 Q Officer Rowe, I just want to pause this for a minute.
7 What did we just see with the two people over near the
8 window? What were you doing?

9 A Just moving people so that Lieutenant Rainier and other
10 officers could clear the two small closets because,
11 obviously, we didn't know if there was anybody else hiding
12 the closets or anything of that nature. So we brought
13 everybody to one side of the room so they could safely enter
14 those closets to make sure nobody was there.

15 Q And where the Defendant was standing, is that where the
16 crack cocaine was found? You moved him over there?

17 A Yes, ma'am.

18 (WHEREUPON, the video was continued.)

19 THE COURT: You've got to pause it -- because there's
20 audio, you've got to pause it before you ask a question.

21 MR. BELTON: Your Honor, may we approach one second?

22 THE COURT: Yes, sir.

23 (WHEREUPON, a bench conference was held in the presence
24 of the jury, but outside the hearing of the jury.)

25 THE COURT: All right. You may continue.

1 MS. HAMILTON: Thank you.

2 (WHEREUPON, the video was continued.)

3 BY MS. HAMILTON:

4 Q I know it's hard to see on this video, Officer Rowe,
5 but is there something under the dresser in this video?

6 A Yes, ma'am. When we were moving Mr. Tate and the other
7 individuals around inside within that room, the bag of crack
8 moved -- or was shuffled in the foot movement from where it
9 originally was, where you saw it a minute ago, and it's just
10 up under to the left leg of the dresser there that you see.

11 Q It's the white object over there?

12 A Yes, ma'am.

13 MR. BELTON: Again, Your Honor, leading. She's
14 testifying.

15 THE COURT: Sustained.

16 (WHEREUPON, the video was continued.)

17 BY MS. HAMILTON:

18 Q Officer, what are we seeing you do at this moment?

19 A At this time, I'm drawing a diagram of [REDACTED] Leach Road
20 so I can notate what bedrooms items of evidence are located
21 in. It makes it a bit easier when documenting it. Instead
22 of just saying something was found in a bedroom, it would be
23 bedroom number one, number two, bathroom one, so and so
24 forth.

25 (WHEREUPON, the video was continued.)

1 Q So, Officer Rowe, please show me in this picture the
2 window you spoke of earlier?

3 A It would be on the bottom right portion as you're
4 looking at it now. This is the exterior view of it, and
5 then, of course, the screen on the outside. It has two
6 screws affixed on the bottom there. You can actually see
7 them, two black dots, holding that screen shut where it
8 would have been impossible to throw anything out the window
9 from that side.

10 Q And what's in the middle of that window?

11 A A box fan.

12 Q And just to be clear, is that the window that you spoke
13 of earlier?

14 A Yes, ma'am. That is just from the outside.

15 Q But you saw what happened?

16 A Correct.

17 Q So what did you see happen at that window?

18 A That's the window that Mr. Tate attempted to throw the
19 bag of crack that we later found out of.

20 (WHEREUPON, the video was continued.)

21 MR. BELTON: Your Honor, we have an objection.

22 THE COURT: That you need to put on the record?

23 MR. BELTON: Yes, Your Honor.

24 THE COURT: All right, ladies and gentlemen. Go back
25 to your jury room. Do not discuss the case amongst

1 yourselves. I'll have you back shortly.

2 (WHEREUPON, the jury exits the courtroom.)

3 THE COURT: Yes, sir.

4 MR. BELTON: Your Honor, I think the officers were
5 running commentary on the video, the audio portion of what
6 Mr. Tate did and what he saw him do and where it went and
7 where it landed and so forth should be silenced, at least,
8 the audio portion of this. I think inside the court
9 testimony, he can testify as to what he saw, but a running
10 commentary during this video, I don't think should be played
11 for the jury. At this time, we object to it.

12 MS. HAMILTON: Your Honor, he is making a record as to
13 what he saw for his body cam purposes. He's already
14 testified to the things that he saw. Additionally,
15 yesterday, we asked them to watch the video. They stated
16 they were going to watch the video and let us know of any
17 redactions that needed to be made. Nothing was stated on
18 the record today about any redactions, anything that needed
19 to be made, changes that needed to be made to this video.
20 They could have done so before today. And now, we are in
21 court watching the video that they have not objected to and
22 now, we have all these new objections.

23 I don't think this is a valid objection. I believe
24 this shows the nature of what he's doing. Any commentary
25 with the other officers is going to be reflective of his

1 actions and response to those. As if, okay, there's
2 something there inside, I'm not going to look out here.
3 These are his reactions, not for the truth of the matter
4 asserted in this video, Your Honor. And again, these
5 redactions and these requests were not made. They had no
6 objections and now they're making these new objections on
7 the record. And we would oppose those, Your Honor.

8 THE COURT: The objection is overruled. The DVD as is
9 has been admitted into evidence without objection. There
10 was no -- I mean, it's already in evidence. And to the
11 extent that the officer -- Officer Rowe is making commentary
12 on the video, it seems to be -- now, I don't know what's
13 coming, but it seems to be the same as his testimony here in
14 court, so any affect on the Defendant is harmless, frankly.

15 MR. BELTON: May I be heard?

16 THE COURT: Yes, sir.

17 MR. BELTON: And the solicitor is correct, we didn't
18 object to the video coming in and we don't object to the
19 video coming in. And the officer can testify as to what he
20 saw and what he found, but as to a running commentary, this
21 bolstering of his testimony, it's watching a movie. He can
22 testify to that, but for him to be offering a running
23 commentary about what Ricky Tate did, oh, he did this and he
24 did that and we watched him do this and we watched him do
25 that, you know, I think it's hearsay and I think it's

1 objectionable. Obviously, he can testify to that. And we
2 didn't object to the video portion coming in --

3 THE COURT: Well, no --

4 MR. BELTON: It's leading --

5 THE COURT: What you didn't object to was the DVD that
6 has been handed up and is now being played. To the extent
7 that the DVD should have been edited to silence certain
8 portions, et cetera, then I would have expected that to have
9 occurred before you do not object to the admission of that
10 DVD as is in evidence. People make redactions all the time.
11 Then the conversation would have been is the DVD that the
12 State is offering, the one that's been redacted, so we make
13 sure we have the right one in evidence.

14 There was no objection to the DVD as it's being played
15 now. There were no caveats, qualifications or otherwise.
16 And because it's identical to his testimony, I find no harm
17 to the Defendant. So I understand your objection, I'm just
18 overruling it.

19 MR. BELTON: Thank you very much, Your Honor.

20 THE COURT: Yes, sir.

21 All right. How much longer do we have on this video?

22 MS. HAMILTON: We have almost two minutes left.

23 THE COURT: Okay.

24 Bring the jury.

25 (WHEREUPON, the jury enters the courtroom.)

1 THE COURT: Ms. Hamilton, continue with your direct
2 examination.

3 MS. HAMILTON: Thank you, Your Honor.

4 (WHEREUPON, the video was continued.)

5 BY MS. HAMILTON:

6 Q Officer Rowe, I just want to go back one more time and
7 watch the beginning of this video. And I want you to kind
8 of give us a play-by-play as we watch it as to what you saw
9 and then we'll be done with this video.

10 (WHEREUPON, the video was continued.)

11 Q Could you please show me what we're seeing in this
12 video? Just describe it in words because I know you can't
13 physically show me.

14 A This was shortly after I arrived, maybe a step or two
15 inside the house. And you can see Mr. Tate in the hallway
16 there proceeding away from my location, or running toward
17 the back bedroom.

18 Q Okay. What is he wearing?

19 A A bright red shirt. I think it was blue jean pants
20 maybe, or blue jean shorts, long blue jean shorts.

21 MS. HAMILTON: Your Honor, would the witness be able to
22 come down and point to the screen so we can have some kind
23 of pointing in reference to thing in the video?

24 THE COURT: Are they going to be able to hear?

25 MS. HAMILTON: Your Honor, I think I might be able to

1 have him do annotations if that's okay.

2 THE COURT: Go back to the witness stand.

3 BY MS. HAMILTON:

4 Q You can do what you did on the screen before, circle,
5 and see if that works.

6 A You want me to circle Mr. Tate?

7 Q Yes.

8 A (Witness complies.)

9 Q Perfect. Okay.

10 (WHEREUPON, the video was continued.)

11 BY MS. HAMILTON:

12 Q Okay. Can you describe to me what we just saw happen
13 on that video?

14 A Sure. This is Mr. Tate continue down the back hallway,
15 open the rear bedroom door and proceeded into that room.

16 Q And what are we going to see shortly after this?

17 A You'll see me make entry into the room and you'll see
18 Mr. Tate attempting to throw the bag of crack out of the
19 window and drop the bag of marijuana.

20 Q Do you remember what hand you saw him reach towards the
21 window that we're going to see?

22 A His right hand.

23 (WHEREUPON, the video was continued.)

24 Q Could you please identify in this video, and I'm going
25 to see if you can circle -- would you please circle where

1 Ms. Brandi Eades is located?

2 A (Witness complies.)

3 Q Perfect. Thank you. Okay, Officer Rowe, I am going to
4 hand you a few exhibits for identification purposes. This
5 is going to be Exhibits 4 through 18.

6 MR. BELTON: No objection.

7 THE COURT: No objection to the admission of State's 4
8 through 18. They're admitted without objection.

9 (WHEREUPON, State's Exhibit Nos. 4 through 18 were
10 admitted into evidence.)

11 MS. HAMILTON: May I approach the witness, Your Honor?

12 THE COURT: Yes.

13 BY MS. HAMILTON:

14 Q Officer Rowe, could you please take a moment to look at
15 all of these photos? And then I'm going to ask you a few
16 questions about them.

17 A (Witness complied.)

18 Q Did you have an opportunity to review those?

19 A Yes, ma'am.

20 Q I'm going to ask you a few questions. So you have
21 looked at Exhibits 4 through, I believe, it is 18 -- or 17.
22 Could you please describe to me what these are?

23 A Sure. There's a diagram of the residence at [REDACTED] Leach
24 Road. There is several stills of images from my body
25 camera. And there's also photographs of the crack cocaine

1 and oxycodone pills that were recovered within [REDACTED] Leach
2 Road.

3 Q You stated oxycodone pills. Is that what you believed
4 those to be initially?

5 A No, ma'am, I believed they were fraudulent pills.

6 Q And what made you believe them to be fraudulent?

7 A The color, the pill stamping. They're just not
8 consistent with a true oxycodone manufacturer.

9 Q Number 5, Exhibit No. 5, you recognize that because
10 why?

11 A Number 5 is a still from my body camera.

12 Q Number 4, I am so sorry. No. 4?

13 A Number 4 is a diagram that I drew of [REDACTED] Leach Road.

14 Q And does that accurately and fairly depict the
15 residence, a map of the residence that you wrote down on May
16 16, 2018?

17 A Yes, ma'am.

18 Q Now, let's go to the other photos, still shots body
19 camera. Do those photos fairly and accurately depict what
20 you saw from your eyes and off your body camera on May 16,
21 2018, at [REDACTED] Leach Road?

22 A Yes, ma'am, they do.

23 Q And the last few photographs, how do you recognize
24 those?

25 A Those are photographs I took of the drugs that were

1 recovered on scene, once back at the Rock Hill Police
2 Department of the drugs on the scale showing the weight of
3 the drugs and how they were packaged prior to them being
4 packaged by me to be placed in evidence.

5 Q Do those fairly and accurately depict the items that
6 you seized and photographed from the residence at [REDACTED] Leach
7 Road on May 16, 2018?

8 A Yes, ma'am, they do.

9 MS. HAMILTON: I believe these are already in evidence,
10 Your Honor. Could we please publish to the jury?

11 THE COURT: Yes, ma'am.

12 MS. HAMILTON: Thank you, Your Honor.

13 BY MS. HAMILTON:

14 Q So what I'm going to be publishing is State's Exhibit
15 No. 4 at this moment. What I would like you to do, if you
16 could for the jury, for everyone, just identify the location
17 that you entered this residence, first off, and the pathway
18 that you saw the Defendant run. You can do it on your
19 screen. I think we have it ready for you.

20 A So we initially entered in on the front attached porch.
21 And then myself and Mr. Tate both went through the residence
22 and we're about here and Mr. Tate stopped at the window with
23 the other individuals.

24 Q And you said you subsequently recovered the pills that
25 -- the oxycodone pills, eventually, believed to be heroin --

1 tested to be heroin. Can you show me where those were
2 located?

3 A Yes, ma'am, those were located right here at the corner
4 of the kitchen and the hallway, the same area that Mr. Tate
5 was observed fleeing from upon our entry into the residence.

6 Q Did you see anyone else running in that direction or
7 even around that direction when you entered that home?

8 A No, ma'am. The closest other individual would have
9 been a male, who was lying on the couch upon our entry into
10 the house.

11 Q Could you please mark where that couch would be
12 located?

13 A Sure. There were two couches. One was here
14 (indicating) and there was another here (indicating). And
15 if I'm not mistaken, the male was on this particular couch
16 (indicating).

17 Q Okay. And which couch was the male on?

18 A I didn't deal directly with him, but I believe he was
19 on this couch.

20 Q Did he have the ability to throw that bag --

21 MR. BELTON: Objection, Your Honor.

22 THE COURT: Sustained. Next question.

23 BY MS. HAMILTON:

24 Q Could you please show me then where the Defendant goes
25 into the bedroom and where you subsequently find the crack

1 cocaine located?

2 A Sure. Yeah, I've already drawn a small X or what looks
3 like an X, sorry, in bedroom one, kind of in that same area
4 was both the marijuana and the back of crack cocaine that we
5 recovered.

6 Q Can you show where the marijuana approximately would be
7 located?

8 A Everything was within that radius of that circle.

9 Q And that's it for that exhibit. Let's go to the next
10 one. This is going to be Exhibit No. 5. What are we seeing
11 in this exhibit?

12 A I'm standing in the bedroom. Mr. Tate has fled into
13 the back hallway. We've already looked at this photograph.
14 But, clearly, the other gentleman would have been to the
15 right side just out of camera view, so he was not on this
16 couch. So upon our entry into the house, there was nobody
17 else within the kitchen or the living room.

18 Q Now, on this photograph, I want you to -- since you did
19 recover the pills, in this photograph, please show me
20 exactly where the pills were found. If you can circle the
21 area whereabouts the pills were.

22 A So they were on the ground directly behind that chair
23 right at the corner of the hallway, where the hallway and
24 the kitchen wall meet.

25 Q And when you entered the home, where exactly did you

1 see Ricky Tate run from?

2 A From that same general area.

3 Q I am going to State's Exhibit No. 6. Please describe
4 what we are seeing here.

5 A Sure. This is a still immediately upon my entry into
6 the room. You can see Mr. Tate standing at the window with
7 his right hand reaching out toward the bottom left of the
8 window, as I've already testified to. Ms. Eades is standing
9 up. Mr. Tolbert -- is Tyrequis Tolbert's leg with his hands
10 kind of in front of his chest on the couch. And then Donna,
11 I don't recall her last name, is seated on the bed.

12 Q And what hand did the Defendant have the marijuana in?
13 Could you please identify that one?

14 A Sure. So the marijuana was in his left hand and the
15 bag of crack I believe he attempted to throw was in his
16 right hand.

17 Q Okay. Now, what are we seeing here? I'm going to give
18 you the ability to show annotation, circle what we are
19 seeing here. I just want you to help the jury identify what
20 made you believe that something was being thrown. Would you
21 show or explain to us?

22 A I mean, it's pretty evident, but you can see his right
23 hand is clearly reaching out toward the bottom left of the
24 window in a throwing motion. I think it's pretty clear.

25 Q Would you please circle his right hand for the jury?

1 A (Witness complied.)

2 Q Perfect. What are we seeing in this exhibit?

3 A Sure. So you can see Mr. Tate still has -- well, it
4 appears that he's holding something in his left hand. The
5 bag of marijuana will later fall onto the ground from his
6 left hand. You can see -- and once he turns toward me,
7 you'll be able to see that his right hand is now open and
8 there's nothing in his hand at that time when he turns and
9 faces me.

10 And same thing, at this point, the bag of marijuana has
11 been dropped by Mr. Tate. His hand is still -- his left
12 hand is still closed. His right hand is opened and there's
13 clearly nothing in it at that point in time.

14 Q Could you please describe to me what we're seeing in
15 this photograph?

16 A Sure. This is just an overview. Mr. Tate is lying --
17 you can see one of his feet, I believe it's his left foot
18 there in the bottom of the screen after we had taken -- or I
19 was placing him in handcuffs. You can see the other
20 individuals in the room and you can see the bag of marijuana
21 and the bag of crack cocaine.

22 Q Okay. Can you circle those for the jury and identify
23 where those are located?

24 A This is the bag of marijuana and this is the bag of
25 crack cocaine.

1 Q Okay. What are we seeing here?

2 A Exterior view. This is the same window you just saw,
3 just on the outside of the house.

4 Q And which side of the window is the window -- the side
5 of the window that you saw the Defendant again?

6 A The right side.

7 Q Or right side in that video?

8 A Right side in this photograph, correct, it would be the
9 right side.

10 Q What are we seeing in this photograph?

11 A This is the bag of crack that was recovered from
12 underneath the dresser just to the left of the window.

13 Q Is this the crack that you saw under the window?

14 A Yes, ma'am.

15 Q What are we seeing here?

16 A This is the crack that's being weighed. It's
17 approximately 30.4 grams.

18 Q What are we seeing here?

19 A This is a bag of oxycodone pills that were found in the
20 hallway, kind of kitchen hallway corner.

21 Q What are we seeing here?

22 A This is another close-up of how they were packaged.
23 Again, that's the pills.

24 Q What are we seeing here?

25 A Inside the plastic bag in the ashtray -- so in bedroom,

1 the bedroom where Mr. Tate was located, there was a -- to
2 the right side of the bed, there was a small nightstand. On
3 that nightstand was this ashtray. Inside that plastic bag
4 is approximately point 5 grams of crack and then you can see
5 the paraphernalia to the left of the ashtray.

6 Q How long have you been in law enforcement?

7 A Since 2010.

8 Q Okay. And do you have experience in investigating drug
9 crimes?

10 A Yes, ma'am. I've been an investigator since 2016 with
11 the York County Drug Unit.

12 Q And based on your experience in the field, do you have
13 knowledge of what certain drugs look like?

14 A Yes, ma'am.

15 Q Do you have knowledge as to dealers versus users?

16 A Yes, ma'am.

17 Q What did you believe to be in the bag that you found in
18 the floor in the back bedroom?

19 A Crack cocaine.

20 Q And we have been over this, but I just want to ask you
21 again, what did you believe to be in the hallway?

22 A Fake oxycodone pills.

23 Q And when you say fake oxycodone pills, what do you mean
24 by that? I want you to explain to the jury.

25 A Sure. A popular drug trend today is for drug dealers

1 to manufacture or attempt to manufacture their own pills or
2 to replicate oxycodone pills. The stamping on those pills
3 were 1815, that's Roxicodone. They generally sell for about
4 a dollar a milligram. They're 30-milligram pills.
5 Therefore, there's a lot of money to be made. All it
6 requires in order to make fraudulent pills is a pill binder,
7 some type of drug.

8 In this particular case, they had heroin in them. They
9 also used fentanyl. Or other drugs to mix within the pill
10 binder. Then place them in a pill press with the dye stamp
11 1815 on them. They apply pressure to that pill binder and
12 it forms that pill. They're pretty easy to differentiate
13 between a legitimate pill and a fake pill. Generally, the
14 manufacturer of real pill, they place a coating over that
15 pill so it doesn't disintegrate as you touch it or as it is
16 in the bottle.

17 Generally, these pills, you'll see that the binder,
18 since they don't place the coating on the pills, that
19 they'll just start to disintegrate after they've been placed
20 in pockets or moved around. You'll also notice that the
21 stamps on the pills are inconsistent of -- pills that are
22 manufactured by legitimate manufacturers are smooth. They
23 have an equal appearance in color. The edges are nice and
24 round and the stamps are consistent. So, you know, now
25 they're making these, in some cases, in their basement and

1 the edges don't come out right. They tend to disintegrate
2 or fall apart. It's pretty easy to differentiate between
3 the two.

4 Q I want to also ask you about the crack cocaine. In
5 your experience, what do you find to be an intoxicating
6 dose? Like a user level of crack cocaine?

7 A Generally speaking --

8 MR. BELTON: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MS. HAMILTON?

11 Q Was this what you found on scene what you would
12 normally see with a user?

13 A No, it was not.

14 Q What was the weight? Do you remember the weight?

15 A Approximately 30.4 grams.

16 Q And how did you get that weight?

17 A We have a scale at the Rock Hill Police Department
18 where our office is and we weighed it there.

19 Q And is there any significance to that weight to you?

20 A Sure. It's about point 1 gram shy of an eight ball or
21 an eighth of an ounce of crack. It's commonly referred to
22 as an eight ball on the street.

23 Q And to you, how much is that worth to you on the
24 street?

25 A Depends on who you're getting it from, depends on the

1 quantity. Generally speaking, you can buy an eight ball for
2 around 140 to \$180. It just depends on your relationship
3 with your dealer, how often you go to him, the quality of
4 the product.

5 Q And in the photo of the crack, it's broken up. What's
6 the significance of that?

7 A It could be broken for intended for sale. I didn't
8 weigh any of the individual rocks themselves. Or it could
9 have -- there's a number of reasons it could be broken.

10 Q And when you say broken, what does it normally look
11 like?

12 A Sure. When you cook cocaine into crack cocaine, it
13 cooks into a cookie or just a small disk waver. And then
14 that actual cookie is broken up into smaller portions and
15 then sold.

16 Q So after you have gone back to -- what happened on
17 scene -- after everyone is secured, you have to get the
18 evidence secured. How do you go about doing that? Did you
19 have a role in securing the evidence within the home?

20 A Sure. So prior to beginning any search warrant, one
21 officer is hey, you're going to be the evidence technician
22 in this particular case or designated evidence technician
23 for that particular occasion. And that just happened to be
24 me in this case. So I was the officer.

25 Once we secure the residence and everybody is secure

1 and there's no officer safety issues, then officers, other
2 investigators will begin searching the residence. If they
3 locate something within the residence, they notice the
4 evidence technician. The evidence technician goes over and
5 photographs that item prior to recovering it, recovers it,
6 bags it, places it in -- in this particular case, we had a
7 black bin. Y'all probably saw that in the video. Secures
8 it in the black bin and then continues throughout the house
9 collecting anything of evidentiary value.

10 Q And do you have that bin in your custody and control?

11 A The bin, yes, ma'am. You almost kind of drag it around
12 with you as you're going through the house.

13 Q And in this particular case with Mr. Tate, what items
14 did you secure that were relevant to him?

15 A The oxycodone pills, the crack cocaine and the
16 marijuana.

17 Q Let me hand to you what's been marked for
18 identification purposes as State's Exhibit No. 19 and No.
19 20.

20 MS. HAMILTON: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 BY MS. HAMILTON:

23 Q Would you please look at these two items?

24 A (Witness complies.)

25 Q Have you had contact with these before?

1 A Yes, ma'am.

2 Q And how do you recognize them?

3 A I filled out the bags and placed the drugs that are in
4 the bags within.

5 Q And when you say filled out the bags, what do you mean
6 by that?

7 A Each bag is marked with the case number, item number,
8 description of the evidence, where it was found, date and
9 time of recovery, who it's related to, the suspect, what the
10 charges were, the officer's name who recovered it and then
11 there's a chain of custody for each item on each bag.

12 Q And do you sign those bags?

13 A Yes, ma'am.

14 Q I'm going to start with Exhibit No. 19. Would you
15 please take a look at Exhibit No. 19 specifically?

16 A Yes, ma'am.

17 Q Is this the envelope that you secured the evidence in
18 on the afternoon of May 16, 2018?

19 A It is.

20 Q What did you believe that to be?

21 A Crack cocaine.

22 Q Where did you seize that crack cocaine from?

23 A In the floor of bedroom one.

24 Q Let's go to Exhibit No. 20. What is this?

25 A Six dose units of fraudulent oxycodone pills.

1 Q And where did you locate those items?

2 A The hallway, hallway kitchen corner.

3 Q Are both of these items that you received from [REDACTED]

4 Leach Road?

5 A Yes, ma'am.

6 Q What did you do with these particular drugs after you
7 sealed them in the evidence bag?

8 A Sure. Once sealed in the evidence bag, they're checked
9 over by a supervisor to make sure we didn't miss any blanks
10 or misnumber any items. Once that's done, they're placed
11 into the Rock Hill Police Department temporary evidence
12 locker. We have a small locker at the Rock Hill Police
13 Department where our office is. It has a small mail slot
14 that allows you to drop items in, which you can't retrieve
15 them out of it.

16 Q So that's a secured location?

17 A Yes, ma'am.

18 Q And were the drugs continuously under your custody and
19 control while you had them prior to bagging them up and
20 placing them in that lockbox at Rock Hill PD?

21 A Yes, ma'am.

22 MS. HAMILTON: Your Honor, we would ask for State's
23 Exhibit No -- oh, wait, not yet, Your Honor. I'm sorry.
24 I'm getting ahead of myself.

25 BY MS. HAMILTON:

1 Q Were these baggies subsequently fingerprinted?

2 A They were.

3 Q Did any hits come back on these?

4 A No, ma'am.

5 Q Meaning, no fingerprints were found?

6 A They were not able to get any fingerprints.

7 Q Now, within this residence, I believe we had mentioned
8 that this is a drug home, correct?

9 A It is.

10 Q So when you say drug home, what do we mean by that?

11 A Means that dealers come there to sell drugs and users
12 come there to buy drugs. There's often -- this particular
13 house and several other locations on Leach Road have been an
14 issue of several narcotics investigations over the years.

15 Q Did you find any evidence of use within that home other
16 than what we have -- or bringing into evidence for Mr. Tate?

17 A Of drug use?

18 Q Yes.

19 A There was paraphernalia that was in the room --

20 MR. BELTON: Objection, Your Honor. It was kind of a
21 duplicate question there that I -- there were multiple
22 questions in there being asked.

23 THE COURT: Restate your question.

24 BY MS. HAMILTON:

25 Q Did you find any other drug paraphernalia in this home?

1 A There was just the one crack pipe and there were two
2 spoons, I believe, that were recovered from within the
3 residence. I'd have to look at the evidence sheet to tell
4 you exactly where they were located.

5 Q I am going to show you for identification purposes
6 State's Exhibit No. 18.

7 MS. HAMILTON: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MS. HAMILTON:

10 Q Officer Rowe, could you please describe to me what this
11 exhibit is?

12 A This is an overview similar to the one we've seen
13 already of Leach Road, to include to Rawlinson Road Middle
14 School at a distance, showing that the distance between [REDACTED]
15 Leach Road and Rawlinson Road Middle School is 2000 --

16 MR. BELTON: Objection, Your Honor. We have a matter
17 of law.

18 THE COURT: All right, ladies and gentlemen, go on back
19 to your jury room. Do not discuss the case amongst
20 yourselves. We'll bring you back shortly.

21 (WHEREUPON, the jury exits the courtroom.)

22 THE COURT: Mr. Belton.

23 MR. BELTON: Yes, Your Honor. Thank you for allowing
24 us to be heard. Your Honor, I think where she is trying to
25 go is to bring this in, let this officer testify to the

1 distance between this residence -- the distance between the
2 residence to this place. Because that particular diagram
3 that he has there has a red line drawn and it has the feet,
4 and to want him to testify that that residence is a half
5 mile from Rawlinson Road Middle School. The basis of my
6 objection is I don't think he's qualified to testify to
7 that.

8 THE COURT: Let's go off the record real quick.

9 (WHEREUPON, an off-the-record discussion was held.)

10 THE COURT: Back on the record.

11 MR. BELTON: Your Honor, you're right, the slide is in,
12 but him testifying to the distance, that the actual distance
13 on there is accurate is not into evidence. The actual
14 picture is in evidence.

15 MS. HAMILTON: Our position is he did measure it before
16 today. That is why we have a charge of proximity of a
17 school. This was measured. He is aware of the distance and
18 that is how he was able to charge this case. Therefore, we
19 are proving based on him measuring this that this was within
20 the half mile. I mean, that's what he did and he has
21 knowledge of, because he charged it.

22 THE COURT: How did he measure it?

23 MS. HAMILTON: You can ask him.

24 THE COURT: How did you measure it?

25 THE WITNESS: The same way the solicitor did, on Google

1 Earth and from my knowledge. We've done other narcotics
2 investigations at this location. I know it to be within a
3 half mile of Rawlinson Road Middle School.

4 MR. BELTON: Your Honor, if I could be heard. Number
5 one, I don't think he can authenticate a document coming
6 from Google Earth. He doesn't have -- you know where I'm
7 going with this.

8 THE COURT: Yeah, and that's why I asked the question
9 because I didn't know if he walked with -- not with a tape
10 measure or something like that, but that's why I wanted to
11 know how it was measured.

12 MR. BELTON: He doesn't have -- and I think our Supreme
13 Court has recently -- one, we've got a case that's come out
14 of the Fourth Circuit. Secondly, we have a case that's come
15 out of the South Carolina Supreme Court here in 2019 where
16 Justice Kittredge clearly said that just because this is the
17 way it's been done in court before doesn't make it right.
18 And so pulling up something on Google Earth and then going
19 to authenticate how Google Earth works, we need more than
20 that in our courts now. And our courts have been clear
21 about that. That's number one.

22 Secondly -- and I don't want to insult the Court, but
23 just to give you an idea of where this is, if you come down
24 Highway 5 past Rawlinson Road, turn left on Leach Road and
25 go back in there, I recently drove it, it's actually over

1 one mile if you go there by car. Certainly, if you go as
2 the crow flies, you may can get to a half a mile as the
3 officer is preparing to testify to. They've got to prove
4 that Mr. Tate had knowledge. Certainly, we know that he
5 didn't go through the woods and cut through this
6 neighborhood walking through the woods. The way they're
7 bringing it, you have to go through the woods.

8 So I say at a minimum, I'm not asking the Court to put
9 a standard on the State that exceeds what the law says, but
10 at a minimum, the Court should require them to bring
11 somebody here in this courtroom who can authenticate that
12 that calculation on there is accurate. He can't do that
13 because his position is he got off of Google Earth. He
14 can't authenticate that Google Earth is accurate.

15 MS. HAMILTON: Your Honor, he's saying driving. In
16 fact, the law is radius straight. It does not matter about
17 driving. It is -- the law says radius, that is as the crow
18 flies.

19 THE COURT: Absolutely.

20 MS. HAMILTON: We would ask that this be admitted
21 because he can also state, due to his knowledge, that this
22 is within a half mile. He has worked with cases in which
23 this is a half mile. We would just ask that -- I mean, I
24 can bring someone from York County GIS, which is where we
25 pulled this from, and they can come in and testify as to the

1 accuracy of their system, but, I mean, I would need some
2 time to do that. He says he has knowledge. He says that he
3 pulled this from the internet. The measurements on that
4 website, we --

5 THE COURT: Right. So the objection as to the
6 testimony is sustained. And that as to interpreting this
7 document or trying to authenticate the distance on this
8 document and as to any personal knowledge because I would
9 bet, assume that the personal knowledge is based on using
10 Google Earth a lot in making other arrests and maybe getting
11 other convictions, you know, from that house or nearby
12 houses, but that's not proof, that's not evidence, that
13 doesn't make it so that he's believed it a number of times.
14 He's never measured it outside of Google Earth. The picture
15 has already been admitted as it is with whatever markings
16 are on it. It speaks for itself and the jury will interpret
17 it however they interpret it. But the objection is
18 sustained.

19 MS. HAMILTON: I have this exhibit, Your Honor,
20 underneath there. Do you see what I'm saying, where it
21 states --

22 THE COURT: Oh, I've seen it, yes. And there was no
23 objection to the admission of the document.

24 MS. HAMILTON: Okay. Thank you.

25 THE COURT: But as to reading it or trying to validate

1 this is what it is because this yellow line here says that
2 it's, you know, 2520 feet, that's not permissible.

3 Yes, sir.

4 MR. BELTON: And Your Honor, I just want to make sure
5 that I understand your ruling. She can't argue to the jury
6 that it's within -- she can't interpret this to the jury
7 either, correct?

8 THE COURT: Argument is argument. She can make that
9 argument. Argument is not evidence. I don't think that's
10 an improper argument, although there has to be some -- never
11 mind.

12 Bring the jury, please.

13 MS. HAMILTON: Your Honor, if we have to, can we amend
14 the witness list? We can totally get someone from the
15 county to come testify as to this.

16 MR. BELTON: Your Honor --

17 THE COURT: Let's handle that after we --

18 MS. HAMILTON: Okay.

19 THE COURT: Because once you finish your direct, I'm
20 going to send them to lunch. We can talk about that then.
21 Because it's 12:36, so we'll break before cross-examination.

22 (WHEREUPON, the jury enters the courtroom.)

23 THE COURT: All right. You may resume your direct
24 examination.

25 MS. HAMILTON: Thank you, Your Honor.

1 BY MS. HAMILTON:

2 Q I believe you had looked at this photo. You said it
3 accurately and fairly depicted the roads and locations as
4 they appeared on May 16th, 2018, correct?

5 A Still do today.

6 Q And you're familiar with the locations on this map?

7 A Yes, ma'am.

8 Q I am going to ask you to circle, in particular, in this
9 photo where [REDACTED] Leach Road is located?

10 A (Witness complies.)

11 Q Is that the location that you found the crack cocaine
12 that Mr. Ricky Tate had thrown at this location?

13 A Yes, it is.

14 Q And that's where you located the pills?

15 A Yes, ma'am.

16 Q Could you please show us on this map where Rawlinson
17 Road Middle School is located?

18 A (Witness complies.)

19 Q And could you please read that distance result number
20 that you see on the screen?

21 A 2,520.9 feet.

22 Q And what does that equate to in mile form?

23 A The bottom, it's point 47 miles. Half a mile is 2,640
24 feet.

25 Q And coming from Rock Hill downtown Main Street in the

1 direction of York County, is Rawlinson Road hard to miss?

2 A Absolutely not. It's one of three schools located on
3 Highway 5.

4 Q So is that visible from the road?

5 A Absolutely. There's a sign out in front of it that
6 says Rawlinson Road Middle School.

7 Q Do you see the person in the courtroom today who you
8 saw make a throwing motion and subsequently saw crack
9 cocaine under his window -- under the window and run through
10 the residence of [REDACTED] Leach Road on May 16th of 2018?

11 A I do.

12 Q And where is he sitting?

13 A At the Defense table, Mr. Ricky Tate, the last
14 gentleman on the left, my left.

15 MS. HAMILTON: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. HAMILTON: Thank you, Officer Rowe. Would you
19 please answer any questions the Defense might have.

20 THE COURT: Actually, folks, we're going to go ahead
21 and break for lunch before cross-examination. Be back at
22 2:15. Do not discuss the case amongst yourselves or with
23 anyone else. Don't do any research about the case. Just
24 enjoy your lunch. Be back at 2:15.

25 (WHEREUPON, the jury exits the courtroom.)

1 THE COURT: Officer Rowe, you may step down.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: Be back at 2:15.

4 THE WITNESS: Absolutely.

5 THE COURT: Now, as to amending the witness list, go
6 ahead.

7 MS. HAMILTON: We would just ask since they brought
8 this up and they actually did request just to have someone
9 -- saying we needed someone from GIS, we can actually get
10 someone here to testify by this afternoon.

11 MR. BELTON: Your Honor, we swore this jury based on
12 the witness list and the people that you gave them whether
13 or not they knew, could they be fair and impartial to who
14 they're bringing in. We absolutely object to amending the
15 witness list and bringing anyone in that we have not had a
16 fair opportunity to vet the jury with. It could have been
17 someone we could have stricken, didn't know who the witness
18 is. So we oppose.

19 THE COURT: Is that the basis for your objection?

20 MR. BELTON: Yes, Your Honor.

21 MS. HAMILTON: Your Honor, we believe that you could
22 just ask them and if we have an issue, we could address it
23 at that time, but we believe that since they did request
24 that we can appease them and have someone --

25 MR. BELTON: I did request it, Your Honor. I indicated

1 what the State could have done to prove their case. Your
2 Honor, here's where we are, but for the proximity charge,
3 Mr. Tate is not facing life without parole. Proximity is
4 what gives him the strike, so that's -- none of the other
5 charges could he get the life without parole but for the
6 proximity charge.

7 So to be a major charge like that and for this man to
8 be on trial for life and the State failing to put on a
9 witness list someone who can authenticate their document and
10 the half mile, yes, because the PWID third -- but that is
11 the major charge, the proximity charge.

12 MS. HAMILTON: Your Honor, PWID third are serious
13 strikes and the proximity is a strike. They're all strikes.
14 Every single charge in this case is LWOP eligible, every
15 single charge.

16 MR. BELTON: If that, indeed, is the case, Your Honor,
17 then that's more of a reason why we don't need to amend the
18 witness list to accommodate to do what she's attempting to
19 do. She understood. Your Honor, I see your facial
20 expression, more of a reason is, if she can get a strike on
21 the other two charges, then why does the proximity charge
22 matter to her? If she can get a conviction on the other
23 charges, why does that matter? She had the opportunity --
24 she's had this case since May 2018. If she wanted to prove
25 proximity, she --

1 THE COURT: And I chuckled because it's not all about
2 the ways in which the State can take down Mr. Tate. I mean,
3 he is charged with these four crimes. He is on trial for
4 these four offenses and the State has the burden of proving
5 each and every element of each of the four offenses beyond a
6 reasonable doubt.

7 The reason I asked about your objection is because I do
8 think that that objection can be cured simply by inquiring
9 of the jurors whether they know the witness at all. I'll
10 need the name of the witness. I'll ask the jury about that
11 person and if they know him, we'll cross that bridge when we
12 get to it. But it may be that none of the 13, the 12 plus
13 the one alternate, have ever heard of the witness that
14 they're going to offer. So that objection is overruled.

15 But when we return from lunch, I'll need the name of
16 the witness. I'll inquire of the jurors.

17 MS. HAMILTON: Thank you, Your Honor.

18 THE COURT: Talk to your lawyer first.

19 We're pausing for a minute to see if I need to address
20 something Mr. Tate has a concern about.

21 (Pause.)

22 MR. BELTON: Your Honor, can we step, at least, in the
23 vestibule where we can speak privately?

24 THE COURT: You think you may have an issue that --

25 MR. BELTON: I don't know what --

1 THE COURT: Okay. Step in there for five minutes or
2 so.

3 We'll be at ease for five minutes.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: Yes, sir.

6 MR. BELTON: We're ready to break for lunch.

7 THE COURT: Okay. Thought you had another issue.
8 Great. See y'all at 2:15.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Ms. Hamilton.

11 MS. HAMILTON: Yes, Your Honor. We just want to go on
12 the record. We did get in contact with the manager of York
13 County GIS, which is the system that we used in Exhibit No.
14 18. And that is a screen shot and distance measuring. He
15 is here and willing and able to testify at the conclusion of
16 Officer Rowe's testimony as an additional witness as to the
17 operation of GIS and validate the distance, Your Honor.

18 THE COURT: What is his name?

19 MS. HAMILTON: Bryan Townsend, B-R-Y-A-N, Townsend.

20 THE COURT: Okay. Thank you.

21 Anything else?

22 MR. BELTON: No, Your Honor, not regarding that.

23 THE COURT: Regarding anything before we bring the jury
24 in?

25 MR. BELTON: Your Honor, I think the State has

1 indicated they intend on calling Brandi Eades, who was in
2 the bedroom when they went in, to testify about what
3 transpired in the bedroom. And on cross-examination of her,
4 I don't want her -- I want her to be instructed and
5 admonished not to say anything about what Ricky Tate has
6 done, may have done, seen him do prior to this incident that
7 does not involve this incident. I just want to make sure
8 she understands not to do that.

9 MS. HAMILTON: I have reiterated that to her on
10 multiple occasions in speaking to her, that you do not go
11 into past conduct of the Defendant. What we are dealing
12 with is this date. So she has been told that and I will
13 also reiterate that when I speak with her when she comes up.

14 That is also something that we wanted to deal with with
15 how this trial is going. Since she is in the detention
16 center, to try to coordinate late in the day it might be
17 harder, so if we come to her later in the day, around 4:30,
18 we just ask possibly that we, due to typical transportation
19 and getting dressed out, that we push it to the next day if
20 it comes late, late in the day when she comes up as a
21 witness. Because she is probably going to be a long
22 witness, too.

23 THE COURT: Okay.

24 MS. HAMILTON: I mean, we have three more witnesses
25 before her at this point.

1 THE COURT: Okay.

2 MR. BELTON: Your Honor, I do want to say that the jury
3 has -- you know, basically, we have a right to defend out
4 client, but, secondly, under the rules of completeness, this
5 video. It's about an hour long, Your Honor, and we do plan
6 on showing all of the video. So I don't want to wear the
7 Court's patience, but I'm just trying to give you a heads up
8 on the front end that we do plan on showing on all whatever
9 minutes on the video.

10 MS. HAMILTON: I mean, I guess, they are entitled to do
11 that, but I just know that there was an objection before as
12 to showing the video by the Defense because there was not a
13 Jackson V. Denno hearing as to statements made by the
14 Defendant on that video and him moving forward showing that
15 based on his objection is why I but it off at 15. It may
16 look as though the State is trying to hide something when we
17 were actually complying with an objection that he had made,
18 Your Honor.

19 MR. BELTON: Your Honor, correct, that was our
20 objection. And, obviously, you know, objections have to be
21 contemporaneous. Her witness is still on the stand. She
22 can recross him. And if we show it, then, obviously, we've
23 opened the door and our objection is what it is. It goes
24 away.

25 THE COURT: Are we ready for the jury?

1 MR. BELTON: Yes, Your Honor.

2 MS. HAMILTON: Yes.

3 THE COURT: Okay. Bring the jury in.

4 (WHEREUPON, the jury enters the courtroom.)

5 (WHEREUPON, Defendant's Exhibit Nos. 1 through 4 were
6 marked for identification.)

7 THE COURT: Welcome back, folks. I hope you enjoyed
8 your lunch. In asking you earlier about witnesses -- I know
9 this is an odd timing to do this, but I don't want to forget
10 to do this. At the beginning of the trial, before we
11 started the trial, I had asked you if you knew a number of
12 witnesses and I went down the list of witnesses. There's
13 one that I did not ask you about. That witness is Bryan
14 Townsend, who works for York County GIS. Is there any
15 member of this jury who is related by blood, connected by
16 marriage, has a close personal relationship with Bryan
17 Townsend or think that you know him at all? If so, raise
18 your hand.

19 (There was no response.)

20 THE COURT: Okay. We left off where the State had
21 finished their direct examination --

22 MR. MORTON: Your Honor, I am so sorry. Can we
23 approach the bench just briefly? I am so very sorry.

24 THE COURT: Okay.

25 (WHEREUPON, a bench conference was held in the presence

1 of the jury, but outside the hearing of the jury.)

2 THE COURT: The State has finished their direct
3 examination of Officer Rowe. We're now going to have
4 cross-examination by the Defense.

5 Mr. Belton.

6 CROSS-EXAMINATION

7 BY MR. BELTON:

8 Q Good afternoon, Officer Rowe.

9 A Afternoon, sir.

10 Q Officer Rowe, how long have you been with the York --
11 in law enforcement?

12 A I've been employed with the Rock Hill Police Department
13 since March of 2010. I've been with the drug unit since
14 March of 2016.

15 Q Speak up just a little bit, please.

16 A Sure.

17 Q The body cam that you had on, did all the officers have
18 on a body cam?

19 A Depends on what agency that particular officer worked
20 for. I work for the Rock Hill Police Department, we're
21 issued Axon body cameras.

22 Q So is the answer to that question you're not sure?

23 A It would depend. Each agency utilizes different body
24 cameras. I think most of them are going to the same ones
25 now, but it's agency dependent.

1 Q And I've asked and answered it, but I just want to make
2 sure that I'm clear. You don't have personal knowledge of
3 whether each officer had on a body camera?

4 A I do not.

5 Q How long have you worked with the drug unit?

6 A Since 2016.

7 Q You know what a blunt is?

8 A I do.

9 Q Is a blunt a marijuana cigarette?

10 A Yes, it is.

11 Q Typically, people who smoke blunts slice open cigar
12 packets?

13 A Sure. That's how you would get a blunt, is you would
14 take a cigar, gut the tobacco out of it, add the marijuana
15 in.

16 Q So gut the tobacco out and add the marijuana?

17 A Yes, sir.

18 Q Officer, you testified that your body camera was pretty
19 much seeing what you were seeing, correct?

20 A It was. I mean, it's mounted to my chest.

21 Q Mounted to your chest?

22 A Yes, sir.

23 Q And how is it activated again?

24 A By push button.

25 Q All right. Let's go back to why you were there. We're

1 going to kind of walk through several stages here, okay?

2 A Sure.

3 Q Let's go back to why -- and if you don't mind, I'm
4 going to grab these things here. Let's go back to why you
5 were at the house that day. You were at the house that day
6 because you actually had a search warrant, am I correct?

7 A That's correct, we did have a search warrant for the
8 house.

9 Q Okay. And you had a search warrant for that house.
10 Were you the officer that got the search warrant?

11 A I was not.

12 Q Were you aware of the search warrant?

13 A I knew we had obtained a lawful search warrant for the
14 residence.

15 Q Was that you screaming as you're going in the house,
16 search warrant, search warrant, et cetera?

17 A Police, search warrant, yes, sir.

18 Q You testified on direct that this was a known drug
19 house?

20 A It is.

21 Q So based on your training and experience, there were
22 some expectations of some things that you would find in a
23 known drug house, correct?

24 A Sure.

25 Q And this particular house, the basis of your search

1 warrant was due to distribution of crack cocaine, wasn't it?

2 A I don't know anything about the probable cause that led
3 up to obtaining the search warrant.

4 Q Okay. But you were aware of the search warrant?

5 A I was aware we had a search warrant for the residence
6 for drugs.

7 Q Okay.

8 A How the search warrant was obtained, I'm not sure.

9 Q Now, you -- okay. Though, you testified on direct
10 examination that you were familiar with that residence?

11 A Yes.

12 Q Let me hand you what has been marked for identification
13 purposes Defendant's Exhibit 4. Let me put the paperclip
14 back on it.

15 MS. HAMILTON: Your Honor, the State would object.

16 THE COURT: Y'all approach the bench and bring the
17 documents.

18 (WHEREUPON, a bench conference was held in the presence
19 of the jury, but outside the hearing of the jury.)

20 THE COURT: The objection is sustained.

21 BY MR. BELTON:

22 Q Based on your training and experience, is it reasonable
23 that when you're doing a search warrant on a known drug
24 house, is it reasonable that you're looking for drugs?

25 A Absolutely.

1 Q Is it reasonable that you're looking for drug
2 paraphernalia?

3 A It's not against the law to possess drug paraphernalia
4 in South Carolina, so we do find it, but that's what we're
5 looking for.

6 Q Well, let me back up again. As a trained law
7 enforcement officer, you kind of do a -- have you ever been
8 the affiant on a search warrant?

9 A Yes, sir.

10 Q And you kind of do a throw everything at the wall when
11 you fill out --

12 A Sure. We're looking for it, but it's not necessarily
13 the main thing we're looking for.

14 Q Not the main thing, but it's what you're looking for?

15 A Correct.

16 Q So you're looking for drugs, you're looking for
17 evidence of drug use?

18 A Yes, sir.

19 Q Which includes paraphernalia?

20 A Yes, sir.

21 Q Maybe currency, maybe other things, right?

22 A Drugs, drug paraphernalia, records, receipts, written
23 or electronic.

24 Q Okay. On this particular day, did you have an idea of
25 who you were looking for when you went to the house?

1 A I do not recall that we had -- I believe they had an
2 arrest warrants for Herman Leach, Rabbit, you saw the
3 beginning of the video, but I do not believe there was
4 arrest warrants for anybody else who we believed was at [REDACTED]
5 Leach Road.

6 Q Okay. So when you were at [REDACTED] Leach Road, initially,
7 when you were going there, you weren't aware of everybody
8 they had search warrants for -- arrest warrants for?

9 A Other than Herman Leach.

10 Q Okay. Once you -- after the arrest is made -- and
11 we're going to come back to the video in a second, but after
12 the arrest was made, did you write a summary of the case?

13 A I did not.

14 Q Was a summary of the case written on your behalf?

15 A It was written by Investigator King. He was the case
16 agent for the overall investigation into Leach Road.

17 Q But he wrote that case summary based on what you told
18 him, correct?

19 A Some of it, yes, sir.

20 Q Okay. So you were at the trailer to execute a search
21 warrant?

22 A Yes, sir.

23 Q There was an expectation that you may find drugs and
24 drug paraphernalia and other things at the trailer, correct?

25 A Yes, sir.

1 Q You testified that the time of day was what, 3:30 in
2 the afternoon?

3 A Yes, sir, I believe so.

4 Q So you're here at this trailer and there were -- how
5 many people -- there were eight people seized at this
6 trailer, correct?

7 A I believe that's correct.

8 MR. BELTON: Your Honor, with the Court's permission, I
9 want to look at these and kind of document the people who
10 were in this trailer.

11 THE COURT: Okay.

12 BY MR. BELTON:

13 Q I've read this many, many, many times and I get
14 confused with all the people who are in there, what their
15 roles are, so I want to make sure we're all clear.

16 A Sure.

17 Q So let's start with the bedroom. Who are the people --
18 I know your testimony was that Mr. Tate ran into the
19 bedroom, okay. Who are the people in the bedroom -- let's
20 try to go one by one so I can write them here on the board.
21 Who are the people in the bedroom that you did not see go
22 into the bedroom?

23 A That were already in the bedroom?

24 Q They were already -- you didn't see them enter the
25 bedroom.

1 A Brandi Eades.

2 Q Let me make sure I'm spelling this correctly. Okay?

3 A Tyrequs Tolbert.

4 Q And for the sake of simplicity so I don't misspell his
5 name --

6 A I think it's T-Y-R-E-Q-U-S, I believe.

7 Q T-Y?

8 A R-E-Q-U-S.

9 Q Okay.

10 A I think.

11 Q Tolbert?

12 A Tolbert.

13 Q Who else was in that bedroom?

14 A Donna, I believe, Gilbert.

15 Q I'm sorry?

16 A I believe her last name was Gilbert, but I could be
17 wrong. I know her first name was Donna.

18 Q So we'll just put Donna. So those three are in the
19 bedroom. Now, you testified that there was someone that was
20 on a couch that was in the living room. Who was that
21 person?

22 A I couldn't tell you his name. I could review the body
23 camera. I got everybody's name when we were back -- and
24 we've already seen a portion of that. I'd have to go back
25 and watch it to tell you his exact name.

1 Q Okay. So just put person on couch. You also testified
2 there was a person found in a bathroom?

3 A There was, a female.

4 Q Who was that person?

5 A I don't know her name.

6 Q Okay. Before I go to the next person, you also
7 indicated that you were the evidence technician and part of
8 your responsibility was to collect all the evidence, drugs,
9 whatever found there, correct?

10 A Yes, sir.

11 Q So there's a female in the restroom. Was there another
12 person found in the house?

13 A There was. It was either bedroom three, I believe it
14 was bedroom three or four on my diagram.

15 Q And what was that person's name?

16 A I don't recall. I wrote it down, but I don't recall a
17 specific name.

18 Q Okay. I thank you said bedroom number three?

19 A Four.

20 Q Four?

21 A Yes, sir. I believe that's right.

22 Q Who was the other person in the house?

23 A I believe there was another female either in bedroom
24 three on my diagram or bathroom two, one of those two. It
25 was on the right side of the house.

1 Q So I think we got that female. I'm sorry, you can't
2 see what I've got written here. We got that female.

3 A Is number five the female in bathroom number one?

4 Q Correct.

5 A Yeah, there was another female on the right side of the
6 residence.

7 Q Okay.

8 A And I'd have to go back and review specifically which
9 room she came out of. And then number eight is going to be
10 Herman Leach and he was not in the house at all. He was
11 brought into the house.

12 Q And then, of course, the next person. Now, it turns
13 out the female that was in another restroom, are you a
14 hundred percent sure about that?

15 A Again, I don't recall. I know there was a female
16 hiding in bathroom number one. I believe there may have
17 been another female. I'd have to go back and watch it.

18 Q So if I were to say to you there's no evidence there
19 was another female in the house, you wouldn't dispute that?

20 A I would not. I don't recall exactly. Again, there
21 were eight people in the house.

22 Q So we got eight here. So we've got Brandi?

23 A Uh-huh.

24 Q We, obviously, know Mr. Tate here would round out
25 eight. Now, you were the officer there on the scene and

1 your body cam is the one's that's capturing it, so we've
2 entered your body cam. And there was conversations going
3 back -- who were the residents of that -- you asked them in
4 the bedroom who were the residents, correct?

5 A Sure.

6 Q Who were the residents of that place?

7 A Again -- initially, when I asked them, nobody lived
8 there. They later changed their statements saying they did,
9 in fact, reside there. You can watch the body cam to see
10 that.

11 Q We'll get to the body cam. I mean, do you just not
12 remember?

13 A Yeah. I don't recall. I believe Brandi -- or Tyreque
14 initially said he didn't live there and then I believe he
15 stated he had just moved there. There was kind of some
16 discrepancy on people admitting whether or not --

17 Q On who actually lived there. All right. So let me
18 make sure that I'm clear on this body cam. The body camera
19 that we saw here in court today was your body camera, right?

20 A Yes.

21 Q Now, were you wearing it the entire time?

22 A No, I was not.

23 Q At one point, you were wearing it, correct?

24 A Yes, sir.

25 Q And you were certainly wearing it when you entered the

1 place, when you entered the trailer?

2 A Yes, sir.

3 Q Okay. All right. Officer, I know I'm being redundant,
4 but how long have you been in narcotics investigations
5 specifically?

6 A March of 2016.

7 Q March of 2016. And what was the date this happened?

8 A I don't recall the exact date. I know we talked about
9 it, but I don't recall.

10 Q Does May 2018 sound about right?

11 A Yes, sir.

12 Q So by that point, you had about two years of
13 experience?

14 A Yes, sir.

15 Q As part of your training as a narcotics agent, you are
16 trained on how to collect evidence?

17 A Yes, sir.

18 Q How to look for evidence?

19 A Yes, sir.

20 Q Collect evidence?

21 A Yes, sir.

22 Q Preserve evidence?

23 A Yes, sir.

24 Q Because the integrity of investigation is important,
25 correct?

1 A Absolutely.

2 Q And you did that in this case?

3 A Yes, sir.

4 Q Did it according to your training?

5 A Yes, sir.

6 Q Also, as a sworn officer here in the State of South
7 Carolina, you can bring charges against people, right?

8 A Yes, sir.

9 Q Were you here in court when the opening was done?

10 A I was not.

11 Q But you are familiar with charges as it relates to
12 drugs?

13 A Yes, sir.

14 Q I assume when you went to [REDACTED] in May of 2018, that's
15 not the first drug raid you had been on?

16 A No, sir.

17 Q I also assume that that's not the first time that you
18 -- that you have charged somebody with a drug offense?

19 A No, sir.

20 Q Okay. So you're aware of actual possession versus
21 constructive possession?

22 A Yes, sir.

23 Q You also make a decision -- or, at least, one of the
24 persons on the scene made a decision on who to charge and
25 who not to charge?

1 A Yes, sir.

2 Q At one point, you actually you indicated you may charge
3 everybody, right?

4 A Potentially.

5 Q Okay.

6 A Depending on where items were found in the house and
7 who was in that room.

8 Q So you could have charged everyone with constructive
9 possession?

10 A You're talking about for the items found in bedroom
11 one?

12 Q I'm just talking about in general as a law enforcement
13 officer when drugs are found in a place where a bunch of
14 people are, you can charge everybody?

15 A You can.

16 Q And again, we're going to watch the video and go frame
17 by frame, I just want to make sure that I understand the
18 testimony that you gave previously, okay?

19 A Yes, sir.

20 Q So when you entered the trailer, Ricky Tate runs down
21 the hallway?

22 A Yes, sir.

23 Q He's the gentleman with the red shirt on?

24 A Yes, sir.

25 Q Who you're chasing down the hallway?

1 A Correct.

2 Q Now, I asked you a question earlier about a case
3 summary that was written. You're aware of that case
4 summary, aren't you?

5 A Yes, sir.

6 Q And this case summary was written based on information
7 you had given to an officer?

8 A Yes, sir.

9 Q And someone else may have written it, but you actually
10 were the one who provided the information to him, correct?

11 A Sure.

12 Q Let's kind of walk through the information that you
13 gave to your colleague in order to write the summary. The
14 information that you indicated as you're chasing Mr. Tate
15 down the hallway, that the door was closed and you had to
16 open the door. That's not --

17 MS. HAMILTON: Objection, Your Honor.

18 THE COURT: What's the basis of your objection?

19 MS. HAMILTON: He's reading from the incident report
20 when he needs to ask the officer these questions, Your
21 Honor, directly as to his recollection.

22 THE COURT: The objection is sustained.

23 BY MR. BELTON:

24 Q You indicated that when you were going down the hallway
25 that the door was closed?

1 A Yes, sir.

2 Q But that's not accurate, is it?

3 A No, sir. After reviewing my body cam, it was partially
4 opened.

5 Q Okay. You also indicated that the window --

6 MS. HAMILTON: Objection, Your Honor, he's doing the
7 same thing --

8 MR. BELTON: I'm --

9 THE COURT: Sustained.

10 BY MR. BELTON:

11 Q Did you indicate that the window was screwed shut?

12 A It was.

13 MS. HAMILTON: Ob --

14 MR. BELTON: I can ask the question.

15 MS. HAMILTON: He's saying indicate, he's indicating
16 the incident report rather than asking him --

17 MR. BELTON: Your Honor, may we approach?

18 THE COURT: Overruled. Continued.

19 BY MR. BELTON:

20 Q Did you indicate the window was screwed shut?

21 A It was.

22 Q Were both sides of the window screwed shut?

23 A No, sir.

24 Q Okay. Did you indicate on the incident report that the
25 crack was found just beneath the window?

1 MS. HAMILTON: Objection, Your Honor.

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

3 THE COURT: Yes.

4 (WHEREUPON, a bench conference was held in the presence
5 of the jury, but outside the hearing of the jury.)

6 BY MR. BELTON:

7 Q Did you see the crack laying underneath the window?

8 A It generally was underneath the window, yes, sir.

9 Q Okay. You saw the crack lying underneath the window
10 prior to your going outside?

11 A I did not see it.

12 Q Okay. You did not see it laying under the window prior
13 to your going outside?

14 A No, sir. Investigator Earls notified me of its
15 location once I was outside.

16 Q Okay. Did you see the marijuana?

17 A I did.

18 Q Okay. Did you see who dropped the marijuana?

19 A The Defendant, Mr. Tate.

20 Q Okay. Inside of this house, did you search all the
21 defendants prior to them leaving the bedroom?

22 A Yes. When you say searched, we frisked them for
23 weapons, make sure they didn't have any weapons. The males,
24 I did search, and then the females were later searched more
25 thoroughly by a female officer.

1 Q You indicated in your previous testimony that you saw
2 his hand going forward?

3 A He was making a throwing motion with his right hand
4 toward the bottom left of the window.

5 Q You also indicated in your last testimony that you saw
6 the drugs hit the floor and come back. Is that your
7 testimony?

8 A No, I did not say that. I said I saw the marijuana hit
9 the floor.

10 Q Okay. So you never saw the crack hit the floor?

11 A No, sir.

12 Q Okay. So you actually never saw the crack in his
13 hands?

14 A No, I did not.

15 Q Never saw the pills in his hands?

16 A No, sir.

17 Q Let's take a look at the video.

18 MS. HAMILTON: Your Honor, may we approach briefly?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held in the presence
21 of the jury, but outside the hearing of the jury.)

22 THE COURT: All right, folks, we're going to take
23 another short break while we get our technology situated one
24 more time. Go back to your jury room. Don't discuss the
25 case amongst yourselves. We'll bring you back shortly.

1 (WHEREUPON, the jury exits the courtroom.)

2 THE COURT: You can step down. We're going to go off
3 the record for a minute. Don't discuss your testimony with
4 anyone.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: Bring the jury in.

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: Mr. Belton.

9 MR. BELTON: Thank you.

10 BY MR. BELTON:

11 Q Officer Rowe, it was your body cam video that was shown
12 here in court earlier today?

13 A Yes, sir.

14 Q Okay. So you all arrived at the residence and you
15 announce your search warrant, correct?

16 A Yes, sir.

17 Q You entered the house and there was a gentleman in a
18 red shirt running down the hall. That was your testimony,
19 correct?

20 A Yes, sir.

21 Q Where did you first encounter this gentleman and have a
22 conversation with him?

23 A In the back bedroom.

24 Q In the bedroom. You then said to him, I just saw you
25 throw it?

1 A Uh-huh.

2 Q Was there another office in the room with you at that
3 time?

4 A I don't recall. I don't believe so, though.

5 Q You then told all the individuals that you had a search
6 warrant for the house, correct?

7 A Yes, sir.

8 Q At that time in this bedroom, there are four people,
9 correct?

10 A Yes, sir.

11 Q One is Donna Perry, second one is Tyreque Tolbert, the
12 third person is Brandi Eades and the fourth person is Ricky
13 Tate?

14 A And the fifth being myself.

15 Q And the fifth person being yourself, correct. Three of
16 those individuals, you did not see go in that bedroom?

17 A They were already in the bedroom.

18 Q Okay. So once you said -- you then asked who all lives
19 here, correct?

20 A Yes, sir.

21 Q At that time, Brandi admits that she lives in the
22 trailer, correct?

23 A I believe she did, yes, sir.

24 Q But Donna indicated she did not live there?

25 A She said she was there visiting her daughter.

1 Q Okay. Then you told them that everybody was being
2 detained until you all could sort it out, correct?

3 A Yes, sir.

4 Q They were being detained because you had a warrant for
5 the house, correct?

6 A Yes, sir.

7 Q Even though your testimony is you didn't know the basis
8 of the probable cause for the warrant?

9 A I did not write the affidavit for this warrant,
10 correct.

11 Q At that point, you then take pictures of everybody
12 who's in the room, correct?

13 A Yes, sir.

14 Q To document who was in the room?

15 A Yes, sir.

16 Q But at that time, you don't take any pictures of the
17 drugs that were in the room?

18 A That's correct.

19 Q There are no pictures of the room? There's no view of
20 the room so we can see the room?

21 A You can see it from my body camera.

22 Q But you didn't take any pictures?

23 A Are you talking about prior to or after them being
24 removed?

25 Q At any point. View of the room so we can have a

1 perspective of the room?

2 A No, sir. I believe my body cam would suffice for that.

3 Q Okay. Based on your training?

4 A You can take -- I mean, you can take as many pictures
5 as you want.

6 Q So you took pictures, but you didn't take pictures of
7 anything that was found in the room in respect of what was
8 found in the room? At that time, you didn't take pictures
9 of anything?

10 A No, sir. First priority is securing everybody within
11 the house.

12 Q And then the next person you encounter is you motion to
13 the young lady that was expecting a child in there?

14 A Brandi.

15 Q Yes, Brandi. That was Brandi who was expecting?

16 A Yes, sir.

17 Q You motioned for her to come and you -- did you search
18 her?

19 A When she got over to me?

20 Q Uh-huh.

21 A I believe I frisked her down to make sure she didn't
22 have any weapons on her and a female would search her more
23 thoroughly.

24 Q Okay. Then you asked for an officer to come and lead
25 her to the front, correct?

1 A Correct.

2 Q And she walked behind that officer up the hallway,
3 didn't she?

4 A I don't recall. I was dealing with the other three.

5 Q And she had not been thoroughly searched?

6 A Her hands were behind her back. We hadn't searched her
7 bra, but with your hands being handcuffed, it would be
8 extremely difficult for her to retrieve anything in her bra.

9 Q But she had not been searched, thoroughly searched?

10 A No, sir.

11 Q And she walked behind the officer who went up the
12 hallway?

13 A Again, I wasn't with the officer. I couldn't tell you
14 if she walked in front of her or behind her.

15 Q All right. So let's watch then the first six minutes
16 of the video, okay? And I may stop it periodically and ask
17 you questions about things. I assume this video would help
18 refresh your memory of what happened?

19 A Sure.

20 (WHEREUPON, video was played for the jury.)

21 Q Now, is that you screaming back to another officer to
22 let them know the front is clear?

23 A Yes, sir.

24 Q Okay. Thank you.

25 (WHEREUPON, the video was continued.)

1 Q Now, at this point, Officer, people are moving around
2 the room?

3 A Sure. I mean, there is some movement in the room.

4 Q And you're taking pictures of the suspects there in the
5 room?

6 A Yes, sir.

7 Q But you didn't take pictures of any of the drugs that
8 were in the room?

9 A No, sir. Again, we were focused on removing them from
10 the room prior to collecting any evidence.

11 (WHEREUPON, the video was continued.)

12 Q So, in fact, Officer, you did not search her, correct?

13 A That's what I testified to, that I frisked her for any
14 weapons. I never said that I thoroughly searched her.

15 Q Body cam didn't catch you frisking her, did it?

16 A Yes, it did.

17 Q And then you asked another officer lead her --

18 A Yes, sir.

19 (WHEREUPON, the video was continued.)

20 BY MR. BELTON:

21 Q At this point, Officer, we just start moving people to
22 the front of the house, correct?

23 A One at a time.

24 Q We start moving people to the front of the house one at
25 a time?

1 A Sure.

2 Q Do you remember the order that you moved people?

3 A I believe it was all the females first, Brandi, Donna,
4 Tyreque and I believe Ricky was the last, Mr. Tate was the
5 last.

6 Q Was Mr. Tate searched any way in there?

7 A He was searched before he left the room.

8 Q Was he searched by you?

9 A He was.

10 Q Was he thoroughly searched?

11 A Yes, sir.

12 Q Do you remember what you recovered off of him?

13 A Again, it was captured on my body cam. There were some
14 personal effects, cigars, lighter, cigarettes, cash, cell
15 phone.

16 Q But you don't remember specifically, just general
17 personal things?

18 A Yes, sir.

19 Q Okay. At this point, you search Mr. Tolbert, who was
20 in the room, correct?

21 A Yes, sir.

22 Q Do you remember searching Mr. Tolbert?

23 A Yes, sir.

24 Q Do you remember what you found on Mr. Tolbert?

25 A He had a small plastic container. I believe it was in

1 his right pants pocket, gym short pocket.

2 Q Do you remember what was in that container?

3 A I don't recall. I don't think it had anything of
4 substance in it, but I could be incorrect.

5 Q So if I were to tell you that it had marijuana in it,
6 you don't dispute that?

7 A No, sir.

8 Q Okay. So during this time, you had a conversation with
9 Mr. Tolbert, correct?

10 A I may have, yes, sir.

11 Q Did he admit to you that that was his room?

12 A I believe at that time, yes, he did.

13 Q And then there was a command that came over telling you
14 all to turn off the body cams, correct?

15 A Sure.

16 Q Now, this is about eight minutes into the search?

17 A Yes, sir.

18 Q So that was the leader of the officers who indicated to
19 turn off the body cams?

20 A It was actually Lieutenant Heath Clevenger. He's the
21 SWAT team commander for the York County Sheriff's Office
22 SWAT team. He also had a team that was at another
23 residence. And each agency -- each officer goes with their
24 agency policy on body cam -- body worn cam footage when to
25 turn it off, when to turn it on, that sort of thing.

1 Q But your body cam stayed on?

2 A Yes, sir.

3 Q I just want to make sure that we're clear because
4 there's a command to turn off body cams, but your body cam
5 stayed on?

6 A Yes, sir.

7 Q Other officers' body cams may have gone off?

8 A They may have.

9 Q At this point, you start drawing the trailer?

10 A Layout of the trailer.

11 Q Okay. When you were drawing the trailer -- and that's
12 been entered into evidence here. I'm going to hand you back
13 what's been marked State's Exhibit 4.

14 A Yes, sir.

15 Q You indicated that was an accurate depiction of what
16 you drew there that day, correct?

17 A Yes, sir.

18 Q Now, in this drawing here, there's nothing on there
19 that indicates where individuals were found, is there?

20 A No, sir.

21 Q And this was being drawn real time, correct?

22 A That particular one was not. That was drawn at the
23 police department after we got back. If you notice in the
24 body cam, I was drawing on a manila envelope, that's the
25 envelope that contained the search warrant, rights form, so

1 on and so forth.

2 Q Are you saying that we don't have what you were drawing
3 when you were there on the scene?

4 A That is not the one that was drawn on the scene.

5 Q So you reproduced what you were drawing there on the
6 scene?

7 A That's correct.

8 Q But on this one right here that you provided to the
9 Defense, there's nothing on here that indicates where people
10 were found in the room, is it?

11 A No. That's not the purpose of it.

12 Q But more importantly, there's nothing on here that
13 indicates where the drugs were found, is there?

14 A That's not the purpose of that drawing.

15 Q There's nothing on here that indicates where the drugs
16 were found?

17 A Correct.

18 Q So at this stage here, we're about nine minutes in,
19 body cams are gone off, you're drawing -- your other
20 officers, you testified, are moving throughout. Everybody
21 has their role, correct?

22 A Yes, sir.

23 Q Part of that role is to collect evidence, correct?

24 A To search the residence.

25 Q Search the residence. So people are moving back and

1 forth. Flashlights are out, rooms are being searched,
2 cabinets are being searched, bathrooms are being searched,
3 closets. The normal place where people would hide illegal
4 stuff is being searched?

5 A Correct.

6 Q People moving back and forth, officers up and -- are
7 officers up and down the hallway that Mr. Tate ran down?

8 A I couldn't tell you how many officers went down the
9 hallway. I wasn't in the hallway the entire time.

10 Q Your testimony was it was a small trailer.

11 A It was. But again, if I was in bedroom number one, I
12 couldn't tell you if there were three officers walking down
13 the hallway. I can't be everywhere at all times.

14 Q This was a small residence, right?

15 A It was, but it would be --

16 Q And you were moving throughout the residence drawing
17 the residence, correct?

18 A Sure.

19 Q And my question to you is, did you see officers moving
20 around the residence, searching the residence?

21 A Yes.

22 Q Up and down the hall, kitchen, bathroom, both sides of
23 the trailer?

24 A Yes.

25 Q Thank you. And at some point in there, you mention you

1 were going outside to recover some dope, correct?

2 A Yes, sir.

3 Q At this point, you still have not mentioned the crack
4 cocaine that supposedly Mr. Tate threw on the floor in here,
5 correct?

6 A That's correct. Because again, when we were moving the
7 individuals in the room, the bag of crack cocaine went from
8 more so in plain view in the center of the floor up
9 underneath the window to up underneath the dresser, so I had
10 not seen it at that point. So I assumed based on his
11 throwing motion toward the window that whatever he was
12 attempting to throw, it made out the window.

13 Q The question that was asked, you had not made mention
14 of any crack that was in the room?

15 A Correct, because I hadn't seen it.

16 Q Okay. Yet, in the incident report, you indicated you
17 had?

18 A Again, I didn't write the incident report. I don't
19 know what the incident report states.

20 Q But your previous testimony is you gave the information
21 to the officer to write the incident report?

22 A Sure. How that officer used that information and wrote
23 the report, I'm not sure. I didn't read it.

24 Q So, you know, again, I'm not going back and forth, are
25 you indicating police officers write incident reports that

1 are not accurate?

2 A No, what I'm --

3 MS. HAMILTON: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. BELTON: Your Honor -- yes, I'll move on.

6 THE COURT: Sustained.

7 BY MR. BELTON:

8 Q So you indicated you were going outside to recover some
9 dope?

10 A Correct.

11 Q All right. At this point, you go outside, you glove up
12 and you start looking for dope?

13 A Yes, sir.

14 Q And at some point, another officer comes to the window,
15 doesn't he?

16 A Investigator Earls.

17 Q Okay. Investigator Earls come to the window and he
18 says to you there was a bag of crack underneath the dresser?

19 A He does.

20 Q He doesn't indicate where this dresser is, does he?

21 A He didn't need to, I was already in the room. I knew
22 exactly where he was talking about.

23 Q But we don't have any pictures of it, do we?

24 A You have a 57-minute body camera video of the entire
25 residence.

1 Q But we didn't take any pictures of it, did we?

2 A No, sir.

3 Q No pictures of the dope that was in the floor
4 originally or allegedly --

5 A Yes.

6 Q -- under this dresser? No pictures of it?

7 A Yes, there were. They've already been entered in
8 State's evidence, I believe.

9 Q No pictures with any perspective?

10 A No far out broader pictures.

11 Q Broader pictures, that's your word. No broader
12 pictures of any perspective?

13 A Correct.

14 Q And you didn't mention any crack prior to this?

15 A Like I previously testified to, I wasn't aware because
16 it was underneath the dresser at that point. I hadn't seen
17 it.

18 Q Let me ask you something about this incident report.
19 When was this incident report written?

20 A I would assume a day or so after the incident
21 culminated.

22 Q Okay. So after the incident?

23 A Yes, sir.

24 Q When you were outside, you, in fact, recovered no drugs
25 outside?

1 A No, sir.

2 Q And the screen was actually opened on one side and
3 bolted on the opposite, correct?

4 A It was. It was open on the left side by a couple
5 inches and it was screwed shut on the right side if you're
6 looking at it from the outside.

7 Q So at this point, Officer Earls comes to the door and
8 he says that I found a bag of crack underneath the dresser.
9 And your response to him was I saw that?

10 A I don't recall what my exact response to him was.

11 Q Okay. So we'll watch the video here in a second, okay?

12 A Yeah.

13 Q Let's watch the video now.

14 A Sure.

15 Q I want to start it a little bit beforehand and sort of
16 work up to it.

17 (WHEREUPON, the video was continued.)

18 Q So you indicated that his hand was leaning out of the
19 window, correct?

20 A Yes, sir.

21 Q But that wasn't your testimony earlier today, was it?

22 A That he was making a throwing motion toward the window?

23 Q Or was your testimony he attempted to get out of the
24 window and couldn't get out of the window?

25 A I never testified that Mr. Tate tried to get out of the

1 window.

2 Q No, no, his arm tried to get out of the window and did
3 not get out of the window. Not Mr. Tate, his arm?

4 A Yes. He was attempting to throw something with his
5 right hand out the window.

6 Q But here, you told the officer his arm was hanging out
7 of the window?

8 A Sure.

9 Q Okay.

10 (WHEREUPON, the video is continued.)

11 Q I'm going to stop it there. There are items that are
12 out there, correct?

13 A Sure. Yeah, trash.

14 Q I'm going to back up here. Based on your training and
15 experience, do you know what that trash is?

16 A I know one's a pack of cigars, looks like a two-pack of
17 cigars, Game is the brand. Looks like a pack of crackers or
18 some type of snack. I believe it's Bud Ice beer can that
19 was in the top of the shrubbery.

20 Q I'm specifically talking about this item here, if you
21 can see me, this item here that I am near. With our new
22 technology, our pointer doesn't work as well. So it doesn't
23 work on this screen. But the two silver-looking packets?

24 A One is definitely a two-pack of cigars and the other
25 one, I can't tell what it is, but it looks like some type of

1 snack.

2 Q And I'm going to back up here just for a second because
3 I don't want to go back too far, but I do want to make sure
4 that we're clear on what you say to the officer.

5 (WHEREUPON, the video was continued.)

6 Q Do you see the bag of marijuana, those are your words,
7 correct?

8 A Yes, sir.

9 Q No mention of crack?

10 A Again, I was not aware there was a bag of crack laying
11 inside. If I had been, I wouldn't have walked outside to
12 look for it.

13 Q Was your testimony earlier that you saw something hit
14 the window and fall back into the house?

15 A No, sir.

16 Q But you never mentioned crack?

17 A No, sir.

18 Q Only marijuana?

19 A Correct, because that's all I had seen at that point.

20 Q Did you testify here earlier that crack was laying in
21 the floor?

22 A It was.

23 Q And you testified that as people were moving around the
24 room, they kicked it under the dresser?

25 A Yes, sir. And during review of my body camera footage,

1 you could clearly see the bag. I didn't see it that day.

2 Q Okay.

3 (WHEREUPON, the video was continued.)

4 Q Now, is that still Officer Earls -- obviously, I can't
5 see his face, is that still Officer Earls talking in the
6 background?

7 A Yes, sir.

8 Q Officer Earls is indicating -- now, to give us some
9 perspective so we don't have to watch the whole video again,
10 you went outside after you had drawn the diagram that was
11 entered, correct?

12 A After I had drawn the envelope.

13 Q The envelope, the diagram. You went outside
14 afterwards?

15 A Yes, sir.

16 Q And other officers -- by the way, do you remember how
17 many officers were on the scene?

18 A [REDACTED], maybe six. I couldn't recall. There were other
19 officers --

20 Q More than you and Officer Earls?

21 A Oh, absolutely.

22 Q So when you were there, you indicated that other
23 officers -- all officers -- I know I'm being a bit
24 repetitive, but I want to make sure we understand and, more
25 importantly, the jury understands. You came outside after

1 you had drawn the diagram?

2 A Correct.

3 Q Diagram of the trailer. Other officers were performing
4 their roles throughout the trailer?

5 A Yes, sir.

6 (WHEREUPON, the video was continued.)

7 Q Now, this body cam that we just watched, that's real
8 time?

9 A It is.

10 Q That's your commentary?

11 A Yes, sir.

12 Q And you were there, before you had an opportunity to
13 review the evidence, before you had an opportunity to write
14 your report in real time, you said his hand was hanging out
15 of the window?

16 A Sure.

17 Q Okay. Let's move on. So at this point now, you don't
18 recover any drugs out here?

19 A No, sir.

20 Q You don't recover anything you feel like has any
21 evidentiary value to you outside of the window?

22 A Correct.

23 Q Okay. So at this point, you go back inside the house?

24 A Yes, sir.

25 Q Once you get back into the house, where are all the

1 seven other people, either other people who were there?

2 Where were they at this point?

3 A In the living room, I believe.

4 Q And you and other officers start having conversations
5 with them, correct?

6 A We may have, yes, sir. I don't recall the exact
7 conversations, but yes, we did speak with them.

8 Q You start asking about drugs?

9 A Absolutely.

10 Q Let me make sure I'm clear. So you do remember having
11 conversations or you don't remember having conversations?

12 A I don't remember the specifics of the conversation.

13 The normal process, we would read them the search warrant,
14 we would advise them of their Miranda rights, and then we
15 would ask them about anything we may or may not find within
16 the residence, anything that may or may not belong to them.

17 Q Fair enough. So since you don't remember the
18 conversation that was being had in there, then let's go back
19 to your body camera, okay?

20 A Sure.

21 Q What I'm going to do is -- again, for efficiency, I'm
22 going to fast forward it some.

23 (WHEREUPON, the video was continued.)

24 Q Now, is that -- the officer who just asked about the
25 back bedroom --

1 A That was me.

2 Q That was you?

3 A Uh-huh.

4 Q And who are you talking to at that point?

5 A I was trying to see who was going to answer the
6 question. I don't recall who I was speaking with at that
7 point.

8 Q Let me back it up a little bit then so you can have the
9 context, okay?

10 (WHEREUPON, the video was continued.)

11 Q Now, this officer does have a flashlight out, right,
12 because he's moving around searching?

13 A That's Investigator Earls.

14 Q He's doing pretty much whatever he was assigned to do,
15 I guess, collect evidence, search the property?

16 A He was searching the property for evidence.

17 (WHEREUPON, the video was continued.)

18 Q Now, who is that that just said "I do"?

19 A Brandi Eades.

20 Q Brandi Eades. So she acknowledges that she lives
21 there?

22 A Yes, sir.

23 Q Okay. There was someone off camera that said "I don't
24 live here", do you remember who that was? Before Brandi
25 said she lives there.

1 A I believe it was the gentleman on the far left of the
2 screen, but I don't recall his name.

3 (WHEREUPON, the video was continued.)

4 Q I'm going to beyond that because that's -- the point of
5 that is Brandi Eades admits that she lives there in this
6 house?

7 A Yes, sir.

8 Q She admits that the back bedroom is hers?

9 A Yes, sir.

10 Q And Mr. Tolbert had already admitted in the bedroom
11 prior to bringing him out that the residence was his?

12 A Yeah, he said he had just moved back in.

13 Q Do you know the relationship between Mr. Tolbert and Ms
14 Eades?

15 A I don't.

16 (WHEREUPON, the video was continued.)

17 Q That's you talking asking that question?

18 A Yes, sir.

19 (WHEREUPON, the video was continued.)

20 Q Now, that's Ricky Tate speaking up, correct?

21 A Yes, sir, he claimed that he had some marijuana.

22 Q He immediately admitted that he had the marijuana?

23 A He did.

24 Q Because you had told everybody that I can charge
25 everybody in here, correct?

1 A I believe I was getting to that point.

2 (WHEREUPON, the video was continued.)

3 Q Brandi Eades then speaks up and says that's her
4 bedroom, right?

5 A Yes, sir. I don't know what she said prior to that,
6 but yeah, she did say it was her bedroom.

7 (WHEREUPON, the video was continued.)

8 Q Go back here for just a second. Again, you're in here
9 questioning them and prior to Ricky -- prior to her
10 indicating that was her bedroom, she actually said I didn't
11 see anything, didn't she?

12 A I don't recall what she said.

13 Q Let me play it again for you, okay?

14 (WHEREUPON, the video was continued.)

15 THE WITNESS: I can't hear exactly what she's saying.

16 (WHEREUPON, the video was continued.)

17 BY MR. BELTON:

18 Q But again, and we'll move on, Mr. Tate immediately
19 acknowledged the bag of marijuana?

20 A He did.

21 Q He immediately said that's all I know about?

22 A Yes, sir.

23 Q Okay.

24 (WHEREUPON, the video was continued.)

25 Q Donna Perry, who was in the bedroom when you entered

1 the bedroom, right?

2 A Yes, sir.

3 Q Just admitted that she may or may not have something in
4 her purse, correct?

5 A Correct.

6 Q And what did she indicate may or may not be in her
7 purse?

8 A I don't recall specifically.

9 (WHEREUPON, the video was continued.)

10 Q So now that you've heard, what did she admit may or may
11 not be in her purse that's in the bedroom?

12 A A bag of heroin.

13 Q A bag of heroin.

14 (WHEREUPON, the video was continued.)

15 Q All right. Let's stop there. So were you the lead
16 officer here on scene?

17 A No, sir, I just happened to be the one asking
18 questions.

19 Q Okay. Who was the lead officer there on scene?

20 A Supervisor?

21 Q Yes, supervisor?

22 A Lieutenant Rainier, he's the gentleman in --

23 Q And I apologize if I don't know the correct term,
24 commander, supervisor?

25 A Tim Lanier is the supervisor for the east office of the

1 York County Drug Unit.

2 Q Okay. All right. So when you all were -- but you're
3 aware of the investigation? You could see what was going on
4 there around you?

5 A Yes, sir.

6 Q And you are aware that there was a person found in the
7 bathroom?

8 A Yes, sir.

9 Q And you were -- you've testified that you were the
10 technician responsible for collecting evidence -- all the
11 evidence that you found there?

12 A Yes, sir.

13 Q As a matter of fact, I think your testimony was I have
14 a black box and I drag -- I pretty much drag it around with
15 me?

16 A Yes, sir.

17 Q In that bathroom, did you all find a spoon with residue
18 in it?

19 A I believe we did, yes, sir.

20 Q The spoon, in fact, had blue residue in it, correct?

21 A Probably did.

22 Q Probably or it did?

23 A I believe it did. There's more than likely a picture
24 of the spoon, but I haven't seen it yet.

25 Q Well --

1 A It hasn't been marked.

2 Q Okay. So there are pictures from the bathroom?

3 A Any evidence that was collected would have been
4 photographed.

5 Q But those pictures, we've not seen them here in court
6 today?

7 A Correct.

8 Q Okay. In fact, there were two spoons found in the
9 bathroom, weren't there?

10 A I can look at the evidence sheets and tell you exactly
11 where everything was found, but I'd have to look at the
12 evidence sheet. There was more than one spoon found.

13 Q Are you aware of the evidence sheet that was done as a
14 result of this?

15 A Yes, sir.

16 Q And because you were responsible for collecting the
17 evidence, you can attest to what was found in the house?

18 A Yes, sir.

19 Q Okay. I'm going to give you what's been marked for
20 identification purposes Defendant's Exhibit 2. And I'm
21 finding my copy of it so I don't have to keep walking up to
22 you. Sir, I'm going to give you what's been marked
23 Defendant's Exhibit 3, okay, for identification purposes.
24 Or better yet, let's do Defendant's Exhibit 4, 3 and 4. I'm
25 going to ask you to refer to No. 4. I'll give you an

1 opportunity to review it.

2 A (Witness complies.)

3 Q Before you say anything --

4 MS. HAMILTON: Your Honor, the State would again object
5 to this exhibit. It's the same exhibit as before, Exhibit
6 4.

7 THE COURT: What about 3?

8 MS. HAMILTON: I do not know what 3 is.

9 MR. BELTON: Your Honor, I think we have a matter of
10 law.

11 THE COURT: Ladies and gentlemen of the jury, please
12 return to your jury room for a brief moment. Do not discuss
13 the case amongst yourselves.

14 (WHEREUPON, the jury exits the courtroom.)

15 MR. BELTON: Your Honor, I agree and I respect the
16 Court's ruling about asking about the search warrant. He's
17 indicated he doesn't know about the probable cause. He's
18 indicated that he doesn't know about -- he wasn't affiant on
19 that and I have no intention asking him anything about
20 probable cause. But he did testify that he was the person
21 who collected the evidence at the scene. I asked him a
22 question. He didn't answer the question. I have a right to
23 show him the return on it, have him to refresh his memory to
24 say was there two spoons with residue found on the spoons in
25 the bathroom. That's all I'm going to ask him and move on.

1 If he had simply stated the blue residue was found, I would
2 have moved on then. I'm asking about just the return,
3 that's all I'm referring to.

4 MS. HAMILTON: Your Honor, I believe he did say there
5 was --

6 MR. BELTON: No, he said I believe. He did not answer
7 it definitively.

8 MS. HAMILTON: Well, Your Honor, I believe that's
9 sufficient. Additionally, there is something that can
10 refresh his recollection that would not have to be admitted
11 into evidence. A document for impeachment purposes, in
12 which he's trying to do at this point and refresh his
13 recollection does not need to be admitted as an exhibit
14 necessarily. He hands it to him for recollection
15 refreshing, gives it back to him and then he can question
16 does that refresh your recollection. It's standard
17 impeachment procedure not admitting it into evidence as an
18 exhibit.

19 Additionally, I would ask that what would be used to
20 refresh the recollection would be the evidence inventory
21 sheets since he has knowledge of that versus the search
22 warrant return, which he has already stated he does not have
23 knowledge of, Your Honor.

24 THE COURT: Do you plan to offer this into evidence?
25 You're just handing it to him to refresh his recollection?

1 MR. BELTON: Yes, Your Honor.

2 THE COURT: That's absolutely appropriate. He can give
3 him whatever he wants to refresh his recollection. I think
4 the last example an attorney gave me was he could hand him a
5 shoe and ask him if it refreshes his recollection, because
6 it may, who knows. There could have been a pink Nike
7 sneaker on the floor and as soon as he sees that, it jogs
8 his memory as to everything that happened that day.

9 MR. BELTON: Your Honor, again, I don't want to wear
10 the Court's -- you know, if he had simply said yes, I would
11 have moved on. But if he doesn't remember, I want to ask
12 him about it.

13 THE COURT: Absolutely.

14 Your objection is overruled.

15 MS. HAMILTON: Your Honor, I still object to that being
16 entered into evidence, Your Honor.

17 THE COURT: Absolutely, I think we're clear.

18 MR. BELTON: I'm not intending to enter it.

19 MS. HAMILTON: Thank you.

20 THE COURT: Do y'all need a break?

21 MR. BELTON: Yeah, I --

22 THE COURT: Let's take five minutes.

23 (WHEREUPON, a short break was taken.)

24 (WHEREUPON, Defendant's Exhibit Nos. 5 through 7 were
25 marked for identification.)

1 THE COURT: Ready?

2 Bring in the jury.

3 (WHEREUPON, the jury enters the courtroom.)

4 THE COURT: Mr. Belton, you may continue.

5 BY MR. BELTON:

6 Q Officer, where we left off before that break, you were
7 talking about the young lady who was found in, I think you
8 referred to it as bathroom number one in your diagram,
9 correct?

10 A Yes, sir.

11 Q Bathroom number one is right beside bedroom number one,
12 correct?

13 A Yes, sir.

14 Q And if you were coming from the direction that Mr. Tate
15 came down the hallway, you would pass bedroom number two?

16 A I believe that's right, yes, sir.

17 Q Then bathroom number one?

18 A Yes, sir.

19 Q And then it would be the bedroom that's in question,
20 correct?

21 A Yes, sir.

22 Q You indicated -- or you testified that you were the
23 person who was responsible for collecting the evidence on
24 the scene?

25 A Yes, sir.

1 Q There was evidence that was collected in the -- in what
2 we refer to as bathroom number one, correct?

3 A Yes, sir.

4 Q You also indicated that you didn't remember what was
5 collected in there, correct?

6 A I know it was a spoon.

7 Q Okay. I'm going to hand you this just for
8 identification purposes only simply to refresh your memory.
9 Don't comment on it. I hand it to you. Look over the
10 documents that I'm giving you. I'm going to give you
11 Defense Exhibit for identification 5, 6 and 7. Take a look
12 at them, review them, take your time. And when you're done,
13 pass them back to me and then I'll ask you questions about
14 them, okay?

15 A Yes, sir.

16 Q Okay. We're going to talk specifically since it's been
17 a minute about that particular one there, okay?

18 A Yes, sir.

19 Q And again, you were the one that took pictures there on
20 the scene?

21 A Yes, sir.

22 Q And you recovered the evidence?

23 A Yes, sir.

24 Q Was there evidence recovered in bathroom number one,
25 which is where the female was hiding?

1 A Yes, sir.

2 Q Was a spoon found?

3 A Yes.

4 Q Was there blue residue found on that spoon?

5 A Yes.

6 Q Similar in color to the blue pills that were found in
7 the hallway?

8 A Yes.

9 Q Thank you.

10 A Yes, sir.

11 Q Was there also a purse searched --

12 A Yes, sir.

13 Q -- in the residence?

14 A Yes, sir.

15 Q Do you remember where that purse was?

16 A I don't recall. There were two females there, so there
17 presumably would have been two purses that we searched. I
18 know Ms. Donna advised that her purse was in the back
19 bedroom. I'm not sure which purse, but yes, any purses
20 would have been searched pursuant to the search warrant.

21 Q And were there syringes found in, at least, one of the
22 purses?

23 A Yes, sir.

24 Q By the way, was anybody arrested for the residue that
25 was found in the bathroom?

1 A On the spoon?

2 Q Yes.

3 A I do not believe so, no, sir.

4 Q All right. Officer, let's go back here to the video.
5 So we're going to kind of jump forward here. Now, Officer,
6 before I move forward, your body cam is kind of keeping
7 time, isn't it? There's time here at the bottom of your
8 body cam that we can see. Like on the left corner, it says
9 1937?

10 A That's the duration of the video.

11 Q All right. Thank you. So at this point, you've been
12 in the house 19 minutes 38 seconds?

13 A Yes, sir.

14 Q Or 19 minutes, 37 seconds since you activated your body
15 cam?

16 A Correct.

17 Q All right.

18 (WHEREUPON, the video was continued.)

19 Q Now, that bag of roxies there is -- or what you're
20 referring to as roxies were there in the hallway, correct?

21 A Yes, sir.

22 Q At this point, we're 20 minutes into this search,
23 right?

24 A Twenty minutes since we started our body cam.

25 Q Since you started the body cam?

1 A Yes, sir.

2 Q And you started body cam as you're entering the door,
3 so approximately 20 minutes in?

4 A I would say approximately, yes.

5 Q So Mr. Tate, that's the first that anything has been
6 said to him about any pills found in the hallway?

7 A Correct.

8 Q When, in fact, there was one person in the restroom, in
9 the bathroom in the house?

10 A There was.

11 Q Blue residue?

12 A Yes, sir.

13 Q One other person who's back in the bedroom, at least,
14 one other person in the back of the bedroom, Donna Perry,
15 who indicates there may be some heroin in her purse?

16 A She did.

17 Q And we find a purse that has syringes in it?

18 A Yes, sir.

19 Q Now, at some point, did you tell all the people there
20 in the house that we can do DNA and find out who all this
21 stuff belongs to?

22 A Yes, sir, I did.

23 Q And, in fact, did you do DNA?

24 A We did fingerprints.

25 Q Okay. Fingerprints didn't reveal Mr. Tate, did it?

1 A It didn't reveal anybody.

2 Q It didn't reveal Mr. Tate, did it?

3 A Again, it didn't reveal anybody.

4 (WHEREUPON, the video was continued.)

5 Q So you did fingerprints, but there was no DNA done on
6 them, right?

7 A That's correct. The solicitor's office requested
8 fingerprints.

9 (WHEREUPON, the video was continued.)

10 Q Now, at some point, you continue on with your
11 investigation, right?

12 A Yes, sir.

13 Q But now, you're just trying to -- officers are working.
14 Some officers are still collecting, other officers are
15 trying to figure out what you're going to do with the people
16 in the house, correct?

17 A Well, at this point, nobody is collecting anything.
18 They may be searching a room, but they're not collecting
19 anything.

20 Q So nobody's collecting, you're searching the room.
21 You're doing what police officers do in this type of thing?

22 A Yes, sir.

23 Q Calling in -- are you checking for the people who are
24 in the room whether they have warrants, don't have warrants?

25 A Yes, sir.

1 Q Did you call in the warrants on that?

2 A I did not.

3 Q Were you present when the warrants were being called
4 in?

5 A Again, I was probably there. I don't know if
6 Lieutenant Rainier ran their names or which officer did.

7 Q Let me ask it another way then, at some point, did you
8 become aware of the people in the house that had outstanding
9 warrants on them?

10 A Other than Mr. Leach?

11 Q Yes.

12 A Most likely, yes, sir. I don't recall who had one.

13 Q Do you remember who had outstanding warrants on them?

14 A Herman Leach.

15 Q And you don't remember anyone else who had warrants on
16 them?

17 A I don't recall if they did or not. Because Herman
18 Leach's warrants were from the drug unit. If somebody else
19 had other outstanding warrants, it would have been from
20 another agency, not the drug unit's warrants.

21 (WHEREUPON, the video was continued.)

22 BY MR. BELTON:

23 Q I'm going to speed it up. At this point, you all are
24 working and someone is just telling everybody where to go
25 and what to do, right?

1 A That's right.

2 (WHEREUPON, the video was continued.)

3 Q Now, this is Officer Earls telling everyone that he's
4 going to read them the rights, correct?

5 A No, that was Lieutenant Rainier and he was asking for
6 the rights form. We have a standard Miranda rights form
7 that we read off of and on that form, it has lines so we can
8 write down everybody who's present during the execution of
9 the search warrant. And he said 71s, that's what warrants a
10 warrant check, so he was asking for the rights form to have
11 the names and dates of birth of everybody that was in the
12 house so he could check for warrants.

13 Q Okay. We're going to speed it up here and kind of jump
14 through. Just so we're clear, the rest of it is just you
15 all doing your work, your administrative stuff, correct?

16 A Correct. We were in the back rooms collecting
17 evidence, photographing, collecting evidence, searching
18 rooms and that sort of thing.

19 (WHEREUPON, the video was continued.)

20 BY MR. BELTON:

21 Q Now, there were a number of cell phones that you
22 collected there on site as well, right?

23 A There were.

24 Q Ms. Eades had a cell phone?

25 A I know Mr. Tate had a cell phone. The other phones,

1 who they belonged to, I'm not sure. I can look at the
2 evidence sheet and I can tell you.

3 Q But there was more than one cell phone collected on
4 site?

5 A Absolutely.

6 Q And Mr. Tate's phone was collected out of his pocket?

7 A It was.

8 Q Okay. Officer, we're almost done.

9 (WHEREUPON, the video was continued.)

10 Q And just to make sure we both understand, you don't
11 remember who all had warrants there that day, that's your
12 testimony, correct?

13 A Other than Mr. Leach.

14 Q Other than Mr. Leach, okay.

15 (WHEREUPON, the video was continued.)

16 Q Herman Leach is gone because we've got a warrant for
17 his arrest, correct?

18 A (There was no response.)

19 Q I'm sorry. These are just the people who were in the
20 house. Herman, we have a warrant for his arrest, correct?

21 A Yes, sir.

22 Q A warrant that was not established that day, it was a
23 preexisting warrant, correct?

24 A Yes. It wasn't from evidence found that day.

25 Q It wasn't from evidence found that day, great. Thank

1 you. So Herman is gone, correct?

2 A Yes.

3 (WHEREUPON, the video was continued.)

4 BY MR. BELTON:

5 Q Now, you indicated that Herman's warrant was different
6 from the other people's warrant?

7 A Mr. Leach had a warrant, a drug unit warrant.

8 Q And just so I understand and they understand, does York
9 County have more than one drug unit?

10 A No. We have one drug unit in York County, but the drug
11 unit, oftentimes, will not enter their warrants in the NCIC,
12 which is the national database showing that a person is
13 wanted. If we have an ongoing drug investigation,
14 obviously, it could jeopardize that investigation. If
15 they're picked up during a traffic stop for a minor traffic
16 violation, we have cooperating informants that work with us.
17 There's a lot of different factors why we don't enter those
18 people in the NCIC and we pick them up whenever our
19 investigation is complete.

20 (WHEREUPON, the video was continued.)

21 Q Now, he's indicating get him out of here and get him in
22 the van. Who was that they're indicating get him out of
23 here and get him in the van?

24 A Lieutenant Rainier.

25 Q No, who is the gentleman that has no shirt on?

1 A Tyreque Tolbert.

2 Q That's Mr. Tolbert?

3 A Correct.

4 Q So he's being instructed to be taken out of there
5 because he has an existing warrant on him, right?

6 A Yes, sir. I would assume so, yes, sir.

7 Q That's not related to May 16, 2018?

8 A Again, I wasn't in this room when this all occurred, so
9 I'm assuming the reason he's going out to the van is because
10 he has a preexisting warrant, that is correct.

11 Q All right. But, at least, that's what was said on the
12 video, correct?

13 A Yeah, he says take him to the van.

14 (WHEREUPON, the video was continued.)

15 BY MR. BELTON:

16 Q What did one of your colleagues just say on there? We
17 have drug units?

18 A Correct.

19 Q The drug unit has warrants?

20 A Correct.

21 Q So that's Mr. Tolbert who has a warrant and Ms. Eades
22 who has a warrant. So the three, they had existing
23 warrants?

24 A They may have, yes, sir.

25 (WHEREUPON, the video was continued.)

1 BY MR. BELTON:

2 Q So now that's -- who is her who they're pointing to
3 there on the couch?

4 A I don't know her name. I assume it was the lady who
5 was in the bathroom, but I don't know.

6 Q So the young lady that was in the restroom?

7 A I would assume so.

8 Q She also had a warrant?

9 A She did.

10 Q Now, in fact, she did not have a warrant from the drug
11 unit that the other three had, but she had a warrant?

12 A With the county.

13 Q So now, female in restroom, blue pill or blue residue
14 consistent with things, she also has a warrant?

15 A She does have a warrant.

16 Q Okay.

17 (WHEREUPON, the video was continued.)

18 BY MR. BELTON:

19 Q Now, we're whittling it down. Who is left in here?
20 Let's exclude the pregnant lady who's on the couch. And we
21 don't have to say names, but we have basically three left in
22 here that we've got to figure out what to do with, correct?
23 Mr. Tate -- I'm sorry, four. Mr. Tate, the lady who's
24 sitting beside Mr. Tate and the two gentleman on the couch,
25 correct?

1 A Correct.

2 Q So does anyone else in there have warrants on them?

3 A I'm not sure.

4 Q You don't remember?

5 A I don't recall.

6 Q And the reason why the young lady who's expecting, Ms.
7 Eades, is still sitting there because evidently you need
8 special transportation for her because she's expecting,
9 correct?

10 A Females can only be transported with a female and so on
11 and so forth.

12 Q So that's why she's still there?

13 A Correct.

14 Q So my assumption is that Ms. Towery -- there was a
15 female officer out there waiting to transport Ms. Towery?

16 A I don't recall if they had a transport van, most likely
17 a transport officer. I don't recall who it was.

18 (WHEREUPON, the video was continued.)

19 BY MR. BELTON:

20 Q Now -- and I'm going to end with this body cam here.

21 At some point, Mr. Tate is taken out of the residence, isn't
22 he?

23 A Yes.

24 Q He's actually the only one at this moment who's
25 arrested for what happens there that day, is he?

1 A Yes.

2 Q And do you remember the discussion that took place with
3 Mr. Tate as he was about to leave the residence?

4 A I don't recall the specifics of it, but, again, Mr.
5 Tate didn't agree that the drugs that were found within the
6 house were, in fact, his.

7 Q And what Mr. Tate -- let's play it.

8 MR. BELTON: Beg the Court's indulgence. The computer
9 is freezing.

10 (Pause.)

11 (WHEREUPON, the video was continued.)

12 BY MR. BELTON:

13 Q Who is this gentleman with his back turned to us
14 talking?

15 A That's me.

16 Q That's you. So at this point, he asking you about the
17 drugs that were found, correct?

18 A Correct. I advised him he was under arrest for the
19 marijuana that he threw down and I was going to go back and
20 review my body camera to determine if charges were warranted
21 for the crack and pills.

22 Q But your earlier testimony was you saw it, saw his arm
23 throw, saw it hit the floor?

24 A I saw the marijuana come out of his hand and hit the
25 floor. I never once testified here today that I saw him

1 throw the crack or I saw the crack leave his hand and hit
2 the floor.

3 Q And I understand --

4 (WHEREUPON, the video was continue.)

5 BY MR. BELTON:

6 Q So as you all are leaving the scene that day, Mr. Tate
7 was not under arrest for anything in the house except the
8 marijuana that he owned from the beginning?

9 A That's correct.

10 Q So let's go back to the -- and so you indicated you
11 would go back and you would watch your body cam?

12 A I did.

13 Q Let's finish up here by talking about the
14 investigation, okay. In your investigation, your training
15 as an officer, there were things that were collected there
16 at the house, correct?

17 A Yes.

18 Q Drugs?

19 A Yes.

20 Q And preserving this evidence is important, isn't it?

21 A Yes.

22 Q You indicated earlier -- you testified earlier that
23 fingerprints were done, correct?

24 A They were.

25 Q Fingerprints that did not indicate Mr. Tate had been in

1 contact with this?

2 A They did not recover any useable fingerprints from the
3 bags.

4 Q You also indicated on the video here that you all were
5 going to do some forensics on some of the stuff, right?

6 A Correct, DNA or fingerprints.

7 Q Was any DNA testing done?

8 A I do not believe so.

9 Q You all have the capabilities down there to do DNA
10 testing, don't you?

11 A We can. It's my understanding you can only do one or
12 the other. If you attempt to fingerprints from it, it can
13 contaminate DNA and vice versa.

14 Q But you didn't do DNA?

15 A I'm not a forensics officer. I'm assuming they chose
16 fingerprints over DNA because it was more likely to obtain
17 fingerprints or evidence of who had the bag.

18 Q I understand, but no DNA was done, no DNA that links
19 Mr. Tate to anything in that house?

20 A No, there was no DNA testing done.

21 Q I'm going to hand you back what has already been
22 offered into evidence -- admitted into evidence -- oh, not
23 admitted, but State's Exhibit 20 and State's Exhibit 19, 19
24 and 20.

25 A Yes, sir.

1 Q And those, in fact, you indicate is what you collected
2 out of the house?

3 A Yes, sir.

4 Q What color are those bags that are collected there?

5 A The bags are yellow now because they've already been
6 through the process for fingerprinting. They were
7 originally clear. You can see those in the photographs.

8 Q In trying to preserve a crime scene, forensics can help
9 you identify people or exclude people, correct?

10 A Yes.

11 MR. BELTON: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 BY MR. BELTON:

15 Q Officer, just a few more questions. In this house --
16 let me just make sure that we are clear. Mr. Tate was
17 charged?

18 A Yes, sir.

19 Q And Mr. Tolbert was charged?

20 A Yes, I believe so.

21 Q The young lady in the bathroom was not charged?

22 A No.

23 Q The young lady who was expecting that was in there, she
24 had previous warrants, but she was not charged for this
25 incident?

1 A No, sir.

2 Q Nobody else was charged out of this house, out of eight
3 people that lived there -- that were there, three of them
4 who were residents there, Mr. Herman Leach, not charged with
5 what happened in there that day?

6 A He was not.

7 Q Mr. Tyrequs was a resident of that bedroom, was not
8 charged for the large amount of crack, he was charged for a
9 small amount of crack that was found with a crack pipe on
10 the dresser?

11 A He was.

12 Q Brandi Eades wasn't charge with anything?

13 A No, sir.

14 Q From that day?

15 A No, sir.

16 Q But we were there to serve a search warrant for people
17 selling drugs out of that house. The residents out of that
18 house for selling drugs out of that house?

19 A Not only the residents, but --

20 Q It's a drug house?

21 A Correct.

22 MR. BELTON: No further questions.

23 THE COURT: Any redirect?

24 MS. HAMILTON: Yes. I'll try to keep it brief, Your
25 Honor.

REDIRECT EXAMINATION

BY MS. HAMILTON:

Q Officer Rowe, I know to try to go back to testimony, it's a lot to try to remember, but I just want to ask you a few questions that the Defense covered. He recently asked and asked at the beginning of his cross, you didn't charge anyone else is what he said from this incident?

A Mr. Tolbert was charged.

Q And what was he charged with?

A I believe it was possession of crack.

Q Okay. Why did you charge Mr. Tate as you charged him?

A After reviewing my body camera, the marijuana that he was observed dropping, then reviewing my body camera, based on all those observations, what I saw and then reviewing my body camera, it was believed that Mr. Tate discarded both the oxycodone pills and the bag of crack upon his fleeing throughout the house and he attempted to throw that crack out the window.

Q I know the Defense was talking about -- they specifically said -- Mr. Belton specifically said people hide illegal stuff, didn't he? Do you remember him saying that?

A I don't recall exactly.

Q He was talking about hiding illegal stuff, I think in the purses is what he mentioned. Where were these drugs

1 found again? Can we reiterate? Were they hidden?

2 A I don't know if the drugs that we recovered or charged
3 anybody with were hidden, all of them were out in the open.

4 Q Oh, I also do want to ask. You stated this was a drug
5 home, didn't you?

6 A It is known for narcotic sales, yes, ma'am.

7 Q People also using within that home, correct?

8 A Sure. Dealers come there to sell, users come there to
9 use and so on and so forth. There's a lot of traffic in and
10 out of these drug homes.

11 Q In this home, people hide drugs to keep it to
12 themselves, correct?

13 A Sure. Yes.

14 Q Don't just leave them in the open for other people to
15 --

16 A No, ma'am.

17 Q You think they'd last in this home?

18 A No, ma'am.

19 Q I'm going to go to the video. Defense brought
20 attention to a cigar pack outside that window.

21 (Pause.)

22 Q Well, I just want -- I'm going to bypass that for a
23 second. On that, did you see a picture when he zoomed in
24 and stopped at that cigar pack outside that window?

25 A Yes, ma'am.

1 Q Did that seem fresh to you or did that seem like it had
2 been there for a while?

3 A Everything outside the window had been there for a
4 while.

5 Q So the argument that that was possibly thrown out,
6 freshly, just then, seconds ago?

7 A I don't believe so. There was dirt on top of it. It
8 wasn't freshly thrown out.

9 MS. HAMILTON: Your Honor, we are having technical
10 difficulties. Nothing is showing up on our screen.

11 Beg the Court's indulgence, Your Honor.

12 THE COURT: Folks, let's take a break. Yeah, let's
13 take a break one more time. Hopefully, we can get this
14 witness finished today.

15 Go back to your jury room. Don't discuss the case
16 amongst yourselves.

17 (WHEREUPON, the jury exits the courtroom.)

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Okay. Bring the jury in.

20 (WHEREUPON, the jury enters the courtroom.)

21 THE COURT: Ms. Hamilton.

22 BY MS. HAMILTON:

23 Q Officer Rowe, looking at that photo, again, so the jury
24 can see, is that a fresh cigar packet?

25 A No, ma'am, I do not believe so.

1 Q Do you see any dirt on top of that looking at that?

2 A It's kind of hard to tell in the picture. I don't see
3 any large mounds of dirt, but it's clearly been there for a
4 while. In fact, prior to you starting the video, I had to
5 move the bush over to the right with my arm to move it out
6 the way to actually view that.

7 Q And he went over, kept saying you didn't see the crack
8 that day. Did you see the crack that day?

9 A Eventually, I did, yes, ma'am.

10 Q And you took that crack into your custody?

11 A I did.

12 Q And you found that crack, correct?

13 A Yes, ma'am.

14 Q And where did you find that crack?

15 A Underneath the dresser just to the left of the window.

16 Q And what made you charge Mr. Tate with that crime?

17 A Mr. Tate was the only person that made any movements
18 consistent with something being thrown out the window. It
19 was found in close proximity of the window. We reviewed my
20 body camera in order to make that determination that it did
21 come from Mr. Tate. Nobody else within that room made any
22 movements. You could see in the video, nobody -- they did
23 exactly what I asked them to do, put their hands up. Nobody
24 else threw anything while I was inside that room.

25 Q And you talked about in that video, talked about the

1 pills that were found that the Defendant was ultimately
2 charged with. The Defendant -- you said you were the only
3 person that went through that hallway. What made you say
4 that? Were those pills found prior to anybody else going
5 through that hallway? Were they seen prior to anyone else
6 going through that hallway?

7 A They were. They were seen by Investigator Earls prior
8 to --

9 MR. BELTON: Objection, Your Honor.

10 THE COURT: Sustained. Next question.

11 BY MS. HAMILTON:

12 Q Additionally, in the video that the Defense played and
13 they specifically highlighted a portion where you said
14 marijuana and pills are two different charges?

15 A Correct.

16 Q What initiated you to say that?

17 A They carry substantially different punishments for
18 being charged with it.

19 Q I assume marijuana being the lesser?

20 A Yes, that amount of marijuana would have been a traffic
21 ticket, a magistrate level offense, whereas the pills would
22 have been a general sessions or higher level charge.

23 Q And again, you said you were going to review the body
24 camera. And, ultimately, what you saw on that body camera
25 led you to charge Ricky Tate, correct?

1 A Yes, ma'am.

2 Q And I do want to highlight one other thing that was not
3 highlighted. The Defense went through multiple portions of
4 this video, but left out some significant portions. So I do
5 want to show one significant portion that's relevant to Mr.
6 Tate.

7 (WHEREUPON, video was played for the jury.)

8 BY MS. HAMILTON:

9 Q What did they just say?

10 A Advised that Mr. Tate --

11 MR. BELTON: Objection, Your Honor.

12 THE COURT: Overruled.

13 BY MS. HAMILTON:

14 Q What did he just say?

15 MR. BELTON: Your Honor, can we approach?

16 THE COURT: Come on.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury, but outside the hearing of the jury.)

19 THE COURT: The objection is overruled.

20 You may continue, Ms. Hamilton.

21 MS. HAMILTON: Thank you.

22 BY MS. HAMILTON:

23 Q What did we just hear on that video?

24 A That was dispatch radioing back that Mr. Tate was on
25 supervised release status.

1 MS. HAMILTON: Thank you. No further questions.

2 THE COURT: Anything further from this witness, Mr.
3 Belton?

4 MR. BELTON: Just two questions, Your Honor.

5 THE COURT: Yes, sir.

6 RECROSS-EXAMINATION

7 BY MR. BELTON:

8 Q The gentlemen who was in the house, Wayne Leach, is he
9 the owner of the house?

10 A I don't know specifically who the property owner is. I
11 don't know who's on the deed of the property if that's what
12 you're asking.

13 Q Okay. But Wayne Leach wasn't arrested there that day?

14 A He was not.

15 Q Even though these drugs were found in this property, he
16 wasn't arrested?

17 A Mr. Leach wasn't in the area that the drugs were found.

18 Q And there are no other pictures -- you never went back
19 in there and took any broader view of the drugs?

20 A No, sir.

21 MR. BELTON: Thank you. No further questions.

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

23 All right, folks, I think that's a good quitting point
24 today. Be back in your jury room tomorrow at 9:30. Do not
25 discuss the case amongst yourselves or within anyone else.

1 Don't do any research about the case or the parties, the
2 incident location or anything else. Just go home and have a
3 good night. We'll see you at 9:30 tomorrow.

4 MS. HAMILTON: Your Honor, if we may before we dismiss
5 the jury, we have one more witness that will be very quick.
6 It will not even take ten minutes.

7 THE COURT: Until you get to cross-examination and then
8 it gets much longer.

9 MR. BELTON: It's fine with us, Your Honor.

10 THE COURT: Okay. Let's hear the next witness. Call
11 your next witness.

12 MS. HAMILTON: The State calls Mr. Bryan Townsend.

13 THE COURT: Sorry to get your hopes up. It will be
14 quick.

15 BRYAN TOWNSEND, after being duly
16 sworn, testified as follows:

17 THE CLERK: Thank you. You may be seated.

18 MS. HAMILTON: May it please the Court, Your Honor?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MS. HAMILTON:

22 Q Thank you for being here, Mr. Townsend. Could you
23 please state your full name for the record?

24 A My name is Bryan Townsend.

25 Q And what is your occupation?

1 A I am the GIS manager for York County, South Carolina.

2 Q How long have you been employed as the GIS manager for
3 York County?

4 A Since 2001.

5 Q And what is your educational background?

6 A I have a Master's Degree in geography.

7 Q What exactly is York County GIS?

8 A York County GIS is a system of business processes who
9 facilitate services through mapping software.

10 Q And that mapping software, do you have the capability
11 to check distances of certain properties from another?

12 A Yes.

13 Q In coming to York County to be the manager of GIS, what
14 was your role in implementing this GIS system?

15 A I was part of the team that created it.

16 Q And you did say you created it, so I don't know how
17 much training you need, but have you had training regarding
18 the GIS system and methods used in executing it?

19 A Many weeks out of the year since 2001.

20 MS. HAMILTON: Your Honor, the State would offer Mr.
21 Townsend based on his expertise in creating this as an
22 expert in analysis and identification of the GIS system,
23 geographic information systems.

24 THE COURT: Any voir dire or objection?

25 MR. BELTON: No objection, Your Honor.

1 THE COURT: All right, ladies and gentlemen of the
2 jury, typically, a witness must testify as to what they saw,
3 smelled, touched, tasted, whatever experience with their
4 senses and cannot give opinion testimony. However, when a
5 person by virtue of their education, training or experience
6 becomes expert in some field, they are permitted to offer
7 you their opinions and the reasons for those opinions. Mr.
8 Townsend is qualified as an expert in the field of analysis
9 and?

10 MS. HAMILTON: Geographic information systems.

11 THE COURT: Analysis and something else is what you
12 said?

13 MS. HAMILTON: Oh, identification.

14 THE COURT: Thank you.

15 Analysis and identification in geographic information
16 systems, therefore, he will be permitted to give you his
17 opinion within that field of expertise and the reasons for
18 those opinions. However, you take the witness's testimony
19 as you would any other. You need not believe it just
20 because he is an expert. You give it the weight and
21 credibility you think it deserves.

22 BY MS. HAMILTON:

23 Q What type of work do you exactly do in your position?

24 A I work with staff and many different county departments
25 and I assist them in using the software more effectively to

1 answer questions by citizens and to help them do their jobs
2 more effectively.

3 Q And can you explain to us how the GIS system works in
4 measuring distances from one location to another?

5 A From one location to another, if you have a
6 geo-reference location from an aerial photography, you can
7 take that distance and draw a straight line to another
8 geo-reference location and come up with a linear distance
9 between those two coordinates, those two locations.

10 Q How is that information implemented into your system to
11 give us the capability to do that function on the system?

12 A We worked with a vendor who took an airplane and flew
13 it over and required an image, additional image of the earth
14 and each image within that image is a pixel and the pixel
15 represents a certain area on the earth and a pixel has a
16 geo-reference location. So from pixel -- or several pixels
17 that might look like a structure, a house, to another set of
18 pixels that looks like another location, you can draw a line
19 between those two because the pixels have a more precise
20 location on there.

21 Q And is this an accurate measurement?

22 A Yes.

23 Q Are you in charge of making sure this system is
24 accurate?

25 A Yes.

1 Q And is it accurate?

2 A Yes.

3 Q I am going to hand to you --

4 MS. HAMILTON: Your Honor, may I approach the witness?

5 THE COURT: YES.

6 Q -- what is in evidence as State's Exhibit No. 18. And
7 I'm going to ask you a few questions. Let me refresh the
8 jury's recollection since we do not have technology working.

9 This is Exhibit No. 18 that shows the distance that
10 Officer Rowe testified to.

11 Would you please take a look at this exhibit?

12 A (Witness complies.)

13 Q Do you recognize this exhibit, this photo to be a
14 snapshot from the GIS system?

15 A Yes, I do.

16 Q And how do you recognize that to be so?

17 A It is the software interface as well as the tools used
18 to draw out distances on the map.

19 Q And again, you are quite familiar with this software,
20 so you would recognize it?

21 A Yes.

22 Q In that photo, what are we seeing? Is that the correct
23 distance that we are seeing in that photo?

24 A Yes, it's a correct distance.

25 Q So from one location to another location, what is that

1 distance? Could you please tell us?

2 A That distance is stated here as 2,520.9 feet.

3 Q And you are testifying that that is an accurate
4 representation of the radius between one point to another?

5 A Yes, that's correct.

6 MS. HAMILTON: Thank you. Please answer questions the
7 Defense might have.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. BELTON:

11 Q Just one question. On that you have there, the road
12 distance, is that indicated on there?

13 A The road?

14 Q Yeah. If you were to travel from that point -- if you
15 were to travel from this point to this point by road, can
16 you all map that as well or is that just a straight line?

17 A That can be mapped, but this picture here is a straight
18 line distance.

19 MR. BELTON: Thank you. No other questions.

20 THE COURT: Anything further from this witness?

21 MS. HAMILTON: No, Your Honor.

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

23 THE WITNESS: Thank you.

24 MS. HAMILTON: May this witness be excused?

25 THE COURT: Yes, he is free to go.

1 All right, ladies and gentlemen, now, I'm going to send
2 you home for the evening. Do not discuss the case amongst
3 yourselves or with anyone else. Don't do any research about
4 the case or any topics raised in the case. Be back in your
5 jury room tomorrow morning at 9:30. Have a good night.

6 (WHEREUPON, the jury exits the courtroom.)

7 THE COURT: Mr. Morton, your previous objection?

8 MR. MORTON: Yes, ma'am, we would object to the
9 testimony being highlighted about Mr. Tate's supervised
10 release. And that it needlessly highlighted the Defendant's
11 character in evidence and the prejudicial effect far
12 outweighs the probative value of that, Your Honor.

13 THE COURT: Okay. I find the Defense waived any
14 argument about that when it introduced -- that's not
15 something that was introduced by the State. There was great
16 debate earlier on about which portions of the video would be
17 introduced by the State in its case in chief. That portion
18 of the video was introduced by the Defense. The objection
19 was previously overruled because it was an accurate
20 depiction of what occurred on the video. Counsel was
21 instructed not to ask the witness to editorialize in any
22 way, to explain what supervised release is or ask him any
23 questions whatsoever about the supervised release, but the
24 fact that he was on supervised release was stated on the
25 video. I understand your objection, but for those reasons,

1 it was overruled.

2 Anything else?

3 MR. MORTON: No.

4 MS. HAMILTON: Nothing further from the State, Your
5 Honor.

6 MR. BELTON: Nothing from the Defense, Your Honor.

7 THE COURT: I'll see you at 9:30 tomorrow.

8 (WHEREUPON, Court was adjourned for the day.)

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10 THE COURT: All right. Before we bring the jury,
11 anything from the State? Is the State ready for the jury?

12 MS. HAMILTON: The State is ready.

13 THE COURT: From the Defense?

14 MR. BELTON: We're ready, Your Honor.

15 THE COURT: Fabulous.

16 Bring the jury.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: Good morning, folks. I hope you had a good
19 night and I hope you're refreshed and ready to listen.
20 We're still in the State's case.

21 Ms. Hamilton, call your next witness.

22 MS. HAMILTON: Thank you, Your Honor. The State calls
23 Officer Matthew Earls to the stand.

24 MATTHEW EARLS, after being
25 duly sworn, testified as follows:

1 THE CLERK: Thank you. Have a seat.

2 DIRECT EXAMINATION

3 BY MS. HAMILTON:

4 Q Good morning.

5 A Morning.

6 Q Would you please state your full name for the record?

7 A Matthew Earls.

8 Q And what is your occupation?

9 A I'm an investigator with the -- I'm employed by York
10 Police Department and assigned as an investigator with the
11 York County Multi-jurisdictional Drug Enforcement Unit.

12 Q How long have you been employed with the York County
13 Drug Enforcement Unit?

14 A Since August of 2017.

15 Q And what type of work do you do in that position?

16 A Our main focus is investigate drug-related crimes,
17 specifically, dealer-type crimes, distribution. We also do
18 some alcohol enforcement as well as other organized crime
19 operations.

20 Q And were you a police officer prior to joining the drug
21 enforcement unit?

22 A Yes, ma'am.

23 Q And how many years?

24 A I started law enforcement July of 2008.

25 Q And were you employed in your present capacity as a

1 drug enforcement unit officer on May 16th of 2018?

2 A Yes, ma'am.

3 Q So I want to draw your attention to that afternoon
4 around 3:30. What were you doing on May 16th of 2018?

5 A I was participating in the execution of a search
6 warrant at [REDACTED] Leach Road.

7 Q And what residence were you assigned to executing a
8 search warrant on?

9 A [REDACTED] Leach Road.

10 Q And is that house in York County?

11 A Yes, ma'am.

12 Q And could you just please describe for the jury and me
13 what happened when you pulled up to [REDACTED] Leach Road?

14 A We pulled into the front of the residence, exited the
15 vehicle. We walked up onto an enclosed porch area,
16 announced several times that police were at the door and had
17 a search warrant before we entered into the residence.

18 Q And do you remember where you were in the lineup of
19 officers entering that home?

20 A I was the second officer inside the home.

21 Q And who was in front of you?

22 A Investigator Rowe.

23 Q Now, what happened next once you went into that
24 residence?

25 A Upon entry, I observed a male sitting on the couch in

1 the living room. I encountered him first, gave him commands
2 to put his hands up. He complied. I knew I had people
3 behind me. Investigator Rowe continued down the hallway, so
4 I left the guy on the couch and continued after Investigator
5 Rowe just to make sure he didn't need any more assistance as
6 well as help clear the rest of that side of the house.

7 Q And as you're following Investigator Rowe, do you have
8 anyone between you?

9 A No, there's no other people between that living room
10 area all the way to where he was in the bedroom.

11 Q Empty?

12 A It was empty.

13 Q Did you, as you're going down that hallway, observe
14 anything of relevance?

15 A Upon the initial entry, not at first, no, I didn't. On
16 the initial entry into the residence, I didn't see anything.

17 Q What did you do next once you're inside after you
18 secure the guy on the couch and then go after Investigator
19 Rowe?

20 A I see that he has got seems like several people in the
21 bedroom. He seems to have it contained from where he's at.
22 There is another bedroom in the hallway and a bathroom. The
23 bathroom door was open. I didn't see anyone in the bathroom
24 at first, so I checked the door for the bedroom, which was
25 locked. So I called for someone to bring the ram to help

1 force that door open and get into that bedroom.

2 Q And what happens next?

3 A Lieutenant Rainier eventually brought the ram. He
4 forced the door open -- let me back up. While waiting on
5 the ram to come up, I checked behind the shower curtain in
6 that bathroom and I find a female hiding in the shower in
7 that bathroom. So I get her out, give her commands to keep
8 her in the bathroom. She complies. At that point,
9 Lieutenant Rainier forces the door open on the second
10 bedroom and I clear the bedroom to make sure there's no one
11 else inside there.

12 Q So you clear that bedroom and you have the female in
13 the bathroom?

14 A Yes, ma'am.

15 Q Has she left that bathroom at all?

16 A No, ma'am.

17 Q And who has gone down that hallway? Has anyone in that
18 home that is not an officer gone down that hallway at that
19 point?

20 A The only other one that went down the hallway was Ricky
21 Tate.

22 Q But that was not at this time, correct? That was
23 later?

24 A Upon initial entry, he ran down -- that's the way he
25 ran. He ran down that hallway in front of Investigator

1 Rowe.

2 Q So you secure her in the bathroom, the female from the
3 shower. Then what happens next? What do you proceed to do?

4 A At that point, she's secured. I helped Investigator
5 Rowe finish securing the multiple people inside his bedroom.
6 After that, we cleared the living furniture to make sure
7 there's no weapons or contraband hidden there so we could
8 bring people into the living room, get everybody on one area
9 to help maintain control of the residence.

10 Q Okay. Did you find anything of significance, illegal
11 contraband in the living room?

12 A No, not the living room.

13 Q Did you find any illegal contraband in that hallway?

14 A Yes, ma'am. While I was in the hallway waiting before
15 we moved everybody from the bedroom, I finally observed a
16 baggy laying on the floor and there were several pills
17 inside that baggy.

18 Q Was that in plain view?

19 A It was, yes, ma'am.

20 Q And again, that was before -- that was after Tate had
21 gone down the hallway, correct?

22 A Correct. He ran down the hall initially, but no one
23 else had been in the hallway since then.

24 Q I'm going to hand to you what's been marked as State's
25 Exhibit -- or, actually, is State's Exhibit No. 4 in

1 evidence. And I just want to go through, as I did with
2 Officer Rowe, a layout of the home and kind of how you
3 secured it. I want to have you take a look at this exhibit
4 for a moment.

5 A (Witness complies.)

6 Q Do you recognize that?

7 A Yes, ma'am.

8 Q How are you familiar with this?

9 A This is an overview of the residence at [REDACTED] Leach
10 Road.

11 Q So what I'm going to ask you to do, I'm going to have
12 you show the jury the path that you went initially on this
13 map?

14 A All right. So we entered the residence here at this
15 porch and through that doorway. I encountered the male in
16 the living room and then I followed Investigator Rowe down
17 the hallway to -- that right there is where I stopped. I
18 didn't enter all the way into that bedroom. I stopped there
19 kind of between the bathroom and bedroom number two.

20 Q And then show me what room that female was in that you
21 said you secured.

22 A Okay. She was in a shower which was along this wall of
23 the bathroom.

24 Q Secured in that bathroom?

25 A Yes, we did not observe her at all in the hallway. She

1 was in the bathroom the entire time.

2 Q Could you please show me on this map where you saw
3 those pills that you mentioned earlier?

4 A Right as you leave the kitchen area into the hallway,
5 right at that corner right in there.

6 Q Okay. And I'm going to leave this up for the time
7 being. What did you believe those pills to be when you
8 initially saw them?

9 A They appeared to be fraudulent oxycodone pills that's
10 common that we see.

11 Q So once you saw those pills, what happens next?

12 A After everyone was secured and the living room
13 furniture was secured, one by one, we brought all the people
14 that were detained in the bathroom and bedroom number one
15 into the living room area just to help maintain control and
16 get everyone in one spot.

17 Q Now, when you said you secured the female in the
18 bathroom, did you subsequently search her?

19 A She was checked for weapons and she was handcuffed
20 behind her back. There was nothing in her hands and we
21 didn't feel any weapons on her person.

22 Q Now, what happened next? When everyone is in that
23 room, what happens next?

24 A When everyone was in the living room?

25 Q Yes.

1 A At that point, Investigator Rowe went outside and
2 stated he was going to look -- I think he said he was going
3 to look for some dope or something outside. So I went into
4 that bedroom and was speaking to Investigator Rowe through
5 that open bedroom window.

6 Q And upon entering that bedroom, I want you -- on the
7 map, could you state what bedroom you're speaking of that
8 you entered?

9 A Bedroom number one.

10 Q Is that the first time you had entered that room or had
11 --

12 A I had went in there previously just to help escort the
13 people inside the bedroom to the living room.

14 Q So you go in that bedroom. What do you see as soon as
15 you go in that bedroom?

16 A Immediately, I saw a bag of marijuana lying on the
17 floor near the foot of the bed. Then Investigator Rowe
18 asked me if I saw it, I told him I did. And then I also saw
19 a bag of crack cocaine laying underneath the dresser near
20 the window.

21 Q Could you show me where that marijuana was initially
22 found on the map, make an X or circle?

23 A So, the marijuana was roughly in this area there. And
24 then -- you want me to show you where the crack and
25 everything else was, ma'am?

1 Q Sure.

2 A The window and the crack and the dresser was right
3 about right there roughly.

4 Q Of course, this is not to scale?

5 A Correct, it's not to scale.

6 Q Where you put the dot, what was there? You said under
7 the dresser. What else is present?

8 A What else was present?

9 Q Was there a window?

10 A Yes, the window was on the wall and the dresser was
11 directly to the left, just to the left of the window.

12 Q So you said Officer Rowe was outside, what were y'all
13 doing at that time? Did you help secure the drugs?

14 A No, I told him that I saw it and I left it there. I
15 just told him where it was at in relation to the window.

16 Q I am going to hand you what is in evidence as State's
17 Exhibit 11 through 17.

18 MS. HAMILTON: Your Honor, may I approach the witness?

19 THE COURT: Yes.

20 BY MS. HAMILTON:

21 Q Do you recognize this photo?

22 A Yes, ma'am.

23 Q I have up on the screen State's Exhibit No. 11. Would
24 you explain to me what we're seeing?

25 A That's an exterior view of the window that was in

1 bedroom number one.

2 Q And is this where you found the drugs?

3 A Yes. Looking at it from this picture, it would be to
4 the right below the window, bottom right corner.

5 Q Looking at this photo?

6 A So at this point, you can actually see them on the
7 picture here, but when I found them -- you want me to draw
8 it?

9 Q Actually, yeah.

10 A (Witness complies.) So you can actually see the baggy
11 here --

12 MR. BELTON: Objection, Your Honor. He indicated that
13 he had never gone in the room -- that he never went in the
14 room while they were in the room. That's what he testified
15 to.

16 THE COURT: Overruled.

17 BY MS. HAMILTON:

18 Q And where -- would you please circle the marijuana?

19 A (Witness complies.)

20 Q Perfect. Could you also indicate on this photo, you
21 had stated that they had been moved under a dresser?

22 A Correct. They ended up in this area here underneath
23 the dresser.

24 Q Okay.

25 A That was the crack. The marijuana did not.

1 Q Okay. Now, I want to show you some photos. Do you
2 recognize this photo?

3 A Yes, ma'am.

4 Q What is this?

5 A That was the bag of crack cocaine that was located
6 underneath the dresser.

7 Q And this?

8 A That is it on the scale at the police department.

9 Q What are we seeing in this photo?

10 A Those are the oxycodone pills that were found in the
11 hallway.

12 Q And is that how they appeared the day of May 16, 2018,
13 when you saw them?

14 A Yes, ma'am.

15 Q And this photo?

16 A Just a closer view of the pills once at the police
17 department. The same on the scale at the police department.

18 Q And I'm going to ask you, also, you had a body camera
19 on that day, didn't you?

20 A Yes, ma'am.

21 Q And pretty much everything you testified to today was
22 on your body camera?

23 A Correct.

24 Q And for time purposes, how long was that body camera?

25 A Roughly 13 minutes or so.

1 Q Approximately?

2 A Approximately, yes.

3 Q And it was cut off before anybody spoke?

4 A Correct.

5 Q Why did your body camera cut off?

6 A Lieutenant Clevenger gave the command if we didn't need
7 it for evidentiary purposes to turn off the body cameras, so
8 at that point I deactivated mine.

9 MS. HAMILTON: Thank you. Please answer any questions
10 the Defense may have.

11 CROSS-EXAMINATION

12 BY MR. BELTON:

13 Q Good morning.

14 A Good morning, counsel.

15 Q You're the case agent on this case, correct?

16 A Correct.

17 Q And you've sat here in court the entire time?

18 A Yes.

19 Q And you were seated right over here in this chair, so
20 you've heard everything that has gone on in court?

21 A Correct.

22 Q Had an opportunity to watch the video several times?

23 A Yes, sir.

24 Q Prior to your coming to the window, you had never
25 mentioned the drugs -- the pills in the hallway to anybody

1 else, correct?

2 A No, not before I told Investigator Rowe at the bedroom
3 window.

4 Q All right. Never mentioned the blue pills to any of
5 the other officers?

6 A Correct.

7 Q When you all pulled up, you were pretty loud upon
8 making entry, weren't you?

9 A Yes, Investigator Rowe knocked and announced very
10 loudly several times.

11 Q The testimony yesterday was it's a pretty small
12 residence?

13 A It is. Single-wide mobile home.

14 Q Logical to assume that everybody in the house kind of
15 heard and knew what was going on?

16 A Sure.

17 Q You didn't take any pictures of the pills in the
18 hallway prior to them --

19 A No, sir, I did not.

20 Q All the suspects came up the hallway while the pills
21 were still laying there in the floor?

22 A Correct.

23 Q You didn't secure, get pictures, do any of those things
24 when you brought all the suspects up the hallway?

25 A Correct.

1 Q The crack that was found in the bedroom underneath the
2 dresser, it was found by you, correct?

3 A Yes, I observed it. Once I was speaking to
4 Investigator Rowe through the window, I saw it lying on the
5 ground.

6 Q So you drew a circle on the other pictures where you
7 say you can see it right here, but, in fact, you never saw
8 it right here, did you?

9 A No, when I saw it, it was already underneath the
10 dresser.

11 Q So the picture that you drew the circle on, you
12 actually don't know what that is in the floor, do you?

13 A Yes, that was a bag of crack. You can tell from the
14 picture. You can see it in the floor on the body cam video
15 and that's a still from the body cam video.

16 Q And to your knowledge, are there any pictures of scale
17 of the room so everybody can see what everything looks like?

18 A No, sir. The only pictures I know of are what's been
19 presented.

20 MR. BELTON: Thank you. No further questions.

21 THE COURT: Any redirect?

22 MS. HAMILTON: No redirect, Your Honor.

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

24 Call your next witness.

25 MS. HAMILTON: The State would call Brandi Eades.

1 BRANDI EADES, after being duly
2 sworn, testified as follow:

3 THE COURT: Your witness.

4 MS. HAMILTON: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. HAMILTON:

7 Q Ms. Eades, could you please state your full name for
8 the Court?

9 A Brandi Michelle Eades.

10 Q And what area do you live in?

11 A Catawba.

12 Q So you live in York County?

13 A Yes, ma'am.

14 Q And how long have you lived in York County?

15 A My whole life.

16 Q Were you living at [REDACTED] Leach Road on May 16, 2018?

17 A Yes, ma'am.

18 Q And who was living in that home with you at that time?

19 A Me, my boyfriend and the guy who owns the home.

20 Q What was your boyfriend's name?

21 A Tyrequs Tolbert.

22 Q Are you still with him?

23 A No, ma'am.

24 Q I want to draw your attention to the afternoon of May
25 16, 2018, I'm sure you remember it, around 3:30 that

1 afternoon. Could you please tell me what was going on at
2 that time?

3 A Well, I was sleeping and that's when the police came
4 in.

5 Q You were sleeping?

6 A Yes, ma'am.

7 Q Had you woken up at any point prior to the police being
8 there?

9 A I had just woke up to go to the bathroom and someone
10 was in the bathroom.

11 Q So you woke up to go to the bathroom and what happened
12 when you went to the bathroom door?

13 A Someone was in there.

14 Q Did you knock?

15 A Yes, ma'am.

16 Q Did anybody answer?

17 A She told me she was in there.

18 Q And what did you do after that when you realized
19 somebody was in the bathroom?

20 A Went back to my bedroom.

21 Q Did you take anything with you to the bathroom?

22 A Toilet paper.

23 Q Why did you take toilet paper to the bathroom?

24 A Because I have to keep the toilet paper in my bedroom
25 because if I put it in the bathroom, it will get used.

1 Q Okay. I want -- so you go back to your bedroom?

2 A Yes ma'am.

3 Q I'm going to pull up what we have in evidence as
4 State's Exhibit No. 4. And that's going to show kind of a
5 layout that I want you to identify. Ms. Eades, this is
6 State's Exhibit No. 4. Do you recognize this home?

7 A Yes, ma'am.

8 Q Could you please show me what was your bedroom at the
9 time?

10 A Bedroom one.

11 Q And you can actually draw on this screen, so I might
12 actually mark things if you could. So bedroom one was your
13 bedroom. Could you please show me the bathroom. Circle the
14 bathroom that you went to that was locked?

15 A (Witness complies.)

16 Q Now, you stated you had gone back to your bedroom.
17 What time was that? How many seconds, minutes after that
18 had you heard the officers come through the door?

19 A Like probably -- I hadn't even sit back down on my bed.

20 Q So seconds?

21 A Right.

22 Q So you go back into your bedroom and then what happens?

23 A The police come in -- well, first, Ricky Tate comes
24 through the door and then the police is behind him.

25 Q Ricky Tate comes through the door. How do you know

1 it's Ricky Tate?

2 A Because I seen him.

3 Q Did you know him before this?

4 A Yes, ma'am.

5 Q Okay. So you're familiar with who he is?

6 A Yes, ma'am.

7 Q Now, you had mentioned -- or who else was in that
8 bedroom with you? You said you were sleeping in that
9 bedroom. Was anybody else with you in that bedroom before
10 Ricky Tate came into that room?

11 A My mom and my boyfriend at the time.

12 Q And what were they doing at the time?

13 A My boyfriend was asleep. My mom was sitting on the
14 bed.

15 Q Now, Ricky comes into the room. What do you see happen
16 once Ricky comes in the bedroom?

17 A He's running towards, like, on my side of the bed,
18 towards the window and then the police -- that's when the
19 police made us put our hands up.

20 Q Did you see Ricky make any movements?

21 A He was doing something at the window.

22 Q Did you see anything on the ground after you saw him
23 throw something towards the window?

24 A Yes, two bags.

25 Q What bag did you see?

1 A A bag that looked like crack and then marijuana.

2 Q How do you recognize it as crack?

3 A It was white.

4 Q Had you done crack before?

5 A Yes, ma'am.

6 Q So you knew what crack looked like?

7 A Yes, ma'am.

8 Q And in this home -- I just want to go over how the home
9 was. Was this a drug house?

10 A Yes ma'am.

11 Q Did people use drugs there?

12 A Yes, ma'am.

13 Q Would a bag of crack of that extent be laying on the
14 floor?

15 A No, ma'am.

16 Q Would you have seen that before then?

17 A Yes, ma'am.

18 Q Would it have stayed on that floor if you had seen
19 that?

20 A No, ma'am.

21 Q Actually, on this map -- well, I'll do it. I'm showing
22 you what has been put into evidence as State's Exhibit 10.
23 On this photo, could you please point out where you were
24 located? Let me give you the capability to write on this
25 screen. Could you please kind of circle where you are?

1 A (Witness complied.)

2 Q And where is, at that time, your boyfriend?

3 A (Witness complied.)

4 Q And your mother?

5 A (Witness complied.)

6 Q And when Ricky came into that room with officers
7 following him, did anybody else move other than Ricky?

8 A No, ma'am.

9 Q If you don't see it in this photo, that's fine, but do
10 you see what you saw to be the crack cocaine on the floor in
11 this photo?

12 A I believe it's right here (indicating).

13 Q Can you circle it?

14 A (Witness complied.)

15 Q Is that the same location you saw Mr. Tate make a
16 throwing motion towards?

17 A Yes, ma'am.

18 Q Were those drugs in that bedroom before he came into
19 that bedroom, Mr. Ricky Tate?

20 A No, ma'am.

21 Q Was that marijuana on the floor before Ricky Tate came
22 into that bedroom?

23 A No, ma'am.

24 Q I want to kind of go into your history. You have a
25 record, don't you?

1 A Yes, ma'am.

2 Q And you were living in a crack house at that time?

3 A Yes, ma'am.

4 Q In your history, you have things, shoplifting, use of

5 vehicle without permission, possession of a stolen motor

6 vehicle, another shoplifting, malicious injury to personal

7 property in your history, correct?

8 A Yes, ma'am.

9 Q Were these drugs yours?

10 A No, ma'am.

11 Q Were they Ty's?

12 A No, ma'am.

13 Q Were they your mother's?

14 A No, ma'am.

15 Q Do you have any reason today to lie about that?

16 A No, ma'am.

17 Q And did you have warrants that day?

18 A No, ma'am.

19 Q When you were arrested that day?

20 A Yes, ma'am.

21 Q And what were those warrants for, do you remember?

22 A Distribution of crack cocaine.

23 Q And did you plead to that charge?

24 A Yes, ma'am.

25 Q So you took that charge? You would plead to drug

1 charges if they were your drugs, correct?

2 A Yes, ma'am.

3 Q And do you have pending charges right now unrelated to
4 any drug case?

5 A Yes, ma'am.

6 Q Have you been promised anything to come and testify
7 truthfully today?

8 A No, ma'am.

9 Q Again, do you have any reason to lie?

10 A No, ma'am.

11 Q Any reason to protect anyone?

12 MR. MORTON: Object to the bolstering, Your Honor.

13 THE COURT: Sustained.

14 BY MS. HAMILTON:

15 Q Is everything you said today the truth?

16 A Yes, ma'am.

17 MR. MORTON: Object.

18 THE COURT: Overruled.

19 BY MS. HAMILTON:

20 Q Do you see the person in the courtroom today who you
21 watched come into your room at [REDACTED] Leach Road and make a
22 throwing motion and you subsequently found crack cocaine
23 under the window?

24 A Yes, ma'am.

25 Q Would you please point him out? What is he wearing?

1 A A blue collared shirt.

2 MS. HAMILTON: Thank you. Please answer any questions
3 the Defense might have.

4 MR. MORTON: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. MORTON:

8 Q Brandi, my name is Jim Morton. I represent Mr. Tate.
9 Are you currently in jail?

10 A Yes, sir.

11 Q Did you come in through a holding cell?

12 A No, sir.

13 Q How did you get to the courtroom through the regular
14 door?

15 A The officers escorted me.

16 Q Officers escorted you?

17 A Yes, sir.

18 Q That's not the way you normally come into the courtroom
19 when you're in jail, is it?

20 A No, sir.

21 Q Why were they escorting you? Why did you come in that
22 way like everybody else?

23 MS. HAMILTON: Objection, Your Honor, she does not know
24 the answer to this.

25 THE COURT: Overruled. She may know the answer.

1 THE WITNESS: I don't.

2 BY MR. MORTON:

3 Q You don't know?

4 A I don't know.

5 Q Who escorted you?

6 A I don't know his name.

7 Q A police officer?

8 A I guess.

9 Q Were you in jail last night?

10 A Yes, sir.

11 Q What are you in jail for?

12 A Neglect and breach of peace.

13 Q I'm sorry?

14 A Neglect and breach of peace.

15 Q And breach of peace?

16 A Yes, sir.

17 Q Neglect of what?

18 A Child.

19 Q And when did you get arrested for that?

20 A In August.

21 Q August of this year?

22 A Yes, sir.

23 Q So before this trial, right?

24 A Yes, sir.

25 Q And those charges are still pending, right?

1 A Yes, sir.

2 Q And you can go to jail for those charges for ten years,
3 right?

4 A Yes, sir.

5 Q Have they talked to you about that? When I say they, I
6 mean, the police or the prosecutors?

7 A No, sir.

8 Q No?

9 A I spoke to my attorney.

10 Q You don't want to go to jail for that, do you?

11 A No, sir.

12 Q You also have charges of giving false information to
13 the police?

14 A Yes, sir.

15 Q Those charges are also pending, correct?

16 A No, sir.

17 Q They're not pending?

18 A No, sir.

19 Q Why not?

20 A I got time served.

21 Q And when did those charges arise and when did you get
22 time served for that?

23 A Last year.

24 Q After this arrest?

25 A I got time served for the false information.

1 Q After this incident on Leach Road?

2 A Yes, sir.

3 Q And was there a recommendation made by the prosecutors
4 that you get time served for that?

5 A No, sir.

6 Q You understand that when you're charged with something,
7 prosecutors can come in and make recommendations to the
8 judge about what kind of sentence you get, right?

9 A Yes, sir.

10 Q And you want as favorable recommendation as you can
11 get, don't you?

12 A Yes, sir.

13 Q And so you want them to be on your side, right?

14 A Yes, sir.

15 Q Now, Ms. Hamilton went through your record a little bit
16 fairly quickly. You were charged with using a motor vehicle
17 without consent in 2014, right?

18 A Yes, sir.

19 Q You were charged with malicious injury to personal
20 property, also, right?

21 A Yes, sir.

22 Q You were charged with two counts of shoplifting,
23 correct?

24 A Yes, sir.

25 Q You have been charged with giving false information to

1 the police, right?

2 A Yes, sir.

3 Q So we can say you were also -- you have a pending in
4 obtaining by false pretense charge?

5 A Yes, sir.

6 Q So you have pending an unlawful neglect charge and
7 obtaining by false pretense, which is basically stealing,
8 correct?

9 A Yes, sir.

10 Q And you have just been sentenced -- given time served
11 on a giving false information to the police?

12 A Yes, sir.

13 Q So are you a credible person, Brandi, would you
14 consider yourself looking at it objectively?

15 A Could you say that again?

16 Q Would you consider yourself if you were listening to
17 your testimony -- you have lied to the police, correct?

18 A I have.

19 Q You have stolen?

20 A I have.

21 Q You have damaged property, right?

22 A Ye, sir.

23 Q And in fact, on the day that you were arrested, the
24 police were coming there to arrest you?

25 A Yes, sir.

1 Q For distribution of crack?

2 A Yes, sir.

3 Q From that home?

4 A Yes, sir.

5 Q From that bedroom?

6 A Yes, sir.

7 Q They were also coming to arrest your boyfriend, Ty, for
8 distributing crack?

9 A Yes, sir.

10 Q From that house, from that bedroom?

11 A Yes, sir.

12 Q Also, when they got there, they found blue pills. And
13 Robin Towery, you know Robin?

14 A Yes, sir.

15 Q She was in the bathroom with blue pills, correct?

16 A I guess. I mean, she was in the bathroom.

17 Q The same kind of blue pills, same color blue pills that
18 they found outside the bathroom door or outside in the
19 hallway, correct?

20 A I don't know what she was in there doing.

21 Q They find crack in your bedroom, correct?

22 A Yes, sir.

23 Q So you just testified to Ms. Hamilton if there was
24 crack in there, you would have known about it, right?

25 A Right.

1 Q But you didn't know about the crack that was on the
2 dresser that they charged Ty with?

3 A No, I was asleep. No, I didn't.

4 Q I thought you had just been to the bathroom?

5 A I did. I just woke up out of my sleep and went to the
6 bathroom.

7 Q Okay. But you said if there were crack in there, you
8 would know about it. But there was crack in there, right?

9 A Yes, sir.

10 Q And they charged Ty with that crack?

11 A Yes, sir.

12 Q So we have you being charged with distributing crack
13 from that house, from that bedroom while the police were
14 there. We have Ty being charged with that. Correct?

15 A Yes, sir.

16 Q And they find crack on the dresser, correct?

17 A Yes, sir.

18 Q And crack in the floor?

19 A Yes, sir.

20 Q You were in there, Ty was in there, your mom was in
21 there. The police come running in. You hear them running
22 in?

23 A Yes, sir.

24 Q You hear them before Ricky Tate comes back there,
25 correct?

1 A Yes, sir.

2 Q They could have charged you, as Officer Rowe has
3 indicated, with possession with intent to distribute crack
4 on that day. They could have charged everybody in the house
5 with that, correct?

6 A Yes, sir.

7 Q They could have charged you with possession with intent
8 to distribute crack within proximity of a school, correct?

9 A Yes, sir.

10 Q They could have charged you with the pills, correct?
11 Possession with intent to distribute and possession with
12 intent to distribute in proximity, correct?

13 A Yes, sir.

14 Q So they came and talked to you about that that day,
15 right?

16 A No, sir.

17 Q They didn't ask you on tape anybody know anything about
18 any drugs in here, now is the time to come forward, now's
19 the time?

20 A No, sir.

21 Q They didn't say that?

22 A No, sir.

23 Q If that's on tape, then that would be something that
24 we're just not seeing correctly, right?

25 A I don't remember them saying that.

1 Q Well, when did you tell them -- was it before you
2 received these charges of unlawful neglect, of giving false
3 information, of distribution and crack that the drugs in the
4 house were not yours, not Ty's, but they were Ricky's?

5 A I told the officer that.

6 Q When did you tell them that?

7 A That day in the house when we got arrested.

8 Q You did? Is that on tape?

9 A I'm not sure. I don't know.

10 Q What did you tell them? Because we haven't been
11 provided with any of those statements.

12 A I just told them that those were Ricky's drugs that
13 were in my bedroom on the floor.

14 Q Okay. Were you hoping for a favorable deal?

15 A No, sir.

16 Q Did you write this stuff down?

17 A No, sir.

18 Q Did they take a signed statement from you about that?

19 A No, sir.

20 Q Did they take a recorded statement from you?

21 A Not that I know of, no, sir.

22 Q We have all this technology, correct, body cams,
23 videos, cameras everywhere in the world. They didn't take a
24 recorded statement from you?

25 A No, sir.

1 Q They didn't ask you to sign anything?

2 A No, sir.

3 Q And they didn't tell you that they were going to help
4 you out?

5 A No, sir.

6 Q You want them to help you out, though, right?

7 A Yes, sir.

8 Q You do want them to help you out?

9 A Not for this. I'm here today to tell the truth.

10 Q But as I said before, Brandi, you have credibility
11 problems. You steal stuff, you lie to the police, correct?

12 A I have.

13 Q And you told them in there that day that you didn't
14 know anything about any drugs in that room. Sitting on the
15 couch when they asked you, cameras rolling, everybody there,
16 tell us now, let us know now.

17 A I don't understand what you're asking me.

18 Q Did you tell them then anything about drugs being on
19 the floor, on the dresser?

20 A I don't know exactly when I told them that, but I did
21 tell an officer.

22 Q Where were you when you told the officer?

23 A In my room.

24 Q You were in your room?

25 A Yes, sir.

1 Q That day?

2 A Yes, sir.

3 Q So that day in your room, you told an officer that you
4 saw Ricky Tate throw something?

5 A Ye, sir.

6 Q But that's not on the tape?

7 A I don't know that.

8 Q You heard the police coming up, correct?

9 A Yes, sir.

10 Q You heard them before they even bust in the door,
11 right?

12 A Yes, sir.

13 Q And you heard them yelling search warrant, search
14 warrant, police, police, right?

15 A Yes, sir.

16 Q When they came in your room, they had guns pointed at
17 you?

18 A Yes, sir.

19 Q And on that tape, we see you like this (indicating)
20 with your hands up looking at the police. Scary thing, I
21 would presume, correct?

22 A Yes, sir.

23 Q How much time are you facing now, Brandi?

24 A Zero to ten years.

25 Q For the unlawful neglect?

1 A Yes, sir.

2 Q And the unlawful neglect is to the baby that you were
3 carrying at the time of this --

4 MS. HAMILTON: Objection, Your Honor. This is a
5 pending case.

6 THE COURT: Sustained.

7 BY MR. MORTON:

8 Q Ty is no longer your boyfriend?

9 A No, sir.

10 Q He was your boyfriend at the time?

11 A Yes, sir.

12 Q And you were living with him?

13 A Yes, sir.

14 Q And you were dealing crack out of that house?

15 A Yes, sir.

16 Q And you had this record that I'm not going to go into
17 again, correct?

18 A Yes, sir.

19 Q And you're in jail, right?

20 A Yes, sir.

21 Q But you're being escorted here into the courtroom by
22 the police officers?

23 A Yes, sir.

24 Q Unlike how you normally come up here. Why is that?

25 A I don't know.

1 Q You sure about that?

2 A Yes, sir.

3 MR. MORTON: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 BY MR. MORTON:

6 Q There were other people that were there that day,
7 right, Brandi?

8 A Yes, sir.

9 Q And the people that were there were the people that
10 either lived there or owned the trailer?

11 A Yes, sir.

12 Q Including the Leaches?

13 A Yes, sir.

14 Q And there was crack dealing going on out of that house
15 all the time?

16 A Yes, sir.

17 Q Of which you were a part?

18 A Yes, sir.

19 Q And Ty was a part?

20 A Yes, sir.

21 MR. MORTON: Thank you very much.

22 MS. HAMILTON: Your Honor, could we approach briefly?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury, but outside the hearing of the jury.)

1 THE COURT: Folks, I have a matter of law I need to
2 discuss with the attorneys outside of your presence. Go on
3 back to your jury room for a short break. Do not discuss
4 the case amongst yourselves.

5 (WHEREUPON, the jury exits the courtroom.)

6 THE COURT: I would also like for the witness to step
7 down and step out of the courtroom during this discussion.

8 (WHEREUPON, witness exits the courtroom.)

9 THE COURT: I'm always concerned about educating the
10 witness about things that they otherwise might not know.

11 Let me hear from your, Ms. Hamilton.

12 MS. HAMILTON: Your Honor, I just wanted to approach
13 you prior and at the bench, I discussed a concern that I
14 had. I did not want to cause any kind of mistrial in the
15 presence of the jury by going into something that I believe
16 they have opened the door to by acting as though the witness
17 is getting preferential treatment from us by coming dressed
18 out through this door, being escorted differently than Mr.
19 Tate is being escorted is what they're implying.

20 The jury has no idea that Mr. Tate is in jail and that
21 we have a safety concern about having a cooperating witness
22 in a holding cell with the Defendant, who is also in jail.
23 They're implying there's some preferential treatment and I
24 believe that they have opened the door as to why that was
25 done so that it does not look as though the State is

1 treating her differently than anyone else.

2 MR. MORTON: Your Honor, they have a brand new huge
3 holding cell. They bring people in there and keep them in
4 different cells. They have different cells back in there
5 that they could have used to bring her out. That's all
6 we're saying. It doesn't have anything to do with Ricky
7 Tate. They are, they're giving her preferential treatment.
8 They could have brought her back here and I'm allowed to
9 make that point. It doesn't open the door to anything other
10 than she's being brought in through the front door and he's
11 being brought in through the back door.

12 MS. HAMILTON: Your Honor, he brought up she's in jail.
13 They know she's in jail. They know that -- that was brought
14 out on the record. He didn't need to go into why she was
15 brought in through that. He could have asked her, are you
16 in jail? Yes, I am in jail. And not gone into all this
17 acting as though the State's giving preferential treatment
18 to her by bringing her through there. That opens the door
19 as to the safety issue that we had and it makes it as though
20 she's being treated differently. He could have merely asked
21 her if she's in jail.

22 MR. MORTON: Why could they not put her in here?

23 THE COURT: Would you like a security person to answer
24 that question? And I don't know if you know the answer or
25 you're making presumptions because you've seen what's back

1 there. You know, I make assumptions about security things
2 all the time in my mind, why couldn't they just do it this
3 way, but I also know that that's not my job. I don't know
4 security. And so when it comes down to it, I defer to the
5 professionals in that arena. I do law, they do security.

6 So, I mean, I'm happy to hear from an officer, whoever
7 made the decision, as to why they've done that. I don't
8 know that it matters because my concern is -- I understand
9 the State's argument and there was a very heavy focus on the
10 preferential treatment given to the witness. I'm concerned
11 about the presumption of innocence that Mr. Tate is entitled
12 to, so there is a way around it. I mean, certainly, if
13 there is someone in the jail with whom she cannot have
14 contact or people in the jail with whom she cannot have
15 contact and that's why she was brought in the way she was,
16 that suffices without letting the jury know that this man is
17 a pretrial detainee.

18 But beyond that, I don't know that it matters because
19 her answer to the question was I don't know. So in order
20 for you to say isn't it because X, Y and Z would be
21 testifying, Ms. Hamilton, and trying to inform the jury
22 through your own testimony of something that the witness
23 does not know. Her answer was I don't know.

24 MS. HAMILTON: And that's what concerns me, yes, she
25 does not know. She doesn't know about the safety concerns

1 that we had. And so, it looks like we're just treating her
2 differently on our end. And that's the issue, actually, the
3 safety concern that they hammered into the -- he could have
4 merely asked two questions and be done with it, but he
5 hammered it in and he hammered it in and it looks as though
6 we're giving her preferential treatment when it's a safety
7 concern in our book and the jail's book. So I just don't
8 know how to cure this. I don't know how to fix it. I
9 really don't know what to do. Because this was a safety
10 concern, this was not some preferential treatment.

11 THE COURT: Right, and I hear you. I don't know how
12 you fix it either. I have some ideas, but not for me to
13 give you. But this witness does not know, period. And if
14 she doesn't know, she doesn't know, so however you cure it
15 is not going to be through this witness because in order to
16 do that, you would have to testify, which is inappropriate,
17 or ask some leading question to feed her the information
18 that she does not know, which is why I sent her out of the
19 courtroom. It would be one thing if you told her -- if she
20 knew and you told her to say she doesn't know or something
21 like that so you didn't open the door, but if she doesn't
22 know, she doesn't know.

23 MS. HAMILTON: She does know he's in jail, but she
24 doesn't know --

25 THE COURT: She doesn't know why she was brought

1 through that door. So that's it with this witness. She
2 just doesn't know.

3 Now, it doesn't matter in this moment, but I don't know
4 if you intend to try to cure it through some other witness
5 and maybe that's something we need to talk about right now,
6 if that's your plan. Because I also don't want you to
7 commit some faux pas --

8 MS. HAMILTON: That's what I was --

9 THE COURT: Through another witness?

10 MS. HAMILTON: Yes.

11 THE COURT: Right.

12 MS. HAMILTON: Beg the Court's indulgence.

13 THE COURT: Sure.

14 (Pause.)

15 MS. HAMILTON: Your Honor, I don't know if we could do
16 that without adding another witness to the list. I don't
17 know if you would give us some time once she is done to try
18 to get someone to cure this. All our officers are down at
19 this point. I could have done an officer, but this was not
20 something that was in our head. And we might not do that, I
21 just need some time to try to figure out this issue that
22 they've created.

23 THE COURT: Right. I don't intend to take an extra
24 break for that purpose. I'm sure there will be an objection
25 to any witness that you offer. You know, depending on who

1 the witness is and what the subject of their testimony is
2 will determine my ruling on whatever objection is lodged,
3 but we, just like yesterday, need to know who the witness is
4 and what their testimony is going to be so the Defense can
5 properly respond. But this trial is kind of moving pretty
6 slowly as it is, so I don't intend to take a break for that.
7 I know the State sees it as a problem caused by the Defense,
8 but there were questions, fair questions, none of which were
9 objected to.

10 MR. MORTON: Correct.

11 THE COURT: So it is what it is. They were fair
12 questions. They asked did she know. She did, in fact, come
13 in through that way, the jury saw her come in through that
14 way. They're fair questions.

15 MS. HAMILTON: They are, yes, Your Honor. And I wasn't
16 going to object to them, I just felt they opened the door,
17 so I was going to walk into it, but didn't want to before I
18 consulted with you for mistrial purposes.

19 THE COURT: I understand, you took a chance. You
20 hedged your bets and it didn't go as you planned.

21 MS. HAMILTON: So can I ask her if there are other
22 people in the jail that she's not supposed to be in close
23 proximity to? Which is, I think, a fair question.

24 THE COURT: Sure.

25 MS. HAMILTON: That would prevent her from coming

1 through a holding cell.

2 MR. MORTON: That calls for -- if she doesn't know --

3 THE COURT: If she knows, right. She may know, she may
4 not know, but if she knows. And again, that's why she's not
5 in the courtroom right now because this conversation would
6 suggest to her how she's supposed to respond. She could
7 look at you wide-eyed and say I don't know.

8 MS. HAMILTON: It's a chance that I might take.

9 THE COURT: But yeah, if she knows, but she is not to
10 name Mr. Tate or, really, anyone else. It's not necessary.

11 MS. HAMILTON: Just answer.

12 THE COURT: And I don't know if she knows whether she
13 could be in a holding cell near the people. It's one thing
14 if she knows there's someone she's not supposed to have
15 contact with, but I don't know that she knows that she can't
16 be in the holding cell two down from another person. That's
17 sort of a security decision. Yeah, she probably doesn't
18 know that. That's probably not a fair question either. So
19 just the first of the two, if she knows.

20 Mr. Belton, I've seen you popping up and down. Have I
21 addressed all your concerns?

22 MR. BELTON: Well, you have. The first one was, it
23 wasn't objected to. The second one is, I mean, she's a
24 female and to my knowledge, no females are housed with any
25 male inmates whether they're down at the detention center or

1 back here. So, I mean, she could simply ask her on redirect
2 -- she could simply ask her the question on redirect are you
3 getting preferential treatment. If she says no, then let
4 the jury decide whether she is or is not.

5 THE COURT: She could. But for the same reason, are
6 there people that you can't be housed with or have contact
7 with is also a fair question because that applies to any man
8 that's back there. It's a fair question.

9 All right. We're going to take just a couple of
10 minutes before we bring the jury back in.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Let's bring the witness back in.

13 (Witness enters the courtroom.)

14 THE COURT: Please bring the jury.

15 (WHEREUPON, the jury enters the courtroom.)

16 THE COURT: All right. Redirect.

17 MS. HAMILTON: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. HAMILTON:

20 Q Brandi, I want to ask you a few things relating to what
21 they crossed you on, what cross-examination addressed. Now,
22 they said that you pled to false information to police
23 charge for time served. Was I the prosecutor on that case?

24 A No, ma'am.

25 Q Did I make you any promises?

1 A No, ma'am.

2 Q And you have a record?

3 A Yes, ma'am.

4 Q You took responsibility for all those charges?

5 A Yes, ma'am.

6 Q And you took responsibility --

7 MR. MORTON: Objection, leading.

8 THE COURT: Sustained.

9 BY MS. HAMILTON:

10 Q Did you plead to drug charges?

11 A Yes, ma'am.

12 Q Did Ty plead to drug charges?

13 A Yes, ma'am.

14 Q Would you have pled to these drugs if they were yours?

15 A Yes, ma'am.

16 Q They also mentioned that you gave a statement that
17 wasn't reported. I just want to show you a portion of what
18 we have in as State's Exhibit No. 3 and let me know -- I
19 want you to watch this.

20 MS. HAMILTON: Beg the Court's indulgence.

21 (Pause.)

22 (WHEREUPON, State's Exhibit No. 3 was played for the
23 jury.)

24 BY MS. HAMILTON:

25 Q Do you recognize that officer?

1 A Yes, ma'am.

2 Q And who is that officer?

3 A The officer that I told it to.

4 Q So it was caught on camera?

5 A Yes, ma'am.

6 Q Him saying that you made a statement?

7 MR. MORTON: Object, it's hearsay.

8 THE COURT: Overruled.

9 BY MS. HAMILTON:

10 Q So just to reiterate, that is the officer you said that
11 to?

12 A Yes, ma'am.

13 Q I want to also pull up a photo for you to take a look
14 at, just to have you point out something in this photograph.
15 There's a TV in this picture. Can you tell me what's on top
16 of that TV?

17 A Toilet paper.

18 Q And what's that toilet paper from?

19 A From when I went to the bathroom and she was in there,
20 so I set it on top of the TV and I was going back to my bed.

21 Q If you want to draw on there and show me where that
22 toilet paper is located?

23 A (Witness complies.)

24 Q And you're familiar with use of drugs, correct?

25 A Yes, ma'am.

1 Q And you're familiar with dealing drugs, correct?

2 A Yes, ma'am.

3 Q Are you familiar with a lot of weight versus a little
4 weight?

5 A Yes, ma'am.

6 Q What you saw on the floor in your bedroom?

7 A It was a lot.

8 Q Can you repeat that?

9 A It was a lot.

10 Q Is that something you would have as a user?

11 A No, ma'am.

12 Q And again, who did you see making a throwing motion
13 towards that window in your bedroom?

14 A Ricky Tate.

15 Q What did you see in front of that window after Ricky
16 Tate made that throwing motion?

17 A A bag of crack.

18 MS. HAMILTON: Thank you.

19 THE COURT: Mr. Morton.

20 RECROSS-EXAMINATION

21 BY MR. MORTON:

22 Q Brandi, have you seen these recordings before?

23 A Some of them, yes, sir.

24 Q You have? When did you see that?

25 A When I went over my testimony.

1 Q Where?

2 A At the solicitor's office.

3 Q Have you seen the pictures?

4 A Yes, sir.

5 Q So they had you in the solicitor's office going over
6 your testimony before today?

7 A Yes, sir.

8 Q When did they record or when did you give any
9 statements about what you saw so that they could provide
10 them to us?

11 A I guess they didn't.

12 MR. MORTON: That's all I have, Your Honor.

13 THE COURT: Okay. Thank you. You may step down.
14 Call your next witness.

15 MS. HAMILTON: Your Honor, could we take a brief break
16 for Jimmy to come up, Mr. Jimmy Stiles. He is right
17 downstairs.

18 THE COURT: Okay. How long will it take him?

19 MS. HAMILTON: Five minutes.

20 THE COURT: Go back to your jury room. Don't discuss
21 the case amongst yourselves.

22 (WHEREUPON, the jury exits the courtroom.)

23 THE COURT: We'll be off the record and sit here and
24 wait.

25 MS. HAMILTON: Your Honor, Jimmy Stiles is on vacation.

1 He has Pete Mitchum, which is on the Defendant's witness
2 list coming in. The jury was asked about it. So he is
3 unavailable, but Mr. Mitchum will be coming in to testify.

4 MR. BELTON: We have no objection.

5 THE COURT: He's actually on the State's witness list
6 as well.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Bring the jury.

9 (WHEREUPON, the jury enters the courtroom.)

10 THE COURT: Ms. Hamilton, call your next witness.

11 MS. HAMILTON: The State calls Mr. Pete Mitchum.

12 PETE MITCHUM, after being duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. Please have a seat.

15 MS. HAMILTON: May it please the Court, Your Honor?

16 THE COURT: Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. HAMILTON:

19 Q Mr. Mitchum, could you please state your full name for
20 the Court?

21 A My legal name is Clyde Johnson Mitchell, Jr. Everybody
22 calls me Pete, that's my nickname.

23 Q Could you please tell us what your occupation is?

24 A I supervise the evidence department at the York County
25 Sheriff's Office. I've been with York County since 1984.

1 Q And what are your duties within that evidence
2 department?

3 A We take in evidence that's collected for investigations
4 and arrests. And we are charged with storing it correctly
5 and keeping account of anything that goes out that it comes
6 back in, keeping, for lack of a better word, chain of
7 custody on everything.

8 Q How long have you worked there?

9 A In the evidence department? 25 years.

10 Q How long has Mr. Jimmy Stiles worked with you?

11 A He came in February of 2011.

12 Q So you're familiar with his signature, correct?

13 A I've seen it a few times.

14 Q I'm going to show you what's been marked as State's
15 Exhibit -- for identification purposes, Exhibit 19 and No.
16 20.

17 MS. HAMILTON: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 BY MS. HAMILTON:

20 Q Do you recognize the signature on Exhibit No. 19 and
21 No. 20 as to who logged in these exhibits?

22 A This is from reading through the outside bag, and it
23 was signed by -- it was picked up at Rock Hill Police
24 Department evidence by Jimmy Stiles on May the 11th, 2018,
25 at 10:20.

1 Q And --

2 A Let me check the other one. The other one appears to
3 be identical.

4 Q And when did he log those evidence bags into your
5 department from the Rock Hill?

6 A That day.

7 Q That same day?

8 A That afternoon, I'm sure, yes.

9 Q Are you familiar with the place where you work, the
10 York County evidence room?

11 A Yes, ma'am.

12 Q Is that a secured location?

13 A Yes, ma'am, it's secured with an alarm on it.

14 Q And when you take an item into your evidence room to be
15 stored, do y'all have a procedure for noting any issues with
16 a bag that comes in, any tampering that has been done to a
17 bag?

18 A Yes. An example of that, on these bags in particular,
19 and for the jury to understand, this is an outside clear bag
20 that the evidence bag itself was actually sealed into by --
21 I can't testify to that. But this has a filigree edge on it
22 and that edge on there is so that it would be -- if somebody
23 did try to cut off part of it, it would be evident.

24 So we do look at the seal at the top where the officers
25 have their initials to make sure it's sealed and everything

1 is in there and it's not been tampered with.

2 Q So based on your procedure that you have, that would
3 have been noted by Mr. Stiles?

4 A Yes, it would have.

5 Q And were there any notations on there that this bag had
6 been tampered with in any way when he took it into evidence?

7 A I don't see any notation. From what I'm seeing here
8 with the officer's initials and date, it would be no need
9 for that.

10 Q And when this evidence is in your location, does anyone
11 from the outside, not evidence technicians have access to
12 it?

13 A No, ma'am. If anybody has a reason to come into the
14 evidence room, they sign in and they are in our presence and
15 we observe anything they do. For example, somebody coming
16 in to check the trash cans or something like that.

17 MS. HAMILTON: Thank you. Please answer any questions
18 the Defense might have.

19 THE COURT: Cross-examination.

20 MR. BELTON: No questions for this witness.

21 THE COURT: Okay. Thank you. You may step down.

22 Call your next witness.

23 MS. HAMILTON: The State would call Ms. Holley Tobias.

24 HOLLEY TOBIAS, after being
25 duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 MS. HAMILTON: May it please the Court, Your Honor?

3 THE COURT: Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. HAMILTON:

6 Q Ms. Tobias, could you please state your full name for
7 the record?

8 A My name is Holley Tobias.

9 Q And what is your occupation?

10 A I'm a forensic chemist.

11 Q And where are you a forensic chemist?

12 A I'm currently a forensic chemist at the York County
13 Sheriff's Office.

14 Q Where do you work?

15 A I work in a drug lab.

16 Q And what are your duties in that drug lab?

17 A In the drug lab, we receive evidence submissions from
18 officers. It can contain substances such as a powder, a
19 liquid, tablets, any kind of substance that is unknown to us
20 and we will analyze each thing to determine if there's a
21 controlled substance present.

22 Q And how long have you worked in that drug lab?

23 A I've worked at York County's drug lab for 11 months.

24 Q And did you work anywhere else prior to that?

25 A Prior to that, I worked for Spartanburg County

1 Sheriff's Office in their drug lab for three years.

2 Q And do you have education and training to qualify you
3 to be able to identify illegal drugs, prescription drugs and
4 controlled substances?

5 A Yes, I do.

6 Q Could you please explain to us that education and
7 training?

8 A I attended Wofford College, where I received a Bachelor
9 of Science Degree in chemistry. From there, I started at
10 Spartanburg County, where I received on-the-job training as
11 well as continuing education every year in drug analysis.

12 Q And have you ever been qualified as an expert in drug
13 identification and analysis?

14 A Yes, I have.

15 Q Approximately how many times?

16 A I've been qualified four times.

17 MS. HAMILTON: Your Honor, we would offer Holley Tobias
18 as an expert in the analysis and identification of
19 controlled substances and prescription drugs.

20 THE COURT: Any voir dire or objection?

21 MR. BELTON: No voir dire, no objection.

22 THE COURT: Ladies and gentlemen, as I told you before,
23 witnesses must generally testify as to what they saw,
24 smelled, touched or tasted, whatever and not give you their
25 opinion testimony. However, when qualified by virtue of

1 their education, training and experience in the field, they
2 are permitted to give you their opinions within that field
3 of expertise and the reasons for those opinions. Ms. Tobias
4 is qualified as an expert in the field of analysis and
5 identification of controlled substances and prescription
6 drugs and will be permitted by the Court to give you her
7 opinion testimony within that field of expertise and the
8 reasons for those opinions. You give her testimony the
9 weight and credibility you think it deserves.

10 Continue, Ms. Hamilton.

11 MS. HAMILTON: Thank you, Your Honor.

12 BY MS. HAMILTON:

13 Q Ms. Tobias, I'm going to show you what's been marked
14 for identification purpose. It's State's Exhibit No. 19 and
15 20. I ask that you take a look at these.

16 A (Witness complies.)

17 Q Have you had contact with these before?

18 A Yes, I have.

19 Q And how did these two exhibits come into your
20 possession?

21 A I received them from Jimmy Stiles from the evidence
22 department.

23 Q On what date did you receive these?

24 A December 7th, 2018.

25 Q And what was the purpose of you receiving these items?

1 A To analyze them and see if a controlled substance was
2 present.

3 Q When you first received each bag, Exhibit 19 and
4 Exhibit 20 for identification purposes, did either one
5 appear to have been tampered with in any way?

6 A Let me check my notes. Neither did because I would not
7 have accepted them if they were not sealed.

8 Q While the evidence was with you in the drug lab, did
9 any other person have access to it?

10 A Just myself.

11 Q And what was contained in that when you received it,
12 specifically No. 19?

13 A In 19, I found a plastic bag that contained a rock-like
14 substance.

15 Q And as to No. 20?

16 A As for No. 20, I found a plastic bag that contained
17 seven blue tablets.

18 Q And in regards to each bag, did you analyze the
19 substance within each?

20 A I did.

21 Q And let's go with No. 19 first, Exhibit No. 19. What
22 did you specifically find that substance to be?

23 A Exhibit 19, I found it to contain cocaine base, also
24 know as crack at a weight of 2.74 grams.

25 Q And as to No. 20, what did you find that to contain?

1 A I found that to contain heroin at a weight of 0.51
2 grams.

3 Q So what test did you run on these specific drugs?

4 A On each substance, I performed a presumptive test,
5 also, a color test as well as a to confirm reported test.

6 Q And how well regarded and respected are those tests in
7 the scientific community in terms of publications and
8 review?

9 A It is well known in drug analysis.

10 Q And how many times have you performed those type tests?

11 A Several thousand times.

12 Q And how reliable have you found those tests to be in
13 your own experience?

14 A I found it to be very reliable.

15 Q And are there qualify control measures that you take
16 with that test to ensure there's no other contamination from
17 prior samples when you test this specific drug?

18 A That is correct. We run a blank before each sample to
19 make sure there's nothing in the extraction method.

20 Q And is this method consistent with what you know about
21 scientific principles and procedures?

22 A Yes.

23 Q And you have already stated the amounts that you found,
24 but did you make a written report of your findings?

25 A Yes, I did.

1 Q I'm going to hand you what's been marked as State's
2 Exhibit No. 21. Would you please take a look at that?

3 A (Witness complies.)

4 Q Do you recognize that report?

5 A Yes, I do.

6 MS. HAMILTON: Your Honor, the State would move to
7 admit the drug report into evidence.

8 THE COURT: Any objection?

9 MR. BELTON: It's already published now. No objection.

10 THE COURT: Admitted without objection.

11 MS. HAMILTON: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit No. 21 was admitted into
13 evidence.)

14 BY MS. HAMILTON:

15 Q The drug report that you had stated your findings on,
16 is this a copy of it?

17 A Yes.

18 Q Can you please explain to us kind of what we're seeing
19 on this drug report?

20 A The drug report will show as far as the list of
21 evidence, what we describe as we see in the evidence bag and
22 then there's analysis that will tell what our findings were
23 for each item as well as our lab case number as well as the
24 agency case number and the chain as well.

25 Q And it specifies the specific person that is on trial

1 today on this report, correct?

2 A It identifies the suspect that the officer listed.

3 Q And could you please explain to us what we're seeing as
4 to your analysis results?

5 A As far as?

6 Q The weight.

7 A The weight or all of the above or?

8 Q For what's on the screen. So for Exhibit No. 19.

9 A For Exhibit 19, that's where I determined it to contain
10 cocaine base also known as crack.

11 Q And that weight was 2.74 grams?

12 A That is correct.

13 Q And as to the heroin, what exhibit is that?

14 A That will Exhibit 20.

15 Q And again, what was that weight?

16 A That was found to be heroin that weighed 0.51 grams.

17 MS. HAMILTON: Your Honor, the State would move to
18 admit the drug report, Exhibit No. 21, and the drugs in
19 Exhibit 19 and 20 into evidence.

20 THE COURT: 21 is in. Any objections as to 19 and 20?

21 MR. BELTON: No objection.

22 THE COURT: 19 and 20 are admitted without objection.

23 (WHEREUPON, State's Exhibit Nos. 19 and 20 were
24 admitted into evidence.)

25 BY MS. HAMILTON:

1 Q As to the crack, do you frequently see a change of
2 weight as it is taken into custody versus when you actually
3 test it?

4 A Typically, I don't know the weight that the officer
5 always puts on it. We just do the weight per my analysis.
6 The weight could adjust if the substance was damp and it
7 could dry. As far as my notes, it did not appear wet.

8 MS. HAMILTON: Thank you. Please answer any questions
9 the Defense might have.

10 MR. BELTON: No questions.

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

12 Call your next witness.

13 MS. HAMILTON: The State would rests, Your Honor.

14 THE COURT: Y'all approach briefly.

15 (WHEREUPON, a bench conference was held in the presence
16 of the jury, but outside the hearing of the jury.)

17 THE COURT: All right, folks, again, there are certain
18 matters of law that I need to take up with the attorneys
19 outside of your presence. I know it's a bit early, but I'm
20 going to go ahead and send you to lunch because this might
21 take a little while. So we need to sort of figure out our
22 roadmap going forward.

23 It is just after 11:30 now, be back at 1:30 and we will
24 finish the trial then. Do not discuss the case amongst
25 yourselves or with anyone else. Don't do any research about

1 the case. Be back at 1:30. Have a good lunch.

2 (WHEREUPON, the jury exits the courtroom.)

3 THE COURT: Any motions?

4 MR. BELTON: Yes, Your Honor. Beg the Court's
5 indulgence.

6 (Pause.)

7 MR. BELTON: Your Honor, we want to renew the other
8 objections we made to your -- Your Honor, let me ask you, do
9 you mind if both of us do the directed verdict, I do one
10 part and he does one part?

11 THE COURT: That's fine.

12 MR. BELTON: Your Honor, I want to move for a directed
13 verdict on the possession charge, the PWID charge and the
14 proximity charge. And the basis of my motion is the officer
15 who came in to testify, specifically the chain officer, he
16 testified that that evidence that he testified to, the date
17 that he put on the chain that he received, the evidence that
18 we're here today, his testimony was it was May the 11th,
19 2018. This man here is on trial -- was arrested on May 16,
20 2018. That certainly was another drug bust that was going
21 on May the 11th, but it didn't involve Ricky Tate. So, Your
22 Honor, therefore, no drugs, no conviction. So, Your Honor,
23 we ask for a directed verdict on the possession charge.

24 On the PWID charges, on all the charges directed
25 verdict and dismiss the charges against him. Furthermore,

1 my colleague has more.

2 MR. MORTON: Your Honor, there has to be substantial
3 evidence from which could be fairly and logically deduced
4 and which tends to prove the guilt of the accused. And as
5 Mr. Belton said, certainly, as to the evidence that was
6 introduced as to the crack cocaine, that is not there. Our
7 motion is that there be a motion of not guilty directed for
8 and in favor of Mr. Tate on those grounds.

9 MR. BELTON: And lastly, Your Honor, I'll just add,
10 certainly, all the pictures here that were shown, all the
11 evidence that was in, you know, clearly, seven pills were
12 collected that day. All the evidence here only has six
13 pills and there was certainly no evidence as to what
14 happened to the other pill. Why that seven were collected,
15 seven were on the scale, all the pictures that were shown in
16 here, the evidence that's presented there, there are only
17 six pills. Certainly, there could be an explanation. Maybe
18 one was destroyed during testing.

19 But the reality of it is, the bottom line is, the
20 officer who came in to testify to the chain testified that
21 the chain was May the 11th, 2018, when he received those
22 drugs that he testified to.

23 MS. HAMILTON: I don't remember him saying May the
24 11th, Your Honor, but regardless, I've had officers on
25 multiple occasions, two officers who did state that this

1 drug raid took place on May 16th. Ms. Tobias, also, I
2 believe stated that this was taken into custody. Multiple
3 times we reiterate this occurred on May 16th, 2018, Your
4 Honor, so for them to act like there's no knowledge this
5 occurred on May 11th.

6 MR. BELTON: Your Honor, Ms. Tobias did not testify to
7 it. We were listening intently to her testimony. She only
8 testified to the date she received it. She did not testify
9 to the date that it came in.

10 MS. HAMILTON: Your Honor, it is evidence and that was
11 logged in on the evidence, the chain is logged in on the
12 evidence and it says May 16th, 2018.

13 MR. BELTON: But he testified -- and the evidence comes
14 from the stand and he testified -- he read the paper and he
15 testified May the 11th. That was his testimony, what he
16 wrote. She brought him in to read this thing. And he said
17 it twice, he didn't say it once. He said May the 11th
18 twice. So we can't go back and undue his testimony. That
19 was his testimony. And we know for a fact Mr. Tate was
20 arrested on May the 16th, 2018. I don't think the Court has
21 a choice but to direct the verdict on this.

22 MS. HAMILTON: I did not hear that, Your Honor.

23 THE COURT: I did.

24 MS. HAMILTON: Okay. You want me to hand it to you?

25 THE COURT: Yes, please. 19, 20 and 21.

1 MR. BELTON: He said it on both bags.

2 THE COURT: Well, what he said is -- he said it as to
3 19 and as to 20, something along the lines of it's identical
4 or the same.

5 MR. BELTON: Correct. Correct. That's exactly what he
6 said.

7 THE COURT: However, despite that being his testimony,
8 the bags are in evidence, so that is evidence to be
9 considered from which the jury could conclude -- yeah, it
10 was taken into custody on 5/16/18. I don't know why he said
11 the 11th. It hit my ear as soon as he said it. But these
12 are evidence, too, not simply his testimony.

13 MR. BELTON: Your Honor, but what you're leaving to --
14 if that had not been his testimony, we would have had an
15 opportunity to challenge him on the chain. Your Honor, we
16 opted not to because sitting in the position we're in, that
17 was their witness that they came in, so now, we're leaving
18 it up to the jury to speculate about the chain. Your Honor,
19 he testified to May the 11th. That was his testimony. And
20 so I understand that the bag -- and, of course, we'll
21 respect the Court's ruling, but to have the jury now have to
22 speculate about a chain, that's not the role of the jury.
23 That's not the role of the jury.

24 MS. HAMILTON: Your Honor, I don't believe they have to
25 speculate as to the chain. It's going to be sitting right

1 in front of them when they're looking at the bag. He
2 misspoke. The evidence is evidence that was admitted. That
3 evidence shows the chain. It's a log of the chain. They
4 can look at it themselves. That's -- and he could have
5 objected at that time and clarified it himself, which he
6 said he just didn't want to do just now. So I don't --

7 MR. BELTON: Your Honor, but to read that entire chain
8 --

9 I don't mean to cut you off, I'm sorry.

10 MS. HAMILTON: Go ahead.

11 MR. BELTON: You have to pull it out to see the entire
12 thing. You have to shake it and pull it out. So most of
13 what they're doing from the chain is based on -- the bag, at
14 least, when we saw it the other day, the bag was folded over
15 and one part of it is on the front side of the bag and you
16 have to flip it over on the other side of the bag to see the
17 other side of the chain.

18 So again, Your Honor, he testified to what the chain
19 was, what were the drugs and when he got it. That was his
20 testimony. Certainly, he knew he was coming in here to
21 testify today. We all met with him last week. He knew this
22 was coming up. I assume he's had an opportunity to review
23 it.

24 MS. HAMILTON: Your Honor, if this needs to be taken
25 care of, we could definitely -- if you would be open to

1 having the State reopen their case, getting him up there to
2 clarify this under law that is in your discretion, Your
3 Honor. So we would just ask that if this is something that
4 he wants to clarify. But we believe that this is sufficient
5 to have in evidence for their eyes to view this chain right
6 then and there. They can make an argument the credibility
7 of the witness if they would like to --

8 MR. BELTON: No.

9 MS. HAMILTON: -- but that's their argument on closing.
10 They have the evidence that's in -- the evidence was
11 admitted. The chain was established. He said that they had
12 not been tampered with. And on that bag, it does state the
13 dates these were checked in and it is not May 11th. They
14 can attack that in closing if they would like to.

15 MR. BELTON: Last thing that I would just add to this
16 and I'm done is I would just send your attention to State
17 vs. Hatcher, which is 708 S.E.2d 750. One part there on
18 Page 4, at least, on Page 4 of mine, is, in fact, what is
19 purported to be. And that's the purpose of bringing in the
20 chain people, to testify that this is, in fact, what it is
21 purported to be. He testified that what he was looking at
22 was taken in -- he looked at it and he responded May the
23 11th, 2018. And we have the incident reports from all these
24 other things that were going on on Leach Road and May the
25 11th was, in fact, one of the days that they were making

1 arrest on Leach Road.

2 MS. HAMILTON: I don't know what --

3 THE COURT: That's neither here or there in my mind.

4 Let's take a 15-minute break.

5 MS. HAMILTON: Thank you, Your Honor.

6 MR. BELTON: Thank you.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: As I stated before, I, too, was concerned
9 when I heard the witness give the date of May 11th, however,
10 it's clear that -- I mean, when he gave the date, it's clear
11 that he was reading from the contents of the bag. And now
12 having looked at the bag, I actually see how he got May
13 11th, because the date is right on the crease of that bag.
14 If you look at it in the right way, it clearly says May
15 17th, but if you -- and that's me looking from the end of
16 the bag to where it's folded, but if you just hold it
17 upright, it absolutely looks like May 11th.

18 But he had it in his hand, was referring to it, and so
19 I think it would be clear to the jury that he is referring
20 to what is written on the bag. Although he may have spoken
21 something else, he referred to this and the jury can read it
22 for themselves. But beyond that, issues as to chain of
23 custody are issues that should be raised as to the
24 admissibility of the evidence.

25 Therefore, to the extent that the Defense objected to

1 -- or thought that there was an incomplete or insufficient
2 chain of custody established, the Defense should have
3 objected to the admission of these two exhibits, State's 19
4 and 20. There was no objection. They were, in fact,
5 admitted without objection from the Defense. They are
6 already in evidence. For those reasons, I find -- I'm
7 denying the Defendant's motion for a directed verdict.

8 MR. BELTON: Your Honor, may I just put something on
9 the record?

10 THE COURT: Absolutely.

11 MR. BELTON: Your Honor, obviously, we respect the
12 Court's ruling. We would just note for the record we did
13 not object to the drugs that were going in as to May the
14 11th. If he had stated that the drugs were going in as May
15 16th, then, certainly, we would have objected to those.

16 THE COURT: And I think we've come across this issue as
17 to some other exhibit. What was not objected to is these
18 two things that are in my hand that are marked 19 and 20,
19 whatever they say -- because you know once they're in, the
20 jury goes and looks at them. Whatever is on them as they
21 are, these are the exhibits. So maybe you believed that
22 what was written on there was the 11th, I don't know, but
23 that really -- chain is an issue as to admissibility of the
24 evidence and it's already been admitted.

25 MS. HAMILTON: Your Honor, I just wanted to put on the

1 record we did look for a ton of case law while we were on
2 break and we found quite a few cases from South Carolina
3 Supreme Court and Court of Appeals, essentially, stating
4 that the chain of custody is a credibility issue for the
5 jury to decide, not admissibility and a directed verdict
6 issue. Those cases specifically being State vs. Trapp, 420
7 S.C. 217. There's also a case, Bodiford vs. Spanish Oak
8 Farms, which is 317 S.C. 539.

9 They all state the same thing, that, essentially, proof
10 of chain of custody need not negate all possibility of
11 tampering so long as the chain possession is complete where
12 the identity of the person handling the specimen is
13 established, we have found evidence regarding the care goes
14 only to the weight of the specimen as credible evidence.
15 And that is specifically how this case, the State would
16 argue, was handled. And this is a credibility issue they
17 can argue to the jury, but as to the DV and the evidence, we
18 believe that this is a good case and the DV motion should be
19 denied, Your Honor.

20 THE COURT: Yes, ma'am.

21 Now, Mr. Tate, would you stand and be sworn.

22 RICKY DEAN TATE, after being
23 duly sworn, testified as follows:

24 THE COURT: Mr. Ricky Dean Tate, at this time, I'm
25 going to explain to you certain of your rights. If you do

1 not understand anything I say, please let me know, okay.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If you want me to explain anything in more
4 detail, please let me know. You understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: We have now reached the stage of the trial
7 where you may present your defense. You have the right to
8 claim the protections given to you by the Fifth Amendment to
9 the Constitution of the United States. This amendment
10 states in part: No person shall be compelled in any
11 criminal case to be a witness against himself. This means
12 that you cannot be required to testify in this case. You
13 have the right to testify on your own behalf, however, no
14 one can make you testify. This is a personal right and no
15 one can waive this right except you. If you decide to
16 testify, you will be subject to the same rules that govern
17 other witnesses and you may be examined and cross-examined
18 on any relevant issue in this case.

19 In addition, if you have any convictions involving
20 dishonesty or false statement or for crimes punishable by
21 imprisonment for more than one year and this Court
22 determines that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you, the
24 solicitor will be able to introduce your record to attack
25 your credibility. If you decide to testify, this decision

1 on your part must be freely, voluntarily and intelligently
2 made with knowledge of the protections given to you by the
3 Fifth Amendment and the consequences of your decision to
4 testify.

5 If you decide not to testify, I will instruct the
6 jurors that they cannot give the fact that you did not
7 testify any consideration whatsoever and that there is to be
8 absolutely no prejudice to you because you did not testify.
9 It is left entirely up to you whether or not you testify.
10 You make talk with your attorney, your family and friends
11 and anyone else, but the final decision will be left
12 entirely up to you.

13 Do you understand what I have explained to you?

14 THE DEFENDANT: Yes, ma'am.

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

17 THE DEFENDANT: No, ma'am.

18 THE COURT: At this point, we're going to take a lunch
19 break so that you have sufficient time -- I'm sure you've
20 had some discussions with your attorney, maybe with your
21 family already, but I'm going to give you over the lunch
22 break to think about it a little more, talk to whoever you
23 need to talk to to decide whether you want to testify. And
24 when we come back from lunch, I will ask you what your final
25 decision is, okay? Do you have any questions about

1 anything?

2 THE DEFENDANT: No, ma'am. I can give you my answer
3 now. I don't want to testify.

4 THE COURT: Okay. That's fine. You don't need any
5 more time to think about it?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: And you don't want any more time to talk to
8 anyone else about that decision?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: So you're choosing not to testify, is that
11 correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Thank you. You may have a seat.
14 Mr. Belton, is the Defense going to put up a case?

15 MR. BELTON: No, Your Honor.

16 THE COURT: So the Defense rest as well?

17 MR. BELTON: When the jury comes back, yes, Your Honor,
18 we'll rest.

19 THE COURT: Understood.

20 Okay, let's talk about proposed jury charges. Does
21 anyone have proposed jury charges? Or do you need over
22 lunch to get them together?

23 MR. BELTON: Well, we have an idea. Obviously, we're
24 going to ask for possession, we're going to ask for mere
25 presence, just the standard possession one, mere presence,

1 circumstantial circumstances --

2 THE COURT REPORTER: Could you speak up, please?

3 MR. BELTON: I'm sorry, I'm not speaking loud enough.

4 We're going to ask for the standard ones, Judge, mere
5 presence. We're going to ask for, obviously, the possession
6 charge as a lesser included of the PWID, circumstantial
7 evidence charge. And, Your Honor, I guess once you get them
8 printed, if you'll just print a copy.

9 THE COURT: Okay.

10 Anything that the State is aware of at this point?

11 MS. HAMILTON: Nothing other than the standard charge.
12 I'm sure yours covers the inference, the permissive
13 inference, but nothing that I can think of at this moment
14 that would be anything special from the State, Your Honor.

15 THE COURT: Are y'all ready to close this afternoon and
16 send it to the jury?

17 MS. HAMILTON: If you need us to be.

18 MR. BELTON: If you need us to be. Now, obviously, I
19 assume closings are going to be pretty lengthy. I don't
20 know what your evening looks like if the jury is out. If
21 you want to try to wrap it up, we're prepared to do that.

22 THE COURT: I guess I'm sort of asking for preference
23 as well. Because, I mean, I'm here. I'm prepared to spend
24 the night in the area, if necessary. You know, if it goes
25 to the jury and they're out deliberating for a while, of

1 course, I wouldn't necessarily want to drive back, but I'm
2 also open to doing this all in the morning.

3 MS. HAMILTON: Either way, Your Honor. If you want --

4 MR. BELTON: We prefer --

5 I'm sorry.

6 MS. HAMILTON: Go ahead.

7 MR. BELTON: We prefer to just keep plowing. We want
8 to be respectful. I know sometimes there's an issue with
9 clerk staff and law enforcement and child care. As long as
10 those things are clear, the Defense would rather plow
11 through it.

12 THE COURT: Okay. Sounds good.

13 Then I will see y'all back at 1:30 and we will talk
14 about jury instructions before bringing the jury back out.

15 MR. BELTON: Your Honor, the last thing we're asking
16 before we're dismissed, we asked you about State v. Beattie,
17 I assume we would get last argument, right?

18 THE COURT: Yes.

19 MS. HAMILTON: That's fine. I've seen the closings
20 either way. Recently I've done where we close first and
21 they just close the old way or there's also you can go with
22 the new way. I mean, it's your preference.

23 THE COURT: Either the Defense can begin, then the
24 State, then the Defense or you can waive that opening and
25 closing argument and allow the State go first and only go

1 last as the Defense.

2 MR. BELTON: We will waive it and let them close in
3 full and we'll close.

4 THE COURT: All right. Sounds good.

5 MR. BELTON: Are we going to have a break before
6 closing or when we come back? We're pushing? We're not
7 going to stop, we're going to go straight into closing? The
8 reason I ask is because all these technology issues. I then
9 have got to set my computer up. I may not have to set up a
10 computer, probably not, but I just want to know for
11 logistical purposes so we can plan accordingly. And I know
12 these gentleman may want to take lunch breaks and we can't
13 often get back into the courtroom. I just need to know.

14 THE COURT: Right. Realistically -- I hate to leave
15 the jurors sitting too long waiting, but realistically, I
16 plan to eat something and take a lunch break over lunch and
17 then begin editing this jury charge. I probably will not
18 have it completed by 1:30, so I would expect somewhere close
19 to 1:30, I will bring the jury in so that you can rest in
20 front of the jury, send them back out and we will sort of
21 finalize jury charges and gear up for closing arguments,
22 which could happen about 2:15ish or so.

23 So to the extent that you need a lunch break, you might
24 want to lunch over lunch and then there will be some time
25 between 1:30 and actually beginning closing arguments for

1 you to get your mind prepared. I'm just giving you sort of
2 layout, of course, what you choose to do with the time is up
3 to you.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Folks, we're just going to bring the jury
6 in so the Defense can rest, send them back out and then
7 y'all will get another little break.

8 Bring the jury, please.

9 (WHEREUPON, the jury enters the courtroom.)

10 THE COURT: All right, folks, before lunch, the State
11 rested its case. It's now time to hear the Defendant's
12 case.

13 Mr. Belton, Mr. Morton?

14 MR. MORTON: The Defense rest.

15 THE COURT: All right. So that means you've heard all
16 of the testimony that you're going to hear and we have
17 received all the evidence that will be in this case. All
18 that remains is the attorneys' closing arguments and my
19 charge to you on the law that applies to this case. Before
20 we do that, there are certain matters of law that I need to
21 take up with the attorneys outside of your presence. So I'm
22 going to send you back to the jury room. This time, it will
23 probably be for about 30 minutes. Don't discuss the case
24 amongst yourselves. We will have you back as soon as we
25 can.

1 (WHEREUPON, the jury exits the courtroom.)

2 THE COURT: Mr. Belton.

3 MR. BELTON: Respecting the Court's previous rulings,
4 we do renew all motions, objections to include our directed
5 verdict motion.

6 THE COURT: Absolutely. My rulings remain the same.

7 MR. BELTON: Thank you.

8 THE COURT: All right. Let's take a break before
9 closing arguments. My clerk is about -- if y'all will hang
10 tight in here for just a minute, we'll get you copies of the
11 jury charge that we've worked up and the verdict forms
12 sooner than later. Do y'all have suggestions as to the
13 verdict form? Just because of the lesser included.

14 MS. HAMILTON: I would personally put it as a lesser
15 included after the standard charges that he's indicted on.
16 That is what the State would ask in this case.

17 THE COURT: Okay. I didn't know if you had a specific
18 proposed verdict form.

19 MR. BELTON: Your Honor, we don't have any objection to
20 what she said, but, obviously, we would like to see it and
21 see what it looks like. Mr. Morton does have one more --

22 MR. MORTON: I'll look at your charge, Your Honor, and
23 then if I have an objection, I can raise -- or if I have a
24 request.

25 THE COURT: Okay. So we're going to take a break until

1 -- I know y'all probably need a few minutes to sort of get
2 organized. We'll say like 2:05 and at that point, we'll --
3 we'll give you the jury charges now. We'll give you the
4 verdict form probably at 2:05 and then we'll go back on the
5 record, hear any objections, make any little changes, if
6 necessary.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Yes, sir, Mr. Morton.

9 MR. MORTON: Your Honor, on Page 15, the second
10 paragraph where the Court is talking about possessing with
11 intent to distribute, we would request one of two things.
12 The last sentence of that paragraph, Your Honor, says you
13 must find that the Defendant did not intend to have the
14 crack cocaine or heroin solely for his own use. Taken out
15 of context, they could consider that to be a comment on the
16 facts. We would ask the Court to delete that sentence. Or
17 either to put in order to find that the Defendant possessed
18 the drugs, you must find the Defendant did so to be in
19 actual and constructive possession and to find that the
20 Defendant possessed with intent to distribute, you must find
21 that the Defendant intended to deliver or distribute based
22 on the factors just described above.

23 MS. HAMILTON: Your Honor, the State would say that is
24 very confusing. Your one sentence is exactly how I would
25 phrase it. What he's saying is very confusing to me. I

1 didn't even understand what he just said. So I would say
2 leave it as is as one sentence. It is appropriate. And
3 that's the State position, you must find that the Defendant
4 did not intend to have the crack cocaine or heroin solely
5 for his own use. That's exactly the definition of
6 possession with intent to distribute. He was intending to
7 distribute it, not for his own use.

8 MR. MORTON: I think the definition is sufficient
9 without that last sentence. It sounds like a juror could
10 take that out of context as an instruction from the Court
11 that you must find the Defendant did not intend to have the
12 crack cocaine or heroin solely for his own use. I don't
13 think that sentence needs to be in there. And if it is --
14 if the Court does want to put it in there, I think it needs
15 to be defined with a little more language about what intent
16 to distribute is and what possession is.

17 MS. HAMILTON: Your Honor, maybe at the beginning of
18 the sentence, it could be put to find the Defendant guilty
19 of possession with intent to distribute, you must find that
20 the Defendant did not intend to have the crack or heroin
21 solely for his own use.

22 THE COURT: I'm trying to think of how to phrase it so
23 it is easiest to understand. If you find that the Defendant
24 -- I don't know, that he had the crack or heroin and
25 intended it solely for his own use, you must give him the

1 benefit of the doubt. I don't know.

2 MR. MORTON: And Your Honor, I had in there beyond a
3 reasonable doubt language. I had scribbled if it's not too
4 confusing, that in order to find that the Defendant
5 possessed the drugs, you must find the Defendant to be in
6 actual or constructive possession and to find that the
7 Defendant possessed with intent to distribute, you must find
8 the Defendant intended to distribute or deliver based on the
9 factors just outlined, described and beyond a reasonable
10 doubt.

11 MS. HAMILTON: Your Honor, I think all that is already
12 outlined in your charge.

13 THE COURT: It is. And that makes it more confusing to
14 me. I am more comfortable deleting the sentence, frankly.
15 Because it's already been stated that the State must prove
16 that the Defendant intended to distribute the crack or
17 heroin. I define distribute. We talk about intent. I'd
18 rather delete the final sentence in its entirety. I'll do
19 that.

20 MR. MORTON: Thank you.

21 THE COURT: Anything else?

22 MS. HAMILTON: Nothing from the State, Your Honor,
23 except I do want to bring up that under the law, there is a
24 two-hour limit. I am not going to get close to that, but I
25 just want to make sure we enforce that on the Defense due

1 the time that we have left today.

2 MR. BELTON: Your Honor, Mr. Tate is facing life
3 without parole. I hope the Court will give us adequate time
4 to lay this case out. He will be in prison maybe the rest
5 of his life if he's convicted. I have no intentions of
6 going two hours, but I would hope the Court would be
7 respectful and show some indulgence as we try and lay this
8 out.

9 THE COURT: Absolutely. But considering the duration
10 of the trial, the evidence and the testimony, certainly,
11 more than two hours is not needed. I wouldn't even expect
12 you to approach two hours. We've only had a day and a half
13 of testimony. But absolutely, take your time. Be mindful
14 of the jury as well. You don't want to lose their attention
15 and the longer you go, beware that we may have to take a
16 break during your closing for the benefit of the jurors if
17 it goes too long.

18 MR. BELTON: Your Honor, I timed my closing and it's
19 between 35 and 45 minutes. Is that appropriate?

20 THE COURT: Absolutely.

21 MR. BELTON: I don't want to be interrupted and I want
22 to be within your ruling.

23 THE COURT: Absolutely. Absolutely. I didn't know how
24 long you intended to go. I'll give you the full two hours
25 if you want it. I'm just saying if you're getting close to

1 two hours and they've already heard from the State, that
2 means they will have been sitting there for -- I don't know
3 how long she'll go, maybe 30 minutes, maybe -- but if she's
4 gone 30 minutes and you're getting close to two hours, two
5 hours and 30 minutes is a long time for them to sit without
6 a break is what I'm saying. But I don't like to interrupt
7 closing arguments. It's not my intention. That would only
8 happen if we'd gotten to the point they had been sitting
9 there an hour and a half, two hours, something like that and
10 you are not wrapping it up. That's what I meant.

11 MR. BELTON: Your Honor, also, just make sure -- this
12 happened to me one time before. Everything that's here on
13 the table is already in evidence. I know we didn't enter
14 anything in evidence, but I just want to make sure I don't
15 inadvertently or the State doesn't inadvertently grab
16 anything off of this table that's not in evidence. I don't
17 know if anything got mixed in here or not.

18 THE COURT: It should be State's 1 through 21 only.

19 MR. MORTON: Your Honor?

20 THE COURT: Yes.

21 MR. MORTON: We've been in here since about 1:20 or so,
22 if we're going to be here for another three hours, can I run
23 downstairs real quick?

24 THE COURT: Absolutely. Do you need to right this
25 second or can you look at this verdict form first? If you

1 need to go, go.

2 MR. MORTON: He can look at the verdict form.

3 MS. HAMILTON: May I approach?

4 THE COURT: Yes, absolutely.

5 (WHEREUPON, an off-the-record discussion ensued.)

6 THE COURT: Counsel has reviewed the Court's verdict
7 form. There is one typographical error on number three that
8 will be corrected. But outside of that typographical error,
9 am I correct that the State and the Defense consent to this
10 verdict form?

11 Ms. Hamilton?

12 MS. HAMILTON: I'm sorry, Your Honor.

13 THE COURT: The verdict form, you agree to it with the
14 one correction that we've discussed?

15 MS. HAMILTON: Yes, Your Honor, I do agree.

16 THE COURT: And the Defense?

17 MR. BELTON: Yes, Your Honor.

18 THE COURT: Okay. Let's take just a few minutes. How
19 long do y'all need?

20 MS. HAMILTON: We're ready.

21 THE COURT: You're ready, okay.

22 Let me just fix this verdict form and we'll be right
23 back.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: Bring the jury, please.

1 (WHEREUPON, the jury enters the courtroom.)

2 THE COURT: Thank you for your patience, folks. It's
3 not time for closing arguments, after which, I will give you
4 my charge on the law that applies to this case. If you will
5 give the attorneys your undivided attention as they
6 summarize the case for you and make their argument.

7 Ms. Hamilton.

8 MS. HAMILTON: Thank you, Your Honor.

9 CLOSING ARGUMENT

10 MS. HAMILTON: Good afternoon, ladies and gentlemen.
11 We have, as the Judge said, come to the conclusion of the
12 trial. At this time, I am going to initially kind of go
13 over the evidence and the law that is before you. Then I'm
14 going to argue my case, essentially. So what we are here
15 today for is because the Defendant, Mr. Ricky Tate, again,
16 is here for possession with intent to distribute crack
17 cocaine and heroin and possession with intent to distribute
18 within proximity of a school, specifically Rawlinson Road
19 Middle School.

20 So first off, the State must prove beyond a reasonable
21 doubt the substance is crack, the substance is heroin. The
22 second element, the Defendant had possession of the crack
23 and heroin, specifically, Mr. Ricky Tate, either
24 constructive or actual. And the third element is the
25 Defendant possessed the crack and the heroin with the intent

1 to distribute. So I just want to go through each one.

2 The illegal substance being heroin and crack. You
3 heard from Ms. Holly Tobias on the stand today. She did
4 state that the drugs seized from the Defendant tested
5 positive for heroin and crack cocaine. She gave you the
6 amounts that they tested positive for. That was in her drug
7 report. That is in evidence and you will be able to review
8 that when you get back to the jury room in your
9 deliberations.

10 Next element, possession. That the Defendant, Mr.
11 Ricky Tate, actually possessed these drugs. As stated at
12 the beginning of this trial, there's actual possession and
13 there's constructive possession. What we're dealing with in
14 this case is constructive. He had no physical contact with
15 the object when he was caught. I mean, officers saw him and
16 Ms. Brandi Eades saw him. But he had the ability to
17 exercise control over that object, that being crack cocaine.
18 And additionally, the pills that were found in the hallway,
19 he had constructive possession. He knew of their presence
20 and he had the ability at that time to exercise dominion and
21 control over those objects.

22 How do we know he had constructive possession of these?
23 As you heard Officer Rowe on this stand, he did state he saw
24 and the only person who went down that hallway is Ricky
25 Tate. As you can see him in the red shirt running exactly

1 past where those pills were found in this drug house where
2 no pills would be left sitting on the ground.

3 Then past the pills, you see Mr. Ricky Tate go into the
4 bedroom. You saw the video. That is also in evidence. I
5 ask that you review that extensively for your benefit and be
6 able to see this happen. But I have taken some screen shots
7 so you can see the motion of his hand going to that window,
8 the exact side that Officer Rowe said that he saw that
9 motion and Officer Earls said he saw that crack on the
10 ground.

11 Again, I want you to look -- let me see if I have a
12 pointer on this. You will see his hand -- but you can see
13 his hand right there coming back from that window, pulling
14 back. Next one, hand down. Done. Dropping the marijuana
15 on the ground with the other hand. And what do we
16 automatically find under that? Just happened to find crack
17 cocaine under that exact spot that you just saw the hand
18 motion, on the ground. Officer Rowe on the stand circled
19 that crack cocaine, so did Officer Earls. They also circled
20 the marijuana. Officer Earls highlighted, additionally,
21 when we go back, where the pills were located. And those
22 pills just happened -- those heroin pills happened to be
23 right where Mr. Tate goes through. He possessed those
24 pills. He possessed that crack cocaine.

25 The third element, the State would argue, is he

1 possessed these illegal substances, specifically, crack and
2 heroin in this case, with the intent to distribute these
3 drugs. We heard from Officer Rowe and Brandi Eades on the
4 stand that the crack possessed, which they both saw, was a
5 large amount of crack, actually, dealer level, not user
6 level. She clearly knows. She is an abuser and she's a
7 dealer, she's dealt before. She knows what this is. And
8 she knows she's not leaving those drugs sitting in that
9 room. Mr. Ricky Tate threw down those drugs. And he came
10 to that home to deal those drugs to the users in that home.

11 You heard from Officer Rowe that he found an abuser in
12 the shower locked in the bathroom, Robbi. She obviously had
13 the pills. And he's going to argue, we anticipate that, of
14 course, we have first closing, they have second. We have to
15 anticipate what their arguments are. They're going to say
16 Robbi Towery, the one who's in that shower, is the one who
17 puts those pills in that hallway because they're blue. She
18 had a spoon with blue residue on it in the bathroom. And
19 Mr. Ricky Tate had those blue pills on the floor. Those are
20 going to be attributed to Robbi Towery. That's going to be
21 that argument.

22 No Ricky Tate is the one who brings those drugs in that
23 home and gives them to these people to use. That's why
24 you're finding new pills within that home because guess who
25 is a dealer who's coming into that home, bringing those blue

1 pills and distributing them out to those users in that home.
2 He came that day to do that and that's why he was in that
3 home. And he dropped those in that hallway because he knew
4 if he was caught with those, there would be problems. And
5 I'll go into that later.

6 Let's go into permissive inferences within this case.
7 As I stated before at the beginning of this trial, under the
8 statute, under the law, if you possess a certain amount of
9 drugs, you have this permissive inference that you intended
10 to distribute, just due to the level, the big amount that
11 you had on your person, that rises to the level that a user
12 would not have those. You have this permissive inference
13 you possess those with the intent to distribute due to that
14 amount.

15 Specifically, in regards to the crack cocaine, under
16 this statute, possession of one or more grams of crack gives
17 rise to a permissive inference that the Defendant, Mr. Ricky
18 Tate, possessed that amount of drugs with the intention to
19 distribute. In this case, we have 2.74 grams found in this
20 case.

21 As to the heroin, under the statute, possession of two
22 or more grains of heroin gives rise to this inference. In
23 this case, he had point 51 grams, that rose to 7.87 grains.
24 Now, that's a significant amount higher than the inference
25 level. And as I stated before, you can consider the

1 circumstances in addition to the inference levels that we
2 have in this case. And I highlighted the circumstances in
3 which these drugs were found. And that altogether would
4 satisfy the element of possession with intent to distribute
5 the drugs.

6 The next charge the Defendant is charged with in this
7 case is two counts, each attributable to the crack and one
8 attributable to the heroin is possession with intent to
9 distribute within proximity of a school.

10 Now, this is a map that I have put up on the screen.
11 Officer Rowe testified that -- he circled Leach Road, which
12 is the beginning of the yellow line. That line extends to
13 -- actually, further into the property of Rawlinson Road
14 Middle School and puts it at 2,520.9 feet. That is under
15 half a mile.

16 We also had a GIS expert, who actually built the system
17 and explained to y'all the accuracy of this measurement in
18 that this was actually within point 47 of a mile in which
19 this Defendant possessed the drugs with the intent to
20 distribute. We also heard from Officer Rowe on the stand
21 that this school is right there. You cannot miss it. It's
22 not something that you just drive by and you just don't
23 happen to see all these schools over here. So that would go
24 to the knowledge. He knew this school was right there. And
25 that's what we would argue, that he did possess with the

1 knowledge that he was in proximity of Rawlinson Road Middle
2 School when he possessed these drugs and entered that home
3 to distribute them.

4 So, ladies and gentlemen, y'all are the fact finders in
5 this case and the Judge is going to reiterate that to you.
6 You're responsible for piecing together everything you've
7 heard today, witness testimony, all the evidence that's
8 going to be presented to you and that y'all can go back and
9 review in your deliberation room.

10 In this case, you specifically heard testimony that --
11 for evidence, that is qualified as direct evidence and
12 circumstantial evidence. In this case, we had testimony,
13 direct evidence, testimony from a person who claims to have
14 actual knowledge of a fact, an eyewitness to a crime. And
15 you actually have direct evidence in this case. Officer
16 Rowe came in and told you direct evidence and he actually
17 saw what happened. So all these people who took the stand
18 and said they saw what happened, that's direct evidence.

19 You also have circumstantial evidence. Circumstantial
20 evidence is a proof of a chain of facts and circumstances
21 that indicate an existence of a fact. This type of evidence
22 is based on inference and not personal observation. So I
23 like to have an example because that's a bunch of words that
24 I don't personally understand. But once we put that in
25 terms of a mother and son are home by themselves in a house

1 and the mother is doing laundry. And she goes into the
2 kitchen to see her little son. And he has a black crayon on
3 the ground. And everything is clean, the cabinets are clean
4 and white. She leaves that room to go put a load of laundry
5 in, less than three minutes. Walks back in that kitchen and
6 guess what's on all those cabinets? A black crayon drawn
7 all over those cabinets. But that crayon is on the ground
8 away from that little boy.

9 Now, you can infer based on that circumstantial
10 evidence that that child, since they were the only people
11 there, that that child is the one that wrote on that wall --
12 wrote on that cabinet. That's circumstantial evidence. It
13 is a main fact to be proven. How did those drugs get here
14 in that case. It's proven because we have the direct
15 evidence of Officer Rowe saying he saw that throwing motion.
16 Brandi Eades saw that throwing motion. And they both saw
17 that crack cocaine on the ground. You also have Officer
18 Earls who stated he saw no one else in that hallway when
19 those pills were dropped by the Defendant on his way to that
20 bedroom. Of course, nobody saw him physically drop them,
21 but that circumstantial evidence can lead you to know that
22 is the fact that occurred.

23 Now, I'm going to get to the argument. Ladies and
24 gentlemen, again, I have to close first. They will go after
25 me. So I know and I can anticipate that they are going to

1 try to distract you. They're going to try to confuse you.
2 We call it smoke and mirrors. That is what they're going to
3 do. They're going to put up all this stuff about people in
4 the home that had warrants and were bad people. Yeah, it's
5 a drug home, of course, they're going to be there. You're
6 not going to have nuns at this place. You're going to have
7 bad people because they're doing drugs. They're doing drugs
8 in this home. People are coming to deal drugs within this
9 home.

10 So, you know, yes, there were people who were wanted in
11 this house. Do not let that distract you from the main fact
12 in this case. What we see is Mr. Ricky Tate running down
13 that hallway, he drops those drugs where no one else had the
14 ability to do so and he throws those drugs at a window and
15 they pop back down. Do not be distracted with all of this
16 other stuff. Use your common sense in this case and pay
17 attention to the evidence. The Defendant, Ricky Tate, was
18 the sole person who possessed that dealer amount of crack
19 and heroin and threw that down in [REDACTED] Leach Road.

20 And how do we know those drugs are the Defendant's.
21 Well, we can know from the evidence that Officer Earls put
22 on the stand. Ricky Tate ran down that hall. Officer Rowe
23 was the next one down that hall. Officer Earls was the next
24 one down that hall. Nobody else entered that hallway. You
25 heard that Brandi Eades said she went to that bathroom, that

1 door was locked, that person was locked in that bathroom.
2 They had not exited that bathroom. They did not have a
3 moment to exit that bathroom. But she said when she went
4 into her bedroom, seconds later, those police stormed in.
5 That girl did not come out of that bathroom, open that door,
6 throw the drugs all the way down to the corner of the
7 hallway, walk back in there by the seconds later that she
8 said the officers came in that home. It's just not
9 believable. Ricky Tate dropped all of that heroin in that
10 hallway.

11 So in the room, let's go back to that, the throwing
12 motion, the large amount of crack underneath the window.
13 It's broken up in dealer levels as you heard Officer Rowe
14 say. Additionally, the Defense might bring up the fact that
15 the drugs were initially found -- let me go back to this
16 photo -- here under the window.

17 Now, I know you will be able to review the video. I
18 want you to review that video. And you're going to see that
19 once Mr. Tate is handcuffed and Ms. Brandi Eades is
20 handcuffed, they're shuffled over to that area right there.
21 Guess who is using his feet to shuffle those drugs right
22 under that dresser to hide it from the officers. Well,
23 guess where they found it? Right under that dresser, right
24 on the edge of that dresser. That's going to be an argument
25 they're going to make, but, again, I want you to use your

1 common sense, ladies and gentlemen.

2 So on the video, you're going to see Mr. Tate. He goes
3 to the window, but uses his hand and then he turns around
4 and he drops that marijuana on the ground in the open view.
5 And then offers everything, yeah, I was there to smoke a
6 blunt. I was there with marijuana. Well, yeah, he's going
7 to deny the pills. He's going to deny the crack. Of
8 course, he's going to say the marijuana is his. I mean,
9 that's what he's going to want them to focus on is that
10 marijuana. Because as you heard Officer Rowe say, that's a
11 ticket. That's a magistrate level offense. Of course, he's
12 going to deny the things he knows carries a higher offense
13 than that marijuana he just dropped on that floor. He wants
14 to deny everything except that marijuana. He wants them to
15 focus on what they saw him drop, that marijuana.

16 He has reason to deny those things. You heard on the
17 video, he's on community supervision, another reason to deny
18 those drugs. Another reason to get rid of all these drugs.
19 Again, it's only him in the area the drugs are found. Yes,
20 everybody else is within this home, but no one is in those
21 areas where those drugs are found and dropped. That is what
22 I want you to focus on, ladies and gentlemen. Only him.
23 And unfortunately for him, he thinks he's running in that
24 room -- and that window, I mean, you saw it and you can look
25 at the evidence, it looks open initially. It's looks like

1 it's opened on the sides. Unfortunately for him, there's a
2 screen and it pops back in when he tries to throw it out.

3 You heard Brandi on the stand say she had to take her
4 toilet paper to the bathroom. Let's look, she wasn't lying.
5 That toilet paper is sitting right there on that TV. She
6 had to take her toilet paper in the bathroom because it's
7 going to get stolen. You think she's going to leave, or
8 anybody else is going to leave drugs sitting out in the
9 open. Guess what's going to happen, those are going to get
10 stolen. You can't even leave toilet paper in this home.
11 You think somebody is going to leave drugs sitting on the
12 ground like that? No. They're fresh and they're from Ricky
13 Tate.

14 I do want to bring up some things briefly. I'm almost
15 done. Pete Mitchum, who is one of the custodians, he
16 misspoke on the stand. We caught that. He said May 11th
17 the drugs were taken into evidence. He misspoke. I won't
18 to just reiterate, you can see on the bags -- y'all can
19 definitely pass these around. It's May 17th on these bags.
20 And I do want y'all to be able to look at those. May 11th,
21 he just misspoke. He just looked at it briefly, but those
22 were taken into evidence on May 17th. You can look at the
23 bag and you can see that's when they were taken into
24 evidence. I know that's something the Defense may bring up.
25 Again, it was a mistake on his part. But as you can see on

1 the bags, that's the date.

2 They're also going to say Brandi's a liar, Brandi's
3 lying. She has a horrible record. But Brandi does not have
4 a reason to lie. She has not been promised anything. She's
5 not dating Mr. Tyreque Tolbert. She's not with him anymore.
6 She has no reason to protect him. No promises were made.
7 She told you she's here to tell the truth. She's just here
8 to tell the truth. She took her charges. She'd take these
9 if they were hers. They weren't hers.

10 Again, I would like for y'all to review the video and
11 review all of the evidence. It's the State's responsibility
12 to prove the elements of this crime beyond a reasonable
13 doubt. We said at the beginning that does mean any and all
14 doubt. That is not a hundred percent certainty. But that
15 is evidence that leaves you firmly convinced of the
16 Defendant's guilt, that is when you can find him guilty.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt.

19 Again, please don't be distracted, please don't be
20 fooled. Focus on the main things in this crime. In all the
21 evidence presented to you, who was in the areas that no one
22 else was in to do these crimes? And that was Mr. Ricky
23 Tate. When you go in that deliberation room, I trust that
24 you will duly perform your role and that you will find the
25 Defendant, Ricky Tate, guilty of possession with the intent

1 to distribute crack, possession with the intent to
2 distribute heroin and possession of those drugs within
3 proximity of a school, half mile of Rawlinson Road Middle
4 School. Thank you.

5 MR. MORTON: May we approach the bench briefly?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury, but outside the hearing of the jury.)

9 THE COURT: Mr. Belton.

10 MR. BELTON: Thank you, Your Honor. May it please the
11 Court?

12 THE COURT: Yes, sir.

13 CLOSING ARGUMENT

14 MR. BELTON: Ladies and gentlemen of the jury, we are
15 not in the home where there's a kid, one of our nice
16 suburban homes where mom is doing laundry and there's a
17 crayon on the floor and the kid writes on the wall. That's
18 not the type of house this is, where there's one innocent
19 child in a room where a presumption can be made that that
20 child is the one who did this. That's not the house you're
21 in. [REDACTED] Leach Road is not a suburban house where mom is
22 doing laundry. [REDACTED] Leach Road is a drug house. It's a
23 drug house, as testimony has indicated, where people come
24 in, people do drugs, people use drugs, most importantly, the
25 people who live there are involved in drug activity. They

1 don't have crayons writing on walls.

2 Now, the State is going to tell you this is about smoke
3 and screens. This is not about smoke and screens. It's
4 about common sense. And that's the one thing that nobody in
5 here can tell you that you have to leave here in this
6 courtroom. You can bring your life experiences. You can
7 bring your common sense. You can take it with you out of
8 this courtroom into the jury room and you can apply your
9 life experiences and your common sense to your
10 deliberations.

11 Now, the Judge is going to give you the law as the law
12 is and as you must apply the law to these facts. I'm not
13 going to be in front of you very long. I do ask for your
14 patience as I kind of walk you through the facts of this
15 case from our position of the facts of this case. And then
16 we ask you to apply these facts to the law. And we believe
17 that if you apply the facts to the law, then you must find
18 Mr. Tate not guilty of all the charges in which he's
19 charged.

20 I'm going to start with the fact that Officer Rowe,
21 who's the uniformed police officer here, indicated that he
22 did not see Mr. Tate with drugs. There's only one person
23 that came to this courtroom over the last two days and
24 indicated that they saw Mr. Tate with drugs and that's
25 Brandi Eades. That's it.

1 Now, we'll talk about Ms. Eades here in a second, but
2 she's the only person that has come to this courtroom that
3 has sat in that stand and indicated they saw Mr. Tate with
4 drugs. And nobody, not one person has come into this
5 courtroom and said they unequivocally saw Mr. Tate with blue
6 pills. Brandi Eades didn't even testify that she saw Mr.
7 Tate with blue pills. So nobody, not one officer, nobody in
8 the house, none of the seven, six other people who were in
9 the house, nobody has come in here and said that they saw
10 Mr. Tate with those blue pills.

11 And ladies and gentlemen, keep something in mind. Mere
12 presence. And I will go into this in a little more detail
13 later, but mere presence in a residence or in a place
14 doesn't mean that you're guilty of everything that's going
15 on this place. I want you to ask the question -- I talked
16 to you a second ago about your common sense and your life
17 experiences. What do you think you're going to find in a
18 drug house? What do you think you're going to find in the
19 bedroom where Brandi Eades admitted that she had been
20 selling drugs out of not only that house, but out of the
21 back bedroom? What do you think you're going to find in
22 there? So for the State to say that this is dealer level,
23 dealer level, what was Brandi Eades? What was Tyrequis
24 Tolbert? They were drug dealers. That's why the police
25 were there. So ladies and gentlemen, again, I ask you, what

1 do you expect to find in a house where people are selling
2 drugs? You expect to find drugs.

3 Now, I want to remind you of your responsibilities and
4 the oath you took. I want to remind you that now, the power
5 is no longer in the hands of police, no longer in the hands
6 of the Defense attorney, no longer in the hands of my
7 learned colleagues that represent the State. The power now
8 is in your hands. Every decision that will be made here on
9 out will be made by you collectively. But before that
10 collective decision can be made, it must be made
11 individually. And I don't want any of you to give up the
12 power you have as individual jurors. Because, collectively,
13 you all must find him guilty beyond -- Mr. Tate guilty
14 beyond a reasonable doubt and each and every element of the
15 charges that are before you. So we're going to walk through
16 those charges. And nobody can tell you that you have to
17 lose any common sense.

18 Now, you took an oath. In 1991, when I was 18 years
19 old, I, too, took an oath. I took an oath to go in the
20 military. Many, many, many years ago, nearly 28 years ago
21 now. At 18 years old, I took an oath to defend this
22 Constitution. And part of this Constitution that we have is
23 for a man like Mr. Tate to come into a courtroom, profess
24 his innocence and have a jury of his peers listen to the
25 facts and determine his guilt or innocence. That's not

1 determined by the police. That's not determined by the
2 State. That's only determined by you, that's it. Nobody
3 else. And you took an oath that regardless of what you
4 think about the circumstances, you would look at the facts
5 and apply the law to the facts. And so I ask you, just as I
6 did in 1991 when I was 18 years old, I ask you to do the
7 same thing, take your oath seriously.

8 Now, the Judge is going to talk to you about the burden
9 of proof. The highest burden of proof that we know of in
10 our modern civilization. The burden is called beyond a
11 reasonable doubt. And it's going to be a lot of talk here
12 over the next -- when the Judge talks to you about
13 reasonable doubt, I want you to listen to the definition of
14 reasonable doubt. Mr. Tate has no burden of proof. The
15 State has all of the burden. They have a hundred percent of
16 the burden that they must prove. And I ask you to listen to
17 the definition that the Judge is going to give you regarding
18 burden of proof.

19 Now, some of you may or may not have been involved in
20 other types of cases, civil cases and those things and you
21 may have seen some of those things -- and again, I'm just
22 going to remind you that the highest burden we have, it is
23 not reasonable suspicion, it is not probable cause, it is
24 not preponderance of evidence, it is not clear and
25 convincing evidence, you must find him guilty on each and

1 every element of all of every charge -- every crime in which
2 he's charged beyond a reasonable doubt. And if you can't
3 get to that level on each and every charge, then she's going
4 to tell you that the law, the Court will tell you, the Judge
5 will tell you that the law states that you must find him not
6 guilty.

7 Now, reasonable doubt. Again, the Judge will give you
8 the official definition that you are to take back in your
9 minds to the jury room with you, but it's what would cause a
10 reasonable person to hesitate to act. So let's -- again, I
11 talked to you a second ago about mere presence. The Judge
12 is going to instruct you on what mere presence means. She's
13 going to give you what we call the jury charge. But just to
14 kind of get it seared in your mind as I will continue to
15 walk through this presentation, mere presence at the scene
16 is not sufficient to prove that somebody is guilty of a
17 crime. It's not sufficient to prove that somebody is guilty
18 of a crime.

19 So let's start talking about the case. There's no
20 question Mr. Tate was at the house. There's no question he
21 possessed a small amount of marijuana. He immediately owned
22 up to the small amount of marijuana that he had. He
23 immediately owned it. Certainly, he got up and ran down the
24 hall, because he was possessing the marijuana. There's no
25 question Mr. Tate went to the window. What is questionable,

1 what is reasonable doubt, was there a throwing motion out of
2 the window? That is questionable. That is reasonable
3 doubt.

4 There were pills that were eventually found in the
5 hallway. My learned colleague said you will have the video
6 where you can watch the video. You look and you determine
7 what time did these pills eventually show up in the hallway.
8 What time did they come in the hallway? No pills were
9 mentioned in this residence until Officer Rowe was outside
10 searching for what he thought was outside. Nobody had
11 mentioned them, no one had said -- and this is after
12 everybody in that room had come up there.

13 Now, there's been a lot that Mr. Tate was the only
14 person that went down that hallway. Again, common sense,
15 ladies and gentlemen. How did the other four people get
16 down the hall? Tell me how they got down the hall. And
17 it's a very small trailer. How did they get down the
18 hallway? Nothing ties Mr. Tate to those pills. It came in,
19 there was testimony they fingerprinted the bag. Mr. Tate's
20 fingerprints weren't found on the bag. None of his DNA is
21 on the bag. This is 2019. His DNA is not on the bag. No
22 forensics. Nothing ties him to those pills. Nothing ties
23 him to the bag of crack. Nothing. There's no evidence that
24 Mr. Tate had been part of the investigation they had going
25 on there at the house. No evidence that he was selling

1 crack out of that house. There's no evidence of any of
2 that. There's plenty that Ms. Eades -- there's been
3 testimony that Ms. Eades had a warrant for selling crack out
4 of that house. That's her testimony, that she sold crack
5 out of that house and out of that bedroom.

6 There's also testimony from the officer that the room
7 was small and that the trailer was small. Mr. Tate wouldn't
8 follow command and he had to be taken down or something to
9 that effect. You see that on the video. Mr. Tate is taken
10 down. As a matter of fact, what you also see on the video
11 is the same picture that she showed, same picture that you
12 will have back in evidence of Mr. Tate laying there on the
13 floor with the toilet tissue, same one that she showed you,
14 with the toilet tissue on the thing, tell me where Mr.
15 Tate's shoe is. That was identified as Mr. Tate's shoe.
16 He's taken down, he's on the floor, he's immediately
17 handcuffed and then the body cam is on him.

18 Now, she says -- my colleague says that you can see him
19 over there shuffling his feet. First of all, the officer
20 testified that his body cam sees what he sees. He was asked
21 that question directly. Are you seeing what the body cam is
22 seeing? The answer to that question was yes. So if Mr.
23 Tate is over shuffling his feet, kicking something, if the
24 body cam is seeing what the officer is seeing, wouldn't he
25 see Mr. Tate doing it? Secondly, and I ask you, you look on

1 the tape, you see when Mr. Tate is taking down, you see when
2 Mr. Tate is standing there, you look and you see if you see
3 Mr. Tate shuffling his feet, kicking something.

4 But I tell you what you will see, you will see Ms.
5 Eades, you can easily see her, she's expecting a child.
6 She's standing by the side of the bed by the window. And
7 guess what else Ms. Eades said, Ms. Eades said not only was
8 she awake, but she heard the officers come in. Ms. Eades is
9 a drug dealer. She's admitted that she sold drugs out of
10 that house, out of that room. She hears the officers
11 coming. What do you think she logically and common sense
12 would do with the drugs? She would throw the drugs. She's
13 standing up when the officers walk in. She's already on her
14 feet. She's admitted that she sells drugs out of that
15 house, out of that room. And she heard them coming. And
16 there's other crack in the house. What would she do with
17 it? She would throw it. And that's exactly what she did,
18 she threw it. That's what she did.

19 Also, you're going to see on this same picture, I want
20 you to take a look at Mr. Tolbert. Take a look at his hand.
21 Take a look at this hand. Take at look at Mr. Tolbert's
22 hand. It's outstretched from the mattress there on the bed.
23 Now, certainly, that's after the police had come into the
24 room, but if it's logical for him to outstretch his hand
25 there at that point, is it not logical that a drug dealer

1 who was laying there on the bed could throw the drugs there
2 as well. Does that not raise enough reasonable doubt? Does
3 it not raise enough reasonable doubt that Ms. Eades standing
4 there by the window when the police get in the room, is that
5 not enough reasonable doubt? Ladies and gentlemen, this
6 case is full of reasonable doubt.

7 I also want you as you're looking at the video to look
8 at Ms. Perry. Ms. Perry certainly was not asleep in the
9 room. In case you have forgotten, I did a chart up here and
10 kind of outlined everybody because it can get confusing.
11 But Ms. Perry certainly was not asleep. Ms. Perry is
12 sitting there on the bed smoking a cigarette, so she's
13 certainly not asleep. And Ms. Perry, obviously, got
14 something going on because she quickly acknowledges the
15 police that she may or may not have heroin in her purse.
16 Now, Mr. Tate is charge with possession of heroin. Ms.
17 Perry, tell me how she got in that bedroom. Tell me where
18 she came from.

19 Now, before we go here to proximity, I'm going to hold
20 the thought here on what happened there in the house, but
21 I'm going to come back to Ms. Towery because that question
22 may be still lingering in your mind. And in case you got
23 confused, Ms. Towery is the person who's in -- the young
24 lady who's in the bathroom. The young lady that was found
25 with the blue residue that the officer said was consistent,

1 at least, in color with the heroin. But guess what, we have
2 no idea what that blue residue was because it wasn't tested.
3 Trained police officers got on the stand and talked to us
4 about their credentials and how long they had been doing
5 this and the training they've got. They could have tested
6 the residue to see if it was consistent, in fact, with those
7 pills. We know it was consistent in color, but was it
8 consistent in substance. But we've linked Ms. Towery to
9 what we found in the hallway. Is that not enough for
10 reasonable doubt?

11 Proximity of a school. Again, the Court will give you
12 the official law regarding proximity. Now, ladies and
13 gentlemen of the jury, if Mr. Tate doesn't possess the
14 drugs, then, certainly, he can't possess it within proximity
15 of a school. But there are two elements to proximity of a
16 school. Not only does he have to possess it, but he also
17 had to have knowledge. Now, I'm accused -- or the State
18 will be accused and as my learned colleague said, you know,
19 she has to anticipate what we're going to say. Ladies and
20 gentlemen, you don't have to anticipate what we're going to
21 say. Everything that we're going to talk about, people sat
22 right here in this chair and they said it.

23 You were shown -- we brought in the expert from GIS,
24 the police officer testified, I think it was Officer Rowe
25 testified that he was familiar with this area, he's familiar

1 with the aerial view, he's familiar with Leach Road and talk
2 about coming down Main Street past Rawlinson Road. They
3 talked about all of that. Then they gave a picture that has
4 a yellow line on it. Ladies and gentlemen, look at the
5 yellow line. Not one person came in here and testified --
6 and the State, my colleague here made a big thing about
7 Rawlinson Road, right down the road, you can see it from the
8 road. That's important. Why is that important? Because
9 how would Mr. Tate have gotten to Leach Road? Unless you're
10 assuming he came from York, and we're not making that
11 assumption, let's assume he came from Rock Hill. How would
12 he have gotten to Leach Road? He would have passed
13 Rawlinson Road. And as the State indicated, he would have
14 seen Rawlinson Road down there. But guess what, he didn't
15 turn and cut through the subdivision and go through the
16 woods as that says. That's the line that they're giving
17 you. Because going down the road is more than a half a
18 mile.

19 And that's what Mr. Tate would have knowledge of, is
20 how to be able to get to Leach Road, down Highway 5 and turn
21 on Leach Road as this map indicates by the red. Not coming
22 through the woods, through a subdivision where there's no --
23 in a car. There was no testimony of what the distance was
24 of going the road way. So Mr. Tate, in fact, may know where
25 Rawlinson Road is, but does he know the distance of

1 Rawlinson Road going the road way? And Mr. Tate would have
2 traveled to Leach Road -- there's no evidence that there's a
3 car path or some kind of path, a road where cars can cut
4 through the woods through a subdivision. Ladies and
5 gentlemen, again, I ask you is that not enough for
6 reasonable doubt? This is their map. You can see the
7 yellow line coming through the woods not down the road. You
8 can't have proximity if you don't have knowledge.

9 In this case here, there's been no evidence that Mr.
10 Tate had knowledge of Rawlinson Road to this place through
11 here. Again, I just remind you, this is just a simplified
12 way of saying what I've already said. There's two elements
13 to proximity, one is possession and one is knowledge. You
14 can read this for yourself. I just want to highlight,
15 there's no question Mr. Tate was at the residence.

16 And the last thing that I will highlight, they
17 indicated that this took place, this raid took place at 3:30
18 in the afternoon, but there was no evidence that it had
19 anything to do with Rawlinson Road Middle School, nothing.
20 No students involved, no students at the house, no students
21 buying drugs, nothing. It has nothing to do with Rawlinson
22 Road.

23 So I want to remind you, no possession equals not
24 guilty and, certainly, no knowledge equals not guilty. I
25 don't believe he knew the distance the way that he would

1 have traveled to that house, that rises to the level of --
2 that rises to the level of not guilty.

3 All right. Mr. Tate is also charged with possession
4 with the intent to distribute. Now, there's been talk about
5 the inference way and those things, and we'll get to that
6 here in a second. Possession -- and again, the Court, the
7 Judge, Her Honor will give you the official law and the
8 definitions of all these things. I'm kind of paraphrasing
9 it. If I misstate something, certainly, you're going to
10 listen to what the Judge tells you.

11 Actual possession means the drugs were actually in Mr.
12 Tate's physical custody. I think we've established and the
13 State has acknowledged that that didn't happen. He was not
14 found with these drugs in his actual possession. So that
15 gets us to the constructive possession, that the Defendant
16 had dominion and control.

17 Ladies and gentlemen, the drugs are in a drug house
18 where Mr. Tate is not a resident. He's not a resident of
19 this house. If anybody has dominion and control, it's the
20 two people, one of them who came in here today and admitted
21 that she was selling drugs out of the house. The other
22 person, who we know now, had a warrant for. Again, he was
23 merely present there. So we can't have constructive
24 possession, we can't have constructive possession here if we
25 cannot prove that there was some dominion and control over

1 these drugs.

2 Now, Mr. Tate was on the couch. It's common sense that
3 the other four people had gone down the hall. The girl in
4 the bathroom, not charged. This other man that the young
5 lady indicated who owned the house not charged. Mr. Tolbert
6 only charged with the small amount of crack that was found
7 in the ashtray. There were already charges on Mr. Tolbert.
8 There were already charges on Ms. Eades. So let's find
9 somebody else to put some charges on. And that's where we
10 find ourselves, ladies and gentlemen. That's where we find
11 ourselves. I want you to be reminded that merely because he
12 was there doesn't make him guilty of the crime. Merely
13 because he was there.

14 And what's important here, I want you to look through
15 all these pictures when you get back here that have been
16 entered into evidence, every single one of them, even take a
17 look at the video. You're going to see the officer taking
18 pictures of the individuals. Then you're going to see the
19 officers, trained officers taking pictures. You're going to
20 see pictures here that the officers said were there and they
21 had taken. The dispute in here is where these drugs were
22 found. Find me a picture that gives us a perspective of
23 where a trained police officer could have taken these
24 pictures. The drugs are here. Why I would go up over it
25 like this and take the drugs? Was it on the dresser,

1 underneath the dresser, in the shower? Why like this? And
2 we're here with these dark photographs trying to sort out
3 what's on the floor of a drug house when they could have
4 simply stepped back and taken the picture. Not everybody
5 has a perspective. Turn on the flashlight. They got
6 flashlights there. Take the picture where everybody has a
7 perspective. Again, you don't have to check your common
8 sense when you walked in the courthouse this afternoon. You
9 can take your common sense and you can ask those questions
10 because you have the power to ask those questions. You have
11 the power to ask those questions.

12 I've already talked to you about kicking that. I've
13 already talked to you about more than 12 minutes before any
14 of these pills are in there. I've talked to you about no
15 DNA. And if you believe that he did not possess, then you
16 must acquit.

17 And the State must prove -- and I'm wrapping up here in
18 the next few slides -- that he intended to distribute the
19 pills and the crack. The Judge will give you the official
20 definition of distribute. And they must prove that he
21 intended to distribute these drugs. And that's where I want
22 to spend when I talk to about the possession. Because in
23 order to convict him of possession with intent to
24 distribute, not only must the State prove possession, but
25 they also must prove that he intended to distribute.

1 Now, the officer testified that he was trained in --
2 Officer Rowe testified that he's trained in narcotics
3 investigations and all these different things that they're
4 trained in and how to locate and identify drugs, you know,
5 how to tell dealers. And I think he even testified the
6 difference between a dealer and a user. Well, if we get to
7 the intent to distribute, Mr. Tate was searched. You all
8 look at the video. There was no large sum of money found on
9 Mr. Tate. If he was the big time drug dealer they're making
10 him out to be with a large quantity, I think is the term
11 that's being used, a large quantity of drugs, where was the
12 money? There was no testimony here that a large sum of
13 money -- as a matter of fact, the only testimony I heard in
14 here is we got a cell phone, we got a small bit of currency,
15 we got two condoms and some other personal effects, I think
16 a lighter. There's no evidence that indicated that Mr. --
17 all these things that he indicates he's trained on, those
18 things did not apply to Mr. Tate.

19 Drug dealers, no scales that are linked to Mr. Tate, no
20 large sums of cash, no little baggies in his pocket, no text
21 messages or communications or any of those things linking
22 Mr. Tate to any of this stuff. It's nothing other than
23 large quantity of drugs, as they have described it, found in
24 a drug house that they went there to execute a search
25 warrant on people or an arrest warrant on people who were

1 selling drugs.

2 Now, the State mentioned Mr. Mitchum who came in here
3 this morning. The State mentioned that he made a mistake.
4 And that in isolation wouldn't be an issue, but it's
5 absolutely an issue when it goes to other stuff. Again, I'm
6 going to ask you to look at, look at Exhibit 13. When you
7 look at Exhibit 13, you will see the measurements that were
8 weighed on Exhibit 13. You'll see the number, 3.3. But
9 then I ask you to go to the forensics report that was put
10 in. I ask you to go to the forensics report and you take a
11 look at the forensics report at what Ms. Tobias said that
12 she weighed.

13 I want you to look at the pictures of Exhibit 16. I
14 want you to look at the pictures. I want you to look at
15 this picture. I want you to count the number of pills
16 that's on the scale. This is ain't a smoke and screen.
17 This ain't trying to throw up a smokescreen. I want you to
18 count the number of pills that's on the scale that the
19 officer testified that they confiscated from that house.
20 Then I want you to -- you will have this and you can take a
21 look at it. I want you to count the pills that are in the
22 bag. Take your time and count the pills. That's why Mr. --
23 because the officer testified that other stuff that they
24 knew about, other things that were going on at Leach Road,
25 that's why that's important, what Mr. Mitchum said. That's

1 why when he testified that he -- that he testified as to May
2 the 11th and we know that this raid took place on May the
3 16th. That's why that's important. It's not smoke and
4 mirrors. It's not smoke and mirrors.

5 I told you I would come back briefly to Ms. Eades. I'm
6 not going to spend a long bit of time on that, but one of
7 the jobs that jurors have, this jury collectively and
8 individually have is you have the responsibility to weigh
9 the credibility of a witness. Do you believe what they are
10 saying? This young lady got on the stand. She was
11 expecting a child at the time of this incident. It was her
12 boyfriend. And to say that she doesn't have any reason to
13 lie, she was facing charges. They were there to arrest her,
14 the possibility of more charges. And to use my colleagues
15 words, serious charges. She was asked -- you'll have the
16 video. Now, they showed you the video of one of the
17 officers coming out and telling another officer what Ms.
18 Eades said but, at least, two people -- we have one body cam
19 in here and we hear -- an officer says on there, who was
20 indicated was a commander of this raid says, turn off your
21 body cam. I find it very interesting, I find it very
22 interesting they said unless you need it for evidentiary
23 purposes, turn off your body cam. Well, if Ms. Eades is
24 saying that Mr. Tate is the one that has the drugs, is that
25 not evidentiary purposes? But you never see her on video

1 anywhere say that Mr. Tate. It wasn't until today she comes
2 in here. We've never been told. Today, she comes in here
3 and says, after she admits that she had met with the
4 solicitor and had seen the video. Is that not enough for
5 reasonable doubt? Ladies and gentlemen, mere presence at
6 the scene, not enough. It's not enough.

7 One last question, I'm going to end the way that I
8 started. What does one expect to find in a drug house?
9 Drugs? And that's exactly what they went there looking for
10 and that's exactly what they found. And for all the reasons
11 that I have stated, there's enough that rises this -- enough
12 that raises this -- enough reasonable doubt here that's been
13 raised. And I ask you, I ask you as you are back in your
14 room to find this man, Mr. Ricky Tate, not guilty of all the
15 charges for which he has been charged. Thank you.

16 CHARGE ON THE LAW

17 THE COURT: All right, folks, it's time for me to
18 charge you on the law that applies to this case. I remind
19 you that during this trial, you and I have certain duties to
20 perform. As the trial judge, it is my responsibility to
21 preside over the trial of this case and I also have the duty
22 to rule on the admissibility of evidence offered during this
23 trial. You are to consider only the competent evidence
24 before you. If there was any testimony ordered stricken
25 from the record in this case during this trial, you must

1 disregard that testimony. You are to consider only the
2 testimony which has been presented from this witness stand,
3 any exhibits which have been made a part of the record in
4 this case and any stipulations of counsel.

5 I have the additional duty to charge you the law
6 applicable to this case. As the presiding judge, I am the
7 sole judge of the law in this case and it is your duty as
8 jurors to accept and apply the law as I now state it to you.
9 If you have any idea as to what the law or what the law
10 ought to be and it does not agree with what I now tell you
11 the law is, you must abandon this idea because you are sworn
12 to accept the law and apply the law exactly as I state it to
13 you.

14 In every case tried in this court before a jury, the
15 jury becomes the sole and exclusive judge of the facts. A
16 trial judge cannot intimate, state, comment on or make any
17 statement to a trial jury about the facts in the case.
18 Since you, the jury, are the sole judges of the facts in
19 this case, you are not to infer from what I have said during
20 the progress of this trial in ruling upon the admissibility
21 of evidence or otherwise or anything that I say now during
22 the course of this instruction to you that I have any
23 opinion about the facts in this case. The law does not
24 allow me to have an opinion about the facts in this case.
25 This is a matter solely for you, the jury, to determine. As

1 jurors, it is your duty to determine the effect, value,
2 weight and truth of the evidence presented during this
3 trial.

4 The indictments in this case allege several different
5 offenses against the Defendant. The charges are possession
6 with intent to distribute crack cocaine, possession with
7 intent to distribute heroin, possession with intent to
8 distribute crack cocaine within proximity of a school and
9 possession with intent to distribute heroin within proximity
10 of a school.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and law applicable to it uninfluenced by your
14 decision as to any other indictment. The Defendant may be
15 convicted or acquitted on any or all of the offenses
16 charged. You will be asked to write a separate verdict of
17 guilty or not guilty for each indictment.

18 I remind you that the fact that the Defendant was
19 arrested, charged and indicted in this case is not evidence
20 in this case and cannot be considered by you as evidence of
21 guilt in this case nor does it create any presumption or
22 inference of guilt. These documents are simply the formal
23 written instruments which contain the charges made against
24 the Defendant. They are the formal documents by which this
25 case is brought into court.

1 The Defendant has pled not guilty to each of these
2 indictments and that plea puts the burden on the State to
3 prove the Defendant guilty. A person charged with
4 committing a criminal offense in South Carolina is never
5 required to prove himself innocent. I charge you that it is
6 an important rule of law that a Defendant in a criminal
7 trial, no matter what the seriousness of the charge may be
8 will always be presumed to be innocent of the crimes for
9 which the indictments were issued unless guilt has been
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 This presumption of innocence does not end when you
13 begin your deliberations, but it accompanies the Defendant
14 throughout the trial until you reach a verdict of guilt
15 based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant,
19 which remains with the Defendant until it has been stripped
20 from him by evidence satisfying you of the Defendant's guilt
21 beyond a reasonable doubt.

22 The presumption of innocence is not a mere legal
23 theory. It is not just a legal phrase. It is a substantial
24 right to which every defendant is entitled unless you, the
25 jury, are satisfied from the evidence of the Defendant's

1 guilt beyond a reasonable doubt.

2 Now, what is a reasonable doubt in the law? A
3 reasonable doubt is the kind of doubt that would cause a
4 reasonable person to hesitate to act. The State has the
5 burden of proving the Defendant guilty of each of the
6 charged offenses beyond a reasonable doubt. Some of you may
7 have served as jurors in civil cases where you were told
8 that it is only necessary to prove that a fact is more
9 likely true than not true, such as by the greater weight or
10 preponderance of the evidence.

11 In criminal cases, the State's proof must be more
12 powerful than that. It must be beyond a reasonable doubt.
13 Proof beyond a reasonable doubt is proof that leaves you
14 firmly convinced of the Defendant's guilt. There are very
15 few things in this world that we know with absolute
16 certainty and in criminal cases, the law does not require
17 proof that overcomes every possible doubt. If, based on
18 your consideration of the evidence, you are firmly convinced
19 that the Defendant is guilty of the crime charged, you must
20 find the Defendant guilty of that crime. If, on the other
21 hand, you think that there is a real possibility that the
22 Defendant is not guilty of any of the charges, you must give
23 the Defendant the benefit of the doubt and find him not
24 guilty of those charges. Mere suspicion, however strong, is
25 not sufficient to find the Defendant guilty.

1 There are two types of evidence which are generally
2 presented during a trial, direct evidence and circumstantial
3 evidence. Direct evidence is the testimony of a person who
4 claims to have actual knowledge of a fact, such as an
5 eyewitness. It is evidence which immediately establishes
6 the main fact to be proved. Circumstantial evidence is
7 proof of a chain of facts and circumstances indicating the
8 existence of a fact. It is evidence which immediately
9 establishes collateral facts from which the main fact may be
10 inferred. Circumstantial evidence is based on inference and
11 not on personal knowledge or observation.

12 The law makes absolutely no distinction between the
13 weight or value to be given to either direct or
14 circumstantial evidence nor is a greater degree of certainty
15 required of circumstantial evidence than of direct evidence.
16 You should weigh all of the evidence in this case. After
17 weighing all of the evidence, if you are not convinced of
18 the guilt of the Defendant beyond a reasonable doubt, you
19 must find the Defendant not guilty.

20 Necessarily, you must determine the credibility of
21 witnesses who have testified in this case. Credibility
22 simply means believability. It becomes your duty as jurors
23 to analyze and to evaluate the evidence and determine which
24 evidence convinces you of its truth. In determining the
25 believability of witnesses who have testified in this case,

1 you may believe one witness over several witnesses or
2 several witnesses over one witness. You may believe a part
3 of the testimony of a witness and reject the remaining part
4 of the testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety. You may consider
7 whether any witness has exhibited to you any interest, bias,
8 prejudice or other motive in this case. You may also
9 consider the appearance and manner of a witness while on the
10 witness stand.

11 The rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to this rule exist for witnesses we call expert
14 witnesses. A witness who by education and experience has
15 become expert in some art, science, profession or calling
16 may state an opinion as to relevant and material matters in
17 which the witness claims to be an expert and may also state
18 the reasons for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case and, like any other evidence, give it
21 the weight you think it deserves. If you decide that the
22 opinion of an expert witness is not based on sufficient
23 education and experience or if you conclude that the reasons
24 given in support of the opinion are not sound or that the
25 opinion is outweighed by other evidence, you may disregard

1 the opinion entirely. An expert witness's testimony is to
2 be given no greater weight than that of other witnesses
3 simply because the witness is an expert. Further, you are
4 not required to accept an expert's opinion even though it is
5 not contradicted.

6 A person who has a past criminal record is competent to
7 testify during a trial. A past record does not affect the
8 ability of that witness to testify. The past record may be
9 considered by you, if at all, in determining the witness's
10 believability. Remember, you are the sole judges of the
11 facts in this case and of the believability of any and all
12 of the witnesses.

13 I instruct you and emphasize that the fact that the
14 Defendant did not testify is not a factor to be considered
15 by you in any way in your deliberations or in your
16 consideration of the question of the guilt or innocence of
17 the Defendant. It must not be considered by you in any
18 manner whatsoever. A Defendant has the Constitutional right
19 to remain silent and the assertion of this right must not be
20 considered by you in your deliberations.

21 I repeat, under your oath, you are to draw no
22 conclusion whatsoever from the fact that the Defendant in
23 this case did not testify. The fact that this Defendant did
24 not testify should not even be discussed in the jury room.
25 The burden of proof, as I stated to you, is on the State.

1 The Defendant is not required to prove his innocence. The
2 burden of proof remains on the State to prove guilt beyond a
3 reasonable doubt.

4 In order to establish criminal liability, criminal
5 intent is required. For example, the mental state required
6 to be proven by the State for a particular crime might be
7 purpose, intent, knowledge, recklessness, or criminal
8 negligence. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always a
10 matter that must be determined by the jury from the
11 circumstances surrounding the situation.

12 There is no way to prove intent to a mathematical
13 certainty. There is no way medical science can dissect a
14 person's brain and determine what the person had in mind.
15 So the law says that criminal intent may be inferred from
16 the circumstances shown to have existed. This is how you
17 make a determination of whether or not the element requiring
18 intent was present. It is not necessary to establish intent
19 by direct and positive evidence, but intent may be
20 established by inference in the same way as any other fact
21 by taking into consideration the acts of the parties and all
22 of the facts and circumstances of the case.

23 Criminal intent is mental state, a conscious
24 wrongdoing. It is up to you to determine what the Defendant
25 intended to do based on the circumstances shown to have

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

5 Mere presence at the scene is not sufficient to prove
6 someone guilty of a crime. A defendant's presence where a
7 crime is being committed or mere association with a person
8 who commits a crime does not make a defendant an accomplice
9 or an aider and abettor of the person committing the crime.
10 The burden of proof is on the State to prove every element
11 of the crime charged.

12 If you find after reviewing all of the evidence that
13 the State has proved that the Defendant was only present at
14 the scene of a crime and that they have not proved beyond a
15 reasonable doubt any other participation in the crime, then
16 you must find the Defendant not guilty. The law is that
17 proof of the defendant at the scene of the crime is not
18 sufficient to find someone guilty.

19 The Defendant is charged with possession with intent to
20 distribute crack cocaine and possession with intent to
21 distribute heroin. The State must prove beyond a reasonable
22 doubt that the Defendant possessed crack cocaine with the
23 intent to distribute it and the State must prove beyond a
24 reasonable doubt that the Defendant possessed heroin with
25 the intent to distribute it.

1 In the prosecution of a crime for possession of
2 narcotics, possession may be actual or constructive. Actual
3 possession occurs when the drugs are found to be in the
4 actual physical custody of the person charged with
5 possession, while constructive possession occurs when the
6 person charged with possession has dominion and control over
7 either the drugs or the premises upon which the drugs are
8 found. Therefore, the State must prove beyond a reasonable
9 doubt that the Defendant had both the power and the intent
10 to control the disposition or use of the crack cocaine and
11 the State must prove beyond a reasonable doubt that the
12 Defendant had both the power and the intent to control the
13 disposition or use of the heroin.

14 Mere presence at the scene where the drugs were found
15 is not enough to prove possession. The Defendant's
16 knowledge and possession may be inferred when a substance is
17 found on the property under the Defendant's control.
18 However, this inference is simply an evidentiary fact to be
19 taken into consideration by you, along with other evidence
20 in this case and to be given the weight you decide it should
21 have. Two or more persons may have joint possession of a
22 drug.

23 The State must also prove beyond a reasonable doubt
24 that the Defendant intended to distribute the crack cocaine
25 and the State must prove beyond a reasonable doubt that the

1 Defendant intended to distribute the heroin. Distribute
2 means to deliver other than by administering or dispensing a
3 drug. Intent may be shown by acts and conduct of the
4 Defendant and other circumstances from which you may
5 naturally and reasonably infer intent.

6 In determining whether the Defendant had the intent to
7 distribute crack cocaine or heroin, you may consider the
8 circumstances surrounding the Defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed, the manner in which it was
11 allegedly possessed, the place where it was allegedly
12 possessed and other factors which you consider to be
13 important.

14 Possession of one or more grams of a cocaine-based
15 substance creates an inference that the Defendant possessed
16 the crack cocaine with intent to distribute it. Possession
17 of two grains or more of heroin creates an inference that
18 the Defendant possessed heroin with the intent to distribute
19 it. These inferences do not relieve the State from proving
20 beyond a reasonable doubt that the Defendant had the intent
21 to distribute. They are simply evidentiary facts to be
22 taken into consideration by you, along with the other
23 evidence in this case and to be given the weight you decide
24 it should have.

25 If you find that the State has failed to prove beyond a

1 reasonable doubt that the Defendant is guilty of possession
2 with intent to distribute crack cocaine or possession with
3 intent to distribute heroin, you may consider whether the
4 State has proved beyond a reasonable doubt that the
5 Defendant is guilty of simple possession of crack cocaine or
6 simple possession of heroin. Simple possession of crack
7 cocaine does not require an intent to distribute crack
8 cocaine. Similarly, simple possession of heroin does not
9 require an intent to distribute the heroin.

10 The Defendant is also charged with possession with
11 intent to distribute crack cocaine within proximity of a
12 school and possession with intent to distribute heroin
13 within proximity of a school, each of which is a separate
14 criminal offense. The State must prove beyond a reasonable
15 doubt that the Defendant distributed, sold, purchased,
16 manufactured or unlawfully possessed with intent to
17 distribute crack cocaine while in, on or within one-half
18 mile of the grounds of a public or private elementary,
19 middle or secondary school, a public vocational or trade
20 school or technical education center or a public or private
21 college or university.

22 As to the same charge for heroin, the State must prove
23 beyond a reasonable doubt that the Defendant distributed,
24 sold, purchased, manufactured or unlawfully possessed with
25 intent to distribute heroin while in, on or within one-half

1 mile of the grounds of a public or private elementary,
2 middle or secondary school, a public vocational or a trade
3 school or technical education center or a public or private
4 college or university. The Defendant must have had
5 knowledge that he is in, on or within one-half mile of the
6 grounds of a public or private elementary, middle or
7 secondary school, a public vocational or trade school or
8 technical education center or a public or private college or
9 university.

10 Now, you have been chosen and sworn to give the parties
11 in this case a fair and impartial trial. When you have done
12 so, you will have complied with your oath and no one will
13 have the right to criticize your verdict. You must not be
14 influenced by opinions or expressions of opinion you may
15 have heard outside of the courtroom, but rather, should base
16 your verdict solely on the testimony of the sworn witnesses
17 who took the stand, the exhibits received into evidence and
18 the law which I have stated to you. You should not be
19 swayed by caprice, passion, prejudice or other improper
20 sympathy for or against anyone in this case. Remember, you
21 have no friends to reward or enemies to punish and all
22 parties are entitled to a fair and impartial trial.

23 It is your duty as jurors to consult with one another
24 and to deliberate in an effort to reach an agreement. Each
25 of you must decide this case for yourself, but only after

1 deliberation -- hold on. I'm out of order. Let me start
2 that paragraph again. It is your duty as jurors to consult
3 with one another and to deliberate in an effort to reach an
4 agreement. Each of you must decide this case for yourself,
5 but only after impartial consideration of all of the
6 evidence with your fellow jurors.

7 In the course of your deliberations, do not hesitate to
8 reexamine your own views and change your opinion if you
9 become convinced it is erroneous. However, do not surrender
10 your honest conviction as to the weight or the effect of the
11 evidence solely because of the opinion of your fellow jurors
12 or for the mere purpose of returning a verdict. As I stated
13 earlier, you are judges, judges of the facts. Your verdict
14 must represent the considerate judgment of each juror. In
15 other words, your verdict must be unanimous.

16 There are two possible verdicts which you may find for
17 each indictment in this case, guilty or not guilty. There
18 is no significance whatsoever in the order in which I state
19 these possible verdicts, it's simply that one has to come
20 first. You may have noticed that I have read these
21 instructions to you. I do so to give you the law as
22 accurately as possible.

23 Now, the foreperson of the jury who will preside over
24 the jury deliberations is Juror No. 244.

25 Madam Foreperson, it will be your duty to preside over

1 the deliberations of the jury. If, during your
2 deliberations, you should desire to communicate with the
3 court, please reduce your message to writing -- or your
4 question to writing, signed by you as foreperson and the
5 foreperson only and pass a note to the bailiff who will
6 bring it to my attention. I will then respond as promptly
7 as possible, either in writing or by having you return to
8 the courtroom, if necessary. I caution you, however, with
9 regard to any message or question you might send that you
10 should never state or specify your numerical division at the
11 time.

12 Now, you have heard the evidence and you've heard the
13 law. Whatever your verdict, Madam Foreperson, you will
14 indicate it on the verdict form and then sign on behalf of
15 the jury. The verdict form is two pages. There are four
16 numbered questions with some directions here. It's sort of
17 like a choose your own adventure book. Under number one,
18 there are three options as to guilty, not guilty or guilty
19 of a lesser included offense. And there are instructions at
20 the end of each of the choices. If your first choice, let's
21 say, under number one is not guilty, the instruction there
22 says skip ahead to question three, which means you would
23 skip over question two and go to question three. So there
24 are instructions on here, so please read it carefully. If
25 you have any questions, I will attempt to assist.

1 Remember that although the foreperson is the only jury
2 who writes the verdict, it is not hers alone. The verdict
3 has to be unanimous. Madam Foreperson, you are not
4 authorized to write the verdict until all of you have agreed
5 on a verdict.

6 Now, I'm going to send you back to your jury room at
7 this time. Do not begin to discuss the case until you have
8 received the exhibits and the verdict form. As soon as you
9 receive those things, that will be your signal to begin your
10 deliberations. Once you begin your deliberations, you will
11 continue to deliberate until you have reached a verdict, at
12 which time, you will knock on the door, advise the bailiff
13 and we will receive you back into the courtroom to receive
14 your verdict.

15 At this point, I'm going to send you to your jury room.
16 As I said, this is the last time I will tell you not to talk
17 about the case. And that's just because you need the
18 exhibits and the verdict form. As soon as you get them, you
19 can start talking.

20 (WHEREUPON, the jury exits the courtroom.)

21 THE COURT: Any objections to the jury charge from the
22 State?

23 MS. HAMILTON: Nothing from the State, Your Honor.

24 THE COURT: From the Defense?

25 MR. BELTON: Nothing from the Defense, Your Honor.

1 THE COURT: All right. Let's make sure all the
2 exhibits are there and let them get started.

3 (WHEREUPON, jury began deliberations at 3:52 p.m.)

4 THE COURT: Bring the alternate in.

5 (Alternate enters the courtroom.)

6 THE COURT: Mr. Alternate Juror, you were our
7 alternate, number 13, just in case one of the 12 didn't make
8 it to the finish line. Unfortunately -- well, fortunately,
9 all of them did, unfortunately, that means you don't get to
10 deliberate with them, but this completes your jury service
11 this week. Although we have another trial starting
12 tomorrow, I'm told we have enough jurors. You won't need to
13 come back because you've been here for a couple of days. So
14 if you need a work excuse or whatever, you can go down to
15 the jury assembly room. But you're free to go, you're free
16 to talk to whoever you want to about the case. Thank you
17 for being with us.

18 ALTERNATE JUROR: Thank you, ma'am.

19 (WHEREUPON, court was in recess awaiting a verdict.)

20 THE COURT: We've received a note from the jury. Due
21 to personal comments, we would like to request to make
22 deliberations tomorrow morning. This is also based on the
23 fact that we have a lot to go over and discuss. We
24 appreciate your consideration. Signed by the foreperson.

25 You know, it is late in the day. I mean, it is four

1 o'clock. I would think they could do some deliberating
2 before going, but, evidently, they don't want to. And I'm
3 okay with that. So I'm just going to bring them in, dismiss
4 them and have them come back 9:30 tomorrow morning.
5 Otherwise, I would feel like I'm guiding their deliberations
6 and they are to deliberate however they want to deliberate.

7 Any objection to dismissing the jury for any reason?

8 MR. BELTON: Your Honor, obviously, our preference
9 would be to try to get this done, but I don't want them to
10 rush and then rush into a guilty. So if they are going to
11 be refreshed and think about it tomorrow, we're not going to
12 force them to stay in here. We'll leave it to the Court's
13 discretion.

14 THE COURT: Any objection from the State?

15 MS. HAMILTON: No objection.

16 (WHEREUPON, Court's Exhibit No. 1 was marked for
17 identification.)

18 THE COURT: Bring them back in.

19 (WHEREUPON, the jury enters the courtroom at 4:03 p.m.)

20 THE COURT: All right, folks, I've received your note
21 indicating you would like to go home. You've got some
22 things to do this afternoon, some of you, at least, and
23 start fresh tomorrow. That is perfectly fine. I brought
24 you back in the courtroom because I wanted to remind you
25 that you are not permitted to discuss the case amongst

1 yourselves or with anyone else. You are not permitted to do
2 any research on the case whatsoever. You are not to
3 research the law, any topics you think would be helpful,
4 anything that came up in testimony or anything you wish had
5 come up in testimony that you want to find out more about.
6 You're simply not permitted by law to do any of that, to do
7 any research about that whatsoever. Do not go home and
8 discuss other friends', family members' thoughts about the
9 case. Don't discuss the case at all. Be back tomorrow
10 morning at 9:30 and you can resume your deliberations then.
11 Y'all have a good night.

12 (WHEREUPON, the jury was released for the day.)

13 THE COURT: All right. We'll break until tomorrow
14 morning. See y'all then.

15 (WHEREUPON, court was adjourned for the day.)

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17 THE COURT: I'm just going to bring the jury in briefly
18 before they begin their deliberations, specifically, because
19 I don't know how long -- I mean, who ever knows how long
20 deliberations will ever last, but just so they know about
21 lunch and things because I don't intend to dismiss them for
22 lunch. If they want lunch, they need to send us a note.
23 You know, just housekeeping kind of things.

24 Bring the jury, please.

25 (WHEREUPON, the jury enters the courtroom.)

1 THE COURT: Good morning, folks. Welcome back. I just
2 wanted to bring you into the courtroom just to welcome you
3 back and tell you as soon as you get back there, you know,
4 you'll go straight back with the evidence and verdict form
5 to deliberate.

6 I wanted to tell you, though, because none of us know
7 how long your deliberations will last, I want you to know
8 that I do not intend to release you for lunch today. We can
9 order lunch for you, but lunch takes about an hour to get
10 here, so it will be up to you to let us know whether we
11 should order lunch. So if you get to whatever time you
12 choose, 11:30 or 12 o'clock or whatever time it is and it
13 looks like you're going to be here for a while longer,
14 knowing that it takes about an hour for it to get here, then
15 you'll want to send us a note out and let us know that we
16 should order lunch for you.

17 So you're going to stay back there and deliberate until
18 you have reached a verdict. The burden will be on you to
19 let us know if you need lunch. Because we could get to noon
20 and y'all might know that you're wrapping up or very close,
21 so I won't presume that you're going to take any longer and
22 won't presume that you need lunch. You just let us know if
23 you need that.

24 So with that, I'll send you back to the jury room.
25 They're going to follow with the verdict form and evidence

1 and you can continue your deliberations.

2 (WHEREUPON, the jury exits the courtroom to continue
3 deliberations at 9:45 a.m.)

4 THE COURT: Now, we wait. Y'all don't go far.

5 (WHEREUPON, court was in recess awaiting a verdict.)

6 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were marked
7 for identification.)

8 THE COURT: We have another note from the jury, which
9 reads: What is the specifics of the law regarding the
10 proximity to the school? My intention is to bring them back
11 into the courtroom and recharge them on proximity.

12 Any objection to that from the State?

13 MS. HAMILTON: No objection, Your Honor.

14 THE COURT: From the Defense?

15 MR. BELTON: No objection, Your Honor.

16 THE COURT: Bring in the jury, please.

17 (WHEREUPON, the jury enters the courtroom.)

18 THE COURT: All right, folks, I have received your
19 note. My only response is to reread you the charge on the
20 law regarding the charge of possession with intent to
21 distribute a drug within proximity of a school.

22 The Defendant is charged with possession with intent to
23 distribute crack cocaine within proximity of a school and
24 possession with intent to distribute heroin within proximity
25 of a school, each of which is a separate criminal offense.

1 The State must prove beyond a reasonable doubt that the
2 Defendant distributed, sold, purchased, manufactured or
3 unlawfully possessed with intent to distribute crack cocaine
4 while in, on or within one-half mile of the grounds of a
5 public or private elementary, middle or secondary school, a
6 public vocational or trade school or technical education
7 center or a public or private college or university.

8 As to the same charge for heroin, the State must prove
9 beyond a reasonable doubt that the Defendant distributed,
10 sold, purchased, manufactured or unlawfully possessed with
11 intent to distribute heroin while in, on or within one-half
12 mile of the grounds of a public or private elementary,
13 middle or secondary school, a public vocational or trade
14 school or a technical education center or a public or
15 private college or university.

16 The Defendant must have had knowledge that he is in, on
17 or within one-half mile of the grounds of a public or
18 private elementary, middle or secondary school, a public
19 vocational or trade school or technical education center or
20 a public or private college or university.

21 I hope that answers your question. I'm going to send
22 you back to your jury room. If it did not resolve your
23 question, again, you'll communicate with the Court in
24 writing. Please return to your jury room.

25 (WHEREUPON, the jury exits the courtroom and continues

1 deliberations at 11:03 a.m.)

2 THE COURT: Any objections from the State?

3 MS. HAMILTON: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. BELTON: None, Your Honor.

6 THE COURT: We'll be at ease. Y'all maybe hang out for
7 a second just in case that didn't answer their question and
8 they're sending another note.

9 (WHEREUPON, court was in recess awaiting a verdict.)

10 THE COURT: It's another note. It just says we'd
11 please like to order lunch.

12 (WHEREUPON, Court's Exhibit No. 4 was marked for
13 identification.)

14 THE COURT: Okay. We have your numbers, so y'all can
15 relax. We're going to order lunch for them. We'll let you
16 know if something comes up.

17 (WHEREUPON, court was in recess awaiting a verdict.)

18 (WHEREUPON, Court's Exhibit No. 5 was marked for
19 identification.)

20 (WHEREUPON, the jury enters the courtroom.)

21 THE COURT: Madam Foreperson, I understand the jury has
22 reached a verdict; is that correct?

23 THE FOREPERSON: That's correct.

24 THE COURT: Is it unanimous?

25 THE FOREPERSON: Yes, ma'am.

1 THE COURT: If you would hand that to him, please.

2 Madam Clerk, will you publish the verdict?

3 THE CLERK: Indictments 2018-GS-46-3392, 3993,
4 2019-GS-46-695 and 696, the State vs. Ricky Dean Tate. As
5 to the charge of possession with intent to distribute crack
6 cocaine, we find the Defendant guilty of possession with
7 intent to distribute crack cocaine. As to the charge of
8 possession with intent to distribute crack cocaine in
9 proximity of a school, we find the Defendant not guilty. As
10 to the charge of possession with intent to distribute
11 heroin, we find the Defendant not guilty. As to the charge
12 of possession with intent to distribute heroin within
13 proximity of a school, we find the Defendant not guilty
14 signed by the foreperson, dated today's date.

15 Ladies and gentlemen of the jury, if this be your
16 verdict, so say you all by raising your right hand.

17 (All hands raised.)

18 THE CLERK: Let the record show all jurors affirm this
19 verdict.

20 THE COURT: Anything from the State before the jury is
21 released?

22 MS. HAMILTON: Nothing from the State, Your Honor.

23 THE COURT: From the Defense?

24 MR. BELTON: Your Honor, we would like the jury to be
25 polled, please.

1 THE COURT: Madam Clerk, would you poll the jury,
2 please.

3 THE CLERK: If you will please stand.

4 Juror 244, is this your verdict?

5 JUROR NO. 244: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NO. 244: Yes.

8 THE CLERK: Please be seated.

9 Juror 149, is this your verdict?

10 JUROR NO. 149: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR NO. 149: Yes.

13 THE CLERK: Please be seated.

14 Juror 25, is this your verdict?

15 JUROR NO. 25: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR NO. 25: Yes.

18 THE CLERK: Please be seated.

19 Juror 181, is this your verdict?

20 JUROR NO. 181: Yes.

21 THE CLERK: Is this still your verdict?

22 JUROR NO. 181: Yes.

23 THE CLERK: Please be seated.

24 Juror 158, is this your verdict?

25 JUROR NO. 158: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR NO. 158: Yes.

3 THE CLERK: Please be seated.

4 Juror 22, is this your verdict?

5 JUROR NO. 22: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NO. 22: Yes.

8 THE CLERK: Please be seated.

9 Juror 214, is this your verdict?

10 JUROR NO. 214: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR NO. 214: Yes.

13 THE CLERK: Please be seated.

14 Juror 206, is this your verdict?

15 JUROR NO. 206: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR NO. 206: Yes.

18 THE CLERK: Please be seated.

19 Juror 203, is this your verdict?

20 JUROR NO. 203: Yes.

21 THE CLERK: Is this still your verdict?

22 JUROR NO. 203: Yes.

23 THE CLERK: Please be seated.

24 Juror 253, is this your verdict?

25 JUROR NO. 253: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR NO. 253: Yes.

3 THE CLERK: Please be seated.

4 Juror 145, is this your verdict?

5 JUROR NO. 145: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR NO. 145: Yes.

8 THE CLERK: Please be seated.

9 Juror 35, is this your verdict?

10 JUROR NO. 35: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR NO. 35: Yes.

13 THE CLERK: Please be seated.

14 THE COURT: Anything further from the Defense?

15 MR. BELTON: We do have few motions, Your Honor.

16 THE COURT: Anything further of the jury?

17 MR. BELTON: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, thank you for your hard work. As I told you at the
20 beginning, you know, when you deliberate and pay attention
21 as you do and come up with a decision, whatever that
22 decision, no one really has the right to criticize your
23 verdict. No one else has been in your shoes. So on behalf
24 of the citizens of York County, on behalf of the State and
25 the Defense, I appreciate your work -- and the judiciary, I

1 appreciate the work that you've done. You obviously had a
2 lot of discussion to have back there and I appreciate you
3 sticking to it and being attentive during the trial and
4 doing the work that you have done.

5 I also appreciate your patience. We did get the note
6 that you had a verdict. I appreciate your patience with the
7 technology, but also with bringing you back out into the
8 courtroom. In response to your previous note, we were
9 getting things in place, so that took a little while. So
10 rest assured that that is taken care of.

11 At this point, your jury service is complete. I've
12 told you all throughout the trial that you are not to
13 discuss the case with anyone, including your fellow jurors,
14 which you've done, but you are now free to talk to anyone
15 that you want to about the case now that your jury service
16 is complete, your friends, family members, whoever you want,
17 that's fine. If you don't want to talk to someone or anyone
18 about it, that's fine. If someone approaches you, calls you
19 and tries to force you to talk about it and you don't want
20 to talk about it, I don't think any of these attorneys are
21 going to do that, but if anyone tries to force you to talk
22 and you feel in any way harassed by that or disturbed by
23 that notify the clerk of court's office and they will get in
24 touch with me and I will ensure that an end is put to it.

25 As I said, your jury service for this week is complete.

1 You are no longer qualified to serve on a jury for the
2 remainder of 2019. If you are summoned for jury duty in
3 2020 or 2021, you can exercise an exemption from service if
4 you choose not to serve. If you choose to serve, we would
5 love to have that happen as well.

6 In South Carolina, we do sentencing, typically,
7 immediately at the end of a trial. So I'm going to dismiss
8 you and you will go back out and get your cell phones if you
9 have them or whatever you need to get from back there and
10 there's another route out of the building. If you choose to
11 come back into the courtroom, that's fine, too, because
12 we're going to get set up in just about five or ten minutes
13 for sentencing Mr. Tate on the one charge he was convicted
14 of.

15 So with that, I think I've covered everything. Thank
16 you for your service and you're dismissed.

17 For the foreperson, I'm going to have the clerk walk
18 back there and have you sign one additional thing back in
19 the jury room, so don't leave immediately, but everyone else
20 is free to go. I want everyone in the courtroom to stay in
21 the courtroom while the jury leaves.

22 (WHEREUPON, the jury was released.)

23 (WHEREUPON, Court's Exhibit No. 6 was marked for
24 identification.)

25 THE COURT: Mr. Belton, let me hear your motions.

1 MR. BELTON: Yes, Your Honor, I would like to make a
2 motion for a new trial based on all the previous motions and
3 objections the Defense made.

4 THE COURT: Your motion is respectfully denied, sir.

5 MR. BELTON: And Your Honor, I do have a second
6 question. Mr. Tate was served with a life notice. I would
7 make a motion based on Bryant V. State that the Court not
8 impose that life sentence on him. The Court does have some
9 discretion under the recidivous statute. I draw the Court's
10 attention to South Carolina Code 17-25-45, and draw the
11 Court's attention to Bryant V. State. Obviously, it
12 overturns State V. Gordan, which was a case that came out of
13 York County, actually, where a Judge refused to impose the
14 LWOP statute. That case was then appealed to the Supreme
15 Court. Our then Solicitor Brackett -- I'm sorry, Solicitor
16 Pope, who then the Supreme Court upheld the Court's decision
17 not to impose the life sentence. That case was eventually
18 overturned by Bryant V. State. If you want a citation --
19 and I have a copy here for my colleagues and the Court.

20 May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 MR. BELTON: Your Honor, in this case, it says that the
23 Court must view the recidivous statute, which is 17-25-45(f)
24 in conjunction with 17-25-50. And it talks about -- and
25 that's kind of the safeguard from three strikes. It talks

1 about if something is so closely connected, they can be
2 considered as one offense.

3 I do want to draw the Court's attention back to 1999
4 when Mr. Tate was originally arrested and when he picked up
5 the strikes that form the basis -- the previous strikes that
6 form the basis for the life without parole notice that he
7 was served with. Your Honor, all of those were picked up
8 from April of 1999 until July 13th, 1999.

9 Our position is that even though they were charged as
10 multiple strikes as this case talked about, only one -- even
11 though they were charged as separate offenses and there
12 legally can be more than one strike, but if something is
13 part of one overall general criminal enterprise, then they
14 can be considered as one strike for sentencing purposes.

15 Our position is that back in 1999, that Mr. Tate was
16 involved in one criminal enterprise. It seems like multiple
17 warrants were sought for his arrest and he was eventually
18 arrested. Then he was all sentenced on the same date and
19 that date was September 22nd, 1999, for this criminal
20 enterprise that he was involved in.

21 I would ask the Court to take a look at that and see
22 that as one strike, which makes this one the second strike,
23 which then gives this Court some discretion of sentencing.
24 We understand that this is a possession with intent to
25 distribute third offense. We understand that it's a 15 to

1 30-year sentence that would be in the Court's discretion.
2 So the Court could sentence him anywhere between 15 and 30
3 years as opposed to imposing the mandatory life without
4 parole.

5 THE COURT: Let me hear from the State.

6 MS. HAMILTON: Your Honor, these are separate and
7 distinct offenses, months apart. He was properly served
8 back on February 13th of this year as to this notice. We do
9 not believe this is some ongoing criminal enterprise, one
10 event. These are months apart, April 9th, 1999, and July
11 13th, 1999. So Your Honor, I do not believe that he could
12 allege these are so close in time that these do not count as
13 separate offenses.

14 Under the requirement for life without parole, it has
15 to be separate dates. And these are separate dates,
16 separate convictions, Your Honor. I believe that we served
17 this properly and we would ask that it be enforced, Your
18 Honor, based on the conviction in this case, it is also a
19 serious offense.

20 MR. BELTON: Your Honor, just one last thing for the
21 record. We don't argue that it was properly served.
22 Certainly, it was properly served and, certainly, from a
23 reading of 17-25-45, specifically, 45(f), that it was -- he
24 could be noticed for it. Our position is that that has to
25 be read, that's the power and exclusive power that's in the

1 hands of the State. And, certainly, the State had the right
2 under their exclusive power to serve life notice under
3 17-25-45(f).

4 But then the Court has power, and the Court's power
5 that's outside of the power of the State, the Court's power
6 lies in 17-25-50, 17-25-50. The State has no power over
7 that. That power is exclusively -- and the case law
8 specifically states that the Court has to -- that's the
9 safeguard that's put there for judges to put a check or put
10 a safeguard on recidivous statute. As a matter of fact,
11 that's what this case says, that's a safeguard under the
12 recidivous statute.

13 And we contend that over that three-month period of
14 time that Mr. Tate is charged that he was continuously
15 selling drugs, much akin to the Rico statute at the federal
16 level, that he was continuously selling drugs, that he
17 wasn't stopping selling drugs, starting back selling drugs,
18 stopping selling drugs, starting back selling drugs. So it
19 was part of a continuous criminal enterprise. And being
20 that it was a continuous criminal enterprise, then he would
21 be -- you could look at it -- the Court has the discretion
22 that it can look at it as one strike as opposed to the
23 multiple strikes.

24 THE COURT: And the two qualifying convictions we're
25 talking about are possession with intent to distribute --

1 MR. BELTON: It's proximity, proximity, proximity and a
2 trafficking, one trafficking. The PWIDs back then didn't
3 qualify.

4 THE COURT: So I need the offense dates.

5 MS. HAMILTON: April 9th, 1999, Your Honor, that was
6 the proximity, and the trafficking crack cocaine was July
7 13th, 1999.

8 THE COURT: Any additional argument on this issue?

9 MR. BELTON: Give me one moment, Your Honor.

10 THE COURT: Yes, sir.

11 MS. HAMILTON: Your Honor, additionally, the State
12 would argue these are two different locations that these
13 events occurred, also. And these cases in my opinion could
14 not have been tried together in a trial because they are so
15 not closely connected. I could not try these cases
16 together. I don't think I could win that argument,
17 therefore, I don't think they can win their argument that we
18 could try to hold these cases so closely connected that he
19 cannot qualify for life without parole. So that's our
20 position, Your Honor. I haven't had a full opportunity to
21 read this case, but it's our position these are not closely
22 connected enough to say that this is an ongoing event.

23 MR. BELTON: Your Honor, being familiar with -- those
24 of us who live here in this area, geographically, all these
25 areas are very close in time -- not close in time, close

1 geographically. As a matter of fact, they're in the
2 neighborhood where I've come to learn since representing Mr.
3 Tate is the neighborhood he grew up in. So, you know, the
4 argument that they're different locations, they're
5 geographically all in the same location.

6 Again, I would argue that we're not -- an ongoing
7 criminal enterprise means that something is continuously
8 happening. What our position is, is Mr. Tate wasn't
9 stopping and starting selling drugs. He was continuing to
10 sell drugs. Multiple warrants were sought for his arrest
11 and he was brought in and he took a plea on September 22nd,
12 1999, on all these charges at one time and he was given a
13 20-year sentence of which he did 18 years.

14 THE COURT: What were the incident locations for the
15 two convictions?

16 MS. HAMILTON: I have the incident location of
17 proximity being at Bellview Square.

18 MR. BELTON: Can you repeat that?

19 MS. HAMILTON: Bellview Square. And that's the
20 incident that occurred on April the 9th. As to the
21 trafficking, that occurred at [REDACTED] Harris Road in Fort Mill.
22 So one's Rock Hill and one's Fort Mill. Two different
23 cities, Your Honor.

24 MR. BELTON: And that is correct, Your Honor. I did
25 misspeak on the trafficking one. I was looking at the other

1 proximity one. Now, it is in the same county and I still
2 would argue it's geographically close, but it's not in the
3 neighborhood in which he grew up. I did misspeak on that
4 and I apologize.

5 THE COURT: They may be in the same county, but York
6 County is a rather large county, so that doesn't necessarily
7 mean that one was in proximity to the other -- in close
8 proximity to the other. In addition, they were in separate
9 cities and the offense dates are some 98 days apart. They
10 are similar offenses, although not the same offense. I just
11 don't think that there is sufficient evidence before the
12 Court to establish that this is a continuing criminal
13 enterprise.

14 I mean, recognizing the Defendant's right to remain
15 silent and right of self-incrimination, I'm certain that
16 never before would he have admitted continuously selling
17 drugs for a 98-day period. Now, when it could work in his
18 benefit, of course, it has become a daily thing, and maybe
19 it was always was. And that's why I say, I recognize his
20 right of self-incrimination and he wouldn't have needed to
21 admit continuously selling drugs for 98 days at any time
22 prior to today. But it is somewhat convenient that when it
23 is to his benefit, then it is a continuing, at least, 98-day
24 criminal enterprise.

25 I don't find that the offenses are so closely connected

1 in time, location or in any other manner to consider them to
2 be one strike or one continuing criminal enterprise. The
3 two convictions will be deemed as separate strikes pursuant
4 to 17-25-45.

5 Anything else?

6 MR. BELTON: Just for the record, that motion is
7 denied, I assume?

8 THE COURT: Yes, sir.

9 MR. BELTON: Thank you.

10 THE COURT: Anything else, Mr. Belton?

11 MR. BELTON: No, Your Honor.

12 THE COURT: Yes ma'am.

13 MS. HAMILTON: I have the sentencing sheet. For
14 sentencing purposes, Your Honor, I just wanted to put on the
15 record and make as a Court's Exhibit a few things. I wanted
16 to put as a Court's Exhibit No. 1 the notice of intention to
17 seek life imprisonment, which was filed February 13th, 2019.
18 This is actually notarized and the original copy and I just
19 wanted to make that Court's Exhibit No. 1.

20 THE COURT: It's not going to be No. 1, but whatever
21 the next one is.

22 (WHEREUPON, Court's Exhibit No. 7 was marked for
23 identification.)

24 MS. HAMILTON: Additionally, Your Honor, for the
25 purposes also of the life without parole sentence and for

1 the purposes of enhancement, in this case, to make this a
2 technical third offense, the State would also like to make
3 as a Court's Exhibit the convictions that were the basis for
4 the life without parole notice, that being indictment number
5 99-GS-46-1635, date of offense April 9th, 1999, possession
6 of crack cocaine with intent to distribute within proximity
7 of a public school. The Defendant was noticed that that was
8 a serious offense on February 13th, 2019. That would be
9 used for enhancement purposes. The second one is indictment
10 number 99-GS-46-2771, trafficking crack cocaine, 10 to 28
11 grams, second offense with an incident date of July 13th,
12 1999.

13 We would use both of these offenses that I have -- I
14 have certified convictions with the warrants and the
15 indictments and the sentencing sheet, Your Honor. These
16 have been provided to the Defense prior to today. He was
17 served and stated they would be used for enhancement
18 purposes to make this a third offense and would be used for
19 the life without parole if a conviction was to occur, Your
20 Honor. So we would like to make these Court's Exhibits.

21 MR. BELTON: What was the first indictment number you
22 read?

23 MS. HAMILTON: It was 99-GS-46-1635.

24 MR. BELTON: Thank you.

25 (WHEREUPON, Court's Exhibit Nos. 8 and 9 were marked

1 for identification.)

2 MS. HAMILTON: For the record, Your Honor, the court
3 reporter has marked the intention to seek life imprisonment
4 notice as Court's Exhibit No. 7. The indictment ending in
5 1635 is Court's Exhibit No. 8. And Court's Exhibit No. 9
6 will be the certified conviction ending in 2771.

7 And again, Your Honor, we would just ask that you
8 enforce the life without parole sentence. Thank you.

9 THE COURT: Would you bring me the sentencing sheet,
10 please?

11 All right, Mr. Belton, Mr. Morton and Mr. Tate,
12 anything else?

13 Mr. Tate, you stand as well.

14 Anything else from counsel?

15 MR. BELTON: No, Your Honor.

16 THE COURT: Mr. Morton?

17 MR. MORTON: No, Your Honor. I don't know if any of
18 his family wants to speak. We note for the record that he
19 was sentenced to 20 years in prison when he was 20 years
20 old. And I just want to say for the record something is
21 tragically wrong in this state when you can sentence a man
22 to life in prison without parole for \$150 worth of cocaine.

23 MR. BELTON: Your Honor, you asked me, we do have a
24 family member that wants to speak. Mr. Morton has spoken
25 and I think I would be remiss if I, too, did not make some

1 comments when appropriate.

2 THE COURT: Yes, sir.

3 MR. BELTON: I think his sister does want to speak.

4 THE COURT: Yes ma'am.

5 DEFENDANT'S SISTER: My name is Heather Tate. I'm
6 Ricky's baby sister.

7 (Defendant's sister unable to speak.)

8 MR. BELTON: Your Honor, for the past 14 months, I've
9 -- and I know there's really no mitigation in here. I
10 understand that. I certainly respect the Court's position
11 and the Court's ruling. For the last 14 months, I've
12 represented Mr. Tate and I'm certainly not standing here to
13 make any excuses for any behavior Mr. Tate may have been
14 involved in in 1999 or that he was convicted of here today,
15 but I do stand here torn, torn by a system when a man who
16 was eight years old -- 13 years old finds his father dead,
17 growing up in a community where drugs were prevalent, not
18 really having the opportunities that many of us have had in
19 life.

20 Certainly, at some point, he could have made some
21 decisions, but he got trapped in the system. He got trapped
22 in the system and took a 20-year sentence on some charges,
23 18 of which he did in prison. We put a man back out on the
24 street, no education, no training, nothing. And this,
25 unfortunately, has happened to so many young men, who

1 disproportionately are African-American in our country, then
2 to come in, as my cocounsel said, with less than \$200 worth
3 of dope, put a man in prison at 42 years old for the rest of
4 his life, something is wrong with this system. These people
5 are more than just numbers on indictments. And I pray that
6 somehow somebody's heart will be touched to know that there
7 is no justice in this. Thank you, Your Honor.

8 THE COURT: Yes, sir, Mr. Tate.

9 THE DEFENDANT: Let me say this, Your Honor. I ain't
10 going to sit here and say that I'm a prince, but they
11 offered me eight years last year for this crime right here.
12 And I been seen the light. I could have been took this
13 plea. The reason why I didn't never take a plea with this
14 charge because, ma'am, those were not my drugs. If those
15 would have been my drugs, deep down I would have took the
16 plea for that. I've been in and out of prison all my life.
17 I just did 19 years day for day.

18 The reason why I didn't take the plea to that charge
19 because those are not my drugs. Those were not my drugs.
20 Yeah, I was in the house, yeah, I was there, but them was
21 not my drugs. I ran from the front of that house -- when
22 they knocked on the door, me and a dude was sitting there
23 and I was rolling a blunt. When they hit that door, I ran
24 to the back and tried to throw the marijuana. That girl was
25 already up -- it was already in their room. They was

1 already doing what they was doing when I ran in their room.
2 That's the reason why I never said -- or pled guilty to that
3 charge. They was not my drugs in that house.

4 And I'm going to show you this right here, I just want
5 you to have common sense. And I ain't saying you crazy, but
6 just think about this. I'm sitting there, now, if I got
7 crack cocaine and I got pills and I got weed in my hand, I
8 strike out running, now I got drugs in my hand, there's no
9 way I'm going to drop the pills and leave the rest of the
10 dope and try to throw the dope. I'm going to take all the
11 dope. If I'm going to run with drugs, I'm not going to drop
12 drugs as I go because I've been doing this. I do crime. I
13 ain't going to sit here and tell you I don't do it because I
14 have did it. But if I was running with drugs down a
15 hallway, why would I drop drugs and just --

16 And then just look at -- they told lies on me. I mean,
17 they deliberately told lies on me, I mean, repeatedly. The
18 woman said from the beginning, she said that I ran to the
19 room and threw crack and it bounced back off the window.
20 The man -- the officer stopped me. He said -- I asked the
21 man what you taking me to jail for. The man said you go on
22 back to the couch so we can look at the body camera to see
23 who put the drugs under the dresser.

24 The girl, Brandi Eades, stated right on the spot she
25 didn't know, right on camera, she didn't see nothing or know

1 nothing. This girl already in the room smoking crack. They
2 got a crack stem and a pipe on -- they got drugs on top of
3 the dresser smoking crack in the room already. This is a
4 drug room. I ran, true, I did, but, ma'am, I didn't have no
5 crack cocaine.

6 Now, I can't see -- I'm not saying you wrong or right,
7 but give me a life sentence for something that's not mine.
8 That's not right. That's not right. I can see if they say
9 they seen me on camera, you could see me with the drugs or
10 caught me with the drug, yeah, yeah, I'm going to accept it,
11 but give me a life sentence for something somebody say I
12 did, that's not right, ma'am. That's not right.

13 I could see it if they could show you a camera right
14 now and you could see Ricky Tate with crack cocaine in his
15 hand and I dropped this crack cocaine in my hand, then yeah,
16 I did it. But giving me a life sentence for something
17 somebody said, that's not right, ma'am. That's not right.
18 I mean, it's not right. But you the judge, I can't tell you
19 what to do, but I just want you to know as a person, that's
20 not right. I mean, you the judge, you seen the whole
21 picture. You caught all these lies. You seen what was
22 going on. I mean, it's not right. It's not right.

23 UNIDENTIFIED FEMALE: Can I say something?

24 THE COURT: Yes, ma'am. You need to come a little
25 closer and speak very loudly. First, give me your name.

1 MS. RAGER: My name is Melanie Rager. I've know Ricky
2 for about 20 months or so. And he did come out not knowing
3 how to live out here and he was loose at the beginning or
4 whatever, but Ricky's been with me for the last year and I
5 promise you, like, he is doing so much. Like, I live on a
6 farm. My daddy just passed away a couple weeks before he
7 got locked up. Ricky has been doing everything to help me
8 and my mom and he's just been a changed person. Like, he's
9 starting to see reality, I guess. I just wanted to say
10 that.

11 THE COURT: Thank you.

12 I don't want anyone in this courtroom --

13 Did you have something else?

14 MS. HAMILTON: I'd just like to respond to that, Your
15 Honor, because I wasn't able to put his prior record into
16 the record. It's not just -- he wasn't just -- this wasn't
17 from a 20-year sentence that he served. He had a prior
18 history to that. He has a 1991 burglary first; '96,
19 resisting arrest nonviolent, got one year; possession of
20 crack first, two years in the ATU unit; possession with
21 intent to distribute a controlled substance within proximity
22 of a school or park; 1997, driving under suspension; 1998,
23 petit larceny, hit and run with property damage, driving
24 under suspension second offense; 1999 distribution of crack,
25 second offense, possession with intent to distribute crack,

1 second offense, four counts, two counts of proximity,
2 trafficking crack cocaine more than two grams, second
3 offense, all of those 20 years, the proximity ten years, and
4 possession of marijuana second offense, Your Honor.

5 Additionally, after the fact of this arrest, he has
6 been arrested three times, most recently, I believe,
7 September 28th. So three incidents after this certain
8 incident from May 16th, 2018, Your Honor.

9 So we just wanted to put that on the record. I do take
10 life without parole seriously. In doing so, I saw that he
11 was unable to conform his behavior to society and had been
12 unable to do so since he was actually a juvenile, Your
13 Honor. So I just wanted to put that on the record. This
14 wasn't a one-time offense and he gets life with parole
15 notice. Your Honor, I take it seriously and I did so based
16 on the record and what I've seen after this incident and
17 before. Thank you, Your Honor.

18 THE COURT: So as I started to say, I don't want anyone
19 in this courtroom to think that I take any pleasure
20 whatsoever in sentencing a man, particularly a black man of
21 this age to life without parole on a drug offense. But it
22 is also not my job to rebel against the legislature. I am
23 here as a neutral arbiter and someone who enforces statutes,
24 laws that are currently in place, that have been enacted by
25 the legislature.

1 And, obviously, there is some discretion in many things
2 that are done, but it is also my job to exercise that
3 discretion responsibly. And that is why I've given you my
4 reasoning for not finding the two 1999 offenses to be part
5 of a continuing criminal enterprise. I truly don't believe
6 that they -- or don't have evidence that they were, that
7 they should be considered as a single strike.

8 You know, there's a different argument to be made for
9 two offenses occurring on the same day or two offenses
10 occurring a week apart in the same home, or if it's a series
11 of undercover agents that keep going back and knocking on
12 his door every Sunday afternoon and they charge him for
13 every buy they make, maybe. But as to what I see as to
14 these two 1999 offenses, one in April and one in July, I
15 don't find them to be so closely connected that they should
16 be. And that's what I feel is exercising my discretion
17 responsibly.

18 After having made that decision, that leaves me where
19 we are. I didn't create the law. It doesn't even matter
20 whether I'm a proponent of the law, maybe I would change the
21 law. And that's why I said, it doesn't give me any pleasure
22 whatsoever in imposing this sentence. And I don't know Mr.
23 Tate, maybe it's an appropriate sentence, I don't know.

24 But I guess what I'm trying to say, Mr. Morton, I
25 understand your comment, but that really doesn't matter in

1 my position.

2 So pursuant to the conviction of possession with intent
3 to distribute crack cocaine, third offense and the
4 accompanying life without parole statute, the recidivous
5 statute, Mr. Tate, you are sentenced to the Department of
6 Corrections for life without the possibility of parole.
7 Good luck to you, sir.

8 Let's take about a ten-minute break before we figure
9 out what we're doing.

10 MS. HAMILTON: Your Honor, if I may before we take a
11 break, was the sentencing sheet signed by the Defendant?

12 THE COURT: He didn't sign it, no. I mean, they often
13 don't after trial -- after conviction at trial. Montrieo
14 needs to sign it.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Mr. Belton.

17 MR. BELTON: Yes, Your Honor. Back here on behalf of
18 Mr. Ricky Tate, I'd like to make a motion to reconsider the
19 sentence that the Court imposed. Specifically, Your Honor,
20 I would like to lodge Article 1, Section 15 of the South
21 Carolina Constitution that addresses specifically cruel and
22 unusual punishment. Secondly, Your Honor, the U.S.
23 Constitution provisions on cruel and unusual punishment
24 specifically outlined in the Eighth Amendment and applied to
25 the State's through the Fourteenth Amendment. Your Honor, I

1 do believe for purposes of the record that the sentence is
2 cruel and unusual, particularly being that we believe the
3 only evidence they had of the intent to distribute was based
4 on an inference level, 2.74 grams of crack cocaine. And we
5 believe that in imposing a life without parole sentence on
6 someone for equivalent, a little less than three bags of
7 Sweet & Low is certainly cruel and unusual punishment. It
8 goes against what our United States Constitution -- is dealt
9 with by our U.S. Constitution and our South Carolina
10 Constitution. So we're asking the Court to reconsider the
11 sentence that was imposed on Mr. Ricky Tate.

12 THE COURT: Any response from the State?

13 MS. HAMILTON: The State would just ask the sentence be
14 imposed as originally, the life without parole sentence,
15 Your Honor. I had stated on the record prior kind of my
16 reasoning and his history. We would just ask that it remain
17 in place, Your Honor.

18 THE COURT: Anything else, Mr. Belton?

19 MR. BELTON: No, Your Honor. We just ask you to
20 consider that motion, please.

21 THE COURT: Your motion for reconsideration is
22 respectfully denied. There's certainly case law regarding
23 cruel and unusual punishment and the imposition of a
24 sentence of life without parole finding in very many cases.
25 Sometimes, even when the Defendant was a juvenile -- and I

1 know this is not based on age, but even under extreme
2 circumstances, life without parole, in certain circumstances
3 has been found not to be cruel and unusual punishment.

4 As I said earlier, really, the determination of the
5 sentence turns on whether I find the two 1999 offenses to be
6 so closely connected as to be considered a single offense.
7 There's considerable case law on that issue as well. We
8 were talking about Bryant V. State. There is some
9 discussion in Bryant V. State regarding when it is
10 appropriate to find certain convictions to be so closely
11 connected, but that case, in particular, was about three
12 armed robberies committed over a three-day period involving
13 three different victims and they were found not to be so
14 closely connected that they should be considered one offense
15 for sentencing purposes.

16 Obviously, a drug crime is what we would call a
17 victimless crime, or to the extent there is a victim, it's
18 the user or society as a whole, so I understand there are
19 differences in the types of crime, but that's just one case.
20 There are a number of cases that discuss crimes being so
21 closely connected.

22 And because I find that the two 1999 convictions do not
23 rise to the level of being so closely connected pursuant to
24 South Carolina Code 17-25-50 that they should be considered
25 one offense, then once I cross that bridge, I have no other

1 choice but to impose the sentence of life without parole.

2 For those reasons, your motion is denied.

3 MR. BELTON: Thank you, Your Honor. We would request
4 leave to file for an appeal.

5 THE COURT: Yes, sir. Absolutely.

6 MR. BELTON: Thank you.

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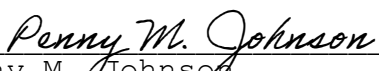
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in General Sessions Court for York
County, South Carolina, on the days of 21-24, 2019.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

March 10, 2020



Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

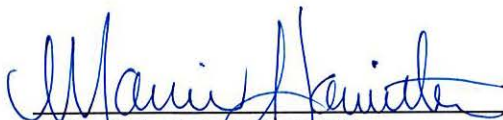
INDICTMENT

At a Court of General Sessions, convened on February 7, 2019, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

The defendant, Rickey Dean Tate, did on or about May 16, 2018, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370, all in violation of Section 44-53-375(B), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2018A4610200801

ACTION OF GRAND JURY
/S/ Michael Barrett 07-19-18

TRUE BILL

Seash Niven
Foreperson of Grand Jury
Date: 2/7/19

VERDICT

Guilty

~~*Not Guilty*~~

Convened 03/20/19
Foreperson of Petit Jury
Date: 10-24-2019

AMENDED
DOCKET NO. 2018-GS-46-03992

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 7, TERM 2019

THE STATE

VS.

RICKEY DEAN TATE

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE CRACK COCAINE**

SC Code: § 44-53-375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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,

RECEIVED

Mar 03 2021

SC Court of Appeals



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of March, 2021.