

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Kershaw County

Honorable Clifton Newman, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ANTHONY C. DAVIS,

APPELLANT.

APPELLATE CASE NO. 2019-001869

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RECORD ON APPEAL

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JESSICA M. SAXON  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

DAVID A. SPENCER  
Senior Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
(803) 734-3727

ATTORNEY FOR APPELLANT

BYRON GIPSON  
Solicitor, Fifth Judicial Circuit  
PO Box 192  
Columbia, SC 29202-1987  
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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 2 COUNTY OF KERSHAW ) COURT OF GENERAL SESSIONS  
 3 2017-GS-28-00346  
 4 2017-GS-28-00347  
 5 2017-GS-28-00348  
 6 2017-GS-28-00349

5 State of South Carolina, )  
 6 Plaintiff, )  
 7 vs. ) TRANSCRIPT OF RECORD  
 8 Anthony C. Davis, )  
 9 Defendant. )

10 August 7-8, 2017  
 11 Camden, South Carolina

12  
 13 B E F O R E:

14 THE HONORABLE CLIFTON B. NEWMAN, JUDGE; and a jury.  
 15

16  
 17 A P P E A R A N C E S:

18 JENNIFER H. MCKELLAR, ASSISTANT SOLICITOR  
 19 SAMUEL C. MCGLOTHIN, ASSISTANT SOLICITOR  
 Attorneys for the Plaintiff

20 ARTHUR K. AIKEN, ESQ.  
 21 Attorney for the Defendant  
 22

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1           THE COURT: That is fairly well established.  
2           If the informant -- like a lot of times, an  
3           informant becomes the person who is actually the  
4           person who is in the video buying the drugs. That  
5           informant then is a witness, and then you have to  
6           disclose the identity because not only is the  
7           person an informant, but the person is a witness to  
8           the crime. And you have to disclose the names of  
9           witnesses, but beyond that --

10          MR. AIKEN: That is the Diamond case, yes,  
11          sir. That is the Diamond case.

12          THE COURT: All right. Okay. So I deny that  
13          motion, to disclose the informant's identity.

14          MR. AIKEN: The next motion is a motion to  
15          controvert the affidavit or the motion to suppress.

16          THE COURT: All right.

17          MR. AIKEN: We made the motion under Franks v.  
18          Delaware, Your Honor. And we have the initial  
19          burden as a Defense of demonstrating that there was  
20          either information that was intentionally false or  
21          given with knowledge -- or given with reckless  
22          disregard for its truth or falsity in the search  
23          warrant affidavit in support of the search warrant.

24                 I have the search warrant affidavit, and it  
25          references, first of all, a traffic stop that

1       happened on July the 8th of 2016. And that search  
2       warrant affidavit states, Agents then spoke with  
3       the occupants of the vehicle -- in other words, the  
4       vehicle at the stop -- who stated that they just  
5       met with a black male known to them as Black at  
6       King Haigler Apartments -- which is where the  
7       search was actually conducted -- and purchased the  
8       marijuana from Black.

9       Well, Your Honor, we just got the incident  
10      report from that traffic stop. And it is right at  
11      about a page long. And not once does it say  
12      anything about anybody in that vehicle saying  
13      anything to any law enforcement about marijuana  
14      being purchased from a person known as Black at  
15      King Haigler Apartments.

16      THE COURT: You said that is not where?

17      MR. AIKEN: That is not in the incident report  
18      from that traffic stop. And the traffic stop, Your  
19      Honor, was conducted by the lead investigator on  
20      this case, who was, at the time he came in behind  
21      this vehicle before he stopped it, surveilling King  
22      Haigler Apartments. So he does an incident report  
23      of approximately a page long, and it says nothing  
24      about what he says in the affidavit in support of  
25      the search warrant about occupants of the vehicle

1       saying they had bought marijuana from a person  
2       known as Black at King Haigler Apartments. It is  
3       not in the incident report at all.

4               Also, Your Honor, the search warrant affidavit  
5       references an audio-visual recording of a drug  
6       purchase. We got the video just before we stood up  
7       before you earlier this morning. I went over the  
8       video very carefully. What it shows is a dark --  
9       it shows a person going into an apartment. And it  
10      shows a dark figure approaching that person and  
11      then walking away. It does not show an actual  
12      hand-to-hand drug transaction.

13             THE COURT: The dark figure, is it a person?

14             MR. AIKEN: Sir?

15             THE COURT: You said it shows a dark figure.  
16      You mean it shows a person --

17             MR. AIKEN: A person, yes, sir.

18             THE COURT: -- who is dark?

19             MR. AIKEN: It shows a person walking up to  
20      someone else and then walking away.

21             THE COURT: All right.

22             MR. AIKEN: It doesn't show any kind of actual  
23      drug transaction. So to say that there --

24             THE COURT: Is there audio on it, or just  
25      video?

1 MR. AIKEN: There is audio. Most of the  
2 audio, Your Honor, from my ears is unintelligible.

3 THE COURT: All right.

4 MR. AIKEN: So the affidavit in support of the  
5 search warrant said, There is audio-visual  
6 recording of a drug transaction.

7 Well, if you look at the actual audio-visual  
8 recording, and you can't tell if it is a drug  
9 transaction by any stretch of the imagination.

10 So our position is that is a statement also  
11 made at least with reckless disregard of its truth  
12 or falsity.

13 THE COURT: By the officer?

14 MR. AIKEN: By the officer who signs the  
15 affidavit, the search warrant affidavit.

16 So our position, Your Honor, is we met our  
17 initial burden of demonstrating that there is  
18 information in the search warrant affidavit which  
19 is either false and given with knowledge of its  
20 falsity or with reckless disregard for its truth or  
21 falsity.

22 If you take the information from the traffic  
23 stop out of the affidavit in support of the search  
24 warrant and you take the information about the  
25 audio-visual recording out of the search warrant,

1       you no longer have probable cause. And that is the  
2       second half of the additional burden we have to  
3       meet.

4               Once we have met this initial burden, we are  
5       entitled to a hearing with live witness testimony.  
6       And we intend to call Deputy Spivey and also the  
7       magistrate who signed the warrant, Magistrate  
8       Davis.

9               Thank you, Judge.

10              THE COURT: All right. What do you say about  
11       it, Madam Solicitor?

12              MS. MCKELLAR: Your Honor, we would disagree  
13       that they have met their burden for showing false  
14       language in the search warrant affidavit.

15              Referring first to the video, the State has a  
16       different viewing of the video than saying you  
17       cannot tell it is a drug transaction by any stretch  
18       of the imagination. It is very clearly a drug  
19       transaction to my trained investigators who watched  
20       it, who monitored it live, as well as having viewed  
21       the video.

22              THE COURT: It was a controlled purchase?

23              MS. MCKELLAR: Yes, sir, Your Honor. And that  
24       was detailed in the report that we also turned  
25       over, how the confidential informant was searched

1       beforehand who went in, was monitored the entire  
2       time, was searched afterwards. And there is no  
3       requirement that the State actually videotape this  
4       process. They do that -- Kershaw County does that  
5       for safety reasons for the confidential informant.

6               So just his seeing something different on the  
7       video does not meet the threshold in the State's  
8       opinion, Your Honor, that there has been some sort  
9       of falsity in the affidavit in support of the  
10      search warrant.

11             In regard to the traffic stop, as he said, we  
12      did turn over the incident report from that traffic  
13      stop, Your Honor. And it does not say that any of  
14      the participants in that interaction didn't make  
15      statements, it just doesn't reference the  
16      statements. And, again, that is a safety measure  
17      that the Kershaw County Sheriff's Department takes,  
18      not knowing if one of those people is going to turn  
19      into a confidential informant. And that is  
20      obviously something you don't want written with  
21      their identity as being cooperating agents of the  
22      State, you don't want that written in discoverable  
23      material.

24             THE COURT: You don't want what written?

25             MS. MCKELLAR: Sir?

1 THE COURT: What did you say?

2 MS. MCKELLAR: Their identity. You don't want  
3 their identity, in that they are going to be a  
4 cooperating witness or could be possibly a  
5 cooperating witness for the State, written down.  
6 That is normally a conversation that is done off to  
7 the side, again for the safety of any future  
8 confidential informant. But there is no evidence  
9 that there is untruths being told by the officers  
10 as they would testify to that interaction.

11 THE COURT: All right.

12 MS. MCKELLAR: Your Honor, if I could also  
13 point out the specific language of the search  
14 warrant at the very end of the final substantive  
15 paragraph. The language is actually, This incident  
16 was audio-visually recorded, so it doesn't say that  
17 a drug transaction is audio-visually recorded.  
18 They recounted their viewing of the factual  
19 situation, what the CI told them, and just said  
20 whatever was performed by the CI was captured on  
21 audio and video. So it would be a stretch to say  
22 that they blatantly lied by saying that there was a  
23 drug transaction audio and visually recorded.

24 THE COURT: All right.

25 MS. MCKELLAR: We feel that there is no

1 evidence that they have told untruths, Your Honor.

2 THE COURT: Mr. Aiken, do you have witnesses  
3 you want to present in support of your motion?

4 MR. AIKEN: Yes, sir.

5 THE COURT: All right.

6 MR. AIKEN: Would you like me to call them?

7 THE COURT: Yes, sir.

8 MR. AIKEN: I call Deputy Spivey.

9 (Witness approaches.)

10 THE CLERK: Place your left hand on the Bible,  
11 and raise your right hand.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the  
14 testimony you shall give in this case will be the  
15 truth, the whole truth, and nothing but the truth,  
16 so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please state your full name for  
19 the record.

20 MR. AIKEN: May I have one moment, Your Honor?

21 THE COURT: Yes, sir.

22 MR. AIKEN: I'm trying to figure out what we  
23 are going to do about the magistrate, who will be  
24 my next witness, Your Honor.

25 THE COURT: All right.

1 (Pause.)

2 MR. AIKEN: Thank you, Judge. I figured it  
3 out.

4 THE WITNESS: Justin Spivey.

5 (Witness seated.)

6 MR. AIKEN: Thank you, Judge.

7 Are you ready, Judge?

8 THE COURT: Yes, sir.

9 JUSTIN SPIVEY,  
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION(IN CAMERA)

12 BY MR. AIKEN:

13 Q Deputy Spivey, you work for the Kershaw County  
14 Sheriff's Department?

15 A Yes, sir, I do.

16 Q And what is your position?

17 A Narcotics investigator.

18 Q And how long you been a narcotics investigator?

19 A Three and a half years.

20 Q Now, taking you back to July 8th of 2016?

21 A Okay.

22 Q You -- I believe you were surveilling King Haigler  
23 Apartments?

24 A Yes, sir.

25 Q And I think you saw an SUV pull into the King

1 Haigler Apartments?

2 A I was -- Lieutenant Lawson and Investigator Young  
3 were sitting to where they could see the parking  
4 lot of King Haigler Apartments. I was -- I'm in a  
5 unmarked vehicle, but it is a very well known  
6 unmarked vehicle. I have a K-9, so I was very  
7 easily recognizable. I was sitting down the road a  
8 piece where I could not be seen.

9 They relayed that a dark-in-color SUV pulled  
10 into the back entrance to the apartments. A short  
11 time later, after pulling in, they observed  
12 somebody get out of the vehicle, walk in the  
13 direction of Apartment F.

14 Shortly after walking to Apartment F, the  
15 person returned back to the vehicle and then  
16 entered the vehicle and then left.

17 I then got behind the vehicle a short time  
18 after they pulled out and stopped them for a  
19 traffic -- unlawful traffic violation.

20 I then -- you could -- I could smell an odor  
21 of marijuana. I think there was like five  
22 occupants in the vehicle. I had the driver step  
23 out, asked her about the odor of marijuana coming  
24 from the vehicle, advised her that I was going to  
25 conduct a probable cause search of the vehicle

1 based on the odor of marijuana.

2 When I did, she stated that she had marijuana,  
3 that she had passed it to one of the passengers in  
4 the back as soon as she saw me get behind them.

5 At that time she told me where it was. I had  
6 the occupants exit the vehicle, retrieved the  
7 marijuana where she said it was located.

8 Q And, actually, one of the passengers had the  
9 marijuana at that point?

10 A Well, the one that -- she gave it to one of the  
11 passengers.

12 Q She had it in her bra?

13 A Yes, sir.

14 Q All right. And after you got the passengers out --  
15 well, when you continued to search the vehicle, you  
16 actually found methamphetamine as well?

17 A I did. I did.

18 Q Okay. She was charged with that?

19 A She was.

20 Q And she was charged with simple possession of  
21 marijuana as well?

22 A Yes, sir.

23 Q Okay. And it was clear to you, based on your  
24 investigation, that these -- all of these drugs  
25 were hers?

1 A Right. Yes, sir.

2 Q Okay. Did anybody ever explain to you who got out  
3 of the vehicle at King Haigler Apartments? Was it  
4 the driver? The passengers?

5 A I don't -- I don't recall. Like I said, at this  
6 point Lieutenant Lawson and Investigator Young were  
7 on the scene with me, so they kind of began talking  
8 with her while I began searching the car. Like I  
9 said, there was five occupants. There was multiple  
10 law enforcement on, you know, on the traffic stop.  
11 So she was talking to Lieutenant Lawson and  
12 Investigator Young as far as all that information.

13 Q All right. And you prepared an incident report?

14 A I did, yes, sir.

15 Q For this --

16 A Yes, sir.

17 Q -- traffic stop?

18 A Yes, sir.

19 Q And I think that incident report was actually  
20 prepared 11 days later, is that right?

21 A Yes, sir, that is correct.

22 Q Prepared July the 19th?

23 A Yes, sir, that's correct.

24 Q Now, in that incident report -- do you have that  
25 incident report in front of you?

1 A Yes, sir, I do.

2 Q It looks to be about, I would say, if you had part  
3 of Page 1 and part of Page -- it looks to be about  
4 a page long, does that sound about right to you?

5 A Yes, sir.

6 Q Okay. So about a page of text, right?

7 A Yes, sir.

8 Q And nowhere in that incident report do you mention  
9 anything about anybody saying anything about Black,  
10 isn't that right?

11 A That's correct.

12 Q Now, you signed the warrant in support of Search  
13 Warrant 1659, is that right?

14 A Yes, sir.

15 Q Okay. And that was a search warrant for 206  
16 Laurens Street, Apartment F, Camden?

17 A Yes, sir.

18 Q Correct?

19 A Yes, sir.

20 Q And in the affidavit that you signed under oath,  
21 you said that, Agents then spoke with the occupants  
22 of the vehicle?

23 A Yes, sir.

24 Q Which would have been the dark SUV that you stopped  
25 in this traffic stop, right?

1 A Yes, sir.

2 Q Who stated that they had just met with a black male  
3 known to them as Black?

4 A Yes, sir.

5 Q You said that?

6 A Yes, sir.

7 Q And you said, At King Haigler Apartments and  
8 purchased the marijuana from Black?

9 A Yes, sir.

10 Q Right? That information appears nowhere in your  
11 incident report from the traffic stop of that dark  
12 SUV, does it?

13 A No, sir.

14 Q Now, you also signed the search warrant affidavit  
15 concerning the controlled buy of cocaine, is that  
16 right?

17 A Yes, sir.

18 Q Now, when -- and this controlled buy, it occurred  
19 July the 8th of 2016, right?

20 A Yes, sir.

21 Q Same day?

22 A Yes, sir.

23 Q As that traffic stop?

24 A Yes, sir.

25 Q Okay. And I believe it was in the afternoon?

1 A It was.

2 Q It was around 2:00 or 3:00 o'clock in the  
3 afternoon?

4 A I would have to look to verify, but --

5 Q Okay.

6 (Pause.)

7 A Yes, sir, around -- between 2:00 and shortly after  
8 3:00.

9 Q And when you -- did you set up the meeting with the  
10 confidential informant?

11 A Yes, sir, I did.

12 Q Did you explain to the confidential informant that  
13 she was going to be going to 206 Laurens Street,  
14 Apartment F?

15 A No, sir, I did not explain anything as to where she  
16 was going. She gave us information. I wasn't --

17 THE COURT: How many days after the marijuana  
18 stop was that?

19 MR. AIKEN: Same day.

20 THE COURT: Same day?

21 MR. AIKEN: The search -- excuse me, the  
22 controlled buy was the same day as the traffic  
23 stop.

24 THE COURT: Okay.

25 MR. AIKEN: And then the search was on the

1 15th.

2 THE COURT: How many days later?

3 MR. AIKEN: So the search was seven days  
4 later.

5 THE COURT: Okay.

6 BY MR. AIKEN:

7 Q So was the confidential informant giving you  
8 information about King Haigler Apartments?

9 A Yes, sir, as well as other areas.

10 Q About 206 Chestnut, Apartment F -- I mean, excuse  
11 me, 206 Laurens, Apartment F?

12 A Yes, sir.

13 Q Okay. So you set up a meeting with the  
14 confidential informant?

15 A Yes, sir.

16 Q And y'all met somewhere?

17 A Yes, sir.

18 Q I don't think you want to tell me because the  
19 report says a predetermined location, so I won't  
20 ask.

21 A Okay.

22 Q Okay? And when you met, you searched her?

23 A And as well as the vehicle she was operating.

24 Q And the vehicle?

25 A Yes, sir.

1 Q Okay. And then you put her on a wire?

2 A Yes, sir.

3 Q Okay. Which was audio and video, is that right?

4 A Yes, sir.

5 Q Okay. And then what happened?

6 A Then she went to go make the controlled purchase.

7 Q How did she get from the predetermined location to  
8 Laurens Street?

9 A She drove her vehicle.

10 Q She drove her own vehicle?

11 A Yes, sir.

12 Q And about how long does it take to make that trip?

13 MS. MCKELLAR: Your Honor, if I could object.  
14 It is not an actual objection. At this time, the  
15 State would request that the other Defendants be  
16 excused from the courtroom. We're getting into the  
17 confidential informant details and police  
18 operations, and the less exposure to that, the  
19 better, in the State's position, if that is  
20 possible.

21 THE COURT: You want to eject Mr. Johnson,  
22 basically?

23 MS. MCKELLAR: Yes, sir.

24 THE COURT: Okay. The other guy is here for  
25 Family Court.

1 MS. MCKELLAR: I don't know of any previous  
2 charges or what they like to do in their off-time,  
3 Your Honor, I just thought out of the abundance of  
4 caution we would get the other Defendants out of  
5 the room, if Your Honor sees fit.

6 THE COURT: Well, you know, I don't make any  
7 orders that would have the effect of closing a  
8 courtroom since the courtroom is an open courtroom.  
9 You know, I don't put one set of people out and the  
10 other set stay in. I deny the motion.

11 MS. MCKELLAR: Thank you, Your Honor.

12 BY MR. AIKEN:

13 Q All right, Deputy Spivey. So how far was it from  
14 the predetermined location to King Haigler  
15 Apartments?

16 A I don't recall.

17 Q So you don't know how long that would have taken?

18 A No, sir, I --

19 Q For the confidential informant to drive?

20 A I don't recall, no, sir.

21 Q Now, you say in your incident report that the  
22 confidential informant was monitored?

23 A Uh-huh.

24 Q How was the confidential informant monitored?

25 A Through the audio-video device. We can listen as

1           they travel to wherever they are going. We also  
2           kept eyes on her the entire time.

3    Q     How did you do that?

4    A     Through surveillance.

5    Q     You followed her?

6    A     Yes, sir.

7    Q     So y'all -- she did not leave y'all's site?

8    A     No, sir.

9    Q     At all?

10   A     Well, whenever she walked into Apartment F.

11   Q     But before that? Between the time you --

12   A     From the time --

13   Q     -- searched her and searched her car to the time  
14           she walked into Apartment F, there was at all times  
15           law enforcement eyes on her?

16   A     Yes, sir.

17   Q     Now, the video itself, it does not actually show,  
18           does it, any drugs changing hands?

19   A     If you slow it down, you can actually see the drug  
20           transaction, yes, sir.

21   Q     If you slow it down?

22   A     Yes, sir.

23   Q     How slow do you have to make it?

24   A     I don't know. I'm not a computer guru. I don't  
25           know how -- the speed settings on the player.

1 Q You can't see any money changing hands, can you?

2 A I don't recall.

3 Q Now --

4 MR. AIKEN: If I could have just one moment,  
5 Your Honor?

6 THE COURT: Yes, sir.

7 (Pause.)

8 BY MR. AIKEN:

9 Q Was the informant paid?

10 A No, sir.

11 Q Was she working off charges?

12 A I don't recall.

13 MR. AIKEN: If I could have just one moment,  
14 Your Honor?

15 THE COURT: Yes, sir.

16 (Pause.)

17 BY MR. AIKEN:

18 Q Thank you, Deputy Spivey.

19 A Okay.

20 THE COURT: By the State?

21 CROSS-EXAMINATION(IN CAMERA)

22 BY MS. MCKELLAR:

23 Q Investigator Spivey, when you were doing  
24 surveillance on the night of -- on the day of  
25 July 8th during -- before and after the car stop,

1 did what you see with your own eyes corroborate  
2 what the driver of the car had told you?

3 A Yes.

4 Q You and other agents?

5 A Yes.

6 Q So when she said she had come from Apartment F at  
7 King Haigler Apartments, that is what you had  
8 already known?

9 A Right.

10 Q So she just corroborated what you already knew,  
11 correct?

12 A Yes.

13 Q So when she told you that she had just purchased  
14 drugs from someone named Black, who y'all already  
15 knew to be Mr. Anthony Davis, did that go along  
16 with the story you already knew to be true?

17 A Yes. Which is why it was already documented in my  
18 report.

19 MS. MCKELLAR: No further questions for  
20 Investigator Spivey, Your Honor.

21 THE COURT: Yes, sir?

22 MR. AIKEN: Your Honor, the constable went to  
23 get the magistrate. He is my next witness.

24 THE COURT: All right.

25 Officer, Mr. Aiken questioned you about the

1 incident report not containing the same information  
2 that is in the affidavit for the search warrant,  
3 that you didn't write in the incident report  
4 everything she said about this person named Black,  
5 and some other later information. Why is that?

6 THE WITNESS: To protect the identity, because  
7 at the time we didn't know if that person was going  
8 to become an informant. And I also, like Solicitor  
9 McKellar stated, she -- he or she basically told us  
10 what we already knew, which I had already had  
11 documented in my report as far as us conducting  
12 surveillance and what we saw, so I didn't feel the  
13 need.

14 THE COURT: You already knew what?

15 THE WITNESS: Where she was coming from,  
16 because we were conducting surveillance, so I had  
17 already known where she was coming from.

18 THE COURT: Where was she coming from?

19 THE WITNESS: She was coming from King Haigler  
20 Apartments.

21 THE COURT: From the same place she later went  
22 and made a buy?

23 THE WITNESS: That's not the same person.

24 THE COURT: Not the same person?

25 THE WITNESS: Right.

1 THE COURT: But the same place?

2 THE WITNESS: Same place.

3 THE COURT: Any other questions based on the  
4 Court's questions?

5 MR. AIKEN: No questions, Your Honor.

6 THE COURT: All right. Anything else?

7 MS. MCKELLAR: Beg the Court's indulgence.

8 (Pause.)

9 MS. MCKELLAR: Your Honor, based on the  
10 Court's questions, I would have one follow-up  
11 question for Investigator Spivey.

12 FOLLOW-UP EXAMINATION(IN CAMERA)

13 BY MS. MCKELLAR:

14 Q Was the information she gave you regarding buying  
15 drugs from Black at King Haigler Apartments  
16 relevant to her charges?

17 A Say that again, I'm sorry?

18 Q You charged her with a drug crime that day,  
19 correct?

20 A Correct.

21 Q So was that information relevant to her charges in  
22 any way?

23 A No, not at that time.

24 Q Is that -- could that be another reason you did not  
25 put it in your report?

1 A Yes.

2 MS. MCKELLAR: Thank you. Nothing further,  
3 Your Honor.

4 THE COURT: All right, you may step down.  
5 (Witness steps down.)

6 MR. AIKEN: My next witness should be up here  
7 in just one moment.

8 THE COURT: All right.  
9 (Pause.)

10 THE COURT: Tell me about this word you have  
11 here. You call it controvert?

12 MR. AIKEN: Controvert.

13 THE COURT: To controvert a search warrant, is  
14 that what you said?

15 MR. AIKEN: The affidavit in support of the  
16 search warrant.

17 THE COURT: Controvert an affidavit. What in  
18 the context -- what does that word mean,  
19 controvert? A motion to controvert a search  
20 warrant affidavit. What does that mean?

21 MR. AIKEN: Your Honor, that is just what I  
22 have seen in federal court. That is typically the  
23 way they describe the Franks v. Delaware motion, is  
24 they indicate controverting an affidavit.

25 THE COURT: Is that the same as contradict, or

1 what does it --

2 MR. AIKEN: Controvert, I believe, means to  
3 introduce information that suggests that it is not  
4 true, that it is false. I believe that is what  
5 controvert means.

6 THE COURT: So sort of like contradict?

7 MR. AIKEN: It is very similar to that, yes,  
8 sir.

9 THE COURT: I have never practiced in federal  
10 court, so that is all foreign to me, including that  
11 word in that context.

12 MR. AIKEN: Sometimes I wish it were foreign  
13 to me.

14 (Pause.)

15 MR. AIKEN: I call Magistrate James Davis.

16 (Witness approaches.)

17 THE CLERK: Place your left hand on the Bible,  
18 and raise your right hand.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the  
21 testimony you shall give in this case will be the  
22 truth, the whole truth, and nothing but the truth,  
23 so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please state your full name for

1 the record.

2 THE WITNESS: James E. Davis, Jr. Magistrate.

3 (Witness seated.)

4 JAMES E. DAVIS, JR.,

5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION(IN CAMERA)

7 BY MR. AIKEN:

8 Q Magistrate Davis, you are a magistrate?

9 A Yes, sir.

10 Q You are a magistrate in Kershaw County?

11 A Yes, sir.

12 Q Did you have occasion to deal with a search  
13 warrant, I believe it is -- it has got a  
14 handwritten number on it, 1659?

15 A Yes, sir.

16 Q Okay. And that is basically one of your roles as a  
17 magistrate is to consider search warrants and  
18 arrest warrants?

19 A Yes, sir.

20 Q And how long have you been a magistrate?

21 A Four years.

22 Q Now, I think I served a subpoena on you, is that  
23 correct?

24 A You did.

25 Q And I believe I asked you to bring certain

1 documents that you might have had?

2 A You did.

3 Q Did you bring those documents with you?

4 A Yes, sir, I have them.

5 Q Can you describe for me what you have there?

6 A I have Search Warrant 1659 that you requested from  
7 Officer Spivey that I signed a warrant and return.  
8 I do have that with me, yes, sir.

9 Q Do you have anything else in that folder?

10 A No, sir, just the letter that you sent me, that's  
11 all.

12 Q Okay. All right. So you have no other documents  
13 concerning the issuance of Search Warrant 1659?

14 A No, sir.

15 Q Now, and Agent Spivey -- was it Deputy Spivey that  
16 came to you to get the search warrant?

17 A Yes, sir.

18 Q Okay. And he brought the -- filled out the search  
19 warrant and the affidavit and the other supporting  
20 documents, is that correct?

21 A He did, yes, sir.

22 Q Now, other than what is in the affidavit in support  
23 of the search warrant, did he supply you with any  
24 information concerning the case?

25 A To my recollection, he supplied the information

1           that was on the affidavit.

2       Q     He supplied the information on the affidavit and  
3           that was it?

4       A     Yes, sir.

5       Q     Thank you, sir.

6       A     You're welcome.

7           MR. MCGLOTHIN: May it please the Court?

8           THE COURT: Yes, sir.

9           CROSS-EXAMINATION(IN CAMERA)

10       BY MR. MCGLOTHIN:

11       Q     Judge Davis, were you shown any video footage in  
12           support of the search warrant?

13       A     No, sir.

14       Q     You were just given what was -- you weren't  
15           provided a video, but you were told of the buy?

16       A     Yes, sir.

17           MR. MCGLOTHIN: Nothing further. Thank you.

18           THE COURT: All right.

19           MR. AIKEN: I have no questions, Your Honor.

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

21           THE WITNESS: Thank you, Judge.

22           MR. AIKEN: Thank you, Judge.

23           THE WITNESS: Thank you, sir.

24           (Witness steps down.)

25           THE COURT: At any point does anyone intend to

1 offer the warrant itself into evidence?

2 MR. AIKEN: I was going to present that to the  
3 Court.

4 THE COURT: The one he just left with or one  
5 that you have?

6 MR. AIKEN: One that I have.

7 THE COURT: Okay.

8 MR. AIKEN: Let me see if I can find a copy.

9 MS. MCKELLAR: Your Honor, I can give you my  
10 copy as well.

11 THE COURT: I was just wondering. Everyone  
12 has talked about it. I haven't seen it.

13 MS. MCKELLAR: Would you like the return as  
14 well or just the --

15 THE COURT: I'm just ready to judge what is  
16 presented to me. I just wondered whether he called  
17 the witness and he brings it and then he leaves  
18 with it, so.

19 MS. MCKELLAR: This is the copy of the search  
20 warrant that is at issue, not the return.

21 THE COURT: Do y'all stipulate that this is  
22 the search warrant?

23 MR. AIKEN: Yes, sir.

24 THE COURT: That will be a Court's Exhibit.

25 (WHEREUPON, Court's Exhibit No. 1 was

1 marked for identification only.)

2 THE COURT: All right. Next witness?

3 MR. AIKEN: That is our presentation, Your  
4 Honor.

5 THE COURT: By the State?

6 MS. MCKELLAR: Your Honor, we would call  
7 Sergeant Brad Lawson, if Your Honor would like to  
8 hear what was considered duplicate testimony.

9 THE COURT: I am just here to listen to  
10 whatever is presented by either party. I don't  
11 have any requests for anything.

12 MS. MCKELLAR: The State calls Sergeant  
13 Lawson.

14 (Witness approaches.)

15 THE CLERK: Place your left hand on the Bible,  
16 and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm that the  
19 evidence you will give in this case will be the  
20 truth, the whole truth, and nothing but the truth,  
21 so help you God?

22 THE WITNESS: Yes, ma'am, I do.

23 THE CLERK: State your full name for the  
24 record.

25 THE WITNESS: Brad Michael Lawson.

1 (Witness seated.)

2 BRAD MICHAEL LAWSON,  
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION(IN CAMERA)

5 BY MS. MCKELLAR:

6 Q Sergeant Lawson, what is your official position at  
7 the Kershaw County Sheriff's Department?

8 A I am the lieutenant over the narcotics unit.

9 Q So when I said sergeant, it is really lieutenant,  
10 and I know that.

11 A And that's okay.

12 Q Lieutenant Lawson, in your official capacity over  
13 narcotics, do you often, or always go on  
14 operations, narcotic operations?

15 A I am usually there I would say probably 99.9  
16 percent of the time.

17 Q Were you doing that on July 8th of 2015?

18 A Yes, I was.

19 Q Were you actually conducting surveillance on the  
20 King Haigler Apartments?

21 A I was the actual person watching the apartment, and  
22 observed the vehicle, the SUV pull up to the  
23 building that Apartment F is in. I watched an  
24 individual get out of that SUV, walk towards and  
25 to -- walk towards Apartment F, stayed there for a

1 short period of time, got back in the vehicle,  
2 left. I relayed that information on the radio.

3 Investigator Spivey, who then I know ended up  
4 getting behind that vehicle because at that point I  
5 had pulled out as well. I know he made that  
6 traffic stop, for whatever reason. And then I  
7 eventually showed up on the traffic stop as well.

8 Q So in your training and experience, was what you  
9 witnessed consistent with narcotic sales?

10 A Absolutely.

11 Q And so you are the one who personally relayed the  
12 information to Investigator Spivey?

13 A Yes, that is correct.

14 Q And you do not know the circumstances surrounding  
15 the traffic stop, but you did ultimately arrive on  
16 the scene?

17 A I know some of the circumstances of the traffic  
18 stop once the drugs were found and the things that  
19 were said, but the reason for the stop, and that,  
20 no, I am not aware of that.

21 Q So once you arrived on the scene, what did you do?

22 A Once I arrived on the scene --

23 Q And to be clear, we are talking about on the scene  
24 of the traffic stop?

25 A On the scene of the traffic stop from that day,

1 yes, ma'am.

2 As far as I can remember, I think the  
3 marijuana that was found -- might have already been  
4 found by the time I showed up. I did partake in  
5 some of the conversation with Investigator Spivey  
6 with the occupants in finding out where they came  
7 from.

8 And the things that were told to us was  
9 everything that I had just saw from sitting and  
10 watching King Haigler Apartments, and Apartment F  
11 to be exact.

12 Q So was that information she gave you on its face  
13 reliable?

14 A Absolutely.

15 Q And then what did she further say about having gone  
16 to that location and leaving that location?

17 A Specifically said they were coming from King  
18 Haigler Apartments and that the marijuana was  
19 purchased from a black male known as Black.

20 Q At that point did you already know the identity of  
21 Mr. Davis?

22 A Did not know the identity of Mr. Davis, because  
23 from the -- no, did not know the full identity of  
24 Mr. Davis at that time.

25 Q But you did know it was a black male named Black,

1 correct?

2 A Yes. Yes.

3 MS. MCKELLAR: Beg the Court's indulgence.

4 (Pause.)

5 BY MS. MCKELLAR:

6 Q As the supervisor over narcotics, do you train or  
7 teach or guide your officers, like Investigator  
8 Spivey, as to what not to include in an incident  
9 report, what information that he may leave out of  
10 an incident report?

11 A That has been gone over. I mean, do I monitor  
12 every little report that is done? Not every little  
13 aspect. At times I do. But I trust that they know  
14 what they also are doing. And I have gone over  
15 this entire thing, and what he did would be correct  
16 in what would be taught and expected of him, yes.

17 Q Y'all have discussed how it is imperative for the  
18 safety of possible future CI's to not include  
19 identifying information for the fact that they may  
20 be cooperating with the police in an incident  
21 report?

22 A Absolutely. That's correct.

23 Q However, you heard her give the information that he  
24 referenced in the search warrant affidavit,  
25 correct?

1 A Yes, that is correct. I heard it as well.

2 MS. MCKELLAR: No further questions from the  
3 State at this time, Your Honor.

4 THE COURT: By the Defense?

5 CROSS-EXAMINATION(IN CAMERA)

6 BY MR. AIKEN:

7 Q So, you were surveilling King Haigler Apartments?

8 A Yes, sir, I was.

9 Q Did you actually see this person go into Apartment  
10 F?

11 A You can't see the actual door to Apartment F from  
12 where I was, but pulled up behind the building that  
13 Apartment F is in and walked no further than  
14 Apartment F. That I can't -- that I do know.  
15 Could I see the door and see it open? No. But I  
16 know pulled up behind the building that F is in and  
17 walked no further than Apartment F. And they  
18 didn't walk any less than Apartment F. That I  
19 know.

20 Q You never saw the person actually go through the  
21 door, though?

22 A No. No.

23 MR. AIKEN: May I have just one moment, Your  
24 Honor?

25 (Pause.)

1 BY MR. AIKEN:

2 Q What side of King Haigler Apartments were you on?

3 A I tell you, to answer your question, what side of  
4 King Haigler Apartments was I on? I guess the  
5 front of King Haigler faces Laurens Street, so I  
6 guess the right-hand side, so to speak.

7 Q The right-hand side?

8 A Facing what is considered the front of King Haigler  
9 Apartments.

10 Q Were you on a street?

11 A I was in a position to where I could see the  
12 building that Apartment F is in.

13 Q But were you parked on a street?

14 MS. MCKELLAR: Your Honor, I would object.

15 THE COURT: What is the basis for your  
16 objection?

17 MS. MCKELLAR: These questions are asked and  
18 answered. He said he was sitting in a position  
19 where he could see, not the door, but all of the  
20 location leading up to it. He is trying to get  
21 into specifics --

22 THE COURT: Therefore he must accept what he  
23 said, or does he have the right to cross-examine  
24 him and to test the veracity of the testimony?

25 MS. MCKELLAR: Well, of course, Your Honor.

1 We are trying to protect the police investigative  
2 techniques, and he has stated he was on the right  
3 side of King Haigler Apartments. I don't know if  
4 he was on a street or hiding in the woods, how that  
5 is relevant. He is stating under oath he could see  
6 the location.

7 THE COURT: You jumped from asked and answered  
8 to relevance. That is the basis for the objection?

9 MS. MCKELLAR: Well, he has asked where was he  
10 located about four different ways, Your Honor.

11 THE COURT: All right. How about it? She  
12 said -- you heard her argument.

13 MR. AIKEN: I understand, Your Honor. He is  
14 talking about his observation being corroborated.  
15 And what I'm trying to determine is, what did he  
16 see, and was he able to see what he claims he saw.  
17 That's all I'm trying to do.

18 THE COURT: I understand. That is what  
19 cross-examination is all about, isn't it?

20 MR. AIKEN: Yes, sir.

21 THE COURT: I agree with you. Go ahead.

22 MR. AIKEN: Thank you, Your Honor.

23 BY MR. AIKEN:

24 Q Were you parked on a street?

25 A I was not parked on the street.

1 Q Were you outside the car or inside?

2 A I was inside of a vehicle.

3 Q I see.

4 A With the windows down and extremely close. I don't  
5 know any other way to answer that, Mr. Aiken.

6 Q Were you in a parking lot?

7 A In a parking lot? No.

8 Q But you were in a car?

9 A I was in my vehicle that I drive that was issued by  
10 the Sheriff's Office.

11 Q What was the nearest street to you?

12 A That would be, if I'm not mistaken, Mill and  
13 Laurens Street, because it sits at the corner.

14 Q All right.

15 MR. AIKEN: Can I have just one moment, Your  
16 Honor?

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. AIKEN: That's all I have, Your Honor.

20 Thank you.

21 Thank you, Officer.

22 THE COURT: Anything else of this witness?

23 MS. MCKELLAR: Nothing from the State, Your  
24 Honor.

25 THE COURT: All right, thank you.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness steps down.)

3 THE COURT: Anything further State's  
4 witnesses?

5 MS. MCKELLAR: Your Honor, the State has no  
6 witnesses, no further witnesses for this motion.

7 THE COURT: I will hear any argument that  
8 anyone has.

9 MR. AIKEN: Your Honor, my argument is  
10 essentially the same argument that I made to  
11 demonstrate we had a factual basis for going  
12 forward with this hearing.

13 The information about the occupants of the  
14 vehicle from the traffic stop of July the 8th,  
15 2016, is not included in the incident report that  
16 was prepared by the officer, a 1-page long incident  
17 report from a traffic stop. It contains no  
18 information about that.

19 And then the search warrant goes further and  
20 says that there is an audio-visual recording of a  
21 controlled buy. If you look at the audio-visual  
22 recording, and it does not show an actual drug  
23 transaction.

24 So our position is both of those items that  
25 were in the affidavit in support of the search

1 warrant --

2 THE COURT: She says -- the prosecutor says it  
3 does show it, and you say it doesn't.

4 MR. AIKEN: It does not.

5 THE COURT: I don't think anyone asked -- you  
6 all may have asked the witnesses -- but I haven't  
7 seen it, so.

8 MR. AIKEN: Yes, sir. I'll be happy to supply  
9 it to you.

10 THE COURT: If it is part of the evidence.  
11 You want me to take your word for what you saw.

12 MR. AIKEN: I understand, Your Honor. And I  
13 would like to present the CD.

14 THE COURT: Ms. McKellar?

15 MS. MCKELLAR: I was going to say we also have  
16 still frames from that we can provide Mr. Aiken, if  
17 Your Honor like to see them.

18 THE COURT: All right.

19 (Pause.)

20 THE COURT: So you are backing up from  
21 argument to more evidence at this point?

22 MS. MCKELLAR: Your Honor, may I approach?

23 THE COURT: Yes.

24 MS. MCKELLAR: These have been provided to  
25 Mr. Aiken before the video was provided.

1 THE COURT: All right.

2 MS. MCKELLAR: And, Your Honor, to clarify,  
3 Investigator Spivey did testify to Mr. Aiken's  
4 question that he does see a drug transaction on the  
5 video if you slow it down.

6 THE COURT: We'll make all these a part of a  
7 Court's Exhibit.

8 (WHEREUPON, Court's Exhibit Nos. 2-3  
9 were marked for identification only.)

10 (WHEREUPON, Court's Exhibit No. 4 was  
11 marked for identification only.)

12 MR. AIKEN: That would be our argument, Your  
13 Honor.

14 THE COURT: All right. What is the response?

15 MS. MCKELLAR: What was the question, Your  
16 Honor?

17 THE COURT: He addressed his argument. What  
18 is your response?

19 MS. MCKELLAR: Your Honor, of the evidence,  
20 testimony presented here today, we see nothing that  
21 points to there being untruth in the affidavits or  
22 the search warrants, either false or given with  
23 reckless disregard, Your Honor. I think everything  
24 that was testified here today by all the witnesses  
25 actually corroborates everything that is in the

1 affidavit for the search warrants.

2 THE COURT: In State v. Gore regarding search  
3 warrant affidavit, the Court talks about the motion  
4 filed by the Defense challenging the veracity of  
5 the search warrant pursuant to Franks v. Delaware.  
6 Is that the same motion that you are making?

7 MR. AIKEN: Yes, sir.

8 THE COURT: So they just call it something  
9 different here. Then they also reference State v.  
10 Missouri. I wonder where that Missouri was from.  
11 1999, 337 S.C. 548.

12 And in Franks v. Delaware, the Supreme Court  
13 held the Fourth Amendment, Fourth and Fourteenth,  
14 gives an accused a right, in certain circumstances,  
15 to challenge the veracity of a search warrant  
16 affidavit after the warrant has been issued and  
17 executed. And they cited State v. Missouri.

18 It may be based on false information being  
19 included in the search warrant affidavit or it is  
20 exculpatory evidence being omitted from the  
21 affidavit. And they outline the 2-prong test  
22 concerning the veracity of the search warrant.

23 First, to mandate an evidentiary hearing,  
24 there must be an allegation of deliberate falsehood  
25 or recklessness. And we have that here. And those

1       allegations must be accompanied by an offer of  
2       proof. And the accused has the burden of proving  
3       the allegations of perjury or reckless disregard  
4       for the truth by a preponderance of the evidence.

5       Second, if the deliberate falsehood or  
6       reckless disregard for the truth has been  
7       established, the Court must exclude the false  
8       material and consider the remainder of the  
9       affidavit to determine if it is sufficient to  
10      establish probable cause.

11      So in the Gore case, they challenge the  
12      sufficiency of the search warrant affidavit based  
13      on the detective's failure to include the date and  
14      time of the first purchase and the type of  
15      misrepresentation that the first purchase occurred  
16      within 72 hours of the date on the search warrant.

17      In that case, they agreed with Gore's argument  
18      that the first allegation in the affidavit  
19      improperly omitted the date and time of the search  
20      of the drug transaction.

21      In this case, the date and time is included in  
22      the transaction.

23      It says, This omission, however, does not per  
24      se invalidate the search warrant, rather Gore must  
25      make a preliminary showing that the detective

1 included deliberate falsehood or recklessly  
2 disregarded the truth in an effort to make an  
3 affidavit misleading to the magistrate. See State  
4 v. Missouri. That is a Greenville Missouri, not a  
5 Camden Missouri, at least that's what the case  
6 says.

7 And in that case, Gore claims this omission is  
8 evidentiary of a reckless disregard for the truth.  
9 That is the omission of the time and I guess the  
10 date not being on there for the first purchase.

11 We find that sworn testimony is evidence to  
12 the contrary. And then they cited State v. Jones,  
13 which oral information may be used by affiant to  
14 supplement or to amend incorrect information in an  
15 affidavit which was not knowingly, intentionally,  
16 nor recklessly supplied by the affidavit.

17 And so in that particular case, Ard said they  
18 told the magistrate other information that  
19 supplemented it. The magistrate in this case says  
20 that no other information was provided other than  
21 what was in the warrant itself or in the affidavit.

22 Basically, in the Gore case, they said that,  
23 though the wording of things could be more artfully  
24 drafted, that they disagreed that Gore's argument  
25 was deliberately misleading.

1           And Gore then says, Even if the allegations in  
2           the search warrant were credible, the magistrate  
3           did not have a substantial basis to conclude  
4           probable cause in this case.

5           And they disagreed saying that the appellant  
6           court's review of the decision to issue a search  
7           warrant should be based on whether the magistrate  
8           had a substantial basis for concluding that  
9           probable cause existed, and it is governed by the  
10          totality of the circumstances test, then the  
11          appellate court should give great deference to the  
12          magistrate's determination of probable cause.

13          And they are mindful of the view that  
14          affidavits are not meticulously drawn by lawyers,  
15          but are normally drafted by non-lawyers in the  
16          haste of criminal investigation and should  
17          therefore be viewed in a common sense and realistic  
18          fashion.

19          And so what the reviewing court is looking at  
20          is whether the magistrate had a substantial basis  
21          for concluding that probable cause existed, and  
22          that the affidavit must contain sufficient  
23          underlying facts and information upon which the  
24          magistrate can make a determination of probable  
25          cause. And in reviewing the validity of the

1 warrant, the reviewing court may consider only  
2 information brought to the magistrate's attention.

3 In effect, hearing this motion to controvert  
4 the search warrant, and I think we pretty much  
5 heard the motion to suppress as well, we pretty  
6 much heard all the testimony.

7 MR. AIKEN: Yes, sir.

8 THE COURT: So, in essence, then I guess is as  
9 to what information did the magistrate have in  
10 issuing the search warrant and whether or not that  
11 amounted to probable cause.

12 And they had the information that the officers  
13 were conducting surveillance at this apartment, and  
14 the vehicle left, they made a stop, and the person  
15 was purchasing drugs -- I mean, they found the  
16 person had possession of the drugs.

17 Then the affidavit next says that within the  
18 past 72 hours they viewed the confidential  
19 informant to purchase drugs from the person known  
20 as Black, and the place where the confidential  
21 informant met with Black at the King Haigler  
22 Apartments, 206 Laurens Street, Apartment F.

23 The officer's testimony is that they received  
24 information from the informant that these drugs  
25 were purchased from this particular apartment and

1       they made a controlled purchase from that  
2       apartment, and that the informant was reliable  
3       based on it being, in effect, a controlled  
4       purchase.

5               The criticism of the officer and the basis for  
6       the contention of the officer giving false and  
7       deliberate misleading testimony is that the officer  
8       did not write in the affidavit for the search  
9       warrant all the detailed information given to them  
10      by the informant.

11             The officer has given testimony explaining why  
12      all of the details given by the informant during  
13      the first arrest, the reason it wasn't included in  
14      the incident report was that at the point they  
15      didn't know if that person would be an informant  
16      for a purchase.

17             I don't -- I find that the officers in this  
18      instance have not given misleading testimony. I  
19      can see a legitimate law enforcement purpose in not  
20      including in the incident report of one case  
21      information relevant to an investigation in another  
22      case.

23             I think that reading the affidavit, the  
24      magistrate would not be required to know the entire  
25      history of the relationship between this first drug

1        buy, the question of the informant, and the other  
2        information placed on the affidavit, the affidavit  
3        itself being a controlled purchase made from Black  
4        at King Haigler Apartments and that that purchase  
5        being within that period of time by an informant  
6        who proved to be reliable based on the  
7        circumstances.

8                In my mind, the circumstances of a controlled  
9        purchase -- I can't say that I have been given  
10       information of the informant being reliable based  
11       on the past history of working for law enforcement,  
12       but based on the controlled purchase, that provides  
13       sufficient reliability and a reasonable basis,  
14       substantial basis for the magistrate concluding  
15       that probable cause to issue the search warrant  
16       existed.

17               And while I have only watched the still --  
18       looked at the still photographs, I have not watched  
19       the video, I do not believe my watching the video  
20       is going to place any -- cause me to discount the  
21       testimony, but I don't know that. And the video  
22       wasn't shown to the magistrate, so I'm not here as  
23       a fact finder as far as the trial is concerned,  
24       just the point that you all were talking about what  
25       is on the video, but the magistrate didn't see the

1 video. But I guess on the prong of whether or not  
2 what was represented by the officers to the  
3 magistrate, whether it clearly wasn't shown in the  
4 video, I guess I need to look at the video of that  
5 purchase, but I see myself denying this motion to  
6 suppress and the motion to controvert the  
7 affidavit. But I'm going to look at the video  
8 during lunch so I can have everything before me  
9 when I rule officially.

10 All right.

11 MR. AIKEN: I just have one more very quick  
12 motion, Your Honor.

13 THE COURT: Yes, sir.

14 MR. AIKEN: It is a motion to exclude evidence  
15 of prior crimes and uncharged misconduct. It is  
16 just a protective matter. What I usually see  
17 happen is the Court tells the Government, If you  
18 are about to get into prior crimes or uncharged  
19 misconduct, just alert the Court and alert Defense  
20 counsel so we can take it up before the information  
21 gets out in front of the jury.

22 THE COURT: Do you have other crimes you want  
23 us to hear about or other crimes or other bad acts?

24 MR. AIKEN: I'm not sure what the Government  
25 intends to do with respect to those two points, but

1 before we bring the jury?

2 MR. AIKEN: Judge, I'm not trying to rush you,  
3 but I would like to know the ruling on the search  
4 warrants.

5 THE COURT: Yes, sir. Thank you very much  
6 for --

7 MR. AIKEN: Yes, sir. Like I said, I'm not  
8 trying to rush you.

9 THE COURT: I know. No, I meant to put it on  
10 the record. I reviewed the video. And, first, as  
11 I stated, the video wasn't presented to the  
12 magistrate, but having reviewed the video, I do not  
13 see where it led to -- that is the -- is that the  
14 second prong of the areas that the -- the first  
15 prong was the material, the false statement part?

16 MR. AIKEN: Yes, sir.

17 THE COURT: And what is the second part? Is  
18 that but for that being redacted --

19 MR. AIKEN: That's correct.

20 THE COURT: -- the search warrant would not be  
21 issued?

22 MR. AIKEN: That's correct.

23 THE COURT: I think -- my view of the video is  
24 that it corroborates the circumstances indicated in  
25 the affidavit and does not contradict it.

1           So the Defense has failed to meet its burden  
2 of proof as it relates to challenging the veracity  
3 of the search warrant, one, and has not met its  
4 burden of showing that the magistrate did not have  
5 probable cause to issue the search warrants.

6           The motions are denied.

7           MS. McKELLAR: Thank you, Your Honor.

8           THE COURT: Anything else?

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

11          MR. AIKEN: Nothing from the Defense.

12          THE COURT: Well, we told the jurors ten  
13 minutes, and we have got about, what, two more to  
14 go? We will take a 2-minute break and we will be  
15 ready for opening statements.

16          (WHEREUPON, a break was taken.)

17          THE COURT: You can bring them on.

18          (WHEREUPON, the jury came into open  
19 court at 4:27 p.m.)

20          THE CLERK: Ladies and gentlemen, please stand  
21 and raise your right hand to be sworn.

22          (Jurors comply.)

23          THE CLERK: Do you solemnly swear or affirm  
24 that you shall well and truly try, and true  
25 deliverance make, between the State of South

1 as I give it to you.

2 You are not to discuss the case with anyone.  
3 Obviously, it would be totally inappropriate and  
4 unfair to participate in deliberations with someone  
5 at home or in the streets who have not heard the  
6 case. You are to listen to the case and decide the  
7 case by deliberating, and all persons being  
8 required to deliberate or participate in the  
9 deliberation with your fellow jurors who have heard  
10 the same evidence.

11 I look forward to working with you. We will  
12 keep this case moving as efficiently as we can so  
13 that we can get the case to you at a reasonable  
14 amount of time.

15 And with that, we'll hear opening statements.

16 First, from the State?

17 MR. MCGLOTHIN: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. MCGLOTHIN: May it please the Court?

20 THE COURT: Yes, sir.

21 OPENING STATEMENT

22 MR. MCGLOTHIN: Ladies and gentlemen of the  
23 jury, this is a simple case. It is illegal to  
24 possess cocaine and crack cocaine and to possess it  
25 within a half mile of any school or park.

1           On July 15, 2016, Anthony Davis did possess  
2 more than 28 grams of crack cocaine and more than  
3 10 grams of cocaine at his apartment within one  
4 half mile of Camden Elementary School. In South  
5 Carolina, that is trafficking cocaine, crack  
6 cocaine, and possession with intent to distribute  
7 within a half mile of a school or park.

8           In July of 2016, investigators in the  
9 narcotics division of the Kershaw County Sheriff's  
10 Office received multiple tips and information about  
11 an individual known as Black, who was selling  
12 narcotics from his apartment at 206 Laurens Street,  
13 Apartment F.

14           And through the course of their investigation,  
15 which included surveillance of the apartment and  
16 other locations, the investigators were able to  
17 confirm those tips. Following a traffic stop, they  
18 also confirmed that the individual that they had  
19 learned was Black, his name was Anthony Davis.

20           On July 15th, 2016, the officers did acquire a  
21 search warrant for 206 Laurens Street, Apartment F.  
22 When they went to execute that search warrant, they  
23 knocked, announced their presence, no one came to  
24 the door.

25           Due to concerns for their safety, as well as

1 the obstruction of evidence, they did do what was  
2 called a forced entry, entered the home. Inside  
3 they found Mr. Davis, sitting alone in his bedroom.

4 Just a few feet away in the closet they found  
5 a pair of sneakers. Inside those sneakers they  
6 found 16 grams of cocaine. They also found  
7 38 grams of crack cocaine, as well as baggies and a  
8 digital scale.

9 Throughout the house they also found different  
10 paraphernalia, different items used for the  
11 manufacturing of crack cocaine, things like Pyrex  
12 measuring cups.

13 Now, it is my job as a prosecutor for the  
14 State of South Carolina to prove our case beyond a  
15 reasonable doubt. To help me do so today, you will  
16 hear from various witnesses. Those witnesses will  
17 include narcotics agents, with the Kershaw County  
18 Sheriff's Office. They will walk you through their  
19 investigation. They will tell you what happened,  
20 how they got to where they were.

21 You will hear from a chemist. He will come in  
22 and he will tell you that the drugs they found are  
23 indeed what they say they are, that they are crack  
24 cocaine, that they are cocaine.

25 You will also hear from a task force agent

1 with the United States Secret Service who did what  
2 is called a phone dump. They acquired a phone that  
3 was taken from Mr. Davis at his apartment. And he  
4 will tell you about the things he found and show  
5 you the text messages that were found on that  
6 phone.

7 And finally you'll hear from the lead  
8 investigator, Justin Spivey. He'll tell you how he  
9 put all these pieces together to make our case.

10 Now, after you have heard all the evidence,  
11 heard all the testimony, we'll come back out and  
12 we'll have closing arguments, or we'll have another  
13 opportunity to go over all this with you.

14 And at that point, we'll ask you to find  
15 Anthony Davis guilty of trafficking cocaine,  
16 trafficking crack cocaine, and possession with  
17 intent to distribute within one half mile of a  
18 school.

19 Thank you.

20 THE COURT: By the Defense?

21 MR. AIKEN: May it please the Court, Your  
22 Honor?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT

25 MR. AIKEN: This is a David and Goliath story.

1 This is the Government against Anthony Davis, the  
2 State of South Carolina against the two of us.  
3 That is all we've got is two. They have more  
4 lawyers than we have got people on our side.

5 Y'all have got probably the hardest job of  
6 anyone in this courtroom, because I'm sure that  
7 during your lifetime you have heard on the radio,  
8 We have just caught somebody that is charged with  
9 murder. And you probably said, Thank God they  
10 caught them.

11 See, when you think that, you are presuming  
12 that that person is guilty. What you have to do is  
13 presume that Anthony Davis is innocent. And that  
14 is a very, very hard job. And you've got to work  
15 at it. You've got to work at it so that you can do  
16 that. Because that is what the law requires.

17 From the founding of our Republic, from the  
18 founding of the United States of America, and even  
19 back in the colonial period before the United  
20 States was even founded, we had due process. And  
21 due process of law was always understood to include  
22 in criminal law the requirement that the Government  
23 in a criminal case, before they take somebody's  
24 life or their liberty, has to prove that person  
25 guilty by proof beyond a reasonable doubt. And

1       that is a long-standing principle of American law.  
2       And it is a principle that James Madison, who wrote  
3       the Bill of Rights, understood when he said, Better  
4       for a thousand guilty men to go free than for one  
5       man -- one innocent man to spend one day in jail.  
6       That is the purpose as Madison understood it of the  
7       requirement that the Government prove somebody  
8       guilty beyond a reasonable doubt so that none but  
9       the guilty are punished.

10       Now, the Government in this case has all kinds  
11       of fancy stuff going on, the Secret Service, and  
12       all kinds of other fancy stuff going on. But, you  
13       know, it really comes down to this. Did Anthony  
14       Davis possess these drugs? Did he possess these  
15       drugs?

16       And in order to prove possession, they've got  
17       to prove either that Anthony Davis had dominion and  
18       control over these drugs or the right to exercise  
19       dominion and control over these drugs or he  
20       physically had them on his body, in his pants  
21       pocket. Okay? I assure you he didn't have these  
22       drugs in his pants pockets. They were found in his  
23       apartment.

24       And the question that is going to be raised by  
25       our case is, Did Anthony Davis possess those drugs

1 in that apartment? Because he is charged with  
2 trafficking, but really that is just possessing a  
3 certain quantity of drugs in this particular case.

4 So that is the question you are going to have  
5 to decide as a matter of fact, did Anthony Davis  
6 possess those drugs? That is the question that is  
7 going to be the focus of this trial.

8 And we feel confident that at the end of the  
9 day you are going to say, Wait a minute, the  
10 Government did not prove possession by proof beyond  
11 a reasonable doubt. Okay?

12 And there are all kinds of people that have  
13 attempted definitions of reasonable doubt. All  
14 right? And I'm not going to give you the  
15 definition of reasonable doubt, but I can tell you  
16 kind of what it is like.

17 My mother, when I was a little kid -- this was  
18 back in the 1960's, and my mother was a little bit  
19 of a flower child, and she always had whole milk,  
20 not pasteurized milk like normal people had, but  
21 whole milk that wasn't even pasteurized because she  
22 thought in her kind of hippiness that it was better  
23 for the children to have whole milk. So we always  
24 had whole milk.

25 Well, the problem with whole milk is it spoils

1 a whole lot faster than pasteurized milk. Okay?  
2 So when we were children and we would get the milk  
3 out of the refrigerator, we always smelled the  
4 milk. That is reasonable doubt, smelling the milk.

5 If at the end of the Government's case you say  
6 to yourself, I have got to smell that milk, then  
7 there is reasonable doubt. And you have to,  
8 because of the presumption of innocence, find  
9 Anthony Davis not guilty.

10 Thank you.

11 THE COURT: You may call your first witness.

12 MS. MCKELLAR: Your Honor, the State calls  
13 Lieutenant Lawson.

14 (Witness approaches.)

15 THE CLERK: Place your left hand on the Bible,  
16 and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the  
19 testimony you give in this case will be the truth,  
20 the whole truth, and nothing but the truth, so help  
21 you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: State your full name for the  
24 record.

25 THE WITNESS: Bradley Michael Lawson.

1 (Witness seated.)

2 BRADLEY MICHAEL LAWSON,  
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MCKELLAR:

6 Q Thank you. I will refer to you as Lieutenant  
7 Lawson so we all know you are a lieutenant.

8 Can you tell us a little about yourself other  
9 than that?

10 A I'm sorry, say that one more time?

11 Q Tell us a little bit about yourself, Lieutenant  
12 Lawson.

13 A Okay. I currently work at the Kershaw County  
14 Sheriff's Office, where I have been since about mid  
15 2011.

16 While there, I have been -- I worked as part  
17 of our traffic unit until about mid 2013 when I was  
18 promoted to lieutenant over our narcotics unit.

19 Prior to that, for about ten years prior to  
20 that -- I'm originally from Hartsville, South  
21 Carolina, and I worked for the Darlington County  
22 Sheriff's Office for about ten years.

23 So I have about 15 years, going into my 16th  
24 year of law enforcement. And while at Darlington  
25 County, pretty much all of my career has been

1 focused around working in narcotics in some way,  
2 fashion, or form.

3 I have also been a K-9 handler during that  
4 time for about nine years up until I just recently  
5 lost that K-9. So about nine years of being a K-9  
6 handler to go along with all those years of working  
7 narcotics.

8 So what I basically do now is oversee our  
9 day-to-day operations of a narcotics unit, which  
10 entails a lot of different things. There is a lot  
11 of different angles that go into working narcotics  
12 investigation. And that is what we do every day.

13 Q So you are a supervisor, but you also actively  
14 participate in the investigations, is that correct?

15 A That is correct. I am considered a supervisor over  
16 that unit, but I work hand-in-hand just as much as  
17 any of the rest of them.

18 Q You spoke about your experience. Do you also have  
19 special training in narcotics investigation and  
20 police work?

21 A Yes. I have I don't know how many hours and  
22 specialized training in things that are related to  
23 the narcotics field, but it is a lot. Again, that  
24 is about all I have ever done. I spent about two  
25 and a half years working the road for calls for

1 service when I first began my law enforcement  
2 career, and since then it has basically been  
3 surrounded around narcotics. And through that, you  
4 do receive significant training in the narcotics  
5 field.

6 Q So as you were serving in your capacity as a  
7 lieutenant over narcotics, how did you first come  
8 into contact with the Defendant, Anthony Davis?

9 A Well, we started in July of 2016, we started  
10 getting some complaints about narcotics sales.

11 MR. AIKEN: Your Honor, I object. This is  
12 hearsay.

13 THE COURT: I sustain the objection.

14 BY MS. MCKELLAR:

15 Q Did you at any point start an investigation into an  
16 individual known as Black?

17 A Yes, we did. A narcotics investigation was started  
18 around the beginning of July on a subject that we  
19 only knew at the time as the nickname or street  
20 name of Black. And that being at the King Haigler  
21 apartment complex, which is located right downtown  
22 Camden at 206, I think it is 206 Laurens Street,  
23 which is right around the corner from Camden  
24 Elementary School, and in particular to Apartment F  
25 of that apartment complex. And we started an

1 investigation.

2 Through our investigation, we learned that the  
3 person that we had heard of as Black, we learned  
4 that true identity to be Mr. Anthony Davis.

5 And through our investigation of then  
6 Mr. Davis and the Apartment F at King Haigler  
7 Apartments, we conducted a -- or executed a search  
8 warrant at Mr. Davis's residence. Again, like I  
9 said, 206, I think it is, Laurens Street, Apartment  
10 F.

11 Q Let me take you back to the time prior to the  
12 search warrant.

13 A Yes.

14 Q You said you conducted an investigation. What did  
15 that investigation entail? You don't have to go in  
16 exclusive detail, but just, did you conduct  
17 surveillance, for example?

18 A Yes. We did some surveillance, conducted  
19 surveillance on a few occasions, was able to  
20 corroborate some things. And, like I said, be able  
21 to ID that person known as Black to be Mr. Anthony  
22 Davis.

23 Q What kind of activity did you see during your  
24 investigation that corroborated details?

25 A Well, we saw things that were consistent with drug

1 activity. And what I mean by that is, when you  
2 start seeing cars coming and going from a location  
3 and only staying for a few minutes and then  
4 leaving, that is kind of consistent with what you  
5 would -- what we hear of drug activity and the  
6 things that we see with drug activity. So we were  
7 kind of able to corroborate the things that we had  
8 been hearing.

9 Q So you referenced your countless hours of training  
10 and experience earlier in narcotics. This  
11 behavior, this activity at the location which you  
12 were surveilling, it is consistent with narcotics  
13 activity?

14 A Oh, absolutely it is consistent with narcotic  
15 sales.

16 Q You said you also identified Mr. Davis through your  
17 investigation. Can you tell me briefly how y'all  
18 were able to do that?

19 A Yes, there was --

20 Q And if I may, what are you referencing?

21 A Just everything that is in the original case file.

22 Q Is that the incident report?

23 A It would be an incident report, yes.

24 Q Okay.

25 A In reference to the identity of Mr. Davis, the

1 date -- and other investigators can speak on it a  
2 little more -- I know that he was identified  
3 through a traffic stop leaving a certain location  
4 in Lugoff where we had heard that Mr. Davis  
5 frequented. It is a location off of Highway 12 or  
6 Fort Jackson Road. I know that he was seen. We  
7 were doing surveillance at that particular location  
8 because we had information that he frequented that  
9 place on Fort Jackson Road.

10 While conducting surveillance that day, he was  
11 seen by one of our other narcotics agents again.  
12 When we work, we work as a group, so we're on the  
13 radio, we're on the phone, we are relaying  
14 information back and forth.

15 He was seen leaving that location by  
16 Investigator Lee Young. And then was stopped by  
17 Investigator Spivey after being seen on a traffic  
18 violation on a traffic stop. He was stopped  
19 driving a silver Lexus.

20 And all of the information that we had  
21 received was that Black --

22 MR. AIKEN: Your Honor, I object. He is  
23 talking about information that is clearly hearsay.

24 THE COURT: I sustain the objection.  
25

1 BY MS. MCKELLAR:

2 Q During your surveillance, when you were surveilling  
3 the apartment that you referenced on Laurens  
4 Street, did you see a silver Lexus that was parked  
5 there consistently?

6 A I'm sorry. Yes. We knew of Anthony Davis to drive  
7 a silver Lexus. And on this particular date  
8 whenever we made the traffic stop, to identify who  
9 he was so that we would know for sure, that silver  
10 Lexus was seen leaving that residence on Fort  
11 Jackson Road. And, again, it was stopped by  
12 Investigator Spivey. And Mr. Davis was driving.  
13 And that is how we were able to get the true  
14 identity of who Black was, the street name Black  
15 was. And on that day we found out that it was for  
16 sure Anthony Davis.

17 Q So it is safe to say that through your surveillance  
18 you learned that the individual living in the  
19 apartment named Black was driving the silver Lexus,  
20 and the car stop confirmed the actual identity to  
21 be Anthony Davis, correct?

22 A Absolutely. That's correct.

23 Q So based on the surveillance and information  
24 gathered, you said that y'all obtained a search  
25 warrant?

1 A That's correct.

2 Q Were you present the day search warrant was  
3 executed?

4 A I was.

5 Q Can you tell me a little bit about the execution of  
6 the search warrant?

7 A Okay. Well, we executed the search warrant on  
8 July 15th of 2016, again, at 206 Laurens Street,  
9 Apartment F, which, again, is King Haigler  
10 apartment complex. We executed that search  
11 warrant.

12 What we did in the beginning was, before just  
13 going and executing that search warrant, we did  
14 some more surveillance on it. We noticed that it  
15 did not appear that Mr. Davis was home at the time  
16 because the silver Lexus that we knew he drove was  
17 not home. It was not parked in his normal spot and  
18 it was nowhere in the parking lot.

19 So we backed up. We waited. I was sitting  
20 down the street conducting surveillance. We  
21 eventually, after -- and I don't know how long had  
22 passed, maybe an hour, from when we were initially  
23 wanting to execute the search warrant. We then saw  
24 that Mr. Davis had arrived home. The silver Lexus  
25 that we know he drives appeared back in its normal

1        parking spot. So then we decided to go in and at  
2        that time execute that search warrant.

3                Now, I was not a part of the entry team. I am  
4        normally not anymore. I'm nearly 40 years old and  
5        have been doing it about 16 years, so I let those  
6        younger guys do all that going in the house. So I  
7        stay out on the perimeter and to make sure that  
8        everything is safe, if any calls need to be made,  
9        somebody is available to make that call. So I  
10       usually don't go in on the entry.

11               But once the residence was secure -- I do know  
12       that Mr. Davis was the only one home -- just like  
13       we do with every search warrant that we execute. I  
14       know he was located upstairs in his bedroom. We  
15       brought him downstairs. He was read the search  
16       warrant so that he would understand why we were  
17       there and what we were doing. And he was read his  
18       Miranda rights, which he stated he understood his  
19       rights. And that is what we do on every search  
20       warrant that we execute. It is all done the same.  
21       We secure the location, we secure the occupants  
22       that are there, the search warrant is read, and  
23       everyone gets read their rights. Then we begin our  
24       search and investigation within the home.

25       Q       After you read him his Miranda rights, did you ask

1 him anything in reference to what was inside the  
2 home?

3 A Well, usually I will be the -- most of the time  
4 I'll try to talk to somebody in the beginning. We  
5 always want to have someone's cooperation. So  
6 we'll talk to them from the very beginning.  
7 Everything goes smoother when everyone cooperates.

8 So I asked Mr. Davis was there anything -- he  
9 knew what we were looking for, because it tells you  
10 in the search warrant. So I wanted to know from  
11 him from the beginning was there anything in his  
12 apartment that he wanted to go ahead and let us  
13 know about and be honest about.

14 And he said -- he basically said, No. Y'all  
15 have got a job to do, just flat out go and do it,  
16 basically is what was told to us.

17 So, then we started to search the residence or  
18 search the apartment.

19 Q You made reference to Mr. Davis's bedroom earlier.  
20 What in that bedroom particularly made you know  
21 that it was his bedroom?

22 A Okay. Well, there is only -- these -- and I don't  
23 know how every apartment at King Haigler is set up,  
24 I really don't. But this is an upstairs apartment.  
25 And I want to say there was only two bedrooms. If

1           there was three -- all I know is there was only one  
2           bedroom occupied.

3       Q     And how do you know that?

4       A     Well, the other bedroom, there was no furniture,  
5           there was no bed, nowhere for someone to sleep, not  
6           even a sleeping bag on the floor. No one was  
7           living -- no one else was living in it. You know,  
8           there was a few miscellaneous items in the other  
9           extra bedroom. And upstairs I remember there being  
10          a bathroom. But the only room that was being lived  
11          in was Mr. Davis's room. And the reason why I know  
12          that is because, well, first of all, when we went  
13          to secure the residence, that is where he was at  
14          was in that bedroom. And he was the only one home.

15               We did find his identification, which was a  
16           Georgia identification card or driver's license  
17           with his full name on it and date of birth, some  
18           documents that were related to the apartment being  
19           in his name was in the bedroom. And he actually,  
20           throughout our time there, ended up also -- he  
21           didn't make a whole lot of statements, but I do  
22           recall him telling us towards the end that he  
23           was -- he told us he was the only one living there.  
24           And that he was also about to move. And we believe  
25           he was probably about to move. We believed that he

1 was about to move --

2 Q Why did you believe that?

3 A -- back up north to New Jersey. We found some  
4 documents that showed that, where he was searching  
5 for an apartment or a house in New Jersey, it  
6 looked like. And he had some U-Haul boxes that  
7 were in the house. So I think he was probably  
8 about to move. That was the only two statements he  
9 made. He did tell us that he lived there alone.

10 Q You said you found some paperwork that showed that  
11 he was the lessee of the home. You said you found  
12 his identification.

13 Now, other than it being his specific bedroom,  
14 what else did y'all find in the bedroom?

15 A Well, there was a stack of shoe boxes against --  
16 soon as you walked in his bedroom to the right in  
17 between the door and the closet was a stack of shoe  
18 boxes next to a stool. And there was a pair of  
19 shoes, pair of red and white shoes that were  
20 sitting on top of the shoe boxes. And it smelled  
21 like marijuana when you first went in the house  
22 anyway. So what we -- we also noticed right up  
23 around in that area was a partially smoked  
24 marijuana cigarette, joint, blunt, however you  
25 understand it or want to call it. It was a rolled

1 cigar and it had marijuana being smoked out of it.

2 But in those -- like I said, you have got this  
3 row of shoe boxes and there is a pair of red and  
4 white shoes sitting on top of these shoe boxes next  
5 to this stool. And inside of those shoes, I turned  
6 and looked, and I see these bags, clear plastic  
7 bags sticking up out of the shoes.

8 I mean, I have been doing this a while. I  
9 knew that was where the stash of drugs was. It is  
10 very common. Sandwich bags usually are used to  
11 package illegal drugs. And that is what it was.

12 So when I looked, I pulled the substances out  
13 of the shoes, the plastic bags out of the shoes, I  
14 find this what we call a cookie of crack, because  
15 it looks like a cookie. It is -- I don't know how  
16 big around it was, but it is a very large amount of  
17 crack cocaine. And we also have 40 -- there is  
18 numerous bags of individually packaged cocaine. It  
19 is 42 or either 47. And I can tell you if you just  
20 give me a moment and let me just refer to make sure  
21 I'm telling you right -- 47 individual bags of  
22 cocaine. It seemed like there was another smaller  
23 bag of crack cocaine that was broke down into some  
24 smaller rocks, if I am not mistaken. But the  
25 biggest thing that caught our eye and what we were

1 interested in was the large cookie of crack cocaine  
2 and all those individual bags of cocaine.

3 MS. MCKELLAR: Your Honor, may I approach the  
4 witness?

5 THE COURT: Yes.

6 BY MS. MCKELLAR:

7 Q I would like to show you what has been marked as  
8 State's Exhibit 1.

9 A Uh-huh.

10 Q Can you tell the jury what that is a photo of,  
11 please, sir?

12 A Okay. Again, the door --

13 MR. AIKEN: Your Honor, I think we need to get  
14 these in evidence before they are published to the  
15 jury.

16 THE COURT: You are absolutely correct.

17 BY MS. MCKELLAR:

18 Q If you could just describe to me what you are  
19 looking at so I can make sure that is a fair and  
20 accurate depiction of what you saw that day. What  
21 is in that photo?

22 A This is the pair of red and white shoes that I was  
23 just speaking about with -- on top of the shoe  
24 boxes with plastic bags sticking out of the top.

25 Q So, was that how you found them that day?

1 A That would be exactly how I found them.

2 Q Do you know who took that photo?

3 A Investigator Lee Young was responsible for taking  
4 all the photos.

5 Q So you didn't take that photo, but that is exactly  
6 how you found the drugs and the shoes that day?

7 A That is correct.

8 MS. MCKELLAR: Your Honor, I would ask that  
9 State's Exhibit 1 be moved into evidence.

10 MR. AIKEN: I may have no objection, but I  
11 need to see them very quickly, Your Honor.

12 (Pause.)

13 MR. AIKEN: No objections.

14 THE COURT: What numbers are they?

15 MR. AIKEN: One and two.

16 MS. MCKELLAR: One and two, Your Honor.

17 THE COURT: One and two are admitted without  
18 objection.

19 MS. MCKELLAR: Thank you.

20 (WHEREUPON, State's Exhibit Nos. 1-2  
21 were marked for identification and  
22 received into evidence.)

23 BY MS. MCKELLAR:

24 Q State's Exhibit 1, can you show me -- can you point  
25 out for the jury how the plastic bags were pointing

1 up so they were visible without you even touching  
2 the shoes?

3 A Yes. This is it. Like I said, the way I  
4 explained, this would be the door where we came in.  
5 It would be on the left side of this picture.  
6 There is a closet over here. But as soon as you  
7 walked in to the right, there is a stack of shoe  
8 boxes I'm talking about with the red and white  
9 shoes, and you can clearly see the plastic bags. I  
10 mean, I can look in it easily and see the drugs in  
11 it. I didn't even have to pull it out to see the  
12 drugs in it. But you can clearly see the plastic  
13 bags that are sticking out of the shoes here that  
14 contained the coke and the crack.

15 MS. MCKELLAR: And, Your Honor, if I may  
16 approach?

17 BY MS. MCKELLAR:

18 Q This is State's Exhibit 2 that we moved into  
19 evidence. That is just an above -- a closer  
20 picture from above. So is that how it looked when  
21 you looked down into the shoes?

22 A That is correct.

23 Q Did you find anything else in the room that  
24 pertained to the drugs that you found?

25 A Well, there was also a little bit of marijuana that

1 we located up here with the cocaine and the crack  
2 cocaine, but it was a small amount of marijuana.  
3 It wasn't very much. But we also found some  
4 digital scales and -- up here next to the cocaine  
5 and the crack cocaine. And what we did with that  
6 was, we could see that it looked like it had a  
7 white substance on those digital scales. So we  
8 have these field test kits. They are called -- we  
9 call them NIK swipes, because that is how cocaine  
10 is made, it is N-I-K, so we call it NIK. And what  
11 it does is it will turn a blue if it tests positive  
12 for cocaine or a cocaine base. So what we did was,  
13 with those digital scales, after seeing that white  
14 powdery substance on there, we took that NIK swipe.  
15 That is how we would field test the drugs that we  
16 actually found. And that actually -- the digital  
17 scales showed to be positive according to that  
18 field test for either cocaine or cocaine base,  
19 which would be crack cocaine.

20 We also found in his room -- like I said, I  
21 think I have already spoken of the documents that  
22 had his name on it with that apartment.

23 I know that he had a, what we call a ledger,  
24 we call it a drug ledger. We see that commonly  
25 with the dealing of narcotics where individuals

1 will keep up with their sales, whether it is the  
2 intake of what they are buying or what they are  
3 selling and what people owe to them. We noticed a  
4 couple of those ledgers in his bedroom where it had  
5 people's names on it and money, that looked look  
6 people either owed or had already paid where it may  
7 have the name scratched out. Those are very common  
8 before that we see at houses that we do search  
9 warrants on for narcotic sales.

10 Q Again, I am going to reference your training and  
11 experience that you spoke of. In your training and  
12 experience, the things you found in the ledger were  
13 consistent with drug transactions, correct?

14 A Absolutely. I mean, honestly, that is the only  
15 place I have ever seen a ledger.

16 MS. MCKELLAR: Your Honor, may I approach the  
17 witness?

18 THE COURT: Yes.

19 BY MS. MCKELLAR:

20 Q Is this the ledger that you found in his bedroom  
21 that day that you are referring to?

22 A Yes, it is.

23 MS. MCKELLAR: And, Your Honor, after showing  
24 Mr. Aiken, I believe he viewed it already, but I  
25 would like to admit State's Exhibit 3 into

1 evidence.

2 MR. AIKEN: No objection to State's 3, Your  
3 Honor.

4 THE COURT: Admitted without objection.

5 MS. MCKELLAR: Thank you.

6 (WHEREUPON, State's Exhibit No. 3 was  
7 marked for identification and received  
8 into evidence.)

9 BY MS. MCKELLAR:

10 Q Was there anything else found in the bedroom? You  
11 referenced scales, you referenced a ledger, Mr.  
12 Davis's ID. Anything else other than the drugs? I  
13 want to make sure we cover the bedroom before we  
14 move on to another room.

15 A As far as I know -- I know we found a pill bottle  
16 with Mr. Davis's name on it, clearly has his name  
17 on it. I don't remember what that prescription was  
18 for. I wasn't really worried about what it was  
19 for. We were looking for items to connect him to  
20 that room, and that pill bottle was in the closet  
21 right next to where we located the drugs.

22 Q So you consider that another identifying factor  
23 tying him to that room, correct?

24 A Yes. It was just one of several things that tied  
25 his identity to that room in that apartment, yes.

1 MS. MCKELLAR: Your Honor, if I may approach  
2 the witness to show him State's Exhibit 4?

3 THE COURT: Yes.

4 BY MS. MCKELLAR:

5 Q Is this the pill bottle you recovered in the room  
6 with his name and identifying information on it?

7 A Yes, it is, clearly with his name on it, yes.

8 MS. MCKELLAR: I'm sorry, I show that to  
9 Mr. Aiken.

10 (Pause.)

11 MS. MCKELLAR: And, Your Honor, if Mr. Aiken  
12 does not object, I would move to have State's  
13 Exhibit 4 admitted into evidence.

14 MR. AIKEN: Without objection.

15 THE COURT: Admitted without objection.

16 (WHEREUPON, State's Exhibit No. 4 was  
17 marked for identification and received  
18 into evidence.)

19 BY MS. MCKELLAR:

20 Q That document that I have just handed you, is that  
21 one of the documents you recovered that you  
22 referenced earlier from the room?

23 A Yes. Yes, it is.

24 Q And based on your plain reading of it, what is that  
25 document?

1     A     It is from the property owners of King Haigler  
2           Apartments or who owns that particular apartment  
3           where it clearly has Anthony Davis, 206 Laurens  
4           Street, Apartment F, Camden, South Carolina. It is  
5           to him, a letter to him for rent to that particular  
6           apartment.

7           MS. MCKELLAR: And I would like to mark this  
8           letter as Exhibit 5.

9           (Pause.)

10          MR. AIKEN: No objection to State's 5.

11          THE COURT: Number 5 is admitted.

12          (WHEREUPON, State's Exhibit No. 5 was  
13          marked for identification and received  
14          into evidence.)

15   BY MS. MCKELLAR:

16   Q     Did Mr. Davis have any phones on him when y'all  
17           made contact with him in his bedroom?

18   A     There was actually two phones that we located. I  
19           can tell you, if you give me a moment, exactly what  
20           they were.

21   Q     Again, you are referencing your incident report?

22   A     Yes, again, it is the incident record.

23           (Pause.)

24   A     I had a black in color AT&T phone that was taken.  
25           And I didn't do all of the -- I didn't do

1 everything that we further did with the phone.  
2 Some of the other investigators did. But he also  
3 had -- there was one other cell phone that was also  
4 taken, which is a -- I don't even know how to say  
5 it, it is different type of cell phone. But the  
6 one in reference that we know for sure, both of  
7 them are Mr. Davis's, but the AT&T we know to be  
8 his that was in the room as well.

9 Q Does this look visually consistent with one of the  
10 phones you recovered that day in the room?

11 A Yes, ma'am.

12 Q Of Mr. Davis?

13 A Yes, it does.

14 MS. MCKELLAR: And, Your Honor, Mr. Aiken  
15 represents he doesn't have any objection to this  
16 being moved into evidence as State's Exhibit 6.

17 MR. AIKEN: I have no objection to that  
18 exhibit.

19 THE COURT: It is admitted.

20 (WHEREUPON, State's Exhibit No. 6 was  
21 marked for identification and received  
22 into evidence.)

23 BY MS. MCKELLAR:

24 Q So you didn't personally search through the phone  
25 and the contents, but that is one of the phones

1 recovered in the room physically that day, is that  
2 correct?

3 A That is correct.

4 Q And, lastly, I would like to show you these two  
5 photos and get you to identify for me what is  
6 represented here.

7 A Okay. Well, what we have in the first picture here  
8 is the individual bags of cocaine that I said that  
9 we found inside of the tennis shoes in Mr. Davis's  
10 room, a little small bag of marijuana, and what we  
11 call a cookie of crack that is in that picture at  
12 as well.

13 MS. MCKELLAR: Your Honor, this has been  
14 marked State's Exhibit 7 and what is going to be  
15 marked State's Exhibit 8.

16 (Pause.)

17 MR. AIKEN: No objection to 7. No objection  
18 to 8.

19 MS. MCKELLAR: Thank you.

20 THE COURT: Admitted without objection.

21 (WHEREUPON, State's Exhibit Nos. 7-8  
22 were marked for identification and  
23 received into evidence.)

24 BY MS. MCKELLAR:

25 Q And now what has been admitted as State's Exhibit

1 8, can you explain what is in that picture?

2 A What we have here is this large round piece right  
3 here, what you have heard me refer to as a cookie,  
4 because that is what it looks like, it looks like a  
5 big cookie. And what that is is crack cocaine.  
6 And what we had was a fairly decent amount. Over  
7 50 grams is what we had on the scene that it  
8 showed. And we also had the digital scale here  
9 that I spoke of that was up here with the crack  
10 cocaine and the cocaine. And that would be the  
11 partially smoked marijuana thing we were smelling  
12 when we went upstairs in his bedroom.

13 Q Now, you said y'all searched the remainder of the  
14 home, and that area was downstairs. The bedroom  
15 was upstairs. What rooms were downstairs?

16 A There was a living room downstairs, or a den -- I  
17 call it a den -- and a kitchen that was downstairs.

18 Q And what items were recovered from any of those  
19 rooms?

20 A Mainly what we recovered out of anything down there  
21 was particularly in the kitchen, which was Pyrex  
22 containers and packaging material. And when I say  
23 Pyrex containers, they had this -- they had a white  
24 residue that is in them and on them. We actually  
25 did another field test of that as well with one of

1           those NIK swipes that tells us whether something is  
2           positive for cocaine or cocaine based crack. And  
3           in the kitchen, those were in the cabinet. And if  
4           you look at the bottom of those, all of them fit  
5           exactly the same shape of the crack cookie that I  
6           keep referring to. And what that is, is it is  
7           cooked in that. And that is why you have the shape  
8           of it the way it is, it is because it is shaped  
9           just like the bottom of a Pyrex because that is  
10          what it is cooked in. And, again, when we tested  
11          it, that tested positive as well, or field tested  
12          positive for a cocaine base or crack.

13       Q     So in your training and experience, would that say  
14           to you that crack cocaine had been made in those  
15           Pyrex dishes, with the positive test?

16       A     Absolutely. That is exactly what it meant to me in  
17           my training and experience.

18               MS. MCKELLAR: Your Honor, if I may approach  
19           again?

20       BY MS. MCKELLAR:

21       Q     This is what has been marked State's Exhibit 9.  
22           You have already described to us the cookies and  
23           the scales.

24       A     Uh-huh.

25       Q     Does that accurately represent the packaging

1 materials that you recovered in the kitchen that  
2 you referenced and the Pyrex dishes which field  
3 tested positive for cocaine?

4 A It does. Absolutely.

5 MS. MCKELLAR: Your Honor, I would like to  
6 move this into evidence.

7 THE COURT: Any objection?

8 MR. AIKEN: No objection.

9 THE COURT: So admitted.

10 (WHEREUPON, State's Exhibit No. 9 was  
11 marked for identification and received  
12 into evidence.)

13 BY MS. MCKELLAR:

14 Q After you recovered all the items, I think you  
15 briefly discussed the interaction with Mr. Davis  
16 downstairs. You said he said nothing more than he  
17 lived there alone and he was moving?

18 A Yes, basically that he -- he did tell us he lived  
19 alone, he did tell us that he was moving. And that  
20 was really -- he didn't say a whole lot to us.

21 Q Did you see any evidence of anyone else living in  
22 the home with him?

23 A There was absolutely no evidence of anyone else  
24 living in the home whatsoever. Only Mr. Davis.  
25 Only his stuff. No evidence of anyone else

1           whatsoever.

2       Q     Is Mr. Davis in the courtroom today? And, if so,  
3           could you point him out for me, please, sir?

4       A     Yes. Mr. Davis is absolutely in the courtroom. He  
5           is sitting right here beside his attorney.

6       Q     And this residence on Laurens Street, is that in  
7           Kershaw County?

8       A     Yes, it is in Kershaw County.

9           MS. MCKELLAR: I have no further questions for  
10          the witness at this time, Your Honor.

11          THE COURT: By the Defense?

12          MR. AIKEN: Your Honor, I think I have about  
13          35 or 40 minutes of cross-examination.

14          THE COURT: All right.

15          MR. AIKEN: I just wanted to tell you that in  
16          case you wanted --

17          THE COURT: Go ahead.

18          MR. AIKEN: Go ahead and do it?

19          THE COURT: Yes, sir.

20          MR. AIKEN: Okay, Your Honor, I'm ready to go.

21                               CROSS-EXAMINATION

22       BY MR. AIKEN:

23       Q     All right, Lieutenant, there was two bedrooms in  
24           this apartment?

25       A     That -- yes.

1 Q On --

2 A From what I remember, there was two bedrooms in the  
3 apartment.

4 Q They were both on the second floor?

5 A That is correct.

6 Q Okay. And I think you said one of them didn't have  
7 any furniture in it?

8 A No, it didn't have any furniture or where it looked  
9 like anyone was living in it at all. It had  
10 miscellaneous items.

11 Q And there were U-Haul boxes around the apartment?

12 A I remember some U-Haul boxes being downstairs.

13 Q And Mr. Davis told you he was moving?

14 A He did tell us that he had plans of moving, yes.

15 Q You discussed one of the phones with Ms. McKellar.

16 A Uh-huh.

17 Q Where was the other phone found?

18 A As far as -- from what I recall, both were found in  
19 his bedroom.

20 Q I see. So the other phone was not found in the  
21 kitchen?

22 A Not -- not that I'm aware of. I recall both phones  
23 being in the bedroom.

24 Q Now, you mentioned something about field testing?

25 A Yes.

1 Q Field testing is not as accurate as a chemist's  
2 test, is it?

3 A I guess -- nothing, I guess, would beat what a  
4 professional chemist actually says from a lab.  
5 But, again, we field test things every day to  
6 verify something. I never had one of these NIK  
7 swipes be wrong, I'll pull it that way.

8 Q But you can't convict somebody based on a field  
9 test, can you?

10 A No. And nor are we trying to off of the field  
11 test. Absolutely not.

12 Q But you can't do that, because it is not accurate,  
13 right?

14 A Would never try to do that. Everything that we do  
15 is field test purposes, then it is sent to SLED to  
16 be verified, and done by them.

17 Q Well, was anything on the Pyrex sent to SLED?

18 A No, we did not send the Pyrex to SLED, no.

19 Q So it was just field tested?

20 A That was just field tested, yes.

21 Q Yes. And it has -- field tests have false  
22 positives and false negatives, right?

23 A I have never had anything from these types of --  
24 like I said, the type that I was using, I never  
25 had -- I have never seen it be wrong.

1 Q Okay.

2 A Because, again, everything that we do we send it to  
3 SLED. If we're charging somebody with what we're  
4 charging them with, the substance, it is all sent  
5 to SLED, analyzed by a chemist. And I have never  
6 seen -- I have never tested any cocaine or any  
7 supposed crack cocaine with that particular field  
8 test and it come back from SLED as being nothing.

9 Q But the Pyrex, you'll acknowledge, never went to  
10 SLED, right?

11 A No. We had no intentions of --

12 Q Never got tested?

13 A Did not. And there was -- the reason why, like I  
14 said, it matches the shape of what we found with  
15 the cookie. We had no intentions of sending that  
16 Pyrex to SLED, no.

17 Q Well, let me ask you about what you refer to as a  
18 cookie.

19 A Uh-huh.

20 Q I think it is in 7 and 9.

21 A Yes, sir.

22 Q Is that that flat round thing there?

23 A Yes, it is the flat round piece here, yes, sir.

24 Q Now, the evidence you actually have that you are  
25 submitting in court doesn't even look like that,

1           does it?

2   A     Let's see.  Not anymore, it doesn't.

3   Q     But it doesn't look like it?  It doesn't even look  
4           like what you seized, right?  Isn't that right?

5   A     It does not -- it does not look like that anymore,  
6           but this is exactly what it looked like the day  
7           that we seized it, yes, sir.

8   Q     But what you are presenting in court today doesn't  
9           look at all like that, does it?

10  A     No, it does not.  It has been some time.  Crack  
11           tends to -- it is cocaine made with water, baking  
12           soda, however they make it.  I'm sure there are  
13           some different types of ways to make it.  Just like  
14           any substance, after a while, it is going to break  
15           down.  It can turn into a crystal-like substance.  
16           It will start to liquefy.  So it is not going to  
17           look anything like what you see right here.  That  
18           is why we take pictures on the scene is so that you  
19           can see today exactly how it was that particular  
20           day.  So to answer his question, it is not going to  
21           look just like what you see right here as far as  
22           the crack cocaine.  Cocaine does not change.  
23           Powder does not change.  Crack over time will  
24           change its substance.  It will break down into  
25           liquid, it dries out, all sorts of things.  I'm not

1 a chemist, I can't get into all of the particulars  
2 of why that happens, but it is not going to look  
3 the same. That is why we take the pictures so that  
4 you can see exactly what it looked like the day  
5 that we got it.

6 Q Now, Mr. Davis, the car stop you were talking about  
7 where you said you identified Mr. Davis, that was  
8 actually on the 13th of August, wasn't it?

9 A I was not on the car stop. I was a part of it from  
10 a distance. So I don't know the exact date, but  
11 that sounds like the exact date, yes, sir.

12 Q All right. So all of the surveillance that you had  
13 done up to that point you weren't able to identify  
14 Mr. Davis as the person that you referred to as  
15 Black?

16 A We identified him on whatever -- on the date that  
17 it says that we -- whatever date that traffic stop  
18 is is the date that we found out his true identity  
19 to be Anthony Davis.

20 Q That would have been the 13th, right?

21 A I'm assuming that is the correct date.

22 Q Now, you said something about cars coming and  
23 staying short periods of time and leaving. When  
24 you were surveilling King Haigler Apartments, you  
25 were actually surveilling more than one apartment,

1           weren't you?

2     A     No, sir.

3     Q     You were just surveilling Apartment F, you were  
4           not --

5     A     The only thing I'm speaking of today is Apartment  
6           F.

7     Q     I understand. But you weren't surveilling any  
8           other apartments out there?

9     A     Not on those dates, no.

10    Q     Now, people stopping and staying for a short period  
11          of time, that could have an innocent explanation  
12          too, couldn't it?

13    A     Mr. Aiken, that's why we do our due diligence of  
14          our investigation before we take any action. That  
15          is just a piece of us getting a search warrant to  
16          go into Mr. Davis's house. That is not --

17    Q     But it can have an innocent explanation?

18    A     I guess it could. In this instance, it didn't.

19    Q     And having people's names with money amounts next  
20          to it, that can have an innocent explanation too,  
21          can't it?

22    A     I'm not sure, if you can -- I have never -- again,  
23          I think I said it a minute ago, in our line of work  
24          and the things we do, I can't tell you how many  
25          times I have been into houses selling narcotics and

1 finding a ledger. That is the only places I have  
2 ever seen it, people that owe --

3 Q You have a checkbook, don't you? Don't you have a  
4 checkbook?

5 A I don't use it much.

6 Q Yes, but when you write a check, you write it down  
7 in there, don't you?

8 A I guess. To be honest with you, I don't handle  
9 that kind of stuff at home, Mr. Aiken, so I really  
10 don't know.

11 Q Well, I understand that. But does your wife write  
12 down when she writes a check?

13 A I'm assuming.

14 Q That is a perfectly innocent ledger, isn't it?

15 A That is wrote in a checkbook, Mr. Aiken, not on a  
16 piece of notebook paper with people's street names  
17 and first names with \$20 and \$40 and \$60 written  
18 beside it, which is common for what --

19 Q But it is not a crime to have a street name, is it?

20 A I don't think it is a crime to have a street name,  
21 no, sir.

22 Q Okay.

23 A No, sir.

24 Q It is not a crime to be black and have a street  
25 name, is it?

1 A Never said it was.

2 MR. AIKEN: If I could have just a moment,  
3 please, Your Honor?

4 A But --

5 THE WITNESS: Can I finish my answer, Your  
6 Honor?

7 THE COURT: I think you answered the question.

8 THE WITNESS: Oh.

9 (Pause.)

10 MR. AIKEN: That's all I have, Your Honor. It  
11 is shorter than I thought it would be.

12 THE COURT: Any redirect?

13 MS. MCKELLAR: Yes, sir. Very briefly.

14 REDIRECT EXAMINATION

15 BY MS. MCKELLAR:

16 Q The ledger he was speaking of, asking you about,  
17 that we discussed earlier, was it consistent with  
18 being some sort of business?

19 A I'm sorry?

20 Q The ledger, was it consistent with some sort of  
21 business, as in conducting some business, whatever  
22 business that is?

23 A It was --

24 Q People are paying him for services, or something,  
25 correct?

1 A People were paying for services and --

2 Q Through your investigation and hours of  
3 surveillance, did you see he was engaged in any  
4 other business? Did he sell homemade pies, from  
5 what you saw?

6 A I didn't see that Mr. Davis was involved in any  
7 other kind of business, other than what we have  
8 here today.

9 Q And until Mr. Aiken questioned you about,  
10 specifically about the ledger and being black and  
11 having a street name, did you know the colors of  
12 any people mentioned in the ledger? Did you know  
13 if they were white or black or Indian?

14 A Well, that is -- yeah, I have no idea the race of  
15 anybody in this ledger whatsoever, at all. I have  
16 no clue what race they are, black or white.

17 Q Not only race, you don't know the people in the  
18 ledger, is that correct?

19 A No, I don't even know them.

20 MS. MCKELLAR: There are no further questions  
21 from the State, Your Honor.

22 THE COURT: Further cross?

23 MR. AIKEN: Nothing further from the Defense.

24 THE COURT: All right, thank you, sir. You  
25 may step down.

1 (WHEREUPON, the jury came into open  
2 court at 9:49 a.m.)

3 THE COURT: Day Number Two.

4 Next witness.

5 MR. MCGLOTHIN: The State calls Brian Elliott.

6 (Witness approaches.)

7 THE CLERK: Place your left hand on the Bible,  
8 and raise your right hand, please.

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm that the  
11 evidence you give in this case will be the truth,  
12 the whole truth, and nothing but the truth, so help  
13 you God?

14 THE WITNESS: I do.

15 THE CLERK: Have a seat in the witness chair,  
16 and state your full name for the record.

17 (Witness seated.)

18 THE WITNESS: Brian Lamar Elliott.

19 BRIAN LAMAR ELLIOTT,  
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MCGLOTHIN:

23 Q Thank you, Brian. Where do you work?

24 A Kershaw County Sheriff's Office.

25 Q And what position do you hold there?

1 A Sergeant on the Narcotics Unit.

2 Q Thank you. How long have you been with the Kershaw  
3 County Sheriff's Office?

4 A Since 2011.

5 Q And were you in law enforcement before that?

6 A Yes.

7 Q And where were you employed then?

8 A Richland County Sheriff's Office.

9 Q What capacity were you employed with them, with the  
10 Richland County Sheriff's Office?

11 A I started in 2006, worked the road for a year, and  
12 got promoted to a specialized unit called the Drug  
13 Suppression Unit.

14 Q And so how long were you with the Drug Suppression  
15 Unit there?

16 A Four years.

17 Q Okay. And I assume you received special training  
18 for working with narcotics specifically?

19 A Yes.

20 Q Could you tell us a little bit about that?

21 A Basically, I got numerous trainings with how to do  
22 an investigation, interview interrogation, and a  
23 lot of tactical training also.

24 Q I am going to draw your attention to July 13 of  
25 2016. Were you working that day?

1 A Yes.

2 Q Did you come into contact with the Defendant in  
3 this case?

4 A Yes.

5 Q Could you tell us a little bit about that  
6 encounter?

7 A The information --

8 THE COURT: Could you pull up some and pull  
9 the mic down a little bit? I'm a little older than  
10 most of those folks over there. I'm having a  
11 little trouble hearing. Is that on?

12 A The information I received --

13 MR. AIKEN: Your Honor, I object. The  
14 information would be hearsay.

15 THE COURT: I sustain the objection.

16 BY MR. MCGLOTHIN:

17 Q Did you have working knowledge of an individual  
18 named Black at that time who was selling narcotics  
19 in Camden?

20 A Yes.

21 Q And were you, along with the narcotics team for  
22 Richland -- or, excuse me, Kershaw County Sheriff's  
23 Department, conducting surveillance on that  
24 individual?

25 A Yes.

1 Q Did you see that individual leaving a -- one of --  
2 his residence that day?

3 A Yes.

4 Q Okay. Could you tell us about that encounter?

5 A Mr. Davis was leaving a known location on Highway  
6 12 that day. He was driving a silver-in-color  
7 Lexus. We ended up conducting a traffic stop on  
8 him, Investigator Spivey, and I was the back-up  
9 officer that day.

10 THE COURT: Can you hear?

11 MR. AIKEN: I'm having a real hard time,  
12 Judge.

13 THE COURT: I am as well. You need to talk  
14 louder, or turn up the mic, or something.

15 A Testing, testing.

16 THE CLERK: Is that better?

17 MR. AIKEN: That is better, yes, ma'am, thank  
18 you.

19 A That day we conducted a traffic stop on Mr. Davis.  
20 He was driving a silver Lexus. And we conducted a  
21 traffic stop on Highway 12 just before Highway 601.  
22 Investigator Spivey conducted a traffic stop, and I  
23 was a secondary officer there to back him up.

24 Q Did you know the individual's name at that time?

25 A Not at the time, we did not know his name.

1 Q You were just operating off information that -- of  
2 an individual known as Black?

3 A Yes.

4 Q Were you able to find out Black's actual name that  
5 day?

6 A Yes.

7 Q And it was Mr. Davis?

8 A Yes.

9 Q Is Mr. Davis here in the courtroom today?

10 A Yes, he is.

11 Q Could you please point him out for the jury?

12 A (Witness complies.)

13 MR. MCGLOTHIN: May the record reflect that he  
14 is pointing to the Defendant.

15 THE COURT: I don't know. You said, Can you  
16 point him out? And I saw a hand go in that  
17 direction.

18 THE WITNESS: The gentleman right there in the  
19 black shirt.

20 THE COURT: Pardon?

21 THE WITNESS: That gentleman in the black  
22 shirt there sitting at the table.

23 THE COURT: Black shirt, sitting at the table?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. The record reflects

1           that.

2           MR. MCGLOTHIN: Thank you. I apologize, Your  
3 Honor.

4           THE COURT: All right.

5 BY MR. MCGLOTHIN:

6 Q       Was Mr. Davis cited for a traffic violation that  
7 day?

8 A       He was given a warning ticket for his violation.

9 Q       But you were able to identify him?

10 A       Yes.

11 Q       Thank you. Now, I draw your attention to July 15.  
12 Did you have any dealings with Mr. Davis that day?

13 A       Yes. As stated, did the search warrant at the  
14 residence.

15 Q       And what part did you play in the search warrant?

16 A       I am the team leader on the SRT team, Special  
17 Response Team. And I was part of the team that  
18 made entry into the residence.

19 Q       What is the -- can you tell us a little bit more  
20 about the SRT team?

21 A       The SRT time is basically, they are people called  
22 the SWAT Team, special weapons tactics, what we  
23 call the SRT team. Basically, we are there to  
24 secure the residence and basically to make forced  
25 entry into the residence to secure the residence.

1 Q And you said you were the leader of that team at  
2 that time?

3 A Yes.

4 Q And what did -- kind of could you tell us about the  
5 procedures you went through that day?

6 A Basically, we pulled up to the residence. We  
7 knocked and announced three times and rammed the  
8 door and we made forced entry to the residence.

9 And what we do, we go in and clear the  
10 residence and detain everyone inside the residence.

11 Q Why -- is using what you call a forced entry  
12 normal?

13 A Yes.

14 Q Why do you do that?

15 A Basically, it is an officer safety issue first, and  
16 the second reason is because it basically allows  
17 people inside the house not to destroy any  
18 evidence.

19 THE COURT REPORTER: I'm sorry, I didn't hear  
20 you.

21 A Destroy any evidence inside the house and other  
22 officer safety issues.

23 Q In your experience, is it typical for individuals  
24 who you believe to have narcotics to destroy them  
25 before --

1 A Yes.

2 Q -- or during the execution of the search warrant?

3 A Yes.

4 Q So you made the forced entry after the knock and  
5 announce?

6 A Yes.

7 Q And what did you find inside?

8 A We found Mr. Davis upstairs in one of the bedrooms  
9 upstairs.

10 Q And was he detained?

11 A Yes.

12 Q Was there anyone else in the home?

13 A No, sir.

14 Q Did Mr. Davis make any statements to you during the  
15 course of the execution of the search warrant?

16 A No, sir, not in the beginning, no, sir.

17 Q Which portion -- do you normally go through as a  
18 team and search the entire residence, or do you  
19 split up the rooms?

20 A Basically we assign people to certain parts of the  
21 residence and we search the area.

22 Q And which portion were you assigned to?

23 A I was searching the kitchen area, kitchen-living  
24 room area.

25 Q What did you find in the kitchen?

1 A In the kitchen area, I recovered three Pyrex cups  
2 and some -- a brown bag with small distribution  
3 baggies in a cabinet.

4 MR. AIKEN: Your Honor, my only objection is  
5 the objection that I made pretrial as to the  
6 admissibility of the fruits of the search.

7 THE COURT: Yes, sir. It is admitted over  
8 objection.

9 MR. MCGLOTHIN: Thank you.

10 BY MR. MCGLOTHIN:

11 Q Could you tell me what those are as well?

12 A These right here are Pyrex cups right here,  
13 different sizes.

14 Q And are those the Pyrex cups that you found in the  
15 residence that day?

16 A Yes.

17 MR. MCGLOTHIN: At this point, Your Honor, we  
18 would move State's 11, 12, and 10 into evidence.

19 MR. AIKEN: As I indicated, Your Honor, my  
20 objection is the same as it was pretrial.

21 MR. MCGLOTHIN: Thank you.

22 (WHEREUPON, State's Exhibit Nos. 10-12  
23 were marked for identification and  
24 received into evidence.)  
25

1 BY MR. MCGLOTHIN:

2 Q Did you notice anything about the Pyrex?

3 A Yes. I noticed they had a white powdery substance  
4 inside of them, and they are real beat up at the  
5 bottom.

6 Q And what did that indicate to you, the interior --

7 A Consistent of someone stirring inside the bottom of  
8 them.

9 Q And why would that be relevant to this?

10 A Basically for cooking stuff inside of them, from  
11 stirring in the bottom, beating inside of it.

12 Q What kind of things would be cooked in that, to  
13 give that sort of marking?

14 A Crack.

15 Q Specifically?

16 A Crack cocaine.

17 Q And why -- is it normal for individuals to cook  
18 crack cocaine in similar utensils?

19 A Yes.

20 Q And why did they use those kind of cups?

21 A Basically, the reason they use these type of cups  
22 is because of the heat of -- these glasses stand  
23 high volume heat. And what they do is put a pot on  
24 the stove and put water in, boil the water, and  
25 they put some grease inside this and place the cup

1           inside the hot boiling water and kind of --  
2           basically, like baking, stirring, they have grease  
3           inside to make the components stick and make the  
4           crack.

5       Q     What -- and I know it may differ from one to the  
6           next, but what are typical ingredients that may be  
7           put in, other than the water and the cocaine?

8       A     The basic ingredients is cocaine, baking soda, and  
9           water.

10      Q     And then they just heat it up?

11      A     Yes, they heat it up, and they basically like stir  
12           it with a, like a little cake batter thing, a  
13           little small one, and they beat it up.

14      Q     And what does the end result typically look like  
15           once they do that?

16      A     Basically, after they get the ingredients mixed,  
17           and stuff like that, they let it cool off, and it  
18           will form a perfect like crack cookie in the bottom  
19           of it. And what they do, they will get it and just  
20           dump it out and it will have a -- form a perfect  
21           circle of crack.

22      Q     And I'm showing you what has been entered as  
23           State's 8. Is that the cookie -- is that similar  
24           to a cookie that you would see --

25      A     Yes.

1 Q -- cooked in the Pyrex?

2 A Yes.

3 Q Thank you. Now, I'm showing you what has been  
4 marked as State's Exhibit 13. Could you tell -- do  
5 you recognize that?

6 A Yes. These were the distribution baggies that  
7 was -- I recovered.

8 MR. AIKEN: Your Honor, I object for the  
9 reasons that I developed pretrial.

10 THE COURT: You object to --

11 MR. AIKEN: The admissibility --

12 THE COURT: -- the question or --

13 MR. AIKEN: The admissibility of the evidence.  
14 He is referring to the evidence now.

15 MR. MCGLOTHIN: I haven't moved it into  
16 evidence yet.

17 MR. AIKEN: Well, he is describing them, so.

18 THE COURT: You can't show the jury anything  
19 that is not in evidence. I sustain that part of  
20 the objection.

21 MR. AIKEN: Yes, sir.

22 THE COURT: All right.

23 BY MR. MCGLOTHIN:

24 Q Do you recognize what that is?

25 A Yes.

1 Q Is it in similar condition and fairly depict what  
2 you found in the kitchen that day?

3 A Yes.

4 MR. MCGLOTHIN: At this point we would move  
5 State's 17, I believe -- excuse me, State's 13 into  
6 evidence.

7 MR. AIKEN: Your Honor, I would object on the  
8 grounds that I developed pretrial.

9 THE COURT: Yes, sir. May I see that?

10 (Pause.)

11 THE COURT: It is admitted over objection.

12 (WHEREUPON, State's Exhibit No. 13 was  
13 marked for identification and received  
14 into evidence.)

15 BY MR. MCGLOTHIN:

16 Q And could you please tell us what that is? What is  
17 contained inside of that?

18 A Different colors of distribution baggies, small  
19 apple baggies, is what we call them, because of the  
20 apple on the front of them.

21 Q And what is the relevance of those bags?

22 A Packaging narcotics.

23 Q Okay. And that is typical in what you have seen in  
24 your experience as a narcotics agent?

25 A Yes.

1 Q Thank you. And with the -- in your experience, how  
2 much crack is usually contained in what you call a  
3 cookie that is used -- made using one of those size  
4 Pyrex dishes?

5 A It depends on the sizes, but the most contained is  
6 basically an ounce is 28 grams of crack.

7 Q Okay. But it does -- it differs from one to the  
8 next?

9 A Yes.

10 Q How much crack is personal use, a single hit,  
11 essentially?

12 A Maybe a \$20 rock. It is a little small piece of  
13 the rock.

14 Q So about how much -- I don't want you to do math  
15 here -- how much of those would be in a cookie of  
16 that size?

17 A A lot.

18 Q A lot? So that you could say in your experience  
19 that is not a personal use amount?

20 A No, sir.

21 Q Okay. And, again, I know I don't want to have you  
22 do any math, and I know you didn't get a chance to  
23 weigh this.

24 MR. MCGLOTHIN: But I'm showing the  
25 Defendant -- or, excuse me, the witness -- State's

1 Exhibit 8, which has been entered.

2 BY MR. MCGLOTHIN:

3 Q If you could guess, is this -- would this -- what  
4 is shown here in the picture have been made, in  
5 your experience, in a Pyrex dish of that size?

6 A Yes.

7 Q So it probably is, as you said, a lot?

8 A Yes.

9 Q More than a personal hit?

10 A Yes.

11 Q Would that be an amount that would be sold to  
12 users, to multiple users?

13 A Multiple, different users.

14 Q Could it have been sold to other sellers?

15 A Yes.

16 Q So it could -- it could be sold to people who would  
17 then sell it to the users as well?

18 A Yes.

19 Q Thank you.

20 MR. MCGLOTHIN: Beg the Court's indulgence.

21 (Pause.)

22 MR. MCGLOTHIN: Nothing further from the  
23 State.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION

1 BY MR. AIKEN:

2 Q Sergeant Elliott, before the search, you knocked  
3 and announced?

4 A Yes, I did.

5 Q Knock and announce, you knock on the door real loud  
6 and you say, Police, search warrant?

7 A Yes.

8 Q Okay. That is pretty much what you say?

9 A Yes.

10 Q And y'all did that three times?

11 A Yes.

12 Q Okay. Nobody came to the door?

13 A No, sir.

14 Q And then you broke down the door?

15 A Yes.

16 Q Okay. How much time elapsed between the first  
17 knock and announce and the time that y'all entered  
18 the house?

19 A We maybe do like three knocks and in a few seconds  
20 we'll, (knocking sound) Sheriff's Office, search  
21 warrant, (knocking sound) Sheriff's Office, search  
22 warrant, (knocking sound) Sheriff's Office, search  
23 warrant.

24 Q So half a minute?

25 A Yes.

1 Q Okay. And when you entered the house, there was  
2 nobody on the ground floor?

3 A No, sir.

4 Q Okay. So you went up to the second floor?

5 A I didn't. My team did, yes, sir.

6 Q Okay. And your team did?

7 A Yes.

8 Q And they found Mr. Davis in one of the bedrooms,  
9 right?

10 A Yes.

11 Q Okay. Do you know what he was doing when they  
12 found him?

13 A I do not know.

14 Q Okay. Did you at any time go onto the second floor  
15 of the apartment?

16 A Yes, I did.

17 Q Okay. And is there a bathroom on the second floor?

18 A I think there are, yes, sir.

19 Q Okay. Do you know how far the room that Mr. Davis  
20 was in is from the bathroom?

21 A I do not know.

22 Q Okay. Is it 10 feet, 15 feet?

23 A I don't know.

24 Q But they are on the same floor?

25 A Yes.

1 Q And it is an apartment, so it is not particularly  
2 large, right?

3 A Yes.

4 Q Okay. And one of the reasons why you breached the  
5 door is so that nobody can discard narcotics,  
6 right?

7 A That is one of the reasons. Also, an officer  
8 safety issue too.

9 Q Officer safety as well?

10 A Yes.

11 Q One of the reasons that you don't want to let them  
12 know you are there, because they might do what they  
13 can to get rid of the drugs?

14 A Yes.

15 Q Okay. And one of the common ways of getting rid of  
16 the drugs is flushing them down the toilet, right?

17 A Some people do, yes.

18 Q You have seen that in searches, where people have  
19 attempted to do that, haven't you?

20 A Yes.

21 Q Okay. So that happens, right?

22 A Yes, it does.

23 Q Okay. Now, Mr. Davis was found in that bedroom,  
24 right?

25 A I don't know which bedroom he was found in, but he

1           was found upstairs.

2       Q     Okay. Well, but you don't know what he was doing  
3           when they found him?

4       A     No, sir.

5       Q     Okay.

6       A     I was downstairs.

7       Q     Was your knocking and announcing loud enough for  
8           him to hear upstairs?

9       A     Yes.

10      Q     Y'all were loud enough because you wanted somebody  
11           to know you were there, right?

12      A     Yes.

13      Q     Okay. Because one of the reasons why you knock and  
14           announce is you don't want somebody to think, I  
15           don't know who this is, it could be an intruder,  
16           I'm going to shoot at them, right?

17      A     Yes.

18      Q     So you want them to know the cops are there?

19      A     Yes.

20      Q     Okay. Because you don't want them to shoot you?

21      A     Yes.

22      Q     Now, I'm a little unclear on this. You actually  
23           participated in the search?

24      A     Yes.

25      Q     Okay. And what part of the house did you search?

1 A I searched the kitchen area and living room area.

2 Q Okay. All right. The Pyrex, did you do any  
3 swabbing or field testing, or anything like that,  
4 on the Pyrex?

5 A Yes, we did.

6 Q Okay. Did you do any swabbing for DNA on the  
7 Pyrex?

8 A No, sir.

9 Q Did you do -- take any fingerprints from the Pyrex?

10 A Not to my knowledge, no, sir.

11 Q Okay. Now, DNA has gotten pretty sophisticated  
12 now, hasn't it?

13 A I guess so.

14 Q Okay. Well, the theory of DNA is that everybody  
15 has a substance inside them called DNA, which is  
16 unique --

17 MR. MCGLOTHIN: Objection, Your Honor.

18 Mr. Aiken is testifying as to what DNA is. I don't  
19 think --

20 THE COURT: I have to hear the entire question  
21 before I can rule on an objection.

22 MR. AIKEN: All right.

23 BY MR. AIKEN:

24 Q You understand that the theory of DNA is there is a  
25 substance inside us that is unique to us, right?

1 A No, I don't -- I don't know nothing about no DNA.

2 Q You know absolutely nothing about DNA?

3 A I know what DNA is, but all the technical stuff,  
4 that is not my field.

5 Q Well, you understand that DNA can be used to  
6 identify somebody, right?

7 A Yes, sir, I understand that.

8 Q In other words, you could find DNA and say it came  
9 from that person, right?

10 A Yes, I understand that.

11 Q Okay. So if DNA were taken from the Pyrex, you  
12 could say whether it came from Mr. Davis or not,  
13 right?

14 A If DNA was collected, yes, sir.

15 Q Okay. And fingerprints, the theory of fingerprints  
16 is that fingerprints are unique, right?

17 A Yes, sir.

18 Q In other words, your fingerprint is different than  
19 my fingerprint, it is different from Mr. Davis's  
20 fingerprint, it is different than the judge's  
21 fingerprint, right?

22 A Yes, sir.

23 Q Okay. So if you took fingerprints off of this  
24 Pyrex, then you would be able to tell whether  
25 Mr. Davis's fingerprints were on the Pyrex?

1 A Yes, sir.

2 Q Okay. And tell whether Mr. Davis had touched the  
3 Pyrex, right?

4 A Yes, sir.

5 Q Now, when you were searching in the downstairs  
6 area, did you notice some U-Haul boxes?

7 A Yes, I did.

8 Q And before y'all searched, was Mr. Davis given his  
9 Miranda warnings?

10 A Yes.

11 Q Okay. Did he say anything before his Miranda  
12 warnings were given?

13 A I can't recall.

14 Q You don't remember whether he did or didn't?

15 A No, sir.

16 Q And, now, the lead investigator on this case is  
17 actually Investigator Spivey, right?

18 A Yes.

19 Q Now, I think you indicated that crack cocaine, when  
20 it is cooked, you use water, baking soda, and  
21 cocaine, right?

22 A Yes.

23 Q And that is what makes the harder substance known  
24 as crack?

25 A Yes.

1 MR. AIKEN: May I have a moment, please, Your  
2 Honor?

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. AIKEN: Thank you, Sergeant Elliott.

6 THE COURT: Redirect?

7 MR. MCGLOTHIN: Yes, Your Honor, briefly.

8 REDIRECT EXAMINATION

9 BY MR. MCGLOTHIN:

10 Q Sergeant Elliott, you said the safety issue was a  
11 big concern with doing the knock and announce and  
12 the forced entry, correct?

13 A Yes.

14 Q And could you elaborate a little bit on that, why  
15 it is a safety issue for officers?

16 A The majority of the times when we deal with drug  
17 dealers or drug search warrants, a lot of times you  
18 are going to have guns involved for protection.

19 Q So it is safe to say that the reason it is for  
20 safety is so that nobody shoots at you?

21 A Yes. That's why we use our SRT team.

22 Q And I know you said that you found Mr. Davis  
23 inside. Did you know where he was inside the  
24 apartment before you entered?

25 A No, sir, I didn't.

1 Q You had no idea where he was?

2 A No, sir.

3 Q Did you know the layout of the apartment before you  
4 entered?

5 A No, sir.

6 Q So he could have been anywhere inside there?

7 A Yes, sir.

8 Q And you said you work specifically with narcotics?

9 A Yes, sir.

10 Q Narcotics team? Are you an expert in DNA?

11 A No, I'm not.

12 Q Are you an expert on fingerprints?

13 A No, I'm not.

14 Q Okay. So, when you found the Pyrex, do you  
15 normally do DNA on those sorts of items?

16 A No, sir.

17 Q And do you know -- I mean, why do you not normally  
18 do that?

19 A Just -- we just don't.

20 Q Have you ever actually done it and received, in  
21 your experience, received a good fingerprint from  
22 something like that?

23 A No.

24 Q Or a DNA hit from something like that?

25 A No.

1 MR. MCGLOTHIN: Nothing else. Thank you.

2 THE COURT: Anything further?

3 MR. AIKEN: Just a few.

4 RECROSS-EXAMINATION

5 BY MR. AIKEN:

6 Q The Kershaw County Sheriff's Department has experts  
7 on DNA, doesn't it?

8 A No, sir, we don't.

9 Q Okay. But you have crime scene investigators,  
10 right?

11 A No, sir, we don't have crime scene.

12 Q You don't?

13 A No, sir.

14 Q Do you have people that are tasked with taking  
15 samples of DNA evidence?

16 A People probably do take samples of DNA, but we  
17 don't have anybody testing DNA at our office.

18 Q I understand the testing part, but the collection  
19 part, you have people at the Kershaw County  
20 Sheriff's Department that are experts at collecting  
21 DNA, right?

22 A Experts? No, sir.

23 Q But they are trained to collect DNA?

24 A Trained? I don't know. I can't answer that.

25 Q What about fingerprints? Does the Kershaw County

1 Sheriff's Department have people that know how to  
2 fingerprint, how to take and lift fingerprints?

3 A Yes.

4 MR. AIKEN: All right. Thank you.

5 THE COURT: Thank you, sir.

6 (Witness steps down.)

7 THE COURT: Next witness.

8 MS. MCKELLAR: Your Honor, the State calls  
9 Charlotte Rankin.

10 (Witness approaches.)

11 THE CLERK: Place your left hand on the Bible,  
12 and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the  
15 evidence you give in this case will be the truth,  
16 the whole truth, and nothing but the truth, so help  
17 you God?

18 THE CLERK: Have a seat in the witness chair,  
19 and state your full name for the record.

20 (Witness seated.)

21 THE WITNESS: Charlotte Wallace Rankin.

22 CHARLOTTE WALLACE RANKIN,  
23 after being duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MS. MCKELLAR:

2 Q Good morning, Ms. Rankin. We have never actually  
3 met, have we?

4 A No.

5 Q You were called here today. I wanted to ask some  
6 information about a property I believe you own. Do  
7 you own any property other than the ones you live  
8 in?

9 A Yes.

10 Q Is one of those properties 206 Laurens Street,  
11 Apartment F?

12 A That's correct.

13 Q Do you own any other apartments in that building,  
14 or just Apartment F?

15 A I own several more.

16 Q Okay. I don't know if you need to reference any  
17 documentation for this, but who was the lessee of  
18 206 Laurens Street, Apartment F, in the year 2016?

19 A Anthony Davis.

20 Q Anthony Davis? Did you ever meet Mr. Davis?

21 A Yes.

22 Q Do you see him in the courtroom today?

23 A Yes. Right over there.

24 Q Is he -- can you point him out for me, please,  
25 ma'am? What is he wearing?

1 A Black shirt.

2 MS. MCKELLAR: Your Honor, please let the  
3 record reflect Ms. Rankin has pointed out the  
4 Defendant.

5 THE COURT: All right.

6 BY MS. MCKELLAR:

7 Q Did he sign a lease with you?

8 A Yes, he did.

9 Q Was he the only name on the lease?

10 A Yes.

11 Q Did you have any personal knowledge of anyone else  
12 living there?

13 A No, I did not.

14 MS. MCKELLAR: There are no further questions  
15 from the State at this time.

16 THE COURT: By the Defense?

17 MR. AIKEN: No questions, Your Honor.

18 THE COURT: All right. Thank you, ma'am.

19 THE WITNESS: Okay, thank you.

20 (Witness steps down.)

21 THE COURT: Next witness.

22 MR. MCGLOTHIN: The State calls Agent James  
23 VanHouten -- Jon VanHouten, excuse me.

24 (Witness approaches.)

25 THE CLERK: Place your left hand on the Bible,

1 and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the  
4 evidence you give in this case will be the truth,  
5 the whole truth, and nothing but the truth, so help  
6 you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat in the witness chair,  
9 and state your full name for the record.

10 (Witness seated.)

11 THE WITNESS: Jon VanHouten.

12 JON VANHOUTEN,  
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MCGLOTHIN:

16 Q And I apologize, I think I called you James, and it  
17 is Jon. And I think I mispronounced your last name  
18 too, didn't I?

19 A That's fine.

20 Q Where do you work?

21 A I'm currently a task force agent for the U.S.  
22 Secret Service.

23 Q And what do you primarily do for the Secret  
24 Service?

25 A I have three primary job functions: Protection,

1 federal financial crimes, and digital forensics.

2 My primary function is digital forensics.

3 Q And could you briefly explain what that means?

4 A Yes. Any item or electronic device that stores  
5 digital data, we have the capabilities of pulling  
6 the information off. And we do so in a manner that  
7 is forensically sound. It does not alter the data,  
8 per se. We can get an exact copy. Depending on  
9 the type of extraction we do, we can get a bit by  
10 bit examination of the device.

11 Q And such devices would be things like cell phones  
12 or computers?

13 A Yes, anything that stores digital equipment, or  
14 digital data: Computers, cameras, cell phones,  
15 iPods, iPads, tablets, things of that nature.

16 Q And you work for the Secret Service, but a lot of  
17 the work you do, is it normally for federal cases  
18 or county?

19 A Our laboratories will do any case for any agency  
20 that requests assistance, anything from federal,  
21 military, state, and local.

22 Q So have you done any work with the Kershaw County  
23 Sheriff's Office?

24 A Yes, we have done several assistant calls for  
25 Kershaw County.

1 Q And do you remember -- did you ever do any sort of  
2 work in this case for the Defendant, Anthony Davis?

3 A For this case, I processed two phones.

4 Q And do you know --

5 MR. AIKEN: Your Honor, right now I'm going to  
6 object to any reference of the second phone. There  
7 is only one phone in evidence.

8 THE COURT: I overrule the objection.

9 BY MR. MCGLOTHIN:

10 Q Do you know where the phones came from?

11 A It was a chain of custody from a Detective J.  
12 Spivey.

13 Q And did you do a forensic analysis of the phone?

14 A Yes, I did.

15 Q What sort of analysis did you do?

16 A There are two main types of analysis that we do on  
17 digital equipment. There is logical and what is  
18 called physical.

19 When we pull a logical extraction, logical is  
20 stuff you can see on your device, all the photos,  
21 the icons, the call logs, things of that nature,  
22 that you can see.

23 When we pull a physical, we pull from what is  
24 called unallocated spaces, stuff that you can't  
25 see. That includes deleted stuff that we can pull

1 back and recover.

2 In this case, I pulled a logical and a  
3 physical extraction of both devices.

4 THE COURT: Members of the jury, I will have  
5 you step to your jury room for just a few minutes.  
6 If you all will go to the jury room. Please do not  
7 discuss the case.

8 (WHEREUPON, the jury retires to the jury  
9 room at 10:23 a.m.)

10 THE COURT: I want to address the objection to  
11 the second phone outside the presence of the jury.

12 Yes, sir?

13 MR. AIKEN: Your Honor, there is two phones  
14 that they claim they have. One is a ZTE, it is an  
15 AT&T phone, which is the one in evidence. There is  
16 another phone, a Huawei phone, that is not in  
17 evidence. And I have looked at the data that came  
18 from the Huawei phone, and I can't determine from  
19 the data that came from the phone that it even  
20 belongs to Mr. Davis.

21 THE COURT: Okay.

22 MR. AIKEN: It doesn't have a number that is  
23 associated with him. He is not listed as the  
24 principal user. I mean, the other phone says,  
25 Account holder, Anthony Davis, has an e-mail

1 address related to Mr. Davis, and that sort of  
2 thing. The Huawei phone, which is not in evidence,  
3 doesn't have any of that as part of the extraction.

4 THE COURT: I thought your objection was  
5 something else, and that's why you have an expert  
6 on the stand. Because you don't know, that doesn't  
7 have too much weight with the Court.

8 MR. AIKEN: I just ask that he be required to  
9 lay the appropriate foundation to connect that cell  
10 phone to Mr. Davis.

11 THE COURT: Okay. I understand.

12 MR. MCGLOTHIN: Your Honor, if this makes it  
13 any easier, we won't be referring to the second  
14 phone. Other than just that there were two phones,  
15 we are not going to talk about anything that as  
16 found on that phone. We would merely be talking  
17 about things found on Mr. Davis's personal phone.  
18 And we will lay a foundation that it is Mr. Davis's  
19 phone.

20 THE COURT: Anything further?

21 MR. AIKEN: I understand. As long as that is  
22 what they do, then my objection is resolved, Your  
23 Honor.

24 THE COURT: All right. I thought the  
25 objection might have related to some type of

1 discovery not being provided, so.

2 MR. AIKEN: No, sir. I got the extraction  
3 report, Your Honor.

4 THE COURT: All right. Okay, very good.  
5 Let's take a 2-minute stretch and we'll bring them  
6 back.

7 MR. AIKEN: Can we have a little bit longer  
8 than that, Judge? I have got to go out to my car  
9 to get something.

10 THE COURT: Oh, okay. We are going to break  
11 at 11:00.

12 MR. AIKEN: Okay.

13 THE COURT: Because I have to take a phone  
14 call at 11:00 o'clock.

15 MR. AIKEN: Okay, Judge.

16 THE COURT: So can you wait until then to go  
17 to your car?

18 MR. AIKEN: Yes, sir, I can.

19 THE COURT: All right. We will break for 15  
20 or 20 minutes at 11:00.

21 (Pause.)

22 THE COURT: All right, bring them on, the  
23 jury.

24 (WHEREUPON, the jury came into open  
25 court at 10:30 a.m.)

1 THE COURT: All right. Throughout the State  
2 it is done a little differently every place you go,  
3 but the jurors typically just come in and sit down.  
4 This is the first place where I have been where  
5 jurors come in and stand and wait until someone  
6 tells them to sit down. Some places the lawyers  
7 stand, some places -- most places no one stands,  
8 the jury just comes in and sits down. I will just  
9 let you all know, you don't have to wait for me to  
10 say sit down, you can take your seat.

11 All right. Let's proceed.

12 MR. MCGLOTHIN: Thank you, Your Honor.

13 **DIRECT EXAMINATION CONTINUES**

14 BY MR. MCGLOTHIN:

15 Q So, you were provided with a phone from this  
16 incident?

17 A That's correct.

18 Q I'm showing you -- do you receive the phones, the  
19 physical phones?

20 A Yes, I do.

21 Q I'm going to show you what has been entered as the  
22 State's 6. Do you recognize this?

23 A Yes, this is the phone that I processed, the ZTE.

24 Q And when you do your reports, do you write down  
25 certain -- the name of the phone, the manufacturer,

1           like the model number, things like that?

2   A       Yes, the characteristics, phone number, and I also  
3           take photos of all the items included with the  
4           device.

5   Q       And that's why you can recognize that phone as  
6           being one in this case?

7   A       Yes.

8   Q       Thank you. And did you do a report on that  
9           particular phone?

10   A       I did.

11           MR. MCGLOTHIN: Showing State's Exhibit 20.  
12           (WHEREUPON, State's Exhibit No. 20 was  
13           marked for identification only.)

14           MR. AIKEN: Your Honor, what they are trying  
15           to introduce is the disk of the entirety of the  
16           data dump they took off the phone. There are  
17           matters that are part of that data dump to which we  
18           have individualized objections. So, for that  
19           reason, I object to the admissibility of the whole  
20           extraction report.

21           THE COURT: All right. Response?

22           MR. MCGLOTHIN: Your Honor, I can lay a little  
23           more foundation before introduction. I merely  
24           wanted at this point to show our forensic  
25           technician, who did the report, so that we can

1           begin talking about it.

2           THE COURT: All right. You may proceed.

3           MR. MCGLOTHIN: Thank you, Your Honor.

4           THE COURT: I overrule the objection at this  
5           point.

6 BY MR. MCGLOTHIN:

7 Q     Do you recognize this?

8 A     Yes. That is a forensic disk, or the results of my  
9       forensic examination, and that is the disk that I  
10      supply.

11 Q    And that was the dump you did on the phone, is that  
12      correct?

13 A    Yes.

14 Q    Do you typically, when you do an analysis like  
15      this, read through the contents of the disk of what  
16      is on the disk other than to check to make sure it  
17      works?

18 A    Well, I burn the items, such as supporting  
19      documents, the actual full forensic report, a  
20      summary report, photos, things of that nature, so  
21      I'm familiar with what I put on the disk, which  
22      does include the full forensic report.

23 Q    So if I were to show you items from the report,  
24      would you be able to say that they came from the  
25      report?

1 A Yes.

2 (Pause.)

3 MR. MCGLOTHIN: I apologize for the delay,

4 Your Honor.

5 (Pause.)

6 MR. MCGLOTHIN: Sorry for the delay.

7 BY MR. MCGLOTHIN:

8 Q Showing you what -- well, can you tell me what this  
9 is?

10 A That looks --

11 Q Or do you recognize it?

12 A Yes, that is -- that would be a full forensic  
13 report that I would generate.

14 Q And does this -- is this the report that you  
15 created for this phone?

16 A Yes, this is for the ZTE cell phone.

17 Q Okay. And if you look at this page, from that  
18 printout, what has been marked there at the top of  
19 the flag for June -- excuse me, March 21st at  
20 6:37:03 as an incoming text message. Do you see  
21 where that is?

22 A Yes.

23 Q Okay. And can you -- if that is contained within  
24 the report, did that come from the cell phone?

25 A Yes, this information came from that device, that

1 cell phone.

2 Q So what is the content of that, of what is written  
3 there, is actually a saved text message inside of  
4 the physical cell phone?

5 A Yes, this particular text message does not appear  
6 to be deleted.

7 Q I'm showing you what has been marked as State's  
8 Exhibit 16.

9 MR. MCGLOTHIN: And at this time I would like  
10 to move State's Exhibit 16, which is just an  
11 enlarged form of what is in the report there.

12 THE COURT: Any objection?

13 MR. AIKEN: I have no objection to that, Your  
14 Honor.

15 THE COURT: It is so admitted.

16 (WHEREUPON, State's Exhibit No. 16 was  
17 marked for identification and received  
18 into evidence.)

19 BY MR. MCGLOTHIN:

20 Q And could you please read the text message either  
21 from the board or from the report there?

22 A Both incoming and outgoing?

23 Q Yes, sir.

24 A On March 21st, 2016, at 6:37:03 p.m. in the  
25 evening, there was an incoming text from phone

1           number (████)████-2692, and the status of the message  
2           is:

3                   What's your info?

4                   Then we have an outgoing message from this  
5           device on March 31st, 2016, at 6:41:27 p.m. back to  
6           the device, (████)████-2692. It is identified as a  
7           contact in this device as Jaz. And the outgoing  
8           message is: Anthony Davis, 206 Laurens Street,  
9           Columbia, South Carolina, 29020.

10   Q    Thank you. Now I would like to do -- and, again,  
11           this is a portion of the printout from your report?

12   A    Yes.

13   Q    And could you please -- do you see an incoming  
14           message from May 5th, 2016, on that page?

15   A    I do.

16   Q    From 1:49:48 a.m.?

17   A    1:49:48 p.m.

18   Q    Oh, excuse me, p.m. Excuse me, 1:49 p.m.?

19   A    Yes, sir.

20   Q    And then a subsequent outgoing message?

21   A    Correct.

22                   MR. MCGLOTHIN: At this time, again, we would  
23           move State's 17, which is an enlargement from the  
24           report, into evidence.

25                   THE COURT: Any objection?

1 MR. AIKEN: No objection, Your Honor.

2 THE COURT: Admitted without objection.

3 (WHEREUPON, State's Exhibit No. 17 was  
4 marked for identification and received  
5 into evidence.)

6 BY MR. MCGLOTHIN:

7 Q Could you please read the message?

8 A Yes. On May 5th, 2016, at 1:49:48 p.m., there was  
9 an incoming message from (████)████-1460.

10 And the status of the message is: What up,  
11 Blackie?

12 Q And was there a subsequent outgoing message sent  
13 from that phone?

14 A There was. There is an outgoing message on  
15 May 5th, 2016, at 1:50:08 p.m. to (████)████-1460.  
16 This is a contact listed in this device as Bria.

17 And that -- the status of that message is:  
18 Nothing. Who dis?

19 Q Thank you. And, again, what I'm showing you is a  
20 printout from your report, is that correct?

21 A That's correct.

22 Q And is there an outgoing message on June 12th,  
23 2016, at 1:31:50?

24 A Yes, there is.

25 Q And what does that message say?

1 A On June 12th, 2016, at 1:31:50 a.m. in the morning,  
2 there is an outgoing message to (████)████-8622.  
3 That is identified as a contact in his phone as  
4 Jennell.

5 And the status of that message is: Hey.

6 Q And was there a subsequent message following that?

7 A Yes. On June 12th, 2016, at 1:32:12 a.m., there is  
8 an outgoing message to (████)████-8622, again to  
9 Jennell: This is Blackie from earlier.

10 Q Thank you. And, once again, I am showing you a  
11 printout from your report, is that correct?

12 A Yes, that is correct.

13 Q And in that, is there a string of text messages on  
14 June 25th, 2016, from 4:41:15 to an outgoing at  
15 5:01:06 of that day?

16 A Yes.

17 MR. MCGLOTHIN: At this time we would move  
18 State's 18, which is, once again, just an  
19 enlargement of the messages from the report, into  
20 evidence.

21 THE COURT: Any objection?

22 MR. AIKEN: I object, Your Honor. And I think  
23 we need to take this up outside the presence of the  
24 jury.

25 THE COURT: All right. We will just have that

1 marked for identification and come back to it,  
2 since we are breaking at 11:00.

3 MR. MCGLOTHIN: Yes, Your Honor.

4 MR. AIKEN: Okay, Judge. Thank you.

5 (WHEREUPON, State's Exhibit No. 18 was  
6 marked for identification only.)

7 BY MR. MCGLOTHIN:

8 Q And, once again, is that a printout from the report  
9 you created for this case from the phone you  
10 provided?

11 A Yes, it is.

12 Q And is there on that page from July 14th, 2016,  
13 three messages from 1:23:08 to 1:23:59? It is an  
14 outgoing, incoming, then outgoing?

15 A What is the timeframe you are looking for?

16 Q 1:23:08. And then the next message is 1:23:43.

17 A Yes.

18 MR. MCGLOTHIN: Once again, we would move  
19 State's 19, which is, once again, just an  
20 enlargement of the report of those text messages.

21 MR. AIKEN: Without objection, Your Honor.

22 THE COURT: So admitted.

23 (WHEREUPON, State's Exhibit No. 19 was  
24 marked for identification and received  
25 into evidence.)

1 BY MR. MCGLOTHIN:

2 Q And could you, to simplify it a little bit, the  
3 outgoing messages are coming from the phone?

4 A Yes, the outgoing messages are being sent from this  
5 device.

6 Q And in this case, who are these two going to?

7 A The one -- the message, outgoing message at  
8 1:23:08 a.m. is going to (████)████-5619. That is  
9 identified as a contact in this phone as Shanelle.

10 Q Okay. And the incoming message, is that from  
11 Shanelle or the contact indicated in the phone as  
12 Shanelle?

13 A Yes, that would be a user input. The user device  
14 would have to input that name in the contact list.

15 Q Thank you. And could you read the messages that  
16 were sent in the actual texts themselves?

17 A Yes. On 7/14/2016 at 1:23:43 a.m., there is an  
18 incoming text message from Shanelle, identified as  
19 a contact in this phone: How many people there?

20 And there is another outgoing on the same date  
21 at 1:23:59 a.m. to Shanelle: Me. I live alone.  
22 Real talk.

23 Q Thank you.

24 MR. MCGLOTHIN: And I show the witness what  
25 has been marked as State's 14 and 15.

1 (WHEREUPON, State's Exhibit No. 14 was  
2 marked for identification only.)

3 (WHEREUPON, State's Exhibit No. 15 was  
4 marked for identification only.)

5 MR. MCGLOTHIN: Beg the Court's indulgence.

6 (Pause.)

7 MR. MCGLOTHIN: I'm showing the witness what  
8 has been marked as State's 15.

9 MR. AIKEN: Without objection.

10 THE COURT: Admitted without objection. Has  
11 it already been admitted?

12 MR. MCGLOTHIN: It hasn't been. I haven't  
13 offered it yet.

14 THE COURT: So admitted without objection.

15 MR. MCGLOTHIN: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit No. 15 was  
17 admitted into evidence.)

18 BY MR. MCGLOTHIN:

19 Q Is that a photo, to your knowledge, that was in  
20 that report? I can provide you the report again.

21 A Yes, I'd have to get the file back from where it  
22 was recovered for me to verify.

23 Q I apologize. Here is the actual printout. I know  
24 it is very small on there. Does the text from  
25 July -- excuse me, June 4th -- it is an outgoing

1 message at 11:33:27?

2 A That is correct.

3 Q What is the content of that message that is sent?

4 A It is an MMS message, which is a multimedia  
5 message. It is different than a SMS or a text  
6 message. It is allowed to send and receive  
7 attachments, such as photographs or videos.

8 Q Okay. And so what you have been shown as the  
9 State's 15, is that that message, from what you can  
10 tell? I know it is very small, but --

11 A On that date and time, yes.

12 Q Okay. So that photograph was sent from this phone  
13 that you were given?

14 A Yes. This is an outgoing message.

15 MR. MCGLOTHIN: And that has already been  
16 admitted, correct?

17 THE COURT: Yes.

18 MR. MCGLOTHIN: Thank you, Your Honor.

19 I have nothing further except for the --

20 THE COURT: Ladies and gentlemen, we'll take a  
21 break now. And this break will be about half an  
22 hour. Please do not discuss the case.

23 Take a break.

24 (WHEREUPON, the jury retires to the jury  
25 room at 10:51 a.m.)

1 and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the  
4 testimony you give in this case will be the truth,  
5 the whole truth, and nothing but the truth, so help  
6 you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Have a seat in the witness chair,  
9 and state your full name for the record.

10 (Witness seated.)

11 THE WITNESS: Justin Elliott Spivey.

12 JUSTIN ELLIOTT SPIVEY,  
13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MCKELLAR:

16 Q Investigator Spivey, please tell me what you do at  
17 the Kershaw County Sheriff's Department, and how  
18 long you have done it.

19 A I am a narcotics investigator for the Kershaw  
20 County Sheriff's Office. I have been in narcotics  
21 for about three and a half years. I started my  
22 public safety right out of high school at the age  
23 of 18. I was a paid fireman for four years before  
24 I got into law enforcement.

25 When I got into law enforcement, I worked for

1 the South Carolina Bureau of Protective Services  
2 and was assigned to the protection of the  
3 Governor's Mansion, as well as the Governor and her  
4 family, any other dignitaries that were visiting  
5 the Governor's Mansion. I did that for a little  
6 over a year before coming to the Kershaw County  
7 Sheriff's Office, where I worked the road for about  
8 six months before getting put into narcotics.

9 Q So how long has your narcotic career been?

10 A Three and a half years.

11 Q Three and a half years?

12 A Yes, ma'am.

13 Q So you have had specialized training in narcotics  
14 investigation?

15 A Yes, ma'am. I am also a K-9 handler at the  
16 Sheriff's Office as well, so I have got a lot of  
17 experience with narcotics.

18 Q Can you tell me if you were acting in that official  
19 capacity back in July 2016?

20 A Yes, I was.

21 Q At any point did you start an investigation on the  
22 Defendant, Mr. Anthony Davis?

23 A Yes, ma'am.

24 Q Did the Defendant Davis have any aliases?

25 A Yes. At the time, through our investigation, we

1           knew Mr. Davis as Black.

2       Q     And during that investigation, you were able to  
3           positively identify the subject known as Black as  
4           Anthony Davis, is that correct?

5       A     Yes, ma'am, that is correct.

6       Q     And, first and foremost, can you point out for the  
7           members of the jury the Defendant you are referring  
8           to in the courtroom?

9       A     Yes, ma'am. He is sitting right there beside his  
10          attorney in the black shirt.

11      Q     Black shirt?

12           MS. MCKELLAR: Let the record reflect that the  
13          witness has identified the Defendant sitting in the  
14          black shirt.

15      BY MS. MCKELLAR:

16      Q     How exactly did you identify Mr. Davis as Black?

17      A     Through our investigation we were conducting  
18          surveillance on another address. While conducting  
19          the surveillance, we observed Mr. Davis to leave,  
20          or at the time -- we knew at the time to be Black.  
21          I initiated a traffic stop on that vehicle for a  
22          lawful traffic violation. After making contact  
23          with the driver, he then identified himself as  
24          Anthony Davis.

25      Q     Was anybody with you during that car stop?

1 A Initially I was the sole occupant of my vehicle  
2 with my K-9, and then Sergeant Elliott arrived on  
3 the scene.

4 Q And was he driving the car that you had learned  
5 Black to drive during that investigation?

6 A Yes, he was.

7 Q What kind of car was that?

8 A It was a silver Lexus with -- I don't know the  
9 size, but it had big chrome wheels.

10 Q So after you identified Mr. Davis, did you use the  
11 information that you gathered through your  
12 investigation to obtain a search warrant?

13 A Yes, we did.

14 Q Can you tell me that information? Did it include  
15 surveillance that you had done at Mr. Davis's a/k/a  
16 Black's residence?

17 A Yes, ma'am, it did.

18 Q And did you find Mr. Davis was the lessee of that  
19 apartment?

20 A Yes, ma'am.

21 Q Was he the sole lessee?

22 A Yes, ma'am.

23 Q Did you see anyone else -- did you see any evidence  
24 during your entire investigation of anyone else  
25 living there other than Mr. Davis?

1 A No, ma'am.

2 Q So you obtained the search warrant. And when did  
3 you execute that search warrant?

4 A On July 15th of 2016.

5 Q Were you on the entry team?

6 A Yes, I was.

7 Q That you heard make reference to before?

8 A I was, yes, ma'am.

9 Q So once you did a forced entry --

10 A Uh-huh.

11 Q -- you entered the home, is that correct?

12 A Yes, ma'am.

13 Q Was anyone else in the home with Mr. Davis?

14 A No, ma'am.

15 Q And where was he located?

16 A He was located in his bedroom upstairs.

17 Q He was in his bedroom alone?

18 A Yes, ma'am.

19 Q During your cursory clearing of the residence or  
20 during your search of the residence, did you see  
21 any evidence of anyone else living in the home?

22 A No, ma'am.

23 Q And does that corroborate what you had seen during  
24 your investigation?

25 A Yes, ma'am, it did.

1 Q What evidence did you recover from the bedroom  
2 where Mr. Davis was found?

3 A In a pair of red and white shoes -- when you first  
4 went into his bedroom, there was a wall to the  
5 right. When you first come in, there was stacks  
6 and stacks and stacks of shoes. On the very top of  
7 one of those boxes was a pair of red and white  
8 tennis shoes. In those tennis shoes, you could see  
9 what appeared to be a clear baggie sticking --  
10 protruding from the top of those shoes. Inside of  
11 each one of those shoes was -- and it was wrapped  
12 up in an individual, almost like a little baggie.  
13 It was 47 individual distribution size baggies of  
14 cocaine, one cookie of crack, a little bit of  
15 marijuana, and a digital scale.

16 MS. MCKELLAR: Your Honor, if I may approach  
17 the witness? I would like to show him what has  
18 been admitted as State's Exhibits 1, 2, and 7.

19 BY MS. MCKELLAR:

20 Q Can you identify these photographs for me, please,  
21 sir?

22 A Yes, ma'am. Exhibit 1 is the shoes that I was  
23 describing when we first went into the room. And  
24 that is how everything was before we removed  
25 anything.

1           Exhibit 2 is kind of the same picture, just  
2           kind of an overhead view of what it looked like as  
3           well.

4           And then Exhibit 7 is everything that was  
5           located in the shoe once we took everything out.

6           MS. MCKELLAR: Your Honor, may I approach the  
7           witness?

8           THE COURT: You don't need my permission to  
9           approach the witness.

10       BY MS. MCKELLAR:

11       Q     I'd like to show you what has been marked State's  
12           Exhibit 22. Can you identify that for me please,  
13           sir?

14       A     Yes. This is the box of sandwich bags that was  
15           located in the bedroom on the floor.

16       Q     So those sandwich bags were not located in the  
17           kitchen?

18       A     No, they weren't.

19       Q     They were located in a bedroom?

20       A     Yes, in his bedroom.

21       Q     In his bedroom?

22       A     Right, Mr. Davis's bedroom.

23       Q     Can you tell me where they were in proximity to the  
24           drugs that you recovered?

25           MR. AIKEN: Excuse me, Your Honor. I'm not

1           sure this is in evidence yet. Is this already in  
2           evidence?

3           MS. MCKELLAR: I have not moved it into  
4           evidence.

5           MR. AIKEN: Okay. Well, I mean, we are  
6           talking about where it was found and what it is,  
7           and it is not even in evidence.

8           THE COURT: I sustain the objection.

9       BY MS. MCKELLAR:

10      Q     Is that box consistent with the box you recovered  
11            in Mr. Davis's bedroom?

12      A     Yes, it is.

13           MS. MCKELLAR: Your Honor, I would move  
14           State's Exhibit 22 into evidence.

15           THE COURT: Any objection?

16           MR. AIKEN: I object, Your Honor, for reasons  
17           I set forth in my pretrial motion.

18           THE COURT: It is admitted over objection.

19           (WHEREUPON, State's Exhibit No. 22 was  
20           marked for identification and received  
21           into evidence.)

22       BY MS. MCKELLAR:

23      Q     Can you tell me specifically where those were  
24            recovered?

25      A     Yes. Can I reference these?

1 Q Yes, you may. Do you want to turn to the jury, as  
2 well as Mr. Aiken, to see where you are pointing?

3 A Okay. If you look closely at the bottom in the  
4 base right here in Exhibit 2, you can see that  
5 sandwich box right there at the bottom.

6 You can see it a little bit better in Exhibit  
7 1. You can see the actual markings. It is kind of  
8 blurry, it is kind of hard to read. It is Smart &  
9 Simple, but it is marked identical to this box.

10 Q Now, do you have sandwich bags in your home?

11 A Yes.

12 Q Where are they located?

13 A In the kitchen.

14 Q In your training and experience, do ziplock bags --  
15 are ziplock bags used regularly by people who  
16 possess large quantities of drugs?

17 A Oh, yes. And, I mean, even more in particular this  
18 brand.

19 Q So, in your training and experience, was it  
20 consistent to have a large amount of drugs with  
21 sandwich bags in a bedroom and not a kitchen? Did  
22 that seem to go --

23 A Oh, yes.

24 Q -- together?

25 A Yes.

1 Q I would like to show you what has already been  
2 admitted as State's Exhibit 5. Can you identify  
3 that for me, please, sir?

4 A Yes. This is the note, the memorandum for --  
5 addressed to Mr. Anthony Davis that was located in  
6 his bedroom about being behind on his rent.

7 Q And what did that indicate to you as the lead  
8 investigator on this case?

9 A That he was the sole occupant or lessee of that  
10 apartment.

11 Q So that letter is not addressed to anyone else, is  
12 that correct?

13 A No, ma'am.

14 Q I would also like to show you what has been  
15 admitted as State's Exhibit 3. Can you identify  
16 what that is for me, please, sir?

17 A Yes. This is -- before I get into all that, this  
18 is a purple notebook that was also located in  
19 Mr. Davis's bedroom. On the first marking there is  
20 a list of -- can I read the names?

21 Q Yes, you may.

22 A Okay. A list of -- a list of a couple of names.  
23 The first one is Lee. Then beside it it has an  
24 equal sign, 20. It has also got Saturday or  
25 Sunday.

1           It has got Heather, 25. Then it has got  
2 Thursday.

3           It looks like it says Face, 30 plus 30. And,  
4 it has got equal 60. And then Friday has got 70  
5 beside it.

6           It has got Nell or Neal, I can't read the  
7 handwriting, 10. Then Friday.

8           Phillipe, either a 7 or 5. Or it might have  
9 been a 5 and got changed to a 7. And then it has  
10 Sunday beside it.

11          And then Russell, equal 30. And then on  
12 Thursday, but that is marked out -- through.

13          The next one that is marked 06, 25 on  
14 Thursday.

15          Heath, 60, plus 400. And then on Friday it  
16 has got 100.

17          Thurs is all it says. It has got 70. And  
18 then Thurs again.

19          Milely, Milley, however you want to pronounce  
20 it, 20. Friday.

21          Hollow, 30. Thursday.

22 Q       And these markings you keep referencing, who marked  
23 these?

24 A       Mr. Davis, I would assume. It was in his bedroom.

25 Q       So the police did not do that?

1 A No, ma'am. No, ma'am.

2 Q And the Solicitor's Office did not do that? That  
3 was the way you actually found it, is that correct?

4 A Yes, ma'am.

5 Q Okay.

6 A The next marking that we have is what appears to be  
7 where Mr. Davis was looking for apartments in the  
8 New Jersey area. Like he stated, that he was  
9 looking to move back to New Jersey.

10 Q So would that be more corroboration that that note  
11 would actually belong to him?

12 A Yes.

13 Q Because he made statements to you that he was  
14 moving back to New Jersey, is that correct?

15 A Yes, he did.

16 Q When did he make those statements?

17 MR. AIKEN: Your Honor, I object. She is  
18 leading this witness. She has been leading for a  
19 while.

20 THE COURT: Don't lead the witness.

21 BY MS. MCKELLAR:

22 Q Did Mr. Davis make any statements to you about  
23 moving anywhere?

24 A Yes, he did. After we were rapping up the search  
25 warrant, we were all downstairs. And that is when

1           he said that he was looking to move back to New  
2           Jersey. And that is kind of corroborating the  
3           U-Haul boxes that were also in living room.

4       Q     Now, as the lead investigator, you turned -- if I  
5           may, I show you this, what has been marked State's  
6           Exhibit 6. Did you recover this from the bedroom?

7       A     Yes.

8       Q     And what is that in your hands?

9       A     This is a ZTE, AT&T smart phone.

10      Q     Whose phone is that?

11      A     Anthony Davis.

12      Q     So as the lead investigator, you recovered that.  
13           And not the day of, but what did you do as part of  
14           your investigation after recovering that phone?  
15           Did you turn it over to anyone?

16      A     Before turning it over, it was placed in a secure  
17           locker before being turned over to Mr. VanHouten.

18      Q     VanHouten with the Secret Service that testified  
19           earlier, correct?

20      A     Yes, ma'am.

21      Q     And what was purpose of giving it to him?

22      A     In order to -- first, we received a search warrant  
23           for the phone. And then he was given the phone to  
24           download all the contents and deleted contents of  
25           that phone pertaining -- which would help with our

1 investigation to this case.

2 Q So in your -- once you got the return, you went  
3 through all the information from the phone dump, is  
4 that correct? You read all the text messages that  
5 were given to you?

6 A Yes, ma'am.

7 Q Was there any information in those text messages  
8 about the Defendant moving?

9 A I would have to look back. I want to say there  
10 was, but I can't for sure give you a definite  
11 answer without having it in front of me looking at  
12 it.

13 Q So if I showed you the print-off from the phone  
14 dump -- you have already read all these, is that  
15 correct?

16 A Yes, ma'am.

17 Q It seems to have gotten out of order. Skip that  
18 question all together. But I would like to draw  
19 your attention to several other text messages from  
20 the phone. This has already been admitted into  
21 evidence as State's Exhibit 16. Can you read that  
22 for the jury, please, sir?

23 A 6:37:03, incoming: What's your info?

24 6:41:27, outgoing: Anthony Davis, 206 Laurens  
25 Street, Camden, South Carolina, 29020.

1 Q So what does that say to you? What would that  
2 imply to you?

3 A That he is giving somebody his address to where he  
4 lives.

5 Q Identifying that as his apartment, is that correct?

6 A Yes, ma'am.

7 Q And then this has been marked State's Exhibit 19.  
8 Also text messages from July 14, 2016. Can you  
9 read that for the jury, please, sir?

10 A Yes, ma'am.

11 1:23:08, outgoing: Okay. My address is 206  
12 Laurens Street, Camden, South Carolina, 29020,  
13 Apartment F.

14 1:23:43, incoming: How many people -- PPLS  
15 people's -- there?

16 1:23:59, outgoing: Me. I live alone. Real  
17 talk.

18 Q I hate to ask you an obvious question, but what  
19 does that last statement mean to you?

20 A That he lives alone.

21 Q That he lives alone. And is that corroborated  
22 through other elements of your investigation, such  
23 as checking with the landlord?

24 A Yes, it is.

25 Q And through the evidence you saw on the scene that

1 day, is that correct?

2 A Yes, ma'am.

3 Q I would like to show you what has been marked  
4 State's Exhibit 21. Can you tell me what that is?  
5 And tell me how you know what it is.

6 A This is the cocaine and the crack that was placed  
7 in the SLED BEST Kit when it was sent over to SLED.

8 Q Does that indicate to you those were the drugs you  
9 collected from the scene that day?

10 A Yes, ma'am.

11 Q And how do you know that?

12 A Because I secured them in this bag, and it is my --  
13 you can see my handwriting.

14 Q So when you collected the bag, those drugs on scene  
15 that day, what did you do with them?

16 A When I collected them, they were brought back to  
17 the Sheriff's Office and secured in a locker and  
18 sealed Monday, when they were taken back out of  
19 that locker and secured in this BEST Kit, along  
20 with all the other evidence, and then placed into  
21 the evidence -- back into the evidence locker of  
22 the Sheriff's Office.

23 Q So from the time you got them at the apartment time  
24 and the time you turned them in to the evidence  
25 locker at the Kershaw County Sheriff's Department,

1           did you tamper with them in any way?

2       A     No, ma'am.

3           MS. MCKELLAR:  Beg the Court's indulgence.

4           (Pause.)

5       BY MS. MCKELLAR:

6       Q     There is one more item I want to show you, text  
7           messages that have already been admitted, and that  
8           is State's Exhibit 17.  Can you read these to the  
9           jury, please, sir?

10      A     Yes, ma'am.

11           May 5th, 2016, 1:49:48, incoming:  What up,  
12           Blackie?

13           1:50:08, outgoing:  Nothing.  Who dis?

14           June 12th, 2016, 1:31:50, outgoing:  Hey.

15           1:32:12, outgoing:  This is Black from  
16           earlier.

17      Q     Now, based on your plain reading of that language,  
18           what does that imply to you?

19      A     Self-admission from Anthony Davis referring to  
20           himself as Black.

21      Q     So you would say that is him identifying himself as  
22           Black?

23      A     Yes.

24      Q     Now, we showed Investigator VanHouten what has been  
25           introduced as State's Exhibit 15.  Do you recognize

1           this photo?

2     A     Yes, ma'am, I do.

3     Q     And what is that photo?

4     A     This is a photo that was in the cell phone from  
5           which he downloaded all the contents. These are  
6           also the shoes that you can clearly see are the  
7           same from where everything was found.

8     Q     And this, which you have already identified State's  
9           Exhibit 1, these are the shoes in which the drugs  
10          were found, is that correct?

11    A     That is correct.

12    Q     So can you explain -- what I would like to mark as  
13          State's Exhibit 23 -- it has already been shown to  
14          Mr. Aiken.

15                 MR. AIKEN: I have seen it.

16                 (WHEREUPON, State's Exhibit No. 23 was  
17                 marked for identification and received  
18                 into evidence.)

19    BY MS. MCKELLAR:

20    Q     Did you read a text message from 11:33:27? Did you  
21          view a text message from 11:33:27 on that phone?

22    A     Yes.

23    Q     And that was Mr. Davis sending a photo, correct?

24    A     Yes.

25    Q     A photo of what?

1 A What appears to be a shoe.

2 Q And that picture on the right, that is what I had  
3 you identify earlier as the shoes you recovered in  
4 the room, correct?

5 A That's correct.

6 Q And you said based on your investigation you --

7 MR. AIKEN: Your Honor, she is leading the  
8 witness again, and has been doing it for a while.

9 THE COURT: I sustain the objection.

10 BY MS. MCKELLAR:

11 Q So through your investigation, do you believe these  
12 shoes are the same as these shoes?

13 A Yes, I do.

14 MS. MCKELLAR: There are no further questions  
15 from the State at this time.

16 CROSS-EXAMINATION

17 BY MR. AIKEN:

18 Q How are you, Investigator Spivey?

19 A I'm doing well. How are you?

20 Q Good. Now, you talked about surveillance. When  
21 you were surveilling at the King Haigler  
22 Apartments, you were not just surveilling Apartment  
23 F, were you?

24 A On the particular dates referring to this case, we  
25 were surveilling a building where Apartment F was.

1 Q Surveilling that entire building. There are  
2 multiple apartments in that building, right?

3 A The building in particular where we were focusing  
4 our attention on, you are correct, there is several  
5 other ones in that building, but we were containing  
6 our investigation to Apartment F.

7 Q Now, you went to the Criminal Justice Academy?

8 A Yes, sir, I did.

9 Q And one of the things you learned there is about  
10 preparing reports, right?

11 A Yes, sir.

12 Q Okay. And you talked about the importance of  
13 preparing a report, right?

14 A Yes, sir.

15 Q And there are a lot of reasons for that. One of  
16 the reasons is so that you can make sure you can  
17 refresh your recollection and testify truthfully in  
18 court, right?

19 A Yes, sir.

20 Q And so it is important to be thorough?

21 A Yes, sir.

22 Q It is important to be accurate?

23 A Yes, sir.

24 Q And it is important to report what you do and what  
25 you see, right?

1 A Yes, sir.

2 Q You don't have any reports of the surveillance, do  
3 you?

4 A No, sir. It is not a common practice for us to  
5 write a report on when and where we are conducting  
6 surveillance.

7 Q Well, it is something you did as part of an  
8 investigation, right?

9 A Yes, sir.

10 Q And it has to do with things you observed as part  
11 of the investigation, right?

12 A Yes, sir.

13 Q And you did it and you observed it, but yet you  
14 didn't report it?

15 A It is recorded in the search warrant.

16 Q All right. Well, do you have any independent  
17 reports of surveillance?

18 A No, sir, I don't.

19 Q Now, the search warrant, as I recall, was executed  
20 on July 15th of 2016, is that correct?

21 A Yes, sir, that is correct.

22 Q And I think your incident report that you prepared  
23 for that search indicates that it was at about  
24 5:54 p.m.?

25 A That is correct.

1 Q Okay. Now, when you arrived at the location, you  
2 did the knock and announce, right?

3 A Yes, sir.

4 Q And you knocked three times and said, Police,  
5 search warrant, right?

6 A Yes, sir.

7 Q Okay. And then after you did that, you busted down  
8 the door?

9 A Yes, sir.

10 Q Because nobody came?

11 A That's correct. No, sir, nobody came to the door.

12 Q And you knocked and announced loudly so the people  
13 inside could hear, right?

14 A Yes, sir.

15 Q Because you don't want them to think you're a  
16 burglar, or something like that, and shoot you?

17 A That's correct.

18 Q Okay. You want to make sure they understand it is  
19 law enforcement so they don't harm you?

20 A Yes, sir.

21 Q So Mr. Davis was in an upstairs bedroom, correct?

22 A Yes, sir.

23 Q And he would have heard the knock and announce,  
24 correct?

25 A I can't testify to what he would have heard.

1 Q But you did it very loudly?

2 A Yes, sir.

3 Q Because you wanted everybody in the house to hear  
4 it?

5 A Correct.

6 Q Now, how much time went by between the time you  
7 first knocked, y'all first knocked on the door and  
8 the time y'all busted down the door?

9 A I don't recall.

10 Q You don't remember?

11 A No, sir.

12 Q Okay. But it was enough time to knock three times  
13 and say, Police, search warrant?

14 A Yes, sir.

15 Q Now, were you part of the team that initially  
16 entered the house?

17 A Yes, sir, I was.

18 Q Okay. And when you first entered the house, what  
19 did you do?

20 A I went upstairs.

21 Q And you went upstairs and found what?

22 A I located Mr. Davis in what appeared to be his  
23 bedroom.

24 Q And what was he doing?

25 A I don't recall exactly what he was doing.

1 Q Was he sitting down? Standing up?

2 A I don't recall.

3 Q You don't remember what he was doing?

4 A I don't remember what exactly he was doing when we  
5 went in the bedroom.

6 Q But he was in that bedroom?

7 A Yes, sir, he was.

8 Q Now, did you look into any of the other rooms in  
9 the upstairs?

10 A No, sir. My main focus was on, like with me being  
11 lead investigator, once we secured everything, I  
12 was focused on that room. I didn't -- outside of,  
13 you know, popping my head in some other rooms, I  
14 didn't extensively search any other rooms.

15 Q All right. Did you notice a bathroom upstairs?

16 A Yes, sir, I did.

17 Q How far was the bathroom away from the room that  
18 Mr. Davis was in?

19 A Kind of across the hall.

20 Q Right across the hallway?

21 A Yes, sir.

22 Q Now, one of the reasons why you want to get into  
23 the house after you knock and announce is to  
24 prevent people from discarding drugs, right?

25 A Yes, sir, that's correct.

1 Q Okay. And a common way of doing that is flushing  
2 it down the commode, right?

3 A That is one way, yes, sir.

4 Q There was no indication when you went to the room  
5 Mr. Davis was in that he was in any way attempting  
6 to dispose of the drugs by flushing them down the  
7 commode?

8 A I can't testify as to what he was going to do, or  
9 anything like that. I can't testify to where he  
10 was at whenever we knocked on the door. He could  
11 have been downstairs, for all I know. He could  
12 have ran up the steps when we knocked and  
13 announced. I have no way of knowing where he was  
14 in the house except for where he was located.

15 Q But the fact remains, you saw no evidence that he  
16 tried to put the drugs in the toilet?

17 A No, sir. They were located in the shoe.

18 Q In the shoe that was in the room that Mr. Davis was  
19 in?

20 A That's correct.

21 Q When you got upstairs?

22 A Yes, sir, that's correct.

23 Q And what part of the house did you search?

24 A I recorded everything, so I kind of stood back.  
25 But I stayed mainly while the search was going on

1 in Mr. Davis's bedroom.

2 Q Well, let me ask you this. At some point, was  
3 Mr. Davis read his Miranda warnings?

4 A Yes. As soon as I located Mr. Davis and detained  
5 him, I brought him downstairs. I then read him his  
6 Miranda rights and a copy of the search warrant,  
7 which is common practice. So, yes, he was read his  
8 rights.

9 Q Did he say anything to you before you read him his  
10 rights?

11 A No, sir, not before I read him his rights.

12 Q The only statements he made was after you had read  
13 him his rights?

14 A Yes, sir.

15 Q And just so the jury understands, part of the  
16 Miranda warning is, You have the right to remain  
17 silent?

18 A Yes, sir. If you like, I can read the card.

19 Q Yes. If you would, that would be great. That  
20 would be fantastic.

21 A You have the right to remain silent. Anything you  
22 say can and will be used against you in a court of  
23 law. You have the right to speak to an attorney  
24 and have an attorney present during any  
25 questioning. If you cannot afford a lawyer, one

1 will be provided for you at government expense.

2 Knowing and understanding your rights as I have  
3 explained them to you, are you willing to answer  
4 any of my questions without an attorney present?

5 Q And that would have been what you would have read  
6 to Mr. Davis?

7 A Yes, sir. That is why it stays in my wallet.

8 Q Now, what items did you actually physically take  
9 possession of?

10 A I took possession of everything after everything  
11 was located in the house. Once we left, I took  
12 custody of everything.

13 Q So you were like the recorder?

14 A Yes, sir.

15 Q Recording where everything was found and what was  
16 taken?

17 A Yes, sir.

18 Q Okay. And then you took possession of all of it?

19 A Yes, sir.

20 Q And then you took it to Kershaw County Sheriff's  
21 Department and you put it in the evidence locker?

22 A Yes, sir.

23 Q All right. Now, none of this evidence was swabbed  
24 for DNA, was it?

25 A No, sir. There was no need to. He lived there by

1           hisself and stated that he lived there by hisself,  
2           so there was no need.

3       Q     All right. And, now, DNA is unique to each  
4           individual, right?

5       A     I'm assuming so, yes, sir.

6       Q     And that is why it is used for identification,  
7           right?

8       A     I would assume so.

9       Q     So if you got DNA from some of these items, you  
10          would be able to tell who touched them, right?

11      A     Yes, sir.

12      Q     Now, these items, you didn't fingerprint any of  
13          these items either, did you?

14      A     No, sir, we didn't feel a need to.

15      Q     And the theory of fingerprints is that every  
16          fingerprint is unique, your fingerprint is  
17          different than mine, right?

18      A     Yes, sir.

19      Q     So if you fingerprinted it and you got  
20          fingerprints, you would be able to tell who touched  
21          those items, right?

22      A     Yes, sir.

23      Q     Now, you prepared the incident report in this case,  
24          didn't you?

25      A     Yes, sir.

1 Q Because you were the lead investigator?

2 A Yes.

3 Q And when you prepared the incident report, you  
4 wanted it to be complete?

5 A Yes, sir.

6 Q You wanted it to be accurate?

7 A Yes, sir.

8 Q There a lot of reasons, not the least of which  
9 making sure that what you said in court is correct?

10 A That's correct.

11 Q Now, your incident report does not mention, does  
12 it, any field test of residue on the Pyrex, does  
13 it?

14 A No, sir, it doesn't.

15 Q Your incident report does not state at any place  
16 that Mr. Davis said he lived alone, does it?

17 A No, sir.

18 Q Now, there were two bedrooms in this house, right?

19 A Yes, sir.

20 Q Okay. And you saw some U-Haul boxes when you went  
21 in?

22 A I'm sorry, go ahead.

23 Q Go ahead.

24 A No, the U-Haul boxes were located downstairs in  
25 what appeared to be the living room area of the

1 apartment.

2 Q Now, these shoes, you didn't take possession of the  
3 shoes, did you?

4 A No, sir.

5 Q When I say shoes, I'm talking about those red and  
6 white shoes.

7 A No, sir.

8 Q Do you know what I'm talking about?

9 A Yes, sir.

10 Q Okay. Now, no drugs were physically found in  
11 Mr. Davis's possession, were they? In other words,  
12 they weren't on his person?

13 A No, sir.

14 Q There were no drugs in his pants pockets, or  
15 anything like that?

16 A No, sir, there was nothing located on his person.

17 Q The drugs were found, as I understand it, in the  
18 closet inside the shoes?

19 A The shoes were not in the closet. The shoes were,  
20 when you first -- would you like to reference a  
21 picture?

22 Q Yes, that would be fine.

23 A All right. When you first -- I'm going to pretend  
24 this is my hand at the door.

25 Q Okay.

1 A When you come into his room and look to the right,  
2 these were located on the wall.

3 Q Okay.

4 A I believe what was testified what was found in  
5 closet was the pill bottle.

6 Q Okay.

7 MR. AIKEN: If I could have just one moment,  
8 Your Honor?

9 (Pause.)

10 MR. AIKEN: That's all we have, Your Honor.

11 THE COURT: Any redirect?

12 MS. MCKELLAR: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MCKELLAR:

15 Q The card that you read earlier, you keep that in  
16 your pocket at all times, is that correct?

17 A That's correct.

18 Q So everyone who is read Miranda that is how it  
19 would be?

20 A I would read out from that card.

21 Q Mr. Aiken asked you about not writing down your  
22 surveillance. How soon after doing the  
23 surveillance did you start drafting the search  
24 warrant where you referenced the surveillance?

25 A When I referenced the surveillance from the time I

1 got the search warrant signed was -- we conducted  
2 surveillance on the 8th. I got the search warrant  
3 signed on I think the 11th.

4 Q So did you start drafting the search warrant on the  
5 11th or did you start the day before?

6 A Well, we started drafting it the day of the 8th.

7 Q So you didn't write it in your report because you  
8 started drafting the search warrant the same day?

9 A Right. That's correct.

10 MR. AIKEN: Your Honor, I object to leading  
11 the witness again.

12 THE COURT: The objection is sustained.

13 MS. MCKELLAR: I apologize, Your Honor.

14 BY MS. MCKELLAR:

15 Q Mr. Aiken asked you about DNA and fingerprints.  
16 What kind of material was the drug -- were the  
17 drugs recovered in?

18 A Like a plastic bag, which is very hard to get  
19 fingerprints off of.

20 Q So in your experience doing narcotics, it is hard  
21 to get fingerprints off plastic bags?

22 A That is correct. It is very hard.

23 Q As the lead investigator, why did you not try to  
24 obtain fingerprints or DNA off of any of the  
25 substances recovered in the home?

1 A Because Mr. Davis stayed alone -- stated that he  
2 stayed alone. There is no need in clogging up the  
3 system and wasting taxpayers' money when he has  
4 already stated that he lived there alone, which,  
5 through our investigation, we confirmed that.

6 Q And this location where you served the search  
7 warrant where you said Mr. Davis did live, what  
8 landmarks are around that?

9 A There -- the hospital is kind of close by, but more  
10 in particular, Camden Elementary School is located  
11 maybe 200 yards at the very most from the entrance  
12 to this apartment complex.

13 Q Camden Elementary School is about two football  
14 fields away from his apartment?

15 A Correct.

16 MS. MCKELLAR: There are no further questions,  
17 Your Honor.

18 THE COURT: Any further questions?

19 MR. AIKEN: No recross, Your Honor.

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

21 (Witness steps down.)

22 THE COURT: Next witness.

23 MS. MCKELLAR: Your Honor, the State calls  
24 Larry Zivkovich.

25 (Witness approaches.)

1 THE CLERK: Place your left hand on the Bible,  
2 and raise your right hand, please.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the  
5 testimony you give in this case will be the truth,  
6 the whole truth, and nothing but the truth, so help  
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Would you state your full name for  
10 the record, and have a seat in the witness chair.

11 (Witness seated.)

12 THE WITNESS: Lawrence Zivkovich,  
13 Z-I-V-K-O-V-I-C-H.

14 LAWRENCE ZIVKOVICH,  
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MCKELLAR:

18 Q So I did say that pretty close to correct, right?

19 A Yes.

20 Q Mr. Zivkovich, could you tell us where you are  
21 employed and what your duties are there?

22 A I work for the South Carolina Law Enforcement  
23 Division, commonly known as SLED. And I work there  
24 as a forensic chemist who works in the drug  
25 identification department.

1 Q And what are your duties as a forensic chemist?

2 A We analyze samples submitted by outside agencies to  
3 confirm the presence of controlled substances.

4 Q And how long have you been employed in that  
5 capacity at SLED?

6 A A little over 11 years.

7 Q What kind of training did you receive to get you to  
8 the position of chemist, forensic chemist,  
9 specifically?

10 A I received a bachelor of chemistry from the  
11 University of South Carolina. And then when I was  
12 hired on at SLED, I received training as a forensic  
13 chemist from SLED, and then was sent to seminars at  
14 the Drug Enforcement Administration at the  
15 University of West Virginia.

16 Q So as part of your duties as a forensic chemist, do  
17 you engage in ongoing training to refresh  
18 throughout your career?

19 A Yes, ma'am.

20 Q Have you had an occasion to chemically analyze  
21 substances to determine whether or not they are  
22 controlled substances?

23 A I have.

24 Q And did you do that in your training as well as  
25 your capacity as a chemist?

1 A Yes, ma'am.

2 Q And how many times would you say you have done  
3 that?

4 A Approximately 10- to 15,000.

5 Q 10- to 15,000?

6 A Yes, ma'am.

7 Q How many substances do you analyze in any given  
8 week to test whether or not they are a controlled  
9 substance?

10 A I work anywhere from 25 to 40 cases.

11 Q So would you say that making analyses is a regular  
12 part of your duties as a chemist?

13 A Yes, ma'am.

14 Q Is it not the Number One part of your job?

15 A It is.

16 Q Have you had an occasion to qualify as an expert in  
17 the area of forensic chemistry in the State of  
18 South Carolina?

19 A I have.

20 Q How about specifically in Kershaw County? I know  
21 you travel all over.

22 A I don't believe I have been in Kershaw County  
23 before.

24 Q How many times have you been qualified as an  
25 expert?

1 A Forty times.

2 Q Forty times? Did you testify in those cases where  
3 you were qualified as an expert?

4 A Yes, ma'am.

5 MS. MCKELLAR: Your Honor, at this time, I  
6 would move that Mr. Zivkovich is an expert in the  
7 field of forensic chemistry.

8 THE COURT: What says Defense?

9 MR. AIKEN: Your Honor, no voir dire as to  
10 expertise, and we will stipulate that he is an  
11 expert in the field.

12 THE COURT: All right. He will be admitted as  
13 an expert in the field of forensic chemistry.

14 Ladies and gentlemen, when a witness is an  
15 expert witness, they can offer opinions in the area  
16 of their expertise, whereas lay witnesses generally  
17 cannot.

18 You may proceed.

19 MS. MCKELLAR: Thank you, Your Honor.

20 BY MS. MCKELLAR:

21 Q Mr. Zivkovich, I would like to show you what has  
22 been marked State's Exhibit 21. Can you identify  
23 what that package is?

24 A Yes, ma'am. It is a BEST Kit with a Lab Number  
25 L16-11798. It was submitted to SLED, which I work.

1 Q And how can you identify that as a case that you  
2 did?

3 A My initials are underneath the heat seal for the  
4 bag that contains the BEST Kit. And also the  
5 writing is partially obscured from some moisture  
6 that is in the bag, but I normally write on the  
7 evidence when I receive it that the seal was intact  
8 and the date that I received it. And the word  
9 "seal" is obscured, but I can see "intact." And it  
10 looks like 1/29/17 with my initials.

11 Q And that would have been when it came into your  
12 possession from where?

13 A From the log-in area for SLED.

14 Q Can you describe to me what the log-in area is?

15 A When the outside agencies bring evidence to be  
16 examined by any of the departments at SLED, they go  
17 through a room downstairs with log-in technicians  
18 who give each piece of evidence a unique SLED lab  
19 number and then identify the departments that need  
20 to do the analysis that the evidence is downstairs  
21 to be picked up.

22 Q So I believe you testified that based on your  
23 handwriting in that bag, you received that sometime  
24 in January, is that correct?

25 A Well, that was when I checked the seal. I would

1           have received it -- I personally received the  
2           evidence on January 29th, 2017.

3       Q     And what is that that you are referencing?

4       A     It is a chain of custody.

5       Q     And can you tell who gave you that based on your  
6           documentation? Where did you receive that from?

7       A     I actually received it from another forensic  
8           chemist whose name is Mary Beth McCormick.

9       Q     But she did not test it, is that correct?

10      A     That's correct.

11      Q     So the first time this package was opened would  
12           have been when you opened it, correct?

13      A     Yes, ma'am. I received it from the other chemist  
14           through a program we started to reduce our backlog.  
15           So if a case had been assigned to a different  
16           chemist but we had finished our work, then we would  
17           help them with the cases they had also.

18      Q     Does that mean she never started testing it?

19      A     That's correct.

20      Q     So once you obtained it and you checked the seal,  
21           did it remain under your care, custody, and control  
22           until you tested it yourself?

23      A     Yes, ma'am.

24      Q     So is that exhibit in the same condition in which  
25           you first received it?

1 A Yes, ma'am.

2 MS. MCKELLAR: Your Honor, I would move  
3 State's Exhibit 21 into evidence at this time.

4 MR. AIKEN: Your Honor, I object because they  
5 haven't completed the chain of custody for this  
6 item.

7 THE COURT: Response?

8 MS. MCKELLAR: Your Honor, that may be a  
9 matter that needs to be taken up outside of the  
10 jury's presence.

11 THE COURT: All right, ladies and gentlemen of  
12 the jury, I will have you step out. Please do not  
13 discuss the case.

14 (WHEREUPON, the jury retires to the jury  
15 room at 12:37 p.m.)

16 THE COURT: Yes?

17 MS. MCKELLAR: Your Honor, if I may? State v.  
18 Sweet says that testimony from each custodian of  
19 fungible evidence is not required as a prerequisite  
20 to establish a chain of custody. And while we are  
21 missing two of the ladies from SLED, we have had  
22 both the people who possessed it before and after  
23 then to cure that chain. They have also testified  
24 that it was in the same condition in which they got  
25 it and gave it.

1           tested.

2                   And all those cases cite --

3           THE COURT: Well, you don't present the blood  
4           sample to the jury. You are attempting to present  
5           the substance to the jury. And that is the  
6           distinction.

7           MS. MCKELLAR: So can we continue questioning  
8           him about his analysis then, Your Honor?

9           THE COURT: Yes. The objection is to the  
10          physical item being admitted into evidence based on  
11          incomplete chain at this point.

12          MS. MCKELLAR: Thank you, Your Honor.

13          THE COURT: Yes, sir?

14          MR. AIKEN: Your Honor, my position is that if  
15          the physical item is not in evidence, the witness  
16          can't testify about the physical item not in  
17          evidence.

18          THE COURT: Well, I disagree with that. He  
19          can testify as to his findings without the physical  
20          item being presented to the jury. And it cannot be  
21          presented to the jury unless and until it is  
22          admitted into evidence.

23          The State is conceding that there is no  
24          testimony as to what has happened with it since it  
25          has left SLED.

1 MS. MCKELLAR: And, Your Honor, I did have the  
2 witnesses that were here earlier come back if we  
3 need to complete the chain.

4 THE COURT: You haven't rested yet. You are  
5 still presenting your case.

6 MS. MCKELLAR: Yes, Your Honor.

7 THE COURT: All right. Bring the jury.

8 (WHEREUPON, the jury came into open  
9 court at 2:28 p.m.)

10 THE COURT: All right, the jury is back.  
11 Now, Mr. Foreman, how is the jury doing?

12 THE FOREPERSON: Fine, sir.

13 THE COURT: Very good.

14 All right. The objection is sustained. You  
15 may continue.

16 MS. MCKELLAR: Thank you, Your Honor.

17 **DIRECT EXAMINATION CONTINUES**

18 BY MS. MCKELLAR:

19 Q The substance which has been identified as State's  
20 Exhibit 21, you have already described how it came  
21 into your custody. Can you explain to me what you  
22 did after it came into your custody?

23 A What I do when I receive evidence is, first I check  
24 to make sure that the evidence is actually sealed  
25 from the time that I receive it. Once I have

1           determined that, then I open the evidence to make  
2           sure that it matches what they said on the  
3           inventory form.

4           Once that is done, then I break it down into  
5           separate items that are being submitted and test  
6           each one according to what type of evidence it  
7           might be.

8           In this particular case, I did a spot test or  
9           a chemical analysis and an instrumental analysis.

10       Q    Before testing any of these items, did you make  
11           markings on any of the containers?

12       A    I did.

13       Q    And what were those markings and what did they  
14           represent?

15       A    The case as a whole was given a SLED lab number  
16           that is unique to that particular item. And then  
17           all the items inside are given an individual number  
18           unique to that particular item. We call that  
19           sub-iteming. So, each item was labeled with a  
20           particular sub-item number.

21       Q    So you did that, not the Kershaw County Sheriff's  
22           Department, is that correct?

23       A    That's correct.

24       Q    So once you mark the items, what testing was then  
25           performed?

1 A On this particular one, I performed a color test  
2 and also an instrumental analysis.

3 Q And what did the color test show you?

4 A Color tests are just preliminary tests. They are  
5 not conclusive, but they give you an idea of what  
6 type of substance you may be examining, whether it  
7 might be some type of an amine or a cocaine or a  
8 cocaine base or heroin, something along those  
9 lines.

10 Q And were those spot tests positive for the items  
11 in the bag that you have?

12 A They were.

13 Q And so that indicated to you that there was cocaine  
14 present? What does a positive spot test indicate  
15 to you?

16 A A positive spot test only is an indication of what  
17 it could possibly be. There are non-controlled  
18 substances that will also give a positive test,  
19 which is why it is mandated that we do an  
20 instrumental analysis for confirmation.

21 Q And what instrumental analysis did you perform on  
22 the substances after your spot test?

23 A I used a gas chromatograph and a mass spectrometer,  
24 commonly known as a GCMS.

25 Q And can you tell me -- try to dumb it down for me

1           personally so that I can understand -- what exactly  
2           those machines do to substances to identify them?

3       A     What they do is we extract them into a liquid and  
4           the liquid is vaporized and then run through an  
5           oven that separates it by its chemical weight, or,  
6           sorry, molecular weight. And as it goes through  
7           the instrument, then the instrument will subject it  
8           to a radiation energy that breaks apart the  
9           molecules and then identifies the molecules.

10      Q     So you ran the tests on the two substances you  
11           received, correct?

12      A     That's correct.

13      Q     And what did those instrument testings tell you  
14           about the substances?

15      A     I had received two different types of substances in  
16           this case.

17           I had received one that I identified as a wet  
18           rock substance, which my instrumental analysis  
19           confirmed to be cocaine base, commonly known as  
20           crack.

21           And I also received 47 ziplock bags containing  
22           a powder substance, which were identified  
23           instrumentally as cocaine.

24      Q     So both your spot test and your instrumental tests  
25           identified the substances as crack cocaine and

1 cocaine, respectively?

2 A Yes, ma'am.

3 Q But then did you have the opportunity to weigh  
4 those substances?

5 A I did.

6 Q And what weight did you obtain?

7 A For the two rock substances that I had tested, I  
8 determined that they were cocaine base, commonly  
9 known as crack, with a total net weight of  
10 33.38 grams.

11 Q For the cocaine substance, what was the  
12 measurement?

13 A For the cocaine substance, we use a sampling plan  
14 called hypergeometric plan. And what that does  
15 is -- it is not physically possible for us to  
16 analyze all the substances all the time. I have  
17 had heroin cases that had over 5,000 different  
18 baggies in them. So statisticians have developed a  
19 plan where you can analyze a small portion of the  
20 entire population and, depending on what your  
21 results are, then it gives you an estimate of the  
22 full amount.

23 So in this particular case, I sampled 18 of  
24 the bags. And those 18 bags were all confirmed to  
25 contain cocaine with a total weight of 6.41 grams.

1           And the estimated remaining weight of the untested  
2           bags was 10.15 grams, plus or minus .45 grams.

3       Q     And is that measurement that you have or that you  
4           stated, the 10.15 grams, based on this  
5           hypergeometric method, does that have a confidence  
6           level associated with it?

7       A     Yes, ma'am, it does.

8       Q     And what is that?

9       A     The confidence level that is built into it says  
10          with a 95 percent confidence that at least  
11          90 percent of the untested material contains the  
12          anolyte of interest.

13               In my particular field, when we use this,  
14          in the 11 years that I have been using this  
15          particular plan, we have been asked several times  
16          to go back and test some of the untested items, and  
17          I have never run across any of the other items in  
18          the case not containing the anolyte.

19       Q     So over 11 years you have been using this same  
20          hypo -- am I saying it right? Hypo or  
21          hypergeometric?

22       A     Hyper.

23       Q     Hypergeometric sampling plan, you have never once  
24          retested the items and had them come back negative  
25          for drugs?

1 A That's correct.

2 Q And that is negative for the drug that you  
3 identified them as based on the hypergeometric  
4 testing method, correct?

5 A Yes, ma'am.

6 Q So, in your expert opinion, the drugs that were  
7 given to you to test by the Kershaw County  
8 Sheriff's Department were 33.38 grams of crack and  
9 16.56 grams of cocaine total, correct?

10 A The first number I didn't hear.

11 Q 33.8 grams of crack cocaine, does that appear --

12 A 33.38 grams.

13 Q I'm sorry, I misread that. 38.38 grams of crack  
14 cocaine. So that the wet rock substance that was  
15 submitted to you by Kershaw County Sheriff's  
16 Department, in your expert opinion, you were  
17 submitted 33.38 grams of crack, correct?

18 A Yes, ma'am.

19 Q And the powder substance you had said in your  
20 expert opinion as a forensic chemist would be a  
21 total of 16.56 grams, correct?

22 A Yes, ma'am, plus or minus .45 grams.

23 Q Absolutely. Now, tell me a little bit about the  
24 machines that you have in your lab and how you make  
25 sure they are running properly and stay running

1 properly.

2 A When we first receive an instrument, we do a  
3 validation where we run known standards on the  
4 instrument and we check it for retention time  
5 values and precision and accuracy.

6 Once it has been validated, then every month  
7 we do a tune on it. And then every week that it is  
8 being used we also run another tune on it. And  
9 these tunes checked all the parameters within the  
10 instrument itself to make sure everything is  
11 running properly.

12 In addition to that, every analyte that we  
13 analyze, once we confirm that there is a controlled  
14 substance, we also run that exact same standard to  
15 make sure that it matches completely on that  
16 particular run on that particular instrument for  
17 that day.

18 Q So there is several checks and balances to make  
19 sure the machine is running properly?

20 A Yes, ma'am.

21 Q And does that coincide with any sort of national  
22 standard, any kind of accreditation your lab may  
23 have?

24 A Yes, ma'am.

25 Q What standard is that?

1 A We are covered under ASCLD, which is I believe the  
2 American Directors Crime Lab Association.

3 Q So that is the premier national standard for  
4 laboratories, directors laboratories?

5 A Yes, ma'am.

6 Q Now, you have what has been marked State's Exhibit  
7 21 in your hand. Can you tell me -- you have  
8 already testified this packaging is in the way that  
9 you received it and the way you sealed it and you  
10 sent it back to Kershaw County Sheriff's  
11 Department, but is the material inside the same way  
12 that it was when you received it?

13 A It was still packaged the same way. There is -- a  
14 lot of the writing is smudged, and I would  
15 attribute that, when I originally analyzed the  
16 substance, I had written on my worksheet that it  
17 was two plastic bags containing a wet soupy rock  
18 substance.

19 Q And why would the -- in your opinion, why would the  
20 rock-like substance be wet?

21 A One of the things we did when we went to the Drug  
22 Enforcement Administration was we actually made  
23 some crack cocaine. Crack cocaine is made from  
24 cocaine hydrochloride, which people refer to  
25 commonly as just cocaine.

1           And the way that you convert cocaine into  
2           crack is you mix the cocaine with a base substance,  
3           like ammonia or baking soda. Then you slurry that  
4           in water and cook it. And what happens is,  
5           depending on the purity, you can either get nice  
6           brittle crack rocks. If it is less pure, it is not  
7           dried correctly, then it will end up soupy or wet.

8       Q     So it is possible for crack cocaine to have been  
9           solid at one point, then over time turn back into  
10          liquid?

11      A     It could.

12           MS. MCKELLAR: Beg the Court's indulgence.

13           (Pause.)

14           MS. MCKELLAR: Your Honor, I have no further  
15          questions from this witness at this time.

16           THE COURT: By the Defense?

17                       CROSS-EXAMINATION

18      BY MR. AIKEN:

19      Q     Hello, Mr. Zivkovich. How are you?

20      A     I'm doing fine.

21      Q     Good. Now, do you have your drug analysis report  
22          in front of you?

23      A     Yes, sir.

24      Q     I believe it is Item 1.2, evidence bag containing a  
25          plastic bag containing 47 ziplock bags containing

1 powder substance. Do you see what I'm talking  
2 about?

3 A Yes, sir.

4 Q That would be the substance that you identified as  
5 cocaine?

6 A That's correct.

7 Q Now, I want to make sure I understand that. You  
8 had 47 separate bags?

9 A Yes, sir.

10 Q Okay. And you tested 18?

11 A Yes, sir.

12 Q Okay. Those were actually subjected to the  
13 chemical test?

14 A Correct.

15 Q And the chemical test of those 18 bags confirmed  
16 the presence of cocaine?

17 A The chemical test indicated the presence and the  
18 instrumental analysis confirmed.

19 Q I apologize. The instrumental analysis, the mass  
20 spectrometer is what you did, right?

21 A Yes, sir.

22 Q Okay. So the chemical test suggested cocaine, and  
23 then your later test with the instrumentation  
24 confirmed it?

25 A Yes, sir.

1 Q Okay. And that was for the 18 bags?

2 A Yes, sir.

3 Q And the total weight of the cocaine in those 18  
4 bags was 6.41 grams, is that right?

5 A Yes, sir.

6 Q Okay. Now, that leaves 29 bags, right? 47 minus  
7 18?

8 A Yes, sir.

9 Q Leaves 29 bags?

10 A Yes, sir.

11 Q Those 29 bags you didn't test at all?

12 A That's correct.

13 Q You didn't do a chemical test?

14 A That's correct.

15 Q And you didn't do an instrumentation test?

16 A That's correct.

17 Q So, as a matter of chemical analysis, you did not  
18 confirm that those 29 ziplock bags contained  
19 cocaine?

20 A That's correct.

21 Q And you say you did a hypergeometric sampling,  
22 right?

23 A Yes, sir.

24 Q And that is fancy statistical kind of stuff, right?

25 A Yes, sir. Other people besides our lab have come

1 up with that.

2 MR. AIKEN: Thank you, sir.

3 THE COURT: Anything further?

4 MS. MCKELLAR: Nothing further from the State,  
5 Your Honor.

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

7 (Witness steps down.)

8 THE COURT: Next witness.

9 MR. MCGLOTHIN: The State calls James Thorpe.  
10 (Witness approaches.)

11 THE CLERK: Place your left hand on the Bible,  
12 and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the  
15 testimony you give in this case will be the truth,  
16 the whole truth, and nothing but the truth, so help  
17 you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat in the witness chair,  
20 and state your full name for the record.

21 (Witness seated.)

22 THE WITNESS: James V. Thorpe, Jr., formerly  
23 with the Kershaw County Sheriff's Office, the  
24 evidence custodian. I apologize for not being  
25 in my suit. I was prepared earlier and was

1 THE COURT: All right, thank you, sir. You  
2 may step down.

3 (Witness steps down.)

4 MS. MCKELLAR: Your Honor, at this time the  
5 State rests.

6 THE COURT: Ladies and gentlemen, the State  
7 has rested. That means you have heard the State's  
8 case. I need to discuss some matters with counsel  
9 outside the presence of the jury. So if you will  
10 go to the jury room. And do not discuss the case.

11 (WHEREUPON, the jury retires to the jury  
12 room at 3:01 p.m.)

13 THE COURT: Based on the testimony of the last  
14 witness, we have 38 additional prospective  
15 witnesses. He said he opened it up in court so  
16 everyone could see. That is all jurors and all  
17 other spectators, including jurors, totaling 38  
18 people or prospective witnesses. I don't know if  
19 you intend to call all of us as witnesses on this  
20 credibility issue or not.

21 MR. AIKEN: I'm not going to, Judge.

22 THE COURT: But it goes to, at this point, on  
23 the question of chain of custody, it all goes to  
24 weight and not admissibility. I think the State  
25 has complied with establishing an adequate chain.

1 testimony you give in this case will be the truth,  
2 the whole truth, and nothing but the truth, so help  
3 you God?

4 THE WITNESS: Yes.

5 THE CLERK: State your full name for the  
6 record, and have a seat in the witness chair,  
7 please.

8 (Witness seated.)

9 THE WITNESS: Anthony Cameen Davis.

10 ANTHONY CAMEEN DAVIS,  
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. AIKEN:

14 Q Make sure you speak up, Mr. Davis, so everybody can  
15 hear you, okay?

16 A Yes.

17 Q All right. Now, how old are you, Mr. Davis?

18 A Thirty-six -- no, 37, I'm sorry.

19 Q Are you married?

20 A Single.

21 Q Do you have any children?

22 A I have a baby that was born a year ago, still  
23 in the hospital from complications, yes.

24 Q How far did you go in school?

25 A High school, some trade school, building

1 maintenance.

2 Q And where do you live?

3 A I live in 1908 Fort Jackson Road, Lugoff, South  
4 Carolina.

5 Q Where are you originally from?

6 A Patterson, New Jersey.

7 Q And how long have you been down south?

8 A Since 2012.

9 Q And where all have you lived in the south?

10 A I lived in King Haigler, Apartment 14 -- I mean,  
11 1401, Apartment 0, and then I lived in 206 Laurens  
12 Street, Apartment F. Then I moved to Lugoff, Fort  
13 Jackson Road, 1908.

14 Q And so how long have you been in Camden?

15 A Since 2012.

16 Q Do you work?

17 A When I moved down here in 2012, I was working  
18 in McDonald's. And then after McDonald's, I  
19 stopped working for about six months, and then I  
20 went back to McDonald's and worked there until the  
21 beginning of 2015. I started working at the  
22 hospital, Kershaw County Health Center.

23 Q What did you do at the hospital?

24 A Environmental service assistant. I was working  
25 in the emergency room and the X-ray room cleaning

1 up.

2 Q And how long did you work there?

3 A I worked there for about a year and a half.

4 Q And what were your normal working hours?

5 A 10:00 p.m. to 7:30 a.m.

6 Q And how much were you paid?

7 A Nine dollars an hour.

8 Q Were you allowed to bring your cell phone to work?

9 A No.

10 Q Were you subject to being fired for mistakenly  
11 bringing your cell phone to work?

12 A First you get suspended, then you get fired next  
13 time.

14 Q As a result of that, did you sometimes leave your  
15 cell phone at home?

16 A Always when I got to work at night.

17 Q Did it have anything to do with the machinery you  
18 worked around?

19 A Yes. In the X-ray department, when I'm buffing and  
20 scrubbing the floors, when I'm just doing general  
21 cleaning duties.

22 Q Did the phone interfere with that equipment?

23 A Yes.

24 Q Now, you have heard some reference to a Lexus  
25 automobile. Whose automobile is that?

1 A Actually that is Phillip Gary's, my former manager  
2 from McDonald's. He is still the manager. That is  
3 his car, but he let me use it until I really get my  
4 license situated so I could buy it off of him, but  
5 I never got to buy it.

6 Q You had an issue with your license?

7 A Yes. That is why I went to New Jersey. Being  
8 in New Jersey is what got me back incarcerated.

9 Q Are you paying me?

10 A No.

11 Q Am I appointed to represent you?

12 A Yes.

13 Q Now, when you were living at 206 Laurens Street,  
14 Apartment F, did you have a roommate?

15 A Yes, Zion Williams.

16 Q And when did you get a roommate?

17 A February 2015. When the new company in Charlotte  
18 was buying out the hospital, so they had to  
19 downsize and they was going by seniority, so my  
20 hours got broke down, so my money got light, so I  
21 had to get me a roommate. And I ran it by my  
22 landlord, and she just gave me -- for her opinion,  
23 she said, I may have to get a roommate if I can.  
24 But I never told her that I was going to get one.  
25 So the next month, which was February, I had called

1 my friend from Savannah, Georgia that I met  
2 in 2010, Zion Williams. He said him and his baby  
3 mother wanted to move down, so I told them I could  
4 rent out my extra room, pay half the rent.

5 Q So how many bedrooms were there in 206 Laurens  
6 Street, Apartment F?

7 A Two bedrooms and a bathroom upstairs.

8 Q Now, I'm showing you what the Government put in  
9 evidence as Exhibit 5. Is that a letter you  
10 received from the lady over your apartment?

11 A Yes.

12 Q And it says you owed some money?

13 A Yes. I owed \$2,702 back rent.

14 Q Was that the situation you were in when you took on  
15 Zion Williams as your roommate?

16 A Yes.

17 Q Okay. Tell me a little bit about the background of  
18 Zion Williams that you know about.

19 A Well, I first met him in 2006 when we was working  
20 in Savannah, Georgia at Strength of Nature making  
21 hair perms. And then I left after that once they  
22 closed down and turned it into Carson Products. I  
23 moved back to New Jersey and came back to South  
24 Carolina, I mean, Savannah, in 2010. And then I  
25 seen him again. When I was living down there, he

1           became my roommate at 540 West 44th Street on the  
2           west side of Savannah. And then after that, once I  
3           moved back after my grandmother's passing, I moved  
4           back to New Jersey, I ain't see him no more since  
5           then, until I called him -- well, I text him on  
6           Facebook and he gave me his current number, then I  
7           called him and started talking.

8       Q     Did Zion Williams go by a nickname?

9       A     Yes.

10      Q     What was his nickname?

11      A     He called hisself Blackie Don, that is a rap name,  
12           but people just call him Black.

13      Q     How long did he live with you?

14      A     He lived with me from January -- no, end of  
15           January -- February -- beginning of February until  
16           this incident right here, which was the 15th of  
17           July, 2016.

18      Q     Did you have a bedroom and he had a bedroom in the  
19           apartment?

20      A     Yes.

21      Q     At the time of the search, which was July 15th of  
22           2016, what bedroom were you in?

23      A     I was in Zion Williams' room, Black.

24      Q     And the other room was yours?

25      A     Yes. I took the smaller room when he moved

1 in because he had his baby and his baby mother, so  
2 I let them get the bigger room. And I had a queen  
3 size bed. I just let them keep that one, and I had  
4 got me a full size to go in the smaller room, extra  
5 bedroom.

6 Q The room that was your room, was there any  
7 furniture in it on July 15th of 2016?

8 A No, just miscellaneous stuff that I left behind  
9 before -- because I had moved to Fort Jackson,  
10 1908, but I came back. When I came back there that  
11 day, on July 15th, I came in the house with some  
12 Bojangles'. And he said he was about to run to  
13 Wal-Mart to get some items for the house because he  
14 had to go to Charlotte's so I could introduce him  
15 to Charlotte and he could see if he could take  
16 over, because his baby mother had got a job at  
17 INVISTA, so she could take over the lease.

18 Q So you were in Zion Williams' room at your former  
19 apartment, but you had already moved out, so there  
20 was nothing in your room?

21 A No. The only thing I had was the bed and probably  
22 a couple of things in the closet, but they were  
23 things I probably ain't need, but under the  
24 mattress I had some documents under the mattress  
25 like old pay stub receipts from the hospital and

1           like documents and my -- I had some business cards  
2           from Vistaprint for a little side business that I  
3           have.

4       Q     Now, the Government says they found a pill bottle  
5           with your name on it in that room that you were  
6           in when they entered for the search. Why was that  
7           pill bottle in that room?

8       A     When I was packing my stuff, that is something I  
9           just looked over because I looked in the closet  
10          in the top shelf. I just seen the empty pill  
11          bottle for my high blood pressure medicine I been  
12          taking since I was 20 years old.

13      Q     Now, I'm showing you what has been marked State's  
14           Exhibit 4. It is an item of evidence the  
15           Government put in evidence. Could you read when  
16           that was filled?

17      A     It was filled 1/26/15.

18      Q     And when you fill your prescriptions, do you  
19           usually get a 30-day supply?

20      A     Yes. But after -- around that time, I started  
21           getting a 90-day supply because I had got my health  
22           insurance from the job.

23      Q     They say they found a Georgia ID in the room you  
24           were in. Why would the Georgia ID be in there?

25      A     Because in 2010 I had lived in Georgia, Savannah,

1 Georgia. And it was the ID which ran out beginning  
2 in 2015. So after that date on the beginning of  
3 2015, it wasn't no good for me to use. And that  
4 was under my mattress also, my old bed that I gave  
5 to Zion.

6 Q Before Zion moved in --

7 A Uh-huh.

8 Q -- were you living in the room you were in when  
9 they searched the apartment?

10 A Yes.

11 Q Now, they say found a notebook in that room. Why  
12 would the notebook be in there?

13 A That is for -- because on my side business with  
14 Vistaprint I got cards that I gave out because I  
15 made fliers for parties, wedding invitations, and,  
16 you know, certain stuff that I may sell, clothes,  
17 and stuff like that. So people will call me. So  
18 when my co-workers need -- got an order in, I just  
19 write what they owed me. Or if they paid, I just  
20 crossed out their name.

21 Q Now, at the time of the search, was Zion Williams  
22 there at the apartment?

23 A No, Zion Williams had went to Wal-Mart with his  
24 baby mother and his baby.

25 Q And what was his baby mother's name?

1 A Keisha.

2 Q Did he leave town after the search?

3 A From what I heard after I bonded out, yes. A  
4 neighbor told me once they came and see that the  
5 door was knocked down, no police was around, he --  
6 my neighbor say he just went in there and came out  
7 with some bags and hopped in the car and him and  
8 his baby mother left and his little baby, and they  
9 ain't never see him no more.

10 Q Did you ever tell investigators that you lived  
11 alone?

12 A Yes. When Elliott and Spivey, if I ain't mistaken,  
13 had me on the ground with a gun to my back, they  
14 asked me was anybody else in the apartment, and I  
15 told them, no, my -- I have a roommate, but he  
16 ain't here right now. And then they cuffed me and  
17 brung me downstairs to the living room. And then  
18 Brian Elliott stayed with me down in the living  
19 room. And everybody else went upstairs to search.

20 Q Now, Mr. Davis, if you would turn just a little bit  
21 and look at this. This is some text messages from  
22 the phone.

23 A Uh-huh.

24 Q Do you see that big old stack of stuff they say  
25 they got text messages from?

1 A Yes, sir.

2 Q Okay. And this is a text message exchange. And it  
3 says: Okay. My address is 206 Laurens Street,  
4 Camden, SC, 29020, Apartment F.

5 And then the response was: How many peoples  
6 there?

7 And you say -- the text says: Me. I live  
8 alone. Real talk.

9 A Uh-huh.

10 Q Tell me about how this text message came about.

11 A I met a female named Shanelle online. She is from  
12 Richland County, from Columbia, which is -- they  
13 call it the metro. And Zion wasn't there at the  
14 time. Him and his baby mother had went out. They  
15 was gone, so -- they went to another family  
16 member's house -- so when me and her was texting --  
17 there is many more texts other than that -- when me  
18 and her was texting, I told -- I gave her my  
19 address because she asked for it. She asked who  
20 was here, I guess for her safety, because she don't  
21 know me like that to be in -- and this her first  
22 time being in my -- being in my presence. We  
23 texted and everything online. So I let her know I  
24 live alone because I know Zion and his baby mother  
25 wasn't going to be back till the next night, so I

1           had my own privacy.

2       Q     So you told her you lived alone? You told this  
3           young lady you had met you lived alone?

4       A     Yes.

5       Q     To reassure her so she would come over to your  
6           apartment?

7       A     Yes.

8       Q     Did you know any of the drugs were in that  
9           apartment?

10      A     No.

11     Q     Did you exercise any kind of dominion or control  
12           over those drugs?

13     A     No. No, sir.

14     Q     Now, you mentioned something earlier about  
15           business. You had a little side business?

16     A     Yes.

17     Q     And tell me what that business was all about.

18     A     I basically -- like, two of my neighbors is DJs.  
19           And I worked with a whole bunch of people. So when  
20           they need fliers done for their parties, I make  
21           fliers. I made bunches of fliers. And people at  
22           my job, they may need some type of cards or they  
23           may need some fliers done or invitations, then I do  
24           them for bundle prices. It depends on how many  
25           they need.

1 Q Now, they, the Government, put in evidence as  
2 Exhibit 3 this notebook.

3 A Uh-huh.

4 Q And if you would just look at the pages that have  
5 tabs.

6 A Uh-huh.

7 Q Okay? The little yellow -- I mean, excuse me, the  
8 first two tabs?

9 A Uh-huh.

10 Q If you could look at those two, and I'll have a  
11 question for you when you --

12 A Well, these are basically old. This is around the  
13 time I started out. I mean, I have a bigger book  
14 now with actual details and everything about what  
15 they want, description, and the amount of money.  
16 That is something old that been under my book -- I  
17 mean, that book been under my mattress a long time.

18 Q So this would have been how long before July 15th  
19 of 2016?

20 A Probably about -- I started doing it, what, March,  
21 April of 2015. So I'd say about close to a year, a  
22 year or a little more than a year.

23 Q So would these entries be what people owed you for  
24 the fliers and the --

25 A Yes.

1 Q -- stock cards?

2 A Yes.

3 Q And the banners?

4 A Yes.

5 Q And did you also sell movies?

6 A Yes, I sold movies.

7 Q Did you sell clothes as well?

8 A Yes. I started selling clothes for, let me see,  
9 June of 2015 til school start down here, which was  
10 in August. Those were the times that the clothes  
11 really be selling fast.

12 Q So all of these entries would have been from that  
13 business?

14 A Yes.

15 Q All the entries on Exhibit 3?

16 A Yes, sir. But that is something old. Once I got  
17 organized and had got a certain amount of people  
18 and the business coming, besides me working, I just  
19 organized, had got an organized book, which is  
20 in -- which I had at the time of my arrest, I had  
21 that on Fort Jackson Road.

22 Q While you were living with Zion, did you ever  
23 notice that he used your cell phone?

24 A Yes. He had used my cell phone a lot if anyone  
25 used his phone when his girlfriend around.

1 Q And why would he use your cell phone?

2 A I guess to hide things from his girlfriend because  
3 she would usually look in his phone, and if  
4 somebody call his phone, she would answer or look  
5 through texts or Facebook messages to see what he  
6 got going on.

7 Q This is what was put in evidence by the Government  
8 as State's Exhibit 17.

9 A Uh-huh.

10 Q It is a couple of text messages, one from May 5th  
11 of 2016. And it says: What up, Blackie?

12 Nothing. Who dis?

13 Did you participate in that e-mail, in that  
14 exchange?

15 A Yeah, I participated in that, because that was the  
16 day after my birthday. My birthday May 4. My  
17 sister called me Blackie. About every time she  
18 seen me, she start smiling: What up, Blackie?  
19 That is just me and her. And that is -- I ain't  
20 know which one of my nieces phone it was, because  
21 she have (862)213 and my other niece, Jazmon, got a  
22 (862)213, so I ain't know which one that was.

23 So I said: Nothing. Who dis?

24 Q The second one from June 12th of 2016?

25 A Uh-huh.

1 Q It says outgoing, it says: Hey.

2 And then there is another outgoing that says:  
3 This is Black from earlier.

4 Was that you?

5 A No. When Zion used my phone for females, something  
6 like that, he go by the name Black. He don't go by  
7 Zion with females because he don't want to get  
8 caught.

9 Q Caught by his girlfriend?

10 A Yes. So he had say his name, his street name,  
11 Black.

12 Q This is put in by the Government, State's Exhibit  
13 Number 23.

14 A Uh-huh.

15 Q Okay. This photograph they claim came off of your  
16 phone, the one on the left-hand side?

17 A Uh-huh.

18 Q Okay. Did that come off of your phone?

19 A Yes, that came off of my phone, but me and Zion  
20 have a pair just that it is two different sizes.

21 Q So both of y'all had a pair of these red and white  
22 shoes like this shown on these pictures?

23 A Yeah. He got his first, and then I got mines.

24 Q Why did you get the same kind of shoes as him?

25 A Because they was going to sell out fast, fixing to

1 sell out fast. And I got a MVP card from Hibbett

2 so I could get mine a little cheaper.

3 Q Were they different sizes?

4 A Yes.

5 Q What size is yours?

6 A Mine is a 10, and he got a 10 and a half.

7 Q So --

8 A Jordans run small, so I had to get a bigger size  
9 for my feet.

10 Q So the shoes shown on the right-hand pictures, the  
11 ones with the drugs on them, those would be Zion's  
12 shoes, right?

13 A Yes, because, as you can see, his was worn out  
14 because he had his before mines.

15 Q And the one on the left would have been a picture  
16 of your shoes?

17 A Yes. I sent that to my niece because my niece  
18 wanted a pair for her birthday, so -- she wanted a  
19 blue pair. There was a blue pair that came out,  
20 same design but blue right here. So she wanted the  
21 blue ones.

22 Q These are Jordans?

23 A Yes, Michael Jordans.

24 Q Are these a really popular brand of shoe?

25 A Yes. Jordan, LeBron James, and Tim Williams.

1 Q Are the red and white ones popular?

2 A Yes. When they come out, they start -- been coming  
3 out for years, but it is hard to get them. Jordan  
4 sneakers come out again every couple of years, so  
5 people -- it is a fashion thing. People want  
6 Jordans when they come out, just to keep up with  
7 the fashion.

8 Q Thank you, Mr. Davis.

9 MR. AIKEN: That is all the questions I have,  
10 Your Honor.

11 BY MR. AIKEN:

12 Q Please answer any questions the Government might  
13 have.

14 A Okay.

15 THE COURT: Ms. McKellar?

16 MS. MCKELLAR: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. MCKELLAR:

19 Q Hello, Mr. Davis.

20 A Hello.

21 Q I want to start by asking you, when did you move to  
22 1908 Fort Jackson Road? That is the address you  
23 gave, correct?

24 A Uh-huh.

25 Q When did you move there?

1 A I moved there in the month of July. I was -- like  
2 a week before I got incarcerated, I was in the  
3 process of moving there. And I got most of my  
4 stuff there, but I had a few things left back at  
5 King Haigler.

6 Q So you said they executed the search warrant at  
7 your house on July 15th, that is what I heard you  
8 say, right?

9 A Yes.

10 Q So if you moved the week before, why did, on  
11 July 14th, the day before --

12 A Uh-huh.

13 Q -- they executed the search warrant did you tell  
14 someone that you lived there? That is what you  
15 told your --

16 A Because I still had a bed there and there is a big  
17 screen TV there, so I wanted her to come there  
18 because I ain't had the bed and everything, a new  
19 bed to buy for Fort Jackson yet, so the bed that I  
20 left home, that is what I --

21 Q So you were telling her kind of a white lie that  
22 you lived there, but you didn't really?

23 A Yeah. But basically that is somebody from the  
24 escort service. I'm going to get technical, you  
25 know what I'm saying, so I really ain't want her

1           knowing my personal, where I stay at, and  
2           everything. I told her I lived -- she asked how  
3           many people there for her safety, and I told her I  
4           lived alone.

5   Q       So you do admit that on July 14th you told someone  
6           that you lived alone at the incident location,  
7           right?

8   A       Yeah, that is what I told her.

9   Q       Okay. You said there was a big screen TV there.  
10          Was that yours? Did you leave that too?

11   A       No, I didn't leave that. That is Zion's.

12   Q       And I have a few questions -- a little confusion.  
13          Maybe you can help me clear it up.

14   A       Okay.

15   Q       Officers testified when you were here that they  
16          didn't see any evidence of anyone else in your  
17          home. Why were there no baby bottles in the home?

18   A       Because they didn't take pictures of any. They  
19          just -- they was there.

20   Q       There were baby bottles in the home?

21   A       In the cabinets and in the sink where the dish  
22          holder. There is baby clothes upstairs. There is  
23          female clothes. There is also Zion's sneakers and  
24          his clothes. The only thing they took pictures of  
25          was anything that could pertain to me.

1 Q So there was a baby bed there as well?

2 A No, the baby slept in the bed. The baby wasn't a  
3 real little baby, the baby was about close to one,  
4 so, you know, she's sleeping with her mother and  
5 her father. It was a big bed.

6 Q A queen, you said, right?

7 A Yes.

8 Q You said Zion left before you got to the location  
9 on July 15th or after you left? Did you get there  
10 and then he left, or he left when you got there?

11 A When I got there, I was talking to the mailman. I  
12 had my Bojangles' food in my hand.

13 Q So was he there already, or no?

14 A So when he -- the door was open, so when he seen  
15 me, like, We got to run to Wal-Mart real quick, she  
16 got to get something for the baby, and she had to  
17 cash her check, so I told him I am going to be here  
18 waiting on them so he could give me the money  
19 for -- to take to the landlord. And then I was  
20 going to let the landlord know that they will be  
21 taking over the place, because I didn't want to  
22 keep the place no more.

23 Q Did they drive to Wal-Mart or did they walk to  
24 Wal-Mart?

25 A They drove to Wal-Mart in a cab.

1 Q Cab?

2 A Yes.

3 Q So you were -- again, you were in here and you  
4 heard investigators testify that they were doing  
5 surveillance on your house that whole day?

6 A They --

7 Q And they testified that they didn't see anyone else  
8 coming or going from that house but you?

9 A They ain't seen me.

10 Q They didn't see you?

11 A They ain't see me.

12 Q Well, you were there. You were there. They did  
13 see you get there. And you were there when they  
14 executed the search warrant, correct?

15 A They seen me at Fort Jackson Road, then they  
16 followed me from Fort Jackson to Bojangles' to my  
17 house. They might have been parked around --  
18 around the area, but they followed me from Fort  
19 Jackson to Number 1 to Bojangles' and then to King  
20 Haigler.

21 Q But you heard them say they were also doing  
22 separate surveillance on the apartment itself, and  
23 they didn't see anyone else leave. So can you  
24 explain how they missed him? If they followed you  
25 there, then how did they not see Zion?

1 A Because I guess they was only looking for me. The  
2 cab, the gray cab, came up with Cynthia. I seen  
3 Cynthia. Cynthia parked right behind my car when  
4 she pulled in. I was getting out the car. She  
5 pulled up, toot the horn, beep beep. They had the  
6 door open already. I guess they was waiting for  
7 the cab.

8 So I told them I would be here. While y'all  
9 gone, I'm going to eat, and when y'all come back,  
10 we can go ahead to the office to -- and we can go  
11 ahead and get the paperwork situated, their  
12 paystubs and everything to show them proof that  
13 they got income so they could take over the  
14 apartment.

15 Q So if the police were following you and watching  
16 you, they would have had to have seen Zion and  
17 Keisha and their baby, correct? Because you spoke  
18 to them, so you were within feet of them, correct?

19 A Yes. I was in the doorway with them talking to  
20 them.

21 Q So the police would have had to see them --

22 A Yes.

23 Q -- if they were watching you?

24 A They was on the outskirts, they wasn't exactly  
25 in front facing -- looking into the parking lot.

1 Q Okay. You said there was a time after they moved  
2 in but before you moved out, so there was a time  
3 when y'all were living there together, correct?

4 A Yes.

5 Q What timeframe --

6 A I been living with them from February to July.  
7 First week of February they came down and moved in.

8 Q So when you gave them the bigger bedroom and the  
9 queen bed, what bed were you sleeping on?

10 A I had a little blow-up bed in there. In the extra  
11 room, there was a small one.

12 Q And you took it with you when you moved to 1908  
13 Fort Jackson Road?

14 A Well, the box was still in the room. I left the  
15 box, but I took the air mattress, but I didn't need  
16 it because I bought me a full-size bed from Big  
17 Lots.

18 Q Another question. After police detained you  
19 downstairs?

20 A Uh-huh.

21 Q And they executed a search warrant and they  
22 recovered the drugs in the bedroom where you were  
23 sitting?

24 A Uh-huh.

25 Q They had forced entry, as you know, kicked in your

1 front door, correct, or knocked it in somehow,  
2 right?

3 A Yeah. I'm eating, and the only thing I heard is,  
4 boom, and the door went in.

5 Q And the door wouldn't close back, right?

6 A No. Everything that was in there that was Zion's  
7 stuff, people done took that out.

8 Q So at that point they had removed you from the  
9 scene and they wanted -- they asked you who they  
10 could leave in the custody and control of the  
11 house. They said, Who can secure this residence  
12 for you?

13 A Uh-huh.

14 Q Why didn't you tell them that Zion was coming back  
15 from Wal-Mart and that he could be there?

16 A They were talking about now. How can I contact  
17 Zion when they got my -- so I just said, well, my  
18 neighbor right here, Jimmy, and that's Frederick  
19 Johnson, I said, Well, Jimmy right here, he could  
20 watch the apartment, because he is rushing over.  
21 We got to take you now.

22 Q And who did you tell them to call? Who did you  
23 tell either Jimmy or the police to call? Who  
24 actually took inevitable control of it? Wasn't it  
25 Phillip Gary? Didn't you tell them to call Phillip

1 Gary?

2 A Frederick Johnson had took control of the apartment  
3 right then.

4 Q Until who could arrive?

5 A Until Phillip Gary arrived there to watch the  
6 house.

7 Q Why not Zion?

8 A And get his car.

9 Q Why not Zion?

10 A Why not Zion? Because Zion left his phone. I  
11 couldn't call Zion. Zion left his phone on the  
12 living room stand.

13 Q Why didn't you ever mention to officers at that  
14 point that you had a roommate that would be back --

15 A I told them --

16 Q -- sometime that day?

17 A -- upstairs when I was on the floor. They had me  
18 at gunpoint.

19 Elliott asked me, Is anybody else here?

20 I said, I got a roommate, but he is not here  
21 right now.

22 Q Tell me this. You said you got your Bojangles'  
23 when you got to the apartment where you used to  
24 live a week ago, but now you don't live, and you go  
25 inside. And you don't live there. So why don't

1           you eat in the living room?

2   A       Because there wasn't no furniture in the living  
3           room.

4   Q       How about the dining room?

5   A       The dining room never had no furniture. The little  
6           small dining room never had furniture in it. Y'all  
7           can see from y'all's video y'all got, ain't got  
8           no -- ain't got no tables, or nothing, in the small  
9           dining room.

10   Q       So you just went and sat on someone else's bed?

11   A       Yeah. That was mine before. I mean, he don't  
12           mind. That is my friend.

13   Q       You just said it wasn't yours, though. It used to  
14           be yours, but now it is not, right?

15   A       Now it is not, but I can sit down. That is not no  
16           big deal. That was the only thing to sit on. The  
17           little stand, the little green stand, I could have  
18           sat on, I put my Bojangles' bottle on it, opened it  
19           up, and ate and sat my little cup, my cup of soda.  
20           When the door kicked in, everything went  
21           everywhere, because I'm thinking like, you know,  
22           What is going on?

23   Q       Why were you there on July 15th?

24   A       I told you why I was there. I was there to go see  
25           Zion so me and Zion and his girlfriend could go

1 handle the switch-over for the apartment and the  
2 lease with Charlotte, but they had to go and get  
3 something for the baby at Wal-Mart. I guess they  
4 had that planned. She had that planned before I  
5 got there. That is why the cab was on the way.  
6 The cab got there when I pulled in.

7 Q You saw Ms. Rankin testify earlier, you were here  
8 in the room, and she said --

9 A Uh-huh.

10 Q -- she knew nothing about a roommate. Are you sure  
11 you told her?

12 A I told -- when she -- in January when she gave me  
13 an opinion that I should get one and I had got one,  
14 after I got one, I went to pay rent, and I told  
15 her, I got one, but she was like, Oh, good, which I  
16 guess she didn't ever, you know, remember that.

17 So now when I -- that day that the house got  
18 kicked in, we was going to get it switched over.  
19 That is why they had other conventional paystubs.  
20 And I was going to let her know that I'm forfeiting  
21 the apartment and I'm moving to 1908.

22 Q So that is why you were there on July 15th. Why  
23 were you there on July 14th? Why were you going to  
24 be there on July 14th?

25 A That is where I was going to meet the girl at.

1 Q So you were going to entertain a female guest at  
2 the home with your friend Zion and his wife and  
3 their baby? Because there is only one room with  
4 furniture in that whole home.

5 A Yes.

6 Q They were going to be there, y'all all were going  
7 to hang out in the bedroom together?

8 A That is just something like me, I covered for him,  
9 he was going to cover for me. He is not there. I  
10 covered for him and I let him use my phone.

11 Q You said you were working at the hospital, that you  
12 worked nights. What time did night shift start at  
13 the hospital?

14 A Night shift starts for me at 10:00 o'clock and for  
15 everybody else 11:00.

16 Q So you would have definitely been home and with  
17 your phone --

18 A No.

19 Q -- at 1:00 p.m., correct?

20 A I was on my three days off at that time.

21 Q I'm talking about on May 5th or June 12th. These  
22 are not the days of the incidents, but these are  
23 days where you sent text messages from your phone  
24 that is in your name.

25 A I may not have been working that day. I was -- I

1           may not have been working.

2       Q     So you would have been with your phone for sure  
3           either way?

4       A     If it was a Friday, Saturday, and Sunday, I wasn't  
5           working.

6       Q     So that means either way, whether you were working  
7           or not, at 1:00 p.m. you would have been with your  
8           phone, correct?

9       A     Say that again?

10      Q     You weren't at work at 1:00 p.m., correct? Whether  
11           you were on duty or off duty?

12      A     That is not -- that ain't me making that text, that  
13           is Zion. I'm not -- my phone was home. Zion was  
14           using my phone.

15      Q     Okay. So you were home with him and you just  
16           handed him the phone to text someone else?

17      A     No, my phone was home. I was -- I wasn't around.

18      Q     So you left your phone, even though you weren't at  
19           work, you just left it for another reason?

20      A     Yes. I probably been next-door by Jermain's house.  
21           Jermaine lives right next-door, my co-worker. I go  
22           over there for a while, played games, chill out,  
23           drink a couple of beers.

24      Q     So you were hanging out on a bed that is no longer  
25           yours but used to be yours eating your Bojangles'

1           waiting for your roommate to come back from  
2           Wal-Mart so you could go meet your landlord? She  
3           didn't know you were coming, right?

4       A     No, she didn't know I was coming until I had --  
5           because the rent was overdue, so I was going to  
6           bring it on that day, Friday when everybody got  
7           paid and got their money. My rent was probably  
8           about a week overdue, but if I bring it, she won't  
9           charge me \$50 late fee.

10      Q     And the drugs were found, correct, within feet of  
11           you, correct? Yes or no?

12      A     I guess. That is what they said. I ain't go  
13           in Zion's room looking in his sneakers.

14      Q     But you have been shown pictures of the drugs that  
15           were found in the sneakers, right? But those are  
16           not your sneakers, correct?

17      A     No, those are not mine.

18      Q     You just have a pair just like them?

19      A     Yes, I do.

20      Q     Okay.

21           MS. MCKELLAR: There are no further questions  
22           from the State at this time, Your Honor.

23           THE COURT: Any redirect?

24           MR. AIKEN: No redirect, Your Honor.

25           THE COURT: All right, thank you, sir. You

1           may step down.

2           (Witness steps down.)

3           THE COURT: Next witness.

4           MR. AIKEN: The Defense rests, Your Honor.

5           THE COURT: Ladies and gentlemen, that is  
6           Defense's case.

7           Any reply by the State?

8           MS. MCKELLAR: None, Your Honor.

9           THE COURT: Ladies and gentlemen, you have  
10          heard all of the evidence in this case. I'm going  
11          to have you go to the jury room and we'll come back  
12          for closing arguments. Please do not discuss the  
13          case.

14          (WHEREUPON, the jury retires to the jury  
15          room at 4:10 p.m.)

16          THE COURT: All right. Any matters of law?

17          MR. AIKEN: Your Honor, I renew my motion  
18          concerning striking the trafficking cocaine and  
19          allowing to go forward as PWID cocaine. I also  
20          renew my general directed verdict motion.

21          THE COURT: All right. Certainly given the  
22          Defendant's testimony, it is a credibility issue as  
23          to guilt or innocence, and the jury will be able to  
24          decide whether those are his drugs or someone  
25          else's drugs, and also the amount of the drugs, if

1           they were his drugs, and whether he was trafficking  
2           or not. I deny the motion.

3           I think we will just press on with closing  
4           arguments because y'all want to do another trial  
5           tomorrow, right?

6           MS. MCKELLAR: Yes, sir.

7           THE COURT: How many minutes do you need  
8           before proceeding with closing arguments?

9           MS. MCKELLAR: I can be ready whenever, Your  
10          Honor.

11          THE COURT: Mr. Aiken?

12          MR. AIKEN: I would like to take a cigarette  
13          break.

14          THE COURT: Sure. If that's all you want.  
15          How long does it take you to smoke them?

16          MR. AIKEN: I need to speak with him just  
17          briefly about closing arguments. It will take me  
18          about four minutes to smoke a cigarette and get  
19          back up here. So if you can give us 15?

20          THE COURT: Fifteen minutes.

21          MR. AIKEN: And about 10 minutes with my  
22          client?

23          THE COURT: Ten minutes with him, four minutes  
24          with a cigarette, and one minute to walk back to  
25          court.

1 MR. AIKEN: Thank you, Judge.

2 THE COURT: All right.

3 (WHEREUPON, a break was taken at 4:12  
4 p.m.)

5 (WHEREUPON, the proceedings resumed at  
6 4:35 p.m.)

7 THE COURT: Have you checked the evidence bags  
8 to make sure there is nothing improper written on  
9 them?

10 MR. AIKEN: I guess we better check.

11 THE COURT: Last time it was referencing a  
12 certain offense, and all that.

13 MS. MCKELLAR: None at this time, Your Honor,  
14 because this is a first offense. Everything else  
15 doesn't have police writing on it.

16 THE COURT: All right. Let's bring them on.  
17 (WHEREUPON, the jury came into open  
18 court at 4:35 p.m.)

19 THE COURT: Ladies and gentlemen of the jury,  
20 you have heard all the evidence. Now it is time  
21 for closing arguments.

22 First, by the State?

23 MS. MCKELLAR: Your Honor, we would like to  
24 exercise the right to have the last close, final  
25 close.

1 THE COURT: Does the State waive opening?

2 MS. MCKELLAR: Yes, Your Honor.

3 THE COURT: All right. By the Defense?

4 CLOSING ARGUMENT

5 MR. AIKEN: It has been my honor and my  
6 privilege to sit here as appointed counsel for  
7 Mr. Davis. Notwithstanding the fact of not paying  
8 me anything, I give him as good a defense as I give  
9 anyone else.

10 But I have done everything I can to try to  
11 help you understand the facts of the case. You may  
12 have heard me object a lot. Objections are not  
13 efforts by lawyers to hide evidence. Objections  
14 are to make sure that the evidence follows very  
15 specific rules about what qualifies as competent  
16 evidence in court. And those rules are designed to  
17 make sure that evidence is reliable. And that was  
18 the nature of the objections that I made, to make  
19 sure that the evidence that was being presented was  
20 proper and reliable.

21 Mr. Davis, you heard him testify. He is 37  
22 years old. He has a longtime girlfriend and a  
23 young child about 1-year-old. Around this time he  
24 was working for the hospital, Kershaw Health Care,  
25 working cleaning up the emergency room. He talked

1       about his job. And, you know, he worked from 10:00  
2       p.m. to 7:00 a.m. He got paid \$9 and something  
3       dollars an hour. Not a wealthy man. He had  
4       problems with his rent. Didn't own a car. He was  
5       allowed to use a car of somebody else. So not  
6       living the life of what you would expect of  
7       somebody who is heavily involved in the drug trade.

8               Now, in a criminal case you have to be  
9       demanding of the Government because you have got to  
10      remember, what the Government is asking you to do  
11      is take Mr. Davis and brand him as a drug  
12      trafficker and cast him out of your midst. That is  
13      what the Government is asking you to do. And that  
14      is such a serious penalty that the Government is  
15      required to prove every element of the offense that  
16      they charged in the indictment by proof beyond a  
17      reasonable doubt.

18              And as I told you in my opening, proof beyond  
19      a reasonable doubt has been a requirement of our  
20      law, our criminal law, since the beginning of the  
21      United States. And that level of proof is required  
22      to make sure that none but the guilty are punished,  
23      nobody except for the guilty people get punished.  
24      That is the reason why that standard is so high.

25              And as the judge indicated to you and as I

1       told you, Mr. Davis is presumed innocent. Unless  
2       you find by proof beyond a reasonable doubt that  
3       the Government has shown that Mr. Davis committed  
4       these offenses that they have charged him with, you  
5       have got to find him not guilty. You've got to  
6       find him not guilty.

7               And let me just give you an idea of what the  
8       offenses they charged him with entail. First of  
9       all, he is charged with trafficking. Trafficking  
10      greater than 10 grams, but less than 28 grams of  
11      cocaine.

12             And the way they have presented this case,  
13      they have presented it as trafficking by  
14      possession. Okay? So essentially what they have  
15      to prove is that Mr. Davis, with respect to this  
16      cocaine charge, Mr. Davis possessed more than 10  
17      grams, but less than 28 grams of cocaine.

18             Now, they have also got him charged with  
19      trafficking crack cocaine, 28 to 100 grams. Okay?  
20      And in order to prove that, they have got to prove  
21      essentially the same thing, that Mr. Davis  
22      possessed that quantity of crack cocaine.

23             And they have got him charged with two counts  
24      of possession with intent to distribute one of  
25      crack cocaine, one of cocaine, within the proximity

1 of a school, within a half mile of a school.

2 Once again, they have to prove possession. So  
3 how does one prove possession? There is two kinds  
4 of possession. There is actual possession. These  
5 keys, they are in my pocket. I actually possess  
6 these keys. All right? Drugs. If I have drugs  
7 in my pocket, I actually possess those drugs.  
8 Okay? If I do not actually possess the drugs, the  
9 Government has to prove by proof beyond a  
10 reasonable doubt that I constructively possessed  
11 the drugs. And what that means is, if I in some  
12 way exercise dominion and control over the drugs, I  
13 knew that the drugs were there and I have control  
14 over those drugs, that is what they have to prove  
15 to show possession.

16 And as I indicated to you, every one of these  
17 offenses is based on possession. It is not based  
18 on selling, it is not based on transporting, it is  
19 not based on distributing. It is based on  
20 possession, possession of the drugs.

21 And that's all they've got. They have no  
22 evidence of a sale, no evidence of a distribution,  
23 no evidence of a conspiracy, no evidence of  
24 manufacturing, none of that. None of that. It is  
25 all pure possession.

1           Now, they say that Mr. Davis constructively  
2 possessed these drugs.

3           Well, the first thing they have got to show is  
4 knowledge. They have got to show that Mr. Davis  
5 knew these drugs were in there.

6           Now, they start with this whole idea, We were  
7 looking for somebody named Black. Okay? Have they  
8 explained to you how they determined they were  
9 looking for somebody named Black? That just --  
10 that dropped out of the sky. Nobody ever  
11 explained, We talked to so-and-so and so-and-so  
12 told us that Black was the one, a person named  
13 Black was the one who was possessing or selling  
14 these drugs. They never did that. They never  
15 explained where the Black comes from. They just  
16 said on the 13th we pulled over Anthony Davis on a  
17 bogus traffic stop so we could stop him and see  
18 him, and we decided Anthony Davis was Black.

19           What difference does it make whether he is  
20 Black? They have never explained in any way,  
21 shape, or form how they concluded that Black was  
22 the -- a person named Black was the person they  
23 were looking for. Never explained that. Never  
24 explained that.

25           Now, what you have got to do is be demanding

1 of the Government in their proof. They never  
2 swabbed for DNA any of these drugs, they never  
3 swabbed for DNA this Pyrex, they never swabbed for  
4 DNA the scales that they didn't put in evidence but  
5 they found. Swab for DNA, test DNA, test  
6 Mr. Davis's DNA, see if it matches. If it matches,  
7 then you know Mr. Davis handled the drugs and  
8 handled the equipment. Easy enough. But did they  
9 do that? No. They never did that.

10 Fingerprints. All of y'all's fingerprints are  
11 different. They are different from mine, they are  
12 different from each other's. They are unique to  
13 the individual. So you cannot identify whether  
14 somebody has touched an item using a fingerprint.  
15 Did they fingerprint any of the drug packaging?  
16 Did they fingerprint any of the Pyrex? Did they  
17 fingerprint the scales that they found? Did they  
18 fingerprint any of that? No.

19 If they fingerprinted it and they found Mr.  
20 Davis's fingerprint, case over. Case over. If  
21 they found Mr. Davis's DNA from touch DNA, case  
22 over.

23 And you have got to remember, these are the  
24 police. Unlike you, who are required to presume  
25 everybody innocent, they presume everybody guilty.

1       They always say, Based on my experience as a police  
2       officer, blah, blah, blah, blah. They always do  
3       that. They always do that. I have been doing this  
4       for 28 years. I have seen it thousands of times.  
5       There is no innocent explanation for anything  
6       in their mind, and they will convey that to you as  
7       the jury, that there is no innocent explanation for  
8       anything. That is what they will convey to you.

9               Now, Mr. Davis sat up here under oath and gave  
10       a description of the situation he was in and what  
11       occurred. He was cross-examined. How someone as a  
12       witness handles cross-examination is very  
13       indicative of whether you should believe what they  
14       say. If somebody wilts or falters or loses their  
15       composure or makes a misstatement on  
16       cross-examination, you should have serious  
17       questions about their believability. But if  
18       somebody withstands cross-examination without  
19       taking any real blows from the cross-examiner, you  
20       have got to give that person some credibility. And  
21       Mr. Davis was very capable of handling himself on  
22       cross-examination. He didn't wilt, he didn't  
23       falter, he didn't make a misstatement. He was very  
24       clear about what his circumstances were. He was  
25       very honest. And he came through cross-examination

1 without any real impact.

2 He didn't know the drugs were there. And, you  
3 know, you don't really have to concern yourself too  
4 much with what people have to say about that. You  
5 know, a lot of times it is more important to think  
6 about what somebody does rather than what they say.

7 You have got these officers. They come up to  
8 206 Laurens, Apartment F, and they beat on the  
9 door, saying they were doing it as loud as they  
10 could to make sure that the people inside would  
11 know it is the police and wouldn't shoot them. So,  
12 bang, bang, bang, bang on the door. Police, search  
13 warrant. Banging and hollering.

14 Then they go in, they go upstairs, and  
15 Mr. Davis is just in the room. If Mr. Davis knew  
16 the drugs were there and they were his drugs, he  
17 would have grabbed them, gone across the hallway,  
18 which the officer testified was where the bathroom  
19 was, go across the hallway, put them in the toilet  
20 and flush them. That is what he would have done if  
21 he knew the drugs were there. But he didn't do  
22 that. He didn't do that. He didn't know they were  
23 there. He had no idea they were there.

24 They didn't take the shoes when they searched  
25 the house, even though the shoes had, according to

1           them, all the drugs in them. If they had the  
2           shoes, they could get Mr. Davis to try them on to  
3           see if they fit.

4           He says, Those aren't my shoes, those are Zion  
5           Williams's shoes. The one in the picture that was  
6           taken and sent out on my phone, that is my shoe.  
7           But the other shoes are Zion Williams's shoes.  
8           Well, take Zion Williams's shoes. Get Mr. Williams  
9           to try -- I mean, get Mr. Davis to try them on. If  
10          they fit, it tends to indicate they are Mr. Davis's  
11          shoes. If they don't fit, it tends to indicate  
12          they are not Mr. Davis's shoes, they are  
13          Mr. Williams's shoes, not Mr. Davis's. See, they  
14          can't do that because they didn't keep the shoes.  
15          The shoes are gone.

16          But all this is about being demanding of the  
17          Government. Because as I told you at the  
18          beginning, this proof beyond a reasonable doubt is  
19          very important. And I think I told you that James  
20          Madison once said, Better for a thousand guilty men  
21          to go free than for one innocent man to spend one  
22          day. That is the reason for proof beyond a  
23          reasonable doubt. That is the purpose of it, to  
24          make sure none but the guilty are punished.

25          Now, one point I want to make about the drug

1       analysis. You saw me on cross-examination when I  
2       was examining the chemist. And he said he got an  
3       evidence bag containing a plastic bag containing 47  
4       ziplock bags containing powder substance. And he  
5       says he tested 18 of those 47 ziplock bags. And he  
6       came up with a weight of 6.41 grams, which is less  
7       than the 10 grams that they charged Mr. Davis. And  
8       he said, I didn't even test the other 29 ziplock  
9       bags. I didn't do the chemical test, I didn't do  
10      the test using the instruments. So we don't know  
11      what was in those other bags.

12             Now, he says he used -- and I'll use the word,  
13      I don't pretend I understand what it means, but  
14      hypergeometric sampling. That is what he said he  
15      used. And he said that has something to do with  
16      statistics. He didn't explain it, didn't explain  
17      how it works, but something to do with statistics.

18             Well, you know, there was a famous British  
19      politician, used to be at one time back in the late  
20      19th century, early 20th century, the prime  
21      minister of Great Britain, and his name was David  
22      Lloyd George. And David Lloyd George said there is  
23      three kinds of lies: There is lies, damn lies, and  
24      statistics. Statistics is more than a damn lie.

25             And so what we're really looking at is

1           6.41 grams of cocaine. Do you remember what I told  
2           you when I made my opening statement? I told you  
3           the story about my mother and the whole milk. We  
4           used to get our milk from West End Dairy. I lived  
5           in Mt. Pleasant and got it from West End Dairy in  
6           Charleston and got whole milk. And whole milk  
7           spoil quickly and is kind of unpredictable and a  
8           little bit less stable than homogenized or  
9           pasteurized milk. And you always had to smell the  
10          milk to make sure it was okay. That is reasonable  
11          doubt. Smelling the milk.

12                 So when you start looking at the evidence in  
13          this case, what you have got to ask yourself is, Do  
14          I need to smell that milk?

15                 And if you say, I have got to smell that milk,  
16          it is over. And your verdict should be not guilty.  
17          And you should set Mr. Davis free.

18                 Thank you.

19                 THE COURT: By the State, Ms. McKellar?

20                         CLOSING ARGUMENT

21                 MS. MCKELLAR: Ladies and gentlemen, I too,  
22          like Mr. Aiken, appreciate your service. I know we  
23          have had a couple of long days, and this one is not  
24          over.

25                 I'm not going to talk to you about the law.

1 Y'all are the trier of the facts. The judge is the  
2 ultimate authority on the law in this courtroom.  
3 He is going to give you law and instruct you on the  
4 law, and he is going to even print it out and let  
5 you take it back there with you. So I am not going  
6 to talk to you about that, because what he says  
7 controls anyway. I don't want to risk getting it  
8 wrong.

9 What I am going to talk to you about is the  
10 facts. You heard my co-counsel, Mr. McGlothlin,  
11 start off by saying this is a simple case. I  
12 maintain that it is a simple case.

13 The Defendant was found in his room in his  
14 apartment with illegal drugs. There is no  
15 situation in the world where these drugs aren't  
16 illegal. That is not in question. So he is found  
17 with illegal drugs in a room, feet away, in a house  
18 where just one day before he says he lived, alone.  
19 And they were in shoes that he admitted he has a  
20 pair just like, but they weren't his. They weren't  
21 in his pocket. That I'll agree with. Does that  
22 mean it wasn't his drugs if it wasn't in his  
23 pocket?

24 These two little rings I wear every day. I  
25 don't wear them when I get home. I get home, and

1       after I take my shoes off, the first thing I take  
2       these rings off and I set them on my jewelry box  
3       and I go back in the kitchen and I make dinner for  
4       me and my little boy. I go outside and play.  
5       Those are still my rings. I have dominion and  
6       control over those rings in my house.

7               I'll take it a step further. I go over to my  
8       friend's house, help her cook something, hands get  
9       dirty. I take my rings off in her bathroom to wash  
10      my hands and I leave the rings in her bathroom. I  
11      am not in my house anymore. Are those still my  
12      rings? Yes, they are. I have dominion and control  
13      over those rings that I left in the bathroom after  
14      I washed my hands.

15             Now, you heard three different officers that  
16      were on the scene that day during the execution of  
17      the search warrant testify. All three of them said  
18      the same thing. They never heard mention of anyone  
19      else living in the home. They didn't see any  
20      evidence of anyone living in the home. They did an  
21      investigation, they did surveillance, not just the  
22      day of the incident, but prior to. They never saw  
23      anyone else coming and going from that home as if  
24      they lived there other than Anthony Davis.

25             And I would agree with him, with Mr. Aiken,

1       that they were all cross-examined. And they did  
2       not wilt, as he said. They did not falter, as he  
3       said. They maintained the same story when he was  
4       cross-examining them. Ask yourself this. Who has  
5       a reason to lie? Why would they lie and say that  
6       they didn't see baby items when there were baby  
7       items throughout the home? Why would they lie and  
8       say they didn't see other people's clothes when  
9       they did?

10            You even have in front of you a picture that  
11       was sent by the Defendant of himself, as he admits,  
12       wearing shoes that are tied in the exact same way  
13       as the shoes recovered on the scene.

14            Yes, there are innocent explanations for  
15       things that happen for seemingly nefarious  
16       purposes. A couple of the pieces of his story have  
17       innocent explanations, but isn't it convenient that  
18       every single piece of evidence the State presented  
19       he had an explanation for? Yes, one can have an  
20       innocent explanation, but what is the probability  
21       that every single piece of evidence pointing to his  
22       guilt has an innocent explanation? Like them  
23       having the same exact pair of shoes, he and Zion?  
24       Or them even having the same nickname? Isn't that  
25       convenient?

1           Also, Mr. Aiken pointed out, if he knew the  
2           drugs were there, wouldn't he try to destroy them  
3           before the police got inside?

4           Well, if you'll remember what Mr. Davis  
5           testified to on the stand, he said the first thing  
6           he heard was them coming through the door. He  
7           never said he heard them knock and announce. Now,  
8           they all testified that they did, but he was  
9           upstairs. And he told me when he was sitting right  
10          there that he didn't hear them, that the first  
11          thing he heard was the door being knocked down. He  
12          said that he was sitting on the bed eating  
13          Bojangles' and there was a loud boom. So I don't  
14          know whether he would have tried to destroy the  
15          evidence or not, but I do know he didn't have a  
16          chance because he said he didn't hear them announce  
17          themselves.

18          So I think if you consider the innocent  
19          explanation defense but you look at the logical  
20          explanation, you'll find that the State has proven  
21          that he is guilty beyond a reasonable doubt of  
22          possessing the crack cocaine and the cocaine, which  
23          were feet away when officers entered that  
24          residence.

25          Thank you.

1                   6:30 p.m.)

2                   THE COURT: We have a verdict. Let's see if  
3 we can get Mr. Davis in here.

4                   (Defendant enters courtroom.)

5                   THE COURT: I understand there is a verdict.  
6 We can get the jury to come in.

7                   (WHEREUPON, the jury came into open  
8 court at 6:31 p.m.)

9                   THE COURT: Mr. Foreman, have you reached a  
10 verdict?

11                  THE FOREPERSON: We have.

12                  THE COURT: Is it unanimous?

13                  THE FOREPERSON: Yes, sir.

14                  THE COURT: If you will pass it up.

15                  (Pause.)

16                  THE COURT: The Defendant will stand.

17                  (Defendant stands.)

18                  THE COURT: Madam Clerk, you may publish the  
19 verdict.

20                                   VERDICT

21                  THE CLERK: State of South Carolina, County of  
22 Kershaw, State of South Carolina v. Anthony Davis.  
23 Indictment Numbers 2017-GS-28-346, 2017-GS-28-347,  
24 2017-GS-28-348, 2017-GS-28-349.

25                  We, the jury, unanimously find the Defendant,

1 Anthony C. Davis, as to the charge of trafficking  
2 cocaine more than 10 grams, but less than 28 grams:  
3 Guilty.

4 As to the charge of trafficking crack cocaine  
5 more than 28 grams, but less than 100 grams:  
6 Guilty.

7 As to the charge of possession with intent to  
8 distribute cocaine within proximity, close  
9 proximity of a school or park: Guilty.

10 As to the charge of possession with intent to  
11 distribute crack cocaine within close proximity of  
12 a school or park: Guilty.

13 August 8, 2017, Camden, South Carolina.  
14 Signed by the foreperson: Frederick L. Bryant.

15 Would the jury stand, please?

16 (Jury complies.)

17 THE CLERK: Mr. Foreman, and ladies and  
18 gentlemen of the jury, if this is your verdict,  
19 please signify by raising your right hand.

20 (All jurors comply.)

21 THE CLERK: Thank you. You may be seated.

22 (Jury complies.)

23 THE COURT: Thank you. The verdict is a  
24 unanimous verdict.

25 Any additional polling requested by either

1 Mr. Aiken gets through chatting with him, we are  
2 going to proceed with sentencing.

3 (Pause.)

4 THE COURT: Yes, sir, Mr. Aiken, are you ready  
5 to go forward?

6 MR. AIKEN: We are prepared to go forward,  
7 Your Honor.

8 THE COURT: The Defendant will come forward.  
9 (Defendant approaches.)

10 THE COURT: All right. What else from the  
11 State?

12 MS. MCKELLAR: Your Honor, I would like to  
13 first start off by saying, though the Defendant was  
14 only charged with trafficking, as you know, it is  
15 the State's contention that he had this large  
16 amount of drugs because he was dealing, and not  
17 just dealing to individuals, but dealing to drug  
18 dealers who then dealt to individuals.

19 Based on the Kershaw County Sheriff's  
20 Department investigation, they feel like he is --  
21 was a major participater in the drug trade in the  
22 Kershaw County area.

23 I would also like to point out, he has two  
24 prior convictions. They are from the same date,  
25 however two separate arrests. And that is -- they

1 are both from New Jersey. One for a controlled  
2 substance on school property. And the other --  
3 that was from a July arrest of 2000. And then from  
4 December 2000 arrest, he has a manufacturing or  
5 distribution of a controlled substance. Their law  
6 doesn't specify which one.

7 THE COURT: All right. Anything that any law  
8 enforcement officer wants to say about Mr. Davis in  
9 your prior experience or trouble with him?

10 MS. MCKELLAR: Nothing, Your Honor.

11 THE COURT: Law enforcement?

12 MR. LAWSON: No, I was just going to tell you  
13 I think we're good, Your Honor. Nothing else.

14 THE COURT: All right. Mr. Aiken?

15 MR. AIKEN: Thank you, Your Honor. You heard  
16 Mr. Davis testify. He is 37 years old. He has a  
17 long-time girlfriend. He has a young child.

18 THE COURT: Where is she?

19 MR. AIKEN: She is not -- she is not here.

20 THE COURT: Where is she?

21 MR. AIKEN: I don't know the answer to that  
22 question.

23 THE COURT: Long-time girlfriend. You don't  
24 know where she is?

25 MR. AIKEN: He said she broke up with him last

1 month.

2 THE COURT: Well, used to be long-time  
3 girlfriend.

4 MR. AIKEN: Exactly. But they were together  
5 for a long time and have a child together, who  
6 unfortunately was born and has been in the hospital  
7 for the last year.

8 THE COURT: Where is the child?

9 MR. AIKEN: Lexington Medical Center.

10 THE COURT: That is where the mother is,  
11 there, or you don't know where is?

12 MR. AIKEN: She is staying in Lexington.

13 THE COURT: Living in Lexington.

14 MR. AIKEN: And while he does have -- the  
15 prior conviction is from the year 2000, so that  
16 would have made it 20 years old, so 17 years old --  
17 or actually it is from 2001 is when the conviction  
18 occurred. He received a Youthful Offender's Act  
19 sentence. And I think I went over that sentence  
20 with you before Mr. Davis made his decision to  
21 testify.

22 THE COURT: Yes, sir.

23 MR. AIKEN: But, you know, at 37 years old,  
24 you know, the life expectancy in the Department of  
25 Corrections is pretty low.

1           And, also, Mr. Davis is a redeemable person,  
2           he is not somebody that needs to be thrown under  
3           the prison.

4           And, you know, I understand what the  
5           Government says, We think he was this, and we think  
6           he was that. The fact remains that they never  
7           charged him with anything except for trafficking by  
8           possession, or in possession with intent to  
9           distribute. They never charged him with selling to  
10          anybody. And, as a matter of fact, presented no  
11          evidence at this trial about him selling to  
12          anybody.

13          THE COURT: Well, they didn't present any at  
14          the trial, but in the pretrial you had a controlled  
15          purchase from the -- from his apartment and the --  
16          where the person that could have been his twin was  
17          on the video participating in sales.

18          MR. AIKEN: Yes, sir.

19          THE COURT: That was used as a basis to get  
20          the search warrant.

21          MR. AIKEN: Yes, sir. But what I'm trying to  
22          get at here, Your Honor, is Mr. Davis is not  
23          somebody that needs a gigantic sentence on this  
24          charge.

25          THE COURT: I mean, he is facing a whole lot.

1 I mean, what is the possible sentences on all these  
2 charges?

3 MS. MCKELLAR: Seven to 25 for each of the  
4 traffickings, Your Honor, and 10 years --

5 THE COURT: Seven to 25?

6 MS. MCKELLAR: Yes, sir. And 10 years for  
7 each of the proximity charges. That adds up to  
8 about 70 total, if I'm not mistaken.

9 THE COURT: That is a pretty wide range there.  
10 But on the trafficking of at least 10 --

11 MS. MCKELLAR: It is 7 to 25 on the  
12 trafficking, 28 to 100. And it is actually 3 to 10  
13 years on the trafficking 10 to 28. Sorry, I  
14 misspoke.

15 THE COURT: And all these earlier offenses  
16 from years ago, this is not the first offense, but  
17 it is indicted as a first offense, though it is  
18 really a second or third offense, even though he  
19 was 20 years old at the time on the other offenses.  
20 But, go ahead.

21 MR. AIKEN: That is all I have to say, Your  
22 Honor.

23 THE COURT: All right. Mr. Davis, what would  
24 you like to say?

25 MR. AIKEN: I have spoken to Mr. Davis about

1 his right to address the Court, and on my advice he  
2 has elected not to do that.

3 THE COURT: You don't want to tell me anything  
4 under advice of counsel?

5 THE DEFENDANT: I'm shocked they found me  
6 guilty, Your Honor. I don't know what to say right  
7 now, seriously.

8 THE COURT: The evidence is pretty clear.  
9 What else could they have found based on the  
10 evidence? Either you are guilty or you are the  
11 most unlucky, unfortunate person in the United  
12 States.

13 THE DEFENDANT: I sure am.

14 THE COURT: All right. Any response by the  
15 State with anything the Defense has said?

16 MS. MCKELLAR: No, Your Honor. I think we  
17 covered it in bringing up that they actually did  
18 buy drugs from him and conducted a controlled buy  
19 from the Defendant. Of course we did not bring  
20 that up because that would have been prejudicial  
21 during the trial; however, the fact remains that he  
22 did deal drugs from that home.

23 THE COURT: You know, Mr. Aiken, you say that  
24 Mr. Davis has redeeming value, and he is a good  
25 person, and all that. Well, that is on the one

1 hand. But, on the other hand, if he has been  
2 convicted of trafficking, and my experience  
3 in dealing with people who buy drugs from drug  
4 dealers, their lives are typically destroyed by  
5 using crack cocaine and cocaine. And in many  
6 instances they go out and commit other crimes  
7 themselves in order to get money to give to people  
8 like Mr. Davis. So it has a boomerang effect that  
9 decimates entire communities.

10 MR. AIKEN: I understand, Your Honor.

11 THE COURT: Mr. Davis, wasn't it about a month  
12 ago we were over here? About three weeks ago?

13 MS. MCKELLAR: It was in July, Your Honor.

14 THE COURT: We met in the middle of July, Mr.  
15 Davis, and you were at that point representing  
16 yourself. You told me that you got arrested on  
17 these charges and you left town in a car that you  
18 were buying from the guy who you mentioned from the  
19 witness stand.

20 THE DEFENDANT: Uh-huh.

21 THE COURT: Supposedly you had paid him for  
22 the car, but he called the police and said you  
23 stole the car.

24 THE DEFENDANT: Uh-huh.

25 THE COURT: And the police in New Jersey then

1       arrested you for being in a stolen car and you  
2       missed your court appearance here and a warrant was  
3       issued for you because you missed your court  
4       appearance here because you were in jail in New  
5       Jersey. And you got a time served sentence in New  
6       Jersey and came back and have been in jail here  
7       since whenever that was. When was that?

8               MS. MCKELLAR: July. When he got rearrested?

9               THE COURT: When he was brought here from New  
10       Jersey or came back from New Jersey?

11              THE DEFENDANT: September 6th, last year.

12              THE COURT: Last September 6th. And you have  
13       been in jail since then. So we need to know how  
14       many days that is. He is entitled to credit for  
15       it. But you came and you were -- had gone through  
16       a lawyer or two, and so I called Mr. Aiken, and he  
17       agreed to represent you, and he has done a stellar  
18       job.

19              THE DEFENDANT: Yes.

20              THE COURT: He represented you well. He  
21       showed his experience as a trial counsel and  
22       presented the best case he could on your behalf.  
23       Unfortunately for you, it seems you are just guilty  
24       of this crime -- these crimes. And you are facing  
25       a significant amount of time. You certainly

1       exercised your right to have a jury trial. And I  
2       don't fault you at all for that. Juries these days  
3       in Kershaw and other counties are sometimes hard to  
4       convince. But they apparently didn't have too much  
5       trouble finding you guilty of each of these  
6       charges.

7               What is he facing, like 70 years?

8               MS. MCKELLAR: Well, I did the math wrong,  
9       Your Honor. Instead of 70, it would be 25 plus 10,  
10      would be 35 plus 20, so 55.

11              THE COURT: Ten on each?

12              MS. MCKELLAR: Yes, sir, 10 on each prox.

13              THE COURT: That is 20?

14              MS. MCKELLAR: Yes, sir.

15              THE COURT: Plus 10 plus 25?

16              MS. MCKELLAR: Yes, sir.

17              THE COURT: How much is that?

18              MS. MCKELLAR: 55.

19              THE COURT: You are facing 55 years in prison.  
20      The choices are -- you know, most people who sell  
21      drugs, you know, they always get caught, they never  
22      get away with it. I mean, is that a pretty nice  
23      side of town? Is that a nice side of town, Laurens  
24      Street?

25              MS. MCKELLAR: Yes, sir, I think it is. We

1 know some people who live over there.

2 THE COURT: Including -- you probably stuck  
3 out like a sore thumb over there. How could you  
4 get away with it? You always get caught. A steady  
5 stream of cars and traffic. Maybe you were just  
6 trying to build up your money before you left town  
7 or something. Of course, the letter they put  
8 in there, you were three months past due on rent.  
9 So you weren't paying rent with the money you were  
10 making. You know, you really got yourself in quite  
11 a mess down here.

12 How long were you living in this town?

13 THE DEFENDANT: I was down here since 2012.

14 THE COURT: In Kershaw County?

15 THE DEFENDANT: Yes.

16 THE COURT: So I guess they got to know you  
17 pretty well around town.

18 THE DEFENDANT: Not really. I ain't know too  
19 many people.

20 THE COURT: Apparently they knew you.

21 Anything else? I'm trying to figure out how  
22 much time to give him. It is quite a situation,  
23 Mr. Aiken.

24 MR. AIKEN: I understand, Your Honor. I  
25 understand. But, you know, like I said, he is 37.

1 And, you know, he has got a small child, and he  
2 wants to have a life after all this. That's all he  
3 wants.

4 THE COURT: The kind of life that these guys  
5 who sell drugs can lead for their children  
6 generally is not very good. Generally they lead  
7 them to right in the same spot by the time they get  
8 old enough to get here.

9 Yes, ma'am?

10 MS. MCKELLAR: I just wanted to tell you, we  
11 calculated the days from September 6, 2016, which  
12 we verified is when he was booked until today, and  
13 that is 336 days credit, Your Honor.

14 THE COURT: In September?

15 MS. MCKELLAR: Yes, sir, September 6.

16 THE COURT: 300 and?

17 MS. MCKELLAR: Thirty-six days.

18 THE COURT: And how many before he got out the  
19 first time, two days before he bonded out?

20 MS. MCKELLAR: That is the number I didn't  
21 know, Your Honor. That sounds right.

22 THE COURT: So 338 days he has been in jail?

23 So on the charge that is on the -- one is 3 to  
24 10 and the other is 7 to 25, and the others are --

25 MS. MCKELLAR: Zero to ten.

1 THE COURT: Zero to ten. Now, are any of  
2 these like no parole offenses?

3 MS. MCKELLAR: Yes, sir, the traffickings are  
4 violent and serious, and the proximity charges are  
5 serious, but not violent.

6 SENTENCING

7 THE COURT: Mr. Davis, the sentence of the  
8 Court on each charge is 9 years, to run concurrent,  
9 with credit for time served.

10 MS. MCKELLAR: Thank you, Your Honor.

11 THE COURT: I wish you the best.

12 MR. AIKEN: Thank you, Judge.

13 THE COURT: All right, ladies and gentlemen,  
14 thank you all very much. That is it for this case  
15 and this week. I want to speak with foreperson  
16 before you leave.

17 Thank you, sir.

18 And you all are free to go.

19 (WHEREUPON, court adjourned for the  
20 evening at 6:57 p.m.)

21

22

23

24

25

(END OF TRANSCRIPT)

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**MOTION TO SUPPRESS EVIDENCE**

FILED FOR RECORD  
2018 AUG -4 PM 3:30  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

**TO: ALL OTHER COUNSEL OF RECORD**

**YOU WILL PLEASE TAKE NOTICE** that the Defendant, Anthony C. Davis (Davis) hereby moves, in accordance with Rule 4 SCRCrimP, to suppress all items seized in execution of Search Warrant 1659 on the grounds that the Affidavit in support of Search Warrant 1659 is facially invalid such that a reasonable officer could not rely in good faith on the validity of Search Warrant 1659. The Affidavit in support of Search Warrant 1659 states:

Within the past 72 hours agents with the Kershaw County Sheriff's Office Narcotics Unit utilized a reliable confidential informant purchased a quantity of cocaine from a black male only known as "Black." The confidential informant was wired and given recorded U. S. Currency provided by the Kershaw County Sheriff's Office to make the purchase. The confidential informant met with quote "Black" at King Heigler apartments located on 206 Laurens St. apartment F in the Camden area of Kershaw County, South Carolina 29020 to make the transaction. This incident was audio/visual recorded.

The Affidavit contains only a bald assertion of the reliability of the confidential informant. To be valid, a search warrant affidavit must contain some factual basis for the conclusion that the confidential informant is reliable. Since the Affidavit is fatally deficient, Search Warrant 1659 is invalid. A search of premises grounded on an invalid search warrant violates the Fourth

Amendment to the U.S. Constitution, and under the exclusionary rule all items seized in such a search must be suppressed.

**WHEREFORE**, Davis prays that this Court suppress all items seized under the authority of Search Warrant 1659.

Respectfully Submitted,

**AIKEN & HIGHTOWER, PA**



**BY: ARTHUR K. AIKEN**

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)

**ATTORNEYS FOR DEFENDANT**

Columbia, South Carolina  
August 1, 2017

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**CERTIFICATE OF SERVICE**

FILED FOR RECORD  
2017 AUG -4 PM 3:30  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, SC

I, Alicia Parler of Aiken & Hightower, P.A., certify that I have on this day, August 2, 2017 affected service of the below listed document upon counsel for the State by US MAIL addressed to: Assistant Solicitor Jennifer H. McKellar. at 1701 Main Street, Suite 302 Columbia, SC 29201 and Assistant Solicitor Curtis A. Pauling III at 1121 Broad Street Camden, SC 29020.

1. Defendant's Motion to Suppress Evidence

By: Alicia Parler  
Alicia Parler  
Paralegal for Aiken & Hightower, P.A.  
2231 Devine Street, Suite 201  
Columbia, SC 29205  
Phone: 803-799-5205  
Fax: 803-799-5206  
Email: [alicia@aikenandhightower.com](mailto:alicia@aikenandhightower.com)

Columbia, SC  
August 2, 2017

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

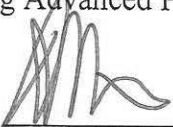
**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**CERTIFICATE OF SERVICE**

I, Arthur K. Aiken, of Aiken & Hightower, P.A., certify that I have affected service of the below listed document upon counsel for the State by email on August 6, 2017 addressed to: Assistant Solicitor Jennifer H. McKellar at [mckellarj@rcgov.us](mailto:mckellarj@rcgov.us) and Assistant Solicitor Curtis A. Pauling III at [paulingc@rcgov.us](mailto:paulingc@rcgov.us) and by hand delivery to both of them on August 7, 2017 at the Kershaw County Courthouse:

1. Defendant's Motion to Compel Discovery;
2. Defendant's Motion to Exclude all Evidence of Prior Crimes and Uncharged Misconduct; and
3. Defendant's Motion for Order Compelling Advanced Production of Witness Statements.

By: 

Arthur K. Aiken

Aiken & Hightower, P.A.

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)

Columbia, SC  
August 6, 2017

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**MOTION TO CONTROVERT  
SEARCH WARRANT AFFIDAVIT  
AND TO SUPPRESS EVIDENCE**

FILED FOR RECORD  
2017 AUG -4 PM 3:30  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

**TO: ALL OTHER COUNSEL OF RECORD**

**YOU WILL PLEASE TAKE NOTICE** that the Defendant, Anthony C. Davis (Davis) hereby moves, in accordance with Rule 4 SCRCrimP, to controvert the Affidavit in support of Search Warrant 1659 and to suppress all items seized in execution of that Search Warrant. The Affidavit in support of Search Warrant 1659 states:

Within the past 72 hours agents with the Kershaw County Sheriff's Office Narcotics Unit utilized a reliable confidential informant purchased a quantity of cocaine from a black male only known as "Black." The confidential informant was wired and given recorded U. S. Currency provided by the Kershaw County Sheriff's Office to make the purchase. The confidential informant met with quote "Black" at King Heigler apartments located on 206 Laurens St. apartment F in the Camden area of Kershaw County, South Carolina 29020 to make the transaction. This incident was audio/visual recorded.

The above statement from the Affidavit was made with either knowledge of its falsity or reckless disregard for its truth or falsity. Under the authority of Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) the above statement must be stricken, and the affidavit must establish probable cause without the stricken statement. Without the stricken statement, the Affidavit fails to establish probable cause. The search made under the authority of Search Warrant

1659 violates the Fourth Amendment to the U.S. Constitution, and the items seized in that search must be suppressed under the exclusionary rule.

**WHEREFORE**, Davis prays that this Court strike the offending portion of the Affidavit in support of Search Warrant 1659 and suppress all items seized under the authority of Search Warrant 1659.

Respectfully Submitted,

  
**AIKEN & HIGHTOWER, PA**

---

**BY: ARTHUR K. AIKEN**

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)

**ATTORNEYS FOR DEFENDANT**

Columbia, South Carolina  
August 1, 2017

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**CERTIFICATE OF SERVICE**

FILED FOR RECORD  
2017 AUG -4 PM 3:30  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY S.C.

I, Alicia Parler of Aiken & Hightower, P.A., certify that I have on this day, August 2, 2017 affected service of the below listed document upon counsel for the State by US MAIL addressed to: Assistant Solicitor Jennifer H. McKellar. at 1701 Main Street, Suite 302 Columbia, SC 29201 and Assistant Solicitor Curtis A. Pauling III at 1121 Broad Street Camden, SC 29020.

1. Defendant's Motion to Controvert Affidavit and to Suppress Evidence

By: Alicia Parler  
Alicia Parler  
Paralegal for Aiken & Hightower, P.A.  
2231 Devine Street, Suite 201  
Columbia, SC 29205  
Phone: 803-799-5205  
Fax: 803-799-5206  
Email: [alicia@aikenandhightower.com](mailto:alicia@aikenandhightower.com)

Columbia, SC  
August 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

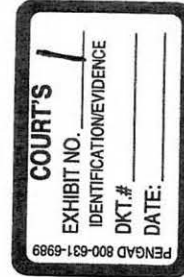
SEARCH WARRANT

1659

Date: 07/11/2016

Officer: Inv. Justin Spivey

Case #: 2016-2983



**REASON FOR AFFIANT'S BELIEF THAT THE  
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

In July of 2016 agents received information that a black male only known as "Black" has been selling/distributing narcotics from King Heigler apartment's located 206 Laurens street apartment F in the Camden area of Kershaw County, South Carolina 29020. Agents also received information that "Black" operates a silver in color Lexus with chrome rims, agents have observed this vehicle at the apartment on several occasions.

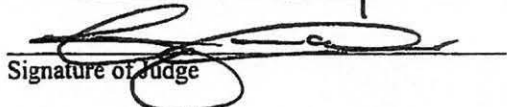
On July 11, 2016 agents with the Kershaw County Narcotics unit were conducting surveillance at King Heigler apartments and observed a dark colored SUV arrive at the apartment complex moments later the vehicle left and following a lawful traffic stop and lawful search agents located approximately 8 grams of marijuana that was located on one for the passenger's person. Agents then spoke with the occupants of the vehicle who stated that they just met with a black male known to them as "Black" at King Heigler apartments and purchased the marijuana from "Black."

Within the past 72 hours agents with the Kershaw County Sheriff's Office Narcotics Unit utilized a reliable confidential informant purchased a quantity of cocaine from a black male only known as "Black." The confidential informant was wired and given recorded U.S. currency provided by the Kershaw County Sheriff's Office to make the purchase. The confidential informant met with "Black" at King Heigler apartments located at 206 Laurens Street apartment F in the Camden area of Kershaw County, South Carolina 29020 to make the transaction. This incident was audio/visual recorded.

Based on these facts, it is believed that illegal drugs are being distributed and stored and illegal activity is taking place at this described location.

Sworn to and Subscribed before me

This 11<sup>th</sup> day of July, 2016

  
Signature of Judge

  
Affiant

Address: 821 Ridgeway Rd  
Lugoff, SC 29078

Phone (803) 425-1512

**STATE OF SOUTH CAROLINA****AFFIDAVIT****COUNTY OF KERSHAW**

Personally appeared before me, one Inv. Justin Spivey, who being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

**DESCRIPTION OF PREMISES TO BE SEARCHED**

The residence is located at 206 Laurens Street apartment F, Camden, Kershaw County, South Carolina 29020. The residence is described as an apartment located in the King Heigler apartment complex. The apartment faces Laurens Street with a black in color door with the letter F clearly posted above the door. The search is to include the apartment, curtilage, vehicles, entire property and any and all persons on the property.

**DESCRIPTION OF PROPERTY SOUGHT**

1. COCAINE, AND OTHER ILLEGAL DRUGS.
2. DISTRIBUTION EQUIPMENT TO INCLUDE PACKAGING MATERIALS, SCALES, AND RECORDS OF NOTES.
3. DRUG PARAPHERNALIA ASSOCIATED WITH ILLEGAL DRUG ACTIVITY.
4. U.S. CURRENCY AND STOLEN PROPERTY BELIEVED TO BE ASSOCIATED WITH THE DISTRIBUTION OF ILLEGAL DRUGS.
5. WEAPONS, AMMUNITION, AND FIREARMS USED TO PROTECT THE INTEREST OF THE ILLEGAL DRUG TRADE.
6. DOCUMENTS INDICATING OWNERSHIP, RESIDENCY, OR FREQUENCY OF STAY OF THE PERSONS AT THE LOCATION.
7. TELECOMMUNICATION DEVICES THAT MAY HOLD INFORMATION RELATED TO ILLEGAL DRUG ACTIVITY.

**STATE OF SOUTH CAROLINA**  
**SEARCH WARRANT**  
**COUNTY OF KERSHAW**

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF CAMDEN, SOUTH CAROLINA

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE, OR THINGS TO BE SEARCHED)**

The residence is located at 206 Laurens Street apartment F, Camden, Kershaw County, South Carolina 29020. The residence is described as an apartment located in the King Heigler apartment complex. The apartment faces Laurens Street with a black in color door with the letter F clearly posted above the door. The search is to include the apartment, curtilage, vehicles, entire property and any and all persons on the property.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

**DESCRIPTION OF PROPERTY**

1. COCAINE, AND OTHER ILLEGAL DRUGS.
2. DISTRIBUTION EQUIPMENT TO INCLUDE PACKAGING MATERIALS, SCALES, AND RECORDS OF NOTES.
3. DRUG PARAPHERNALIA ASSOCIATED WITH ILLEGAL DRUG ACTIVITY.
4. U.S. CURRENCY AND STOLEN PROPERTY BELIEVED TO BE ASSOCIATED WITH THE DISTRIBUTION OF ILLEGAL DRUGS.
5. WEAPONS, AMMUNITION, AND FIREARMS USED TO PROTECT THE INTEREST OF THE ILLEGAL DRUG TRADE.
6. DOCUMENTS INDICATING OWNERSHIP, RESIDENCY, OR FREQUENCY OF STAY OF THE PERSONS AT THE LOCATION.
7. TELECOMMUNICATION DEVICES THAT MAY HOLD INFORMATION RELATED TO ILLEGAL DRUG ACTIVITY

This Search warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

**CUSTODIAN OF RECORDS / DEFENDANT(S)**

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

July 11<sup>th</sup> Kershaw, 2016, S.C. [Signature] (L.S.)  
 Signature of Judge



**COURT'S**  
EXHIBIT NO. 2  
IDENTIFICATION/EVIDENCE  
DKT.# \_\_\_\_\_  
DATE: \_\_\_\_\_

PEMGAD 800-631-5989



|                     |                         |
|---------------------|-------------------------|
| PENGAD 800-631-6989 | <b>COURT'S</b>          |
|                     | EXHIBIT NO. <u>3</u>    |
|                     | IDENTIFICATION/EVIDENCE |
|                     | DKT.# _____             |
| DATE: _____         |                         |

**STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW**

State of South Carolina,

Plaintiff,

vs.

Anthony C. Davis,

Defendant.

**COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT**

**Case Numbers: 2017-GS-28-346-349**

**DEFENDANT'S MOTION FOR A  
NEW TRIAL**

FILED FOR RECORD  
2017 AUG 21 AM 11:13  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

**TO: ALL OTHER COUNSEL OF RECORD**

**YOU WILL PLEASE TAKE NOTICE** that the Defendant, Anthony C. Davis (Davis) hereby moves, in accordance with Rules 4 and 29(a) of the South Carolina Rules of Criminal Procedure, for a new trial in the above captioned case. The grounds for this Motion are as follows:

1. the Indictments charge Davis with trafficking crack cocaine more than 28 grams but less than 100 grams, trafficking cocaine more than 10 grams but less than 28 grams, possession with intent to distribute cocaine within ½ mile of a school, and possession with intent to distribute crack cocaine within ½ mile of a school;
2. the parties tried this case on August 7 and 8, 2017, and the jury convicted Davis on all counts,
3. on August 8, 2017, this Court sentenced Davis to 9 years imprisonment on each count with all sentences running concurrently;
4. on August 8, 2017, this Court granted Davis 10 days to make post-trial motions;
5. Davis made a pretrial Motion to Controvert Affidavit and to Suppress Evidence, and, with due respect to this Court, Davis contends that this Court erroneously denied that Motion in that the Court did not give sufficient consideration of the evidence that the search warrant Affidavit falsely stated that the Kershaw County Sheriff's Department had evidence from a traffic stop of sale of drugs from Davis'

apartment and that the Kershaw County Sheriff's Department had audio and video evidence of a sale of drugs at Davis' apartment;

6. Davis objected to the admission of the subject drugs in evidence on multiple grounds including that the government had not established a sufficient chain of custody of those drugs, and this Court initially sustained that objection but later reversed its ruling and overruled that objection; and
7. with due respect to this Court, Davis contends that it erroneously overruled Davis' objection to the admissibility of the drugs, because the government did not establish a sufficient chain in that government inexplicable presented no testimony from a SLED analyst who had possession of the drugs for approximately 2 months.

**WHEREFORE**, Davis prays that this Court grant him a new trial in this case.

Respectfully Submitted,

**AIKEN & HIGHTOWER, PA**

**BY: ARTHUR K. AIKEN**

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)

**ATTORNEYS FOR DEFENDANT**

Columbia, South Carolina  
August 18, 2017

FILED FOR RECORD

2017 AUG 21 AM 11:13

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

State of South Carolina

Plaintiff,

vs.

Anthony C. Davis,

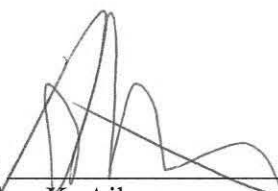
Defendant.

COURT OF GENERAL SESSION  
FIFTH JUDICIAL CIRCUIT

Case Numbers: 2017-GS-28-346-349

**CERTIFICATE OF SERVICE**

I, Arthur K. Aiken, of Aiken & Hightower, P.A., certify that I have affected service of the below listed document upon counsel for the State by email on August 18, 2017 addressed to: Assistant Solicitor Jennifer H. McKellar at [mckellarj@rcgov.us](mailto:mckellarj@rcgov.us) and by hand delivery on August 18, 2017 at Fifth Circuit Solicitor's Office, 1701 Main Street, Third Floor, Columbia, SC 29201: Defendant's Motion for a New Trial;

By: 

Arthur K. Aiken

Aiken &amp; Hightower, P.A.

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Email: [art@aikenandhightower.com](mailto:art@aikenandhightower.com)Columbia, SC  
August 18, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

State of South Carolina

vs.

Anthony C. Davis,  
Defendant,

) IN THE GENERAL SESSIONS COURT  
) FIFTH JUDICIAL CIRCUIT

) Indictment(s):

) 2017-GS-28-0346

) 2017-GS-28-0347

) 2017-GS-28-0348

) 2017-GS-28-0349

**RECEIVED**

NOV 05 2019

SC Court of Appeals

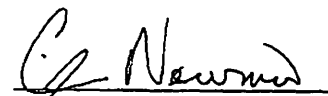
) **ORDER DENYING MOTION**  
) **FOR NEW TRIAL**

This matter is before the Court on the Motion of the Defendant for a New Trial.

Having fully considered the arguments and purported authority, the Court finds that the authority cited and the arguments advanced by the Defendant do not warrant a new trial.

**IT IS THEREFORE ORDERED** that the Motion of the Defendant is denied.

**AND IT IS SO ORDERED** this 23<sup>rd</sup> day of October 2019 in Columbia, South Carolina.

  
Clifton Newman  
Presiding Judge

**WITNESSES**

(S) Justin Spivey  
– Kershaw County Sheriff

**ARREST WARRANT NUMBER**

2016A2810200109

**ACTION OF GRAND JURY**

TRUE BILL

*Lana Kell*  
Foreperson of Grand Jury  
Date: *FEB 22 2017*  
*JAN 22 2017* F.K.

**VERDICT**

*Guilty*  
*Frederick L. Bryant*  
*8 Aug 2017*  
Foreperson of Petit Jury  
Date:

DOCKET NO. 2017GS280346

**The State of South Carolina**

County of

Kershaw

**COURT OF GENERAL SESSIONS**

FEBRUARY TERM 2017  
K96

THE STATE  
vs.

Anthony C Davis

Indictment for  
DRUGS / TRAFFICKING IN METH. OR  
COCAINE BASE - 28 G OR MORE, BUT  
LESS THAN 100 G - 1ST OFFENSE

SC Code: 44-53-0375(C)(2)(a)  
CDR Code: 0392

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.

FILED FOR RECORD  
2017 FEB 23 AM 11:14  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA )

COUNTY OF KERSHAW )

## INDICTMENT

At a Court of General Sessions, convened on February 22, 2017,  
the Grand Jurors of Kershaw County present upon their oath:

TRAFFICKING CRACK COCAINE  
MORE THAT 28 GRAMS, LESS THAN 100 GRAMS

That Anthony C Davis did in Kershaw County on or about July 15, 2016, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Crack Cocaine in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et.seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(c)(2), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

**WITNESSES**

(S) Justin Spivey  
– Kershaw County Sheriff

**ARREST WARRANT NUMBER**

2016A2810200110

**ACTION OF GRAND JURY**

**TRUE BILL**

*Alma Kelly*  
Foreperson of Grand Jury

Date:

FEB 22 2017

F.K.

JAN 22 2017

**VERDICT**

*Guilty*

*Frederick L. Bryant*

8 Aug 2017

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS280347

**The State of South Carolina**

County of

Kershaw

**COURT OF GENERAL SESSIONS**

FEBRUARY TERM 2017

K96

THE STATE

vs.

Anthony C Davis

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.

FILED FOR RECORD  
2017 FEB 23 AM 11:14  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

Indictment for  
DRUGS / DISTRIBUTE, SELL, PURCHASE,  
MANUF. DRUG OTHER THAN CRACK  
COCAINE, OR PWID, NEAR SCHOOL

SC Code: 44-53-0445(B)(1)

CDR Code: 0107

STATE OF SOUTH CAROLINA )  
COUNTY OF KERSHAW )

**INDICTMENT**

At a Court of General Sessions, convened on February 22, 2017,  
the Grand Jurors of Kershaw County present upon their oath:

**POSSESSION OF CRACK COCAINE WITH INTENT TO  
DISTRIBUTE IN CLOSE PROXIMITY TO SCHOOL OR PARK**

That Anthony C Davis did in Kershaw County on or about July 15, 2016,  
unlawfully possess with intent to distribute, dispense, or deliver a quantity of  
Cocaine, a Schedule I controlled substance under provisions of Section 44-  
53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half  
mile radius of the grounds of Camden Elementary School, a public school,  
in violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as  
amended.

Against the peace and dignity of the State, and contrary to the  
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

**WITNESSES**

(S) Justin Spivey  
- Kershaw County Sheriff

**ARREST WARRANT NUMBER**

2016A2810200111

**ACTION OF GRAND JURY**

**VERDICT**

*[Signature]*  
Foreperson of Grand Jury  
Date: *[Signature]*

*Guilty*  
*[Signature]*  
8 Aug 2017  
Foreperson of Petit Jury  
Date:

DOCKET NO. 2017GS280348

**The State of South Carolina**

County of

Kershaw

**COURT OF GENERAL SESSIONS**

FEBRUARY TERM 2017

K96

THE STATE

vs.

Anthony C Davis

Indictment for  
DRUGS / TRAFFICKING IN COCAINE, 10 G  
OR MORE, BUT LESS THAN 28 G - 1ST  
OFFENSE

SC Code: 44-53-0370(e)(2)(a)1  
CDR Code: 0278

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.

JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

2017 FEB 23 AM 11:14

FILED FOR RECORD

STATE OF SOUTH CAROLINA )  
COUNTY OF KERSHAW )

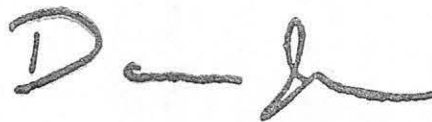
**INDICTMENT**

At a Court of General Sessions, convened on February 22, 2017,  
the Grand Jurors of Kershaw County present upon their oath:

**TRAFFICKING IN COCAINE (10-28 GRAMS)**

That Anthony C Davis did in Kershaw County on or about July 15, 2016, knowingly sell, deliver, purchase or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

**WITNESSES**

(S) Justin Spivey  
– Kershaw County Sheriff

**ARREST WARRANT NUMBER**

2016A2810200112

**ACTION OF GRAND JURY****VERDICT**

**DOCKET NO. 2017GS280349**

**The State of South Carolina**

County of

Kershaw

**COURT OF GENERAL SESSIONS**

**FEBRUARY TERM 2017**

**K96**

**THE STATE  
vs.**

**Anthony C Davis**

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.

Foreperson of Grand Jury  
Date:

FEB 22 2017  
JAN 22 2017

f.k.

**Indictment for  
DRUGS / DISTRIBUTE, SELL, PURCHASE,  
MANUF. DRUG OTHER THAN CRACK  
COCAINE, OR PWID, NEAR SCHOOL**

SC Code: 44-53-0445(B)(1)  
CDR Code: 0107

Foreperson of Petit Jury  
Date:

Guilty  
Frederick L. Byrd  
8 Aug 2017

FILED FOR RECORD  
2017 FEB 23 AM 11:14  
JANET C. HASTY  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF KERSHAW )

INDICTMENT

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the Grand Jurors of Kershaw County present upon their oath:

**POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE IN  
CLOSE PROXIMITY TO SCHOOL OR PARK**

That Anthony C Davis did in Kershaw County on or about July 15, 2016,  
unlawfully posses with intent to distribute, dispense, or deliver a quantity of  
Cocaine, a Schedule I controlled substance under provisions of Section 44-  
53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half  
mile radius of the grounds of Camden Elementary School, a public school, in  
violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as  
amended.

Against the peace and dignity of the State, and contrary to the  
statute in such case made and provided.

  
DAN JOHNSON, SOLICITOR

## 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.”

**RECEIVED****Mar 23 2021****SC Court of Appeals**

Respectfully Submitted,

s/Jessica M. Saxon

Jessica M. Saxon

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of March, 2021.