

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

—————
KENDRICK L. MIMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000190

—————
APPENDIX
—————

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

Jul 14 2021

S.C. SUPREME COURT

INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD FEBRUARY 10-11, 2016.....1

PCR APPLICATION (FILED SEPT. 11, 2018)342

STATE’S RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT (FILED DEC. 17, 2018).....349

AMENDMENT TO PCR APPLICATION (FILED NOV. 12, 2019).....355

STATE’S AMENDED RETURN (FILED FEB. 7, 2020).....358

THIRD AMENDMENT TO PCR APPLICATION
(FILED MARCH 18, 2020).....370

TRANSCRIPT OF PCR HEARING HELD DECEMBER 15, 2020.....373

ORDER OF DISMISSAL (FILED JAN. 28, 2021)435

INDICTMENT.....458

SENTENCING SHEET460

1 State of South Carolina) In the Court
 2 County of Lexington) Of General Sessions

3 Indictment No.: 2013-GS-32-01463
 4

5
 6 State of South Carolina,)
 Plaintiff.)
 7)
 8 vs.) Transcript of Record
 9)
 10 Kendrick Lamont Mims,)
 Defendant.)

11
 12 February 10-11, 2016
 13 Lexington, South Carolina
 14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge, and a jury.
 17

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

19 Gil Bell, Assistant Solicitor
 Casey Rankin, Assistant Solicitor
 20 Attorneys for the State

21 Robert T. Williams, Esquire
 22 Attorney for the Defendant
 23

24 Brenda J. Sigwald, Circuit Court Reporter
 To The Honorable R. Knox McMahon
 25 P.O. Box 206, Jackson, South Carolina 29831

<u>I N D E X</u>	
	<u>Page</u>
<u>Wednesday, February 10, 2015</u>	
Jury Voir Dire.....	7
Jury Selection.....	15
Opening Remarks by the Court.....	25
Opening Statements	
By Mr. Bell.....	33
By Mr. Williams.....	35
Adam Antley	
Direct Examination by Mr. Bell.....	42
Cross-Examination by Mr. Williams.....	105
Redirect Examination by Mr. Bell.....	147
Recross-Examination by Mr. Williams.....	156
Adam Clayton	
Direct Examination by Mr. Bell.....	158
Cross-Examination by Mr. Williams.....	164
Redirect Examination by Mr. Bell.....	166
Phillip Ellis	
Direct Examination by Mr. Bell.....	169
Cross-Examination by Mr. Williams.....	173
Christopher Shelton	
Direct Examination by Mr. Bell.....	174
Cross-Examination by Mr. Williams.....	174
Redirect Examination by Mr. Bell.....	190

	<u>Page</u>
1	
2	Mendel Rivers
3	Direct Examination by Mr. Bell..... 194
4	Cross-Examination by Mr. Williams..... 201
5	Redirect Examination by Mr. Bell..... 207
6	Recross-Examination by Mr. Williams..... 208
7	Adam Antley
8	Direct Examination by Mr. Bell..... 218
9	Cross-Examination by Mr. Williams..... 219
10	Patricia Crooks
11	Direct Examination by Mr. Bell..... 221
12	Motion for Mistrial..... 226
13	Patricia Crooks
14	Direct Examination by Mr. Bell..... 228
15	Cross-Examination by Mr. Williams..... 230
16	Questioning of the Defendant by the Court..... 232
17	<u>Thursday, February 11, 2016</u>
18	Questioning of the Defendant by the Court..... 237
19	Jury Charge Conference..... 239
20	Lynn Black
21	Direct Examination by Mr. Bell..... 249
22	Cross-Examination by Mr. Williams..... 264
23	///
24	///
25	///

	<u>Page</u>
1	
2	Samuel Gunter
3	Direct Examination by Mr. Bell..... 276
4	Voir Dire Examination by Mr. Williams..... 280
5	Direct Examination by Mr. Bell..... 282
6	Cross-Examination by Mr. Williams..... 284
7	Redirect Examination by Mr. Bell..... 286
8	Cross-Examination by Mr. Williams..... 286
9	Mid-Trial Motions..... 288
10	Closing Arguments
11	By Mr. Bell..... 294
12	By Mr. Williams..... 304
13	Jury Charge..... 317
14	Verdict..... 332
15	Polling of the jury..... 333
16	Sentence..... 338
17	Certificate of Reporter..... 341
18	Keyword Index..... 342
19	
20	
21	
22	
23	
24	
25	

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>PAGE</u>
S-1	Aerial Map.....	47	48
S-2	Aerial Map.....		84
S-3	Photograph.....	89	90
S-4	In Car Video.....	93	93
S-5	White Substance.....	200	260
S-6	Box.....	101	263
S-7	Chemist Report.....	259	275
C-1	Chain of Custody.....		210
C-2	Jury Question		

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 WEDNESDAY, FEBRUARY 10, 2016

2 THE COURT: Madam Clerk, are all our jurors here.

3 THE CLERK: No, sir, Your Honor. Number 21,
4 Nicholas Bowers and Number 80, Tiara Green have not shown.

5 THE COURT: Now, Ms. Green was late --

6 THE CLERK: She's a student.

7 THE COURT: Was she late the other day?

8 THE CLERK: Yes, sir, she was. She was late in
9 returning. She was in the panel that we had come back and
10 she was late returning.

11 THE COURT: And the other gentlemen's name?

12 THE CLERK: Nicholas Bowers. He did not show at
13 all yesterday and upon being contacted yesterday, it was
14 made very clear for him to call the number; he forgot.
15 Lisa made it very clear to him to call it and check for the
16 message for the balance of the panel last night after 6.
17 She just spoke to him again here in the courtroom and he
18 said that the message was for the balance of the panel to
19 be back; that's the ones that are seated on the case. Upon
20 her saying no, that's you; he said well, I don't have any
21 transportation then.

22 THE COURT: All right. Sheriff, check on that
23 juror and if he doesn't have transportation, have someone
24 bring him up here.

25 THE OFFICER: Yes, sir.

1 THE COURT: All right. And I'm going to have a
2 contempt hearing on him after he arrives.

3 All right. Solicitor, you may call your next case
4 for trial.

5 MR. BELL: Thank you, Your Honor.

6 At this time, the Solicitor's Office would call the
7 case of State v. Kendrick Lamont Mims, Indictment Number
8 2013-GS-32-1463, indicted for trafficking cocaine greater
9 than 400 grams.

10 THE COURT: All right. Mr. Williams, good morning.

11 MR. WILLIAMS: Good morning, Your Honor.

12 THE COURT: You represent -- I don't have the
13 indictments. You represent Mr. Mims?

14 MR. WILLIAMS: I do, Your Honor.

15 THE COURT: Is he present?

16 MR. WILLIAMS: He is, Your Honor.

17 THE COURT: Ready for trial?

18 MR. WILLIAMS: We are, Your Honor.

19 THE COURT: All right. Thank you. Thank you very
20 much.

21 **JURY VOIR DIRE**

22 THE COURT: All right. Again, ladies and gentlemen
23 of the jury panel, please consider yourselves still under
24 oath for purposes of this proceeding. You've heard, you've
25 heard the lead in to these questions twice I think, already

1 this week. However, I will -- I will repeat it. We're
2 fixing to go through a procedure whereby we select a trial
3 jury for the trial of this specific case. As you recall,
4 Monday you were generally qualified to serve as jurors in
5 this court and now we're selecting twelve of your number
6 and perhaps one, maybe two, alternates to serve as jurors
7 in the case of the State v. Kendrick Lamont Mims.

8 I'm going to read and publish to you the indictment
9 in the case. The indictment is not evidence. The
10 indictment is the formal charging document by which an
11 individual is placed on notice of the charges that have
12 been brought against him or her. It contains mere
13 allegations and is in no way, evidence of any of the
14 allegations contained therein. I read this indictment to
15 you based on certain questions I will ask you concerning
16 your eligibility and qualifications to serve as a member of
17 this trial jury.

18 Indictment Number 2013-GS-32-01463 reads that
19 Kendrick Lamont Mims did, in Lexington County, South
20 Carolina, on or about February 18th, 2013, knowingly and
21 intentionally, willfully and unlawfully, sell, cultivate,
22 manufacture, deliver, purchase, or bring into this state or
23 did provide financial assistance or otherwise aid, abet,
24 attempt or conspire to sell, manufacture, cultivate,
25 deliver, purchase or bring into this state or was knowingly

1 and intentionally in actual or constructive possession of
2 or did knowingly and intentionally attempt to become in
3 actual or constructive possession of cocaine, a controlled
4 substance under the provisions of 44-53-110 of the South
5 Carolina Code of Laws, 1976, as amended, in a quantity of
6 997 grams in violation of Section 44-53-370(E)(2)(e), Code
7 of Laws for South Carolina, 1976, as amended. This is an
8 indictment for trafficking in cocaine 400 or more grams.

9 The State is represented by Assistant Solicitors
10 and if you'd please, Solicitors, stand and introduce
11 yourself to the jury panel and any other member of the
12 solicitor's staff that may assist you in the prosecution of
13 this case.

14 MR. BELL: Thank you, Your Honor.

15 My name is Gill Bell. I'm Assistant Solicitor here
16 in Lexington County. I work for your elected Solicitor,
17 Donald Myers. With me prosecuting this case today is Ms.
18 Casey Rankin, also an Assistant Solicitor in our office as
19 well, Investigator Kevin Wilson with the Solicitor's Office
20 is assisting in this case.

21 THE COURT: Thank you. Mr. Mims is represented by
22 Mr. Williams. If you'd please stand, introduce yourself
23 and your client to the jury panel.

24 MR. WILLIAMS: Thank you, Your Honor. I'm Theo
25 Williams. I practice in the firm of Williams, Hendrix,

1 Steigner, and Brink which is located right across the
2 street on the corner. And this is my client, Kendrick Mims
3 and he is the person being tried today.

4 THE COURT: Thank you. Thank you very much, Mr.
5 Williams.

6 Thank you, Mr. Mims.

7 Is any member of the jury panel related by blood or
8 marriage, close personal friends, have any social,
9 business, professional relationship with any of the
10 attorneys or the staff of the solicitor's office assisting
11 in the prosecution of this case? If so, please stand.

12 (No one stood.)

13 THE COURT: Is any member of the jury panel related
14 by blood or marriage or have any professional relationship
15 with Mr. Williams, the attorney for Mr. Mims, ever been
16 represented by Mr. Williams or been a party to a lawsuit in
17 which Mr. Williams represented the opposing party? If so,
18 please stand.

19 (A juror stood.)

20 THE COURT: Yes, your number and name please?

21 THE JUROR: 41, Deborah Corley.

22 THE COURT: All right. Will you step up here for
23 me please?

24 (The juror approached the front of the courtroom.)

25 THE COURT: And tell me -- 41?

1 THE JUROR: Uh-huh (affirmative response).

2 THE COURT: Ms. Corley?

3 THE JUROR: Yes, sir.

4 THE COURT: All right. And tell me your situation?

5 THE JUROR: He represented me in 2011 for CDV.

6 THE COURT: All right. And Mr. Williams was your
7 defense lawyer?

8 THE JUROR: Yes.

9 THE COURT: All right. Given that fact, can you be
10 a fair and impartial juror in the trial of this case for
11 both Mr. Mims and the State?

12 THE JUROR: Yes, sir.

13 THE COURT: All right. Thank you. And what do you
14 do; what is your occupation?

15 THE JUROR: I'm a secretary for the City of
16 Columbia.

17 THE COURT: For Columbia?

18 THE JUROR: Uh-huh (affirmative response).

19 THE COURT: How long you worked over there?

20 THE JUROR: 20 years.

21 THE COURT: 20 years. Congratulations.

22 THE JUROR: Okay.

23 THE COURT: Thank you, Ms. Corley. Ms. Corley is
24 going to stay with us.

25 Is any member of the jury panel related by blood or

1 marriage, close personal friends, have any social,
2 business, professional relationship with Mr. Kendrick
3 Lamont Mims? If so, please stand.

4 (No one stood.)

5 THE COURT: The indictment alleges an incident that
6 occurred in Lexington County on or about February 18th,
7 2013, the allegations being that Mr. Mims, as I've read the
8 indictment to you, was in actual or constructive possession
9 of a quantity of cocaine. Does any member of the jury
10 panel have any knowledge about the case from any source
11 whatsoever? If so, please stand.

12 (No one stood).

13 THE COURT: Does any member of the jury panel have
14 any bias or prejudice towards the parties, that being Mr.
15 Mims or the State, or the subject matter involved, that
16 being drugs, an alleged drug offense? If so, please stand.

17 (No one stood.)

18 THE COURT: I'm going to call a list of names of
19 potential witnesses in the trial of the case. I would ask
20 if the witnesses are present when their names are called if
21 you'd please stand and face the jury panel. I would
22 further advise the panel that the witnesses are not
23 required to be present during this proceeding.

24 The question of course again, is any member of the
25 jury panel related by blood or marriage, close personal

1 friends, have any business or professional relationship
2 with any of the parties whose names I call and/or who stand
3 before you? If so, please stand.

4 Adam Antley, South Carolina Department of Public
5 Safety. This is Trooper Antley to my front right. Thank
6 you.

7 Adam Clayton, Lexington County Sheriff's
8 Department. Jason Snyder, South Carolina Department of
9 Public Safety and I take it when we say that, that's
10 troopers, other troopers. All right.

11 Phillip Ellis, formerly with the South Carolina
12 Department of Public Safety, now with the Lexington County
13 Sheriff's Department. Glen Levine, South Carolina
14 Department of Public Safety.

15 The next five names, David Fouty, F-O-U-T-Y,
16 Department of Public Safety, Christopher Shelton,
17 Department of Public Safety, Mendel Rivers, Department of
18 Public Safety, Patricia Crooks, formerly with SLED, now
19 retired, Lynn Black with SLED, and Samuel Gunter, Lexington
20 County Sheriff's Department.

21 Again, is member of the jury panel related by blood
22 or marriage, close personal friends, have any social,
23 business, professional relationship with any of those
24 individuals whose names I called and/or who stood before
25 you? If so, please stand.

1 (No one stood.)

2 THE COURT: Is any member of the jury panel who is
3 so opposed to the, quote, war on drugs, un quote, that they
4 could not be a fair and impartial juror -- let me change
5 that question; so opposed or so in favor of the war on
6 drugs that you could not be a fair and impartial juror in
7 the trial of this case for both Mr. Mims and the State? If
8 so, please stand.

9 Any additional requested voir dire from the State?

10 MR. BELL: None from the State, Your Honor.

11 THE COURT: Defense?

12 MR. WILLIAMS: Nothing from the defendant, Your
13 Honor.

14 THE COURT: And finally, finally, ladies and
15 gentlemen, as you've heard me say previously this week, you
16 know yourselves best. You've heard the allegations of the
17 indictment. You've been introduced to the attorneys.
18 You've been introduced to Mr. Mims. You've heard the names
19 and/or had one of the witnesses stand before you. You know
20 our purpose is to select a trial jury to be fair and
21 impartial to both the State of South Carolina and Mr. Mims.

22 Knowing yourselves best, is there any member of the
23 jury panel that knows of any reason whatsoever why you feel
24 like you could not be a fair and impartial juror in the
25 trial of this case for both Mr. Mims and the State? If so,

1 please stand.

2 All right. No one stands. I find our panel is
3 qualified.

4 Strikes, Solicitor?

5 MR. BELL: Five and five, Your Honor.

6 THE COURT: Is that correct, Mr. Williams?

7 MR. WILLIAMS: I believe it is, Your Honor.

8 THE COURT: All right. Thank you. Thank you very
9 much.

10 Madam Clerk, would you give us a jury panel please.

11 THE CLERK: Yes, sir, Your Honor.

12 (Juror strike sheets were produced and handed to
13 the Court and the Court Reporter.)

14 THE COURT: Thank you. Thank you very much.

15 THE CLERK: Proceed, Your Honor?

16 THE COURT: Yes, ma'am, please. Thank you, Madam
17 Clerk.

18 **JURY SELECTION**

19 THE CLERK: As I call your name, please come
20 forward and step to the podium until I instruct you to
21 either return to your seat or have a seat in the box.

22 Number 160, Alexandra Patteson. (White female).

23 What say ye for the State?

24 MR. BELL: Please present the juror.

25 THE COURT: What say ye for the defense?

1 MR. WILLIAMS: Please swear the juror.
2 THE COURT: Have a seat in the jury box, ma'am.
3 131, Kevin McIver. (White Male).
4 What say ye for the State?
5 MR. BELL: Please excuse the juror.
6 THE CLERK: Return to your seat please, sir.
7 163, Kelli Powell. (White Female).
8 What say ye for the State?
9 MR. BELL: Please present the juror.
10 THE CLERK: What say ye for the defense?
11 MR. WILLIAMS: Please excuse the juror from the
12 trial of this case.
13 THE CLERK: Return to your seat please, ma'am.
14 22, Eleesa Boyer. (White Female).
15 What say ye for the State?
16 MR. BELL: Please present the juror.
17 THE CLERK: What say ye for the defense?
18 MR. WILLIAMS: Please swear the juror.
19 THE CLERK: Have a seat in the jury box, ma'am.
20 161, Derrick Pearson. (Black Male).
21 What say ye for the State?
22 MR. BELL: Please present the juror.
23 THE CLERK: What say ye for the defense?
24 MR. WILLIAMS: Please swear the juror.
25 THE CLERK: Have a seat in the jury box, sir.

1 24, Janis Brown. (White Female).
2 What say ye for the State?
3 MR. BELL: Please excuse the juror.
4 THE COURT: Return to your seat please, ma'am.
5 No. 2, Darius Adams. (Black Male).
6 What say ye for the State?
7 MR. BELL: Please present the juror.
8 THE CLERK: What say ye for the defense?
9 MR. WILLIAMS: Please swear the juror.
10 THE CLERK: Have a seat in the jury box, sir.
11 121, Sarah Leslie. (White Female).
12 What say ye for the State?
13 MR. BELL: Please present the juror.
14 THE CLERK: What say ye for the defense?
15 MR. WILLIAMS: Please swear the juror.
16 THE CLERK: Have a seat in the jury box, ma'am.
17 41, Deborah Corley. (White Female).
18 What say ye for the State?
19 MR. BELL: Please excuse the juror.
20 THE CLERK: Return to your seat please, ma'am.
21 39, William Collum. (White Male).
22 What say ye for the State?
23 MR. BELL: Please excuse the juror.
24 THE CLERK: Return to your seat, please, sir.
25 64, Esteban Figueroa-Lopez. (Hispanic Male).

1 What say ye for the State?

2 MR. BELL: Please present the juror.

3 THE CLERK: What say ye for the defense?

4 MR. WILLIAMS: Give me a minute, please, Madam
5 Clerk. Please swear the juror.

6 THE CLERK: Have a seat in the jury box, sir.
7 195, Jeffrey Stoker. (White Male).

8 What say ye for the State?

9 MR. BELL: I beg the Court's indulgence.
10 (There was a pause.)

11 MR. BELL: Please present the juror.

12 THE CLERK: What say ye for the defense?

13 MR. WILLIAMS: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, sir.
15 202, Mark Taylor. (White Male).

16 What say ye for the State?

17 MR. BELL: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. WILLIAMS: Please excuse the juror from the
20 trial of this case.

21 THE CLERK: Return to your seat please, sir.
22 23, Barrett Brooks. (White Male).

23 What say ye for the State?

24 MR. BELL: Please excuse the juror.

25 THE CLERK: Return to your seat please, sir.

1 135, Alissa Meetze. (White Female).
2 What say ye for the State?
3 MR. BELL: Please present the juror.
4 THE CLERK: What say ye for the defense?
5 MR. WILLIAMS: Please swear the juror.
6 THE COURT: Have a seat in the jury box, ma'am.
7 113, Walter Kennerly. (Black Male).
8 What say ye for the State?
9 MR. BELL: Please present the juror.
10 THE CLERK: What say ye for the defense?
11 MR. WILLIAMS: Please swear the juror.
12 THE CLERK: Have a seat in the jury box, sir.
13 183, Joseph Shaffer. (White Male).
14 What say ye for the State?
15 MR. BELL: Please present the juror.
16 THE CLERK: What say ye for the defense?
17 MR. WILLIAMS: Please excuse the juror from the
18 trial of this case.
19 THE CLERK: Return to your seat please, sir.
20 181, Jennifer Seablom. (White Female).
21 What say ye for the State?
22 MR. BELL: Please present the juror.
23 THE CLERK: What say ye for the defense?
24 MR. WILLIAMS: Please swear the juror.
25 THE CLERK: Have a seat in the jury box, ma'am.

1 225, Sheila Zorn. (White Female).
2 What say ye for the State?
3 MR. BELL: Please present the juror.
4 THE CLERK: What say ye for the defense?
5 MR. WILLIAMS: Please swear the juror.
6 THE COURT: Have a seat in the jury box, ma'am.
7 73, Lisa Gillespie. (White Female).
8 What say ye for the State?
9 MR. BELL: Please present the juror.
10 THE CLERK: What say ye for the defense?
11 MR. WILLIAMS: Please excuse the juror from the
12 trial of this case.
13 THE CLERK: Return to your seat please, ma'am.
14 140, John Monts. (White Male).
15 What say ye for the State?
16 MR. BELL: Please present the juror.
17 THE CLERK: What say ye for the defense?
18 MR. WILLIAMS: Please swear the juror.
19 THE CLERK: Have a seat in the jury box, sir.
20 Alternates, Your Honor?
21 THE COURT: 1 alternate; strikes 1 and 2.
22 THE CLERK: 198, Harley Taggett. (White Male).
23 What say ye for the State?
24 MR. BELL: Please excuse the juror.
25 THE CLERK: Return to your seat please, sir.

1 91, Kenneth Hiller. (Black Male).

2 What say ye for the State?

3 MR. BELL: Please present the juror.

4 THE CLERK: What say ye for the defense?

5 MR. WILLIAMS: Please swear the juror.

6 THE CLERK: Have a seat in the jury box, sir.

7 That's our alternate, Your Honor.

8 THE COURT: Any motions regarding the jury
9 selection process from the State?

10 MR. BELL: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. WILLIAMS: None from the defense, Your Honor.

13 THE COURT: Mr. Lopez?

14 THE JUROR: Yes, sir.

15 THE COURT: I'm going to ask you to serve as the
16 foreperson of this jury. You have won your Party's
17 nomination. You have certainly earned your wings this
18 week. This is the third case that's been, third jury
19 that's been selected for trial this week and how many times
20 have you been selected.

21 THE JUROR: This week? Three.

22 THE COURT: Three. You're batting a thousand. I
23 don't condone gambling, but I would suggest perhaps on your
24 way home, you buy a lottery ticket. In fact, we might
25 talk.

1 I'm going to ask you momentarily, ladies and
2 gentlemen of the jury panel, to step to your jury room. Do
3 not discuss the case during this brief recess. I must give
4 my instructions to your fellow colleagues that were not
5 selected for the trial of this case. Again, do not discuss
6 this case during this brief recess. Thank you very much.
7 You may now go with the bailiff.

8 (The jury left the courtroom at 10:02 a.m.)

9 THE COURT: Solicitor, Mr. Williams, step up here
10 please.

11 (There was a bench conference out of the hearing of
12 the jury venire and the court reporter.)

13 THE COURT: Ladies and gentlemen of the jury panel,
14 momentarily I'm going to release you from your jury service
15 for the remainder of the day and for the remainder of the
16 week. This will be the last case that will be called for
17 trial this week and other matters that will be before the
18 Court will be matters which I would not need a jury panel.

19 With that being said, thank you. Thank you very
20 much for your participation and focus this week and
21 fulfilling your civic duties. Many people when they get
22 that notice they, of course, they're not thrilled about it
23 and it disrupts your personal and professional lives. But
24 again, we thank you for being here. Quite frankly, the
25 parties could not do that very important obligation to

1 resolve disputes between the State and its citizens or in
2 civil court, between individual parties or parties and
3 businesses and such. We wouldn't be able to do it without
4 participation of citizens like you week in and week out to
5 resolve these cases.

6 With that being said, you're excused. You do not
7 have to call back. You do not have to come back. It's
8 been my pleasure and privilege to be with you this week.
9 Thank you. Thank you very much.

10 (The remaining jury venire left the courtroom.)

11 THE COURT: All right. Anything from the State
12 before we bring in our jury, Solicitor?

13 MR. BELL: Your Honor, I would say that I made the
14 age-old mistake of assuming that we would have some
15 pre-trial issues to review. My primary witness, Trooper
16 Antley, of course, is here. The following witnesses were
17 kind of coming a little bit later. I have my investigator
18 trying to get them over here now but we, of course, can
19 proceed with opening arguments as well as Trooper Antley's
20 testimony and hopefully our witnesses will be here to move
21 on.

22 THE COURT: All right. Anything from the defense?

23 MR. WILLIAMS: Nothing, Your Honor.

24 THE COURT: All right. Bring us our jury.

25 How long is it going to take to try this case you

1 think, Solicitor?

2 MR. BELL: Your Honor, we do have a dashboard
3 video, which is about an hour long. So that, I would say
4 in all probably 4 hours, 5 at the most.

5 THE CLERK: And at what point are you going to put
6 up the video?

7 MR. BELL: Your Honor, it would come in through
8 Trooper Antley's testimony, which would be our first
9 witness, Your Honor.

10 THE COURT: Do you know about how long his
11 testimony would be before you put in the video?

12 MR. BELL: Your Honor, his testimony is essentially
13 very brief. This entire interaction takes about 13
14 minutes. I don't imagine his testimony would take any
15 longer than 25 or 30 minutes.

16 THE COURT: All right. Perhaps after opening, we
17 need to take a recess before we look at the video. I have
18 one other matter I wanted to take care of about 11:00 or
19 11:15. So I'll try to take care of it then.

20 MR. BELL: I would appreciate that, Your Honor.

21 THE COURT: Does that suit you, Mr. Williams.

22 MR. WILLIAMS: Yes, sir, I was, I was listening to
23 what he was saying. I think that probably opening, I think
24 it's probably closing arguments in the morning would be my
25 bet. I think -- I think we can get all the testimony in

1 today.

2 THE COURT: Thank you.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 (The jury entered the courtroom at 10:09 a.m.)

6 THE COURT: All right. Madam Clerk, place our jury
7 under oath please?

8 THE CLERK: Please stand and raise your right hand.

9 (The jury was sworn.)

10 THE CLERK: Jurors are all under oath, Your Honor.

11 THE COURT: Thank you. Thank you very much, Madam
12 Clerk.

13 **OPENING REMARKS BY THE COURT**

14 THE COURT: Ladies and gentlemen of the jury, the
15 case we're about to try is the case of the State v.
16 Kendrick Lamont Mims, the defendant who has been introduced
17 to you. What I will now say is intended to serve as an
18 introduction to the trial of this case. These remarks are
19 not an instruction on the law in the case. I will instruct
20 you on the law applicable to the case during and at the end
21 of the trial before you retire to consider your verdict.
22 This is merely an explanation of the procedure that we will
23 follow during the trial so that you may better understand
24 what may be happening.

25 The defendant is charged by an indictment filed

1 with this Court for the crime of trafficking cocaine 400 or
2 more grams. The elements of which will be explained to you
3 later. Again, ladies and gentlemen, the indictment is not
4 evidence. The indictment is the formal charging document
5 by which an individual is placed on notice of the charges
6 that have been brought against him or her. It is the
7 document which brings the case into this court and it is
8 not in any sense evidence of any of the allegations
9 contained.

10 The Defendant, Mr. Mims, has pled not guilty to the
11 indictment. The State, therefore, has the burden of
12 proving each of the elements of the indictment beyond a
13 reasonable doubt and it will be your duty, ladies and
14 gentlemen, to decide whether or not the State has met that
15 burden.

16 A criminal Defendant in South Carolina is always
17 presumed to be innocent and he or her has no burden
18 whatsoever to prove himself or herself innocent. Your
19 purpose as jurors is to find and determine facts. You are
20 the sole judge the facts. If at any time I make any
21 comment regarding the facts, you must disregard it. You
22 are to determine the facts from the testimony you hear and
23 the other evidence introduced into court. It is up to you
24 to decide what inferences which you feel may properly be
25 drawn from the evidence. It is especially important that

1 you perform your duty of determining the facts diligently
2 and conscientiously because ordinarily, there's no way to
3 correct an erroneous determination of the facts by a jury.

4 On the other hand and with equal emphasis, the same
5 law that makes you the judges of the facts makes me the
6 judge of the law. The law as given by the Court is the
7 only law you may consider. You must accept it and follow
8 it even though you may disagree with it. I cannot tell you
9 what the facts are and you may not disagree with me about
10 what the law is or what the law should be. Your job is
11 take the law as I give it to you and apply it to the facts
12 as you find them from the testimony of the witnesses and
13 any other evidence that may be introduced. After doing
14 that you will render your verdict, a true and just verdict,
15 under the solemn oath that you have just taken as jurors.

16 Until I advise you to begin your deliberations with
17 your fellow jurors, you must not discuss this case with
18 anyone. That includes your fellow jurors, friends, family
19 members, or anyone else. After the case is submitted to
20 you, you must discuss it only in the jury room with your
21 fellow jurors. It is important that you keep an open mind
22 and not decide any issue in the case until all of the
23 evidence has been presented, the parties have made their
24 closing arguments, and I have instructed you on the law in
25 this case, the parties have made their closing arguments

1 and I have instructed you on the law in this case.

2 It is your solemn responsibility to determine the
3 guilt or innocence of Mr. Mims and your verdict must be
4 based solely on the evidence as it is presented to you in
5 this trial and on the law as I instruct you during and at
6 the close of the trial.

7 Now in just a moment, the solicitor will make what
8 is called an opening statement in which the solicitor will
9 explain to you the issues in this case or at least what the
10 solicitor thinks the issues are in this case. Mr.
11 Williams, the attorney for the defendant, may also make an
12 opening statement, although he is not required to do so
13 based on the legal principle that the defendant is presumed
14 to be innocent and has no burden of proving himself or
15 herself innocent.

16 What the attorneys tell you during their opening
17 statement is not evidence in the case. It is only their
18 contention as to what the issues are. What the attorneys
19 may tell you during their closing arguments is not
20 evidence. It is, again, their contention as to what the
21 issues are or the facts are and how the facts may play into
22 the law. The questioning, the questions by the attorneys
23 are not evidence; it's the responses by the witnesses
24 testifying under oath. The questioning is the framework by
25 which testimony is extracted from those sworn witnesses

1 testifying before you under oath. That is where the
2 evidence will be presented to you, by that sworn testimony
3 from this witness stand and/or by exhibits that may be
4 introduced into evidence.

5 From time to time during a trial, you may hear one
6 of the attorneys say, Your Honor, I believe we have a
7 matter of law or a question of law to discuss with you or
8 may we approach the bench or sometime I myself might find
9 it necessary to excuse you for a short while so the
10 attorneys and I can discuss a matter of law. That is not
11 to hide anything from you.

12 The reason for this is because you are the judges
13 of the facts in this case and sometime when I am discussing
14 matters of law with the attorneys, it may be necessary for
15 me to make some comment as to the facts in connection with
16 ruling whether or not a particular law applies. I am not
17 supposed to tell you what I think the facts are, so I will
18 excuse you from the courtroom while these discussions take
19 place so that in no way will you be influenced by anything
20 that I might say or do in connection with the facts.

21 In determining what the true facts are in this
22 case, in using your individual and collective good judgment
23 and common sense, you must decide whether or not the
24 testimony of the witness is believable. It will be my
25 responsibility to rule as a matter of law as to whether

1 certain testimony is admissible at all or not; in other
2 words, whether you hear it or not. But once the testimony
3 is admitted, whether or not you believe it is solely for
4 you to determine. In deciding whether to believe a
5 witness, you have a right to consider the interest, if any,
6 of any witness; the bias, if any, of any witness; the
7 prejudice, if any, of any witness; the opportunity for the
8 witness to have seen the matters and things about which the
9 witness may testify and the demeanor or the way the witness
10 acts on the witness stand.

11 You have the right to consider anything that is in
12 the record that will help you in evaluating the testimony
13 of the witnesses. That means that it will be your duty to
14 pay close attention to these witnesses, to observe the
15 witnesses, to listen to the witnesses, to pay close
16 attention to the attorneys and to the Court. Don't let
17 your thoughts wander, but give strict attention to the
18 testimony in this trial so that at the end of all the
19 testimony, after the closing arguments by the attorneys and
20 the instruction on the law by the Court, you will be in the
21 position to determine what the true facts are and to apply
22 the law to those facts as you have found them to be and
23 thus render and true and just verdict.

24 It will be your added responsibility, Mr. Foreman,
25 to preside in the jury room and be the jury spokesperson

1 here in court. It will also be your duty to write the
2 verdict and I will give you further instructions about that
3 at the conclusion of the case.

4 Administratively, ladies and gentlemen, of course
5 we have a speaker sound system in the courtroom. However,
6 if those of you who are further away from the witness stand
7 cannot hear a witness, please get my attention, the
8 attention of the clerk or one of our fine bailiffs and
9 we'll certainly have that witness speak up.

10 I don't know what may be offered, if anything, in
11 the form of documents or photographs or the like; maybe
12 some, maybe none. Many times if physical items of evidence
13 are introduced, they may be handed to the foreperson and
14 passed among the jury while you're out here in your jury
15 box. You may look at those items all you wish while you're
16 out here in your jury box. Keep in mind, if I allow an
17 item into evidence, physical items and the like, you will
18 also have that item with you in your jury room at the time
19 of your deliberations. So it would not be the only
20 opportunity that you will have to review any physical
21 items.

22 From time to time, you may see me on my computer.
23 I don't tweet, I don't repeat, I don't know what snap-talk
24 is, I'm faceless. These are very good trial -- very good
25 and experienced trial attorneys. I may look down the road

1 and perhaps see what I think is a legal issue in the
2 distance and I will do some research. I will be as you, I
3 will stay focussed and attentive on the trial of the case.

4 As far as the seating, I have to keep up with
5 thirteen people. I have found by experience, many times
6 jurors are very territorial. They like to sit in the same
7 seat each and every time and have the same view of the
8 courtroom and the witness stand each and every time. You
9 may certainly do so.

10 I need our foreperson to always be in that seat. I
11 need the alternate to always be in that seat. As to the
12 others, if you would like, you may maintain the same seat
13 or sit anywhere you like within the jury box.

14 Finally, what and I in charge of; I'm in charge of
15 taking breaks. That's what I'm in charge of. The way I,
16 the way I decide that issue is if I want to take a break.
17 It works perfectly. This is an important case to the State
18 of South Carolina, an important case to Mr. Mims. It's not
19 any type of judicial marathon. Anytime any of you need a
20 break, just please raise your hand, get my attention and
21 y'all will take y'all's break and we will take our break.

22 All right. Any objections to anything I've told the
23 jury from the State?

24 MR. BELL: None, Your Honor.

25 THE COURT: From the defense?

1 MR. WILLIAMS: None from the defendant, Your Honor.

2 THE COURT: Well, what we're going to do, ladies
3 and gentlemen, is do our opening arguments and then y'all
4 will take a brief recess before the first witness is called
5 in the trial because of a matter I have to take up outside
6 of your presence.

7 All right. With that being said, Solicitor, you
8 may address the jury.

9 MR. BELL: Thank you, Your Honor. May it please
10 the Court.

11 THE COURT: Yes, sir.

12 **OPENING STATEMENTS**

13 MR. BELL: Actions speak louder than words. Ladies
14 and gentlemen, that is a saying that I have heard time and
15 time again throughout my life; and it's a saying that time
16 and time again throughout my life has proven to be true.
17 Actions speak louder than words and that's a big reason
18 that I don't want to waste a lot of time with words with
19 you right now because I'm eager for you to get into the
20 evidence to hear Corporal Antley's testimony; to see
21 dashboard video from his vehicle from the incident location
22 because the actions that day of Mr. Mims speak much louder
23 than his words did; because you're going to see on February
24 18th of 2013, Trooper Antley stopped a vehicle in which Mr.
25 Mims was a passenger.

1 You'll see what the trooper does, what he's trained
2 to do. He approaches, surveys, and determines the
3 situation and at some point, he asks Mr. Mims out of the
4 vehicle. You're going to see Mr. Mims becomes very
5 nervous; he's trying to conceal something in his groin
6 area. The trooper starts questioning what it is because of
7 his own safety concerns and that's when you'll see the gig
8 is up.

9 Mr. Mims tears away from the trooper, bolts off
10 into the woods leading the trooper on about a three tenths
11 of a mile foot chase off I-20 here in Lexington County.
12 Ultimately the trooper is able to close the distance and as
13 he is a short distance away, he sees Mr. Mims pull the bag
14 out of his pants, place it on the ground in the woods and
15 attempt to scoop up some leaves and sit it on top before
16 surrendering. Actions will speak louder than words.

17 There's a couple of things I want you to be aware
18 of as this trial progresses regarding the law. You're
19 going to hear more about the law than you ever wanted to by
20 the end of this trial. So I won't waste too much time now.
21 But very briefly, in South Carolina, when it comes to
22 possession, we have two kinds of possession: There's
23 actual possession and constructive possession. Now actual
24 possession is me holding this pen that's in my hand that is
25 on my person. Constructive possession is me taking my pen,

1 sitting it down and walking away. Now, just because I put
2 my pen down doesn't mean I don't intend to return later and
3 take my pen back; that's constructive possession. It's the
4 exact same as actual possession under the law.

5 The other thing I want you to keep in mind is
6 you're going to hear all about reasonable doubt and how you
7 have to be beyond a reasonable doubt, but what reasonable
8 doubt is not, is just as important as what it is. I want
9 you to keep that in mind because what reasonable doubt is
10 not is it is not beyond all doubt. At the end of this
11 trial, the Judge, the best source of the law in this
12 courtroom, is going to tell you that. That you don't have
13 to be a hundred percent certain; there are very few things
14 in this world that you can be a hundred percent certain of;
15 all you have to be is firmly convinced. That's beyond a
16 reasonable doubt.

17 Ladies and gentlemen, I thank you for your time, I
18 thank you for being here. I ask that you keep in mind as
19 you listen to the evidence that actions speak louder than
20 words.

21 THE COURT: Thank you. Thank you very much,
22 Solicitor.

23 Mr. Williams.

24 MR. WILLIAMS: May it please the Court?

25 Ladies and gentlemen of the jury, we've met.

1 Obviously we -- my office is across the street, so you know
2 who I am, but you don't know anything else about the case
3 yet. You don't know anything about my client yet. You've
4 just come in here and you just -- you're just supposed to
5 make decisions after you hear some evidence what you
6 determine to be facts in a case. I heard what the
7 Solicitor said about actions speaking louder than words.

8 Well, one of the things that has always concerned
9 me is the fact that a lot of times, people misinterpret
10 what you say. A lot of times, people misinterpret what you
11 do. And I don't pretend to understand what goes on inside
12 of peoples minds, but to a certain extent, what the
13 solicitor has said does make a little bit of sense and for
14 that reason, I want you to watch the video because the
15 video will show any actions that are going on.

16 You know, we're humans. We're the ones that
17 ascribe motive. We humans ascribe what we think is going
18 on in somebody else's mind, but unless we're that person
19 involved and unless we're using his brain, we don't know
20 what that person is really thinking. We don't know why a
21 person does a particular thing because we're not
22 clairvoyant. So that video really is the most important
23 piece of evidence I would suggest to in this particular
24 case; because that video doesn't have a mind; it doesn't
25 have any -- it doesn't have any axe to grind, it doesn't

1 have any prejudice, it doesn't have any type of thought
2 process that it can ascribe meaning to. It is simply a
3 rendition of what happened on that particular day and by --
4 for that reason, it is the most important thing that you
5 can look at.

6 What you will see, I suggest, and you see we as
7 lawyers, and as prosecutors, as defense lawyers, we ascribe
8 what we think is met by these actions. I'm going back to
9 what we think are meant by these actions, but obviously
10 we're not inside anybody's mind. But from our viewpoint,
11 what we think as a defense lawyer and as his attorney, what
12 we think was happening is that you had an individual who
13 was very scared when he was pulled over.

14 Now, what you'll learn is that Kendrick Mims is
15 from Georgia. Actually Georgia/Florida, he's actually from
16 the -- if you can imagine how Florida's -- how it actually
17 looks on a map. It's got this little thing which kind of
18 hangs over and I think it's called a panhandle. So he is
19 right there on the edge of Georgia and Florida and he was
20 visiting his -- his nephew who lives in Ridgeway.

21 Now, the reason I'm telling you these things is
22 because as you, as this trial progresses, you'll learn that
23 there's a certain amount of consistency in what is
24 testified to, but how you ascribe those actions are the
25 things which may not be provable. What you interpret these

1 actions to be may not be provable because what you will
2 learn is that his nephew was driving his truck. Mr.
3 Mims -- it was not Mr. Mims' truck, but he was driving his
4 truck. His name was Vanderhall. And the reason that's --
5 the reason why that is important is because there were two
6 people charged in this particular case, Mr. Vanderhall and
7 Mr. Mims. Mr. Vanderhall was driving his truck and you'll
8 see from Officer Antley's vehicle -- the little camera that
9 he has -- you'll see that Mr. Vanderhall's truck speeds up,
10 he pulls him over and when he pulls him over, you'll see
11 there's a lot of conversation going on with Mr. Vanderhall.
12 And you'll see there's some sort of conversation going on
13 with Mr. Mims, who is the passenger in Mr. Vanderhall's
14 truck.

15 For whatever reason, Mr. Antley tells the guy
16 that's not from South Carolina to get out of the truck. At
17 that point in time, I want you to start watching because
18 you see, up until that point in time it's just a regular
19 traffic stop for speeding. There'll be some allegations
20 about maybe some seatbelts, there may be something said
21 about an open container, but this is how this case begins.

22 It's a simple speeding case. So you have Mr. Mims,
23 he's outside, he's on the side of the truck and you'll see
24 Mr. Antley -- Officer Antley, tell him to lean up against
25 the truck and you'll see him grabbing him; what's that,

1 what's that in your pants? And I don't mean to use that
2 tone, but you listen to the tone as you listen to the
3 video. For whatever reason, Mr. Mims is afraid. From that
4 point on, the camera's still on and you will see the camera
5 just sitting there and sitting there. The other individual
6 who was driving the vehicle, Mr. Vanderhall, he's out there
7 on the side of the road and you'll sit there and you'll
8 watch Mr. Vanderhall kind of look around; it's on the
9 video, then he gets in the truck and leaves.

10 You'll hear the audio part of the officer's camera
11 or audio recording and I'll let you make your own
12 interpretations as to what you hear. What you will hear is
13 you'll hear that he tells him I've already tased you twice.
14 You'll hear that. You'll hear the officer probably
15 testify, but he actually pulls his gun on him, but I want
16 you to keep your common sense throughout this whole thing
17 and think for yourself if what the solicitor has suggested,
18 that my client, that he actually sees my client burying
19 something on the ground. Why my client would do it after
20 all this running and after he -- he's clearly in the vision
21 of the officer. There will be a lot more I'm going to talk
22 to you about what makes sense, but I don't -- it's like you
23 don't want to pull out all your surprises right here in the
24 opening.

25 It's kind of -- kind of what it is because I, you

1 know, I want him to put on his case because you know who's
2 got the burden of proof of proving this case? The State.
3 My client doesn't have to testify. He doesn't have to
4 prove a thing and what we're counting on is you twelve plus
5 one jurors to do what you're sworn to do and that is
6 examine the evidence and make a determination as to whether
7 or not you feel that my client's guilty beyond a reasonable
8 doubt or do you think maybe there's a question about it.
9 Who had these drugs, if they are drugs; who possessed them,
10 actually or constructively, and whether or not my client's
11 guilty.

12 I thank you for listening to me and hopefully it
13 won't be -- it should be fairly interesting. It won't be
14 real boring. Thank you.

15 THE COURT: Thank you.

16 MR. WILLIAMS: Thank you, Your Honor.

17 THE COURT: Thank you very much, Mr. Williams.

18 Mr. Foreman, ladies and gentlemen, if y'all would,
19 please, we're going to take about a 15 minute recess. If
20 you'll please step to your jury room; do not discuss the
21 case during this brief recess. Thank you. Thank you very
22 much.

23 (The jury left the courtroom at 10:34 a.m.)

24 THE COURT: All right. Court will be in recess for
25 about 15 minutes. Thank you very much, Solicitor, Mr.

1 Williams.

2 MR. BELL: Thank you, Judge.

3 MR. WILLIAMS: Thank you, Your Honor.

4 (A brief recess was observed.)

5 THE COURT: All right. Anything from the State
6 before we bring in our jury?

7 MR. BELL: Nothing, Your Honor.

8 THE COURT: Defense?

9 MR. WILLIAMS: Nothing from the defendant, Your
10 Honor.

11 THE COURT: Thank you. Bring us our jury, please.

12 (The jury entered the courtroom at 10:57 a.m.)

13 THE COURT: All right. Our jury is back in place
14 so welcome back, ladies and gentlemen. Thank you. Thank
15 you very much for your patience with the Court.

16 We're now going to begin the trial of the case by
17 the presentation of evidence and testimony by the State in
18 its case in chief. If you would please give all the
19 parties your complete and undivided attention. Thank you.

20 Solicitor, you may call your first witness.

21 MR. BELL: Thank you, Your Honor. At this time the
22 State would call Corporal Adam Antley to the stand.

23 THE COURT: All right. If you'd come around and be
24 sworn for us please.

25 ///

Adam L. Antley - Direct Examination by Mr. Bell

1 ADAM L. ANTLEY,
2 having been duly sworn, testified as follows:
3 THE CLERK: Have a seat please, sir. Once you're
4 seated, state your full name spelling your last for the
5 record please.

6 THE WITNESS: Adam Lewis Antley. A-N-T-L-E-Y.

7 **DIRECT EXAMINATION**

8 BY MR. BELL:

9 Q Corporal, who are you employed by?

10 A The South Carolina Department of Public Safety and
11 the South Carolina Highway Patrol.

12 Q And who were you employed by February of 2013?

13 A Department of Public Safety South Carolina Highway
14 Patrol.

15 Q Okay. In what role were you employed in 2013?

16 A State Trooper.

17 Q What was your rank at that time?

18 A Senior Trooper.

19 Q What is your rank currently?

20 A Corporal.

21 Q Can you tell us a little more about your
22 educational background and so forth?

23 A Yes, sir. I went to high school in Orangeburg
24 County at Edisto High School. I graduated from there in
25 2004. After I graduated from high school, I went to the

Adam L. Antley - Direct Examination by Mr. Bell

1 Citadel in Charleston, graduated from the Citadel with a
2 major in Criminal Justice, a Bachelor's of Science in
3 Criminal Justice in 2008. During my senior year at the
4 Citadel or junior and senior year, I began applying at the
5 South Carolina Highway Patrol. I was accepted into their
6 87th Training Class and began in July of 2008 and then
7 graduated from South Carolina Highway Patrol Training in
8 December of 2008. Upon graduation I was assigned and
9 stationed in Lexington County. I've been working in
10 Lexington County ever since.

11 Q So in February of 2013, how long would you have
12 been working in law enforcement?

13 A Just shy of 5 years.

14 Q And do you recall working February 18th of 2013?

15 A Yes, sir.

16 Q Tell us about what kind of shift you were working
17 that day.

18 A I was working dayshift. It began between 6 and 7
19 in the morning and ended around 6 or 7 in the evening.

20 Q Can you tell us a little bit about what you did
21 during a typical shift at that time?

22 A Our responsibilities are to enforce traffic,
23 enforcement of traffic laws whether it be working
24 interstates, primary and secondary roads, investigating
25 collisions. If we have court on those days during

Adam L. Antley - Direct Examination by Mr. Bell

1 dayshift, we attend court to prosecute magistrate level
2 cases we've made, but primarily other than administrative
3 type duties, court, and administrative stuff, we're on the
4 roads either enforcing traffic laws or investigating
5 collisions.

6 Q What are the primary kinds of offenses you run into
7 during a typical shift?

8 A Well other than the collision investigations, our
9 main -- our main focus is traffic laws that -- that -- our
10 enforcement of traffic laws that can prevent injury or
11 collisions on the roadways; speeding, seatbelt usage,
12 things like that.

13 Q Now on February 18th of 2013, do you recall having
14 interaction with Mr. Kendrick Mims?

15 A I do, yes, sir.

16 Q Can you tell us how that initially began?

17 A About -- I think it was about 5:58, just prior to 6
18 o'clock, I was, I was getting close to getting -- getting
19 off the shift or had about an hour left in my shift and I
20 was traveling up I-20 Eastbound in Lexington County near
21 the 378 overpass. Once I got just past 378 bridge, I
22 pulled over on the shoulder. It was still somewhat of a
23 rush hour. A lot of the traffic had already subsided and
24 on that -- that time of the day on I-20 usually the
25 Westbound traffic is thicker coming back into Lexington,

Adam L. Antley - Direct Examination by Mr. Bell

1 but I was on the Eastbound side attempting to just enforce
2 the speeding law out there on I-20.

3 The speeding -- or the speed limit is 60; it's
4 heavily posted. There's one sign saying it's a 60 ahead;
5 there's a 60 mph sign on each side of the road next to the
6 emergency lane and next to the hill barrier about a mile
7 and a half to two miles prior to the 378 bridge at the 60
8 mile marker.

9 Q Okay. I'm going to slow you down for a second.
10 Now, first off you said you were facing Eastbound. For
11 those of us who are directionally impaired, such as myself,
12 can you tell us what landmark Eastbound would be facing?

13 A We were -- if you're coming, if you're coming from
14 Aiken County or from Georgia going towards Columbia,
15 Eastbound; is that what you're asking?

16 Q Sure. If you keep heading eastbound down that road
17 what will you run into that some of us might recognize?

18 A I-26, I-95.

19 Q Is there any sort of geographic landmark down that
20 way? A river by chance?

21 A The Saluda River.

22 Q All right. Now, you said that you were pulled over
23 to the shoulder and were potentially monitoring for
24 speeding; is that correct?

25 A Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q And what was the speed limit again?

2 A 60.

3 Q Now when you're monitoring for speeding, how do you
4 go about that process?

5 A I normally park on the shoulder of the road and
6 look either in my rearview mirror or a side-view mirror and
7 I just watch traffic. It's, you know, once you've done it
8 for, for several years, it's pretty easy to see the, when
9 traffic is pretty steady pace and most all the cars are
10 running together, it's easy to tell the ranges that the
11 cars are traveling in. Usually I wait until I observe a
12 vehicle that appears to be traveling much faster than
13 everyone else or, you know, if there's other traffic where
14 you can gauge it against. But I wait until I see a vehicle
15 that appears to be exceeding the speed limit, I make an
16 estimate of what I think that vehicle is doing or as far as
17 their speed and then I use the radar that's installed in my
18 car to determine the speed.

19 Q Now, is judging speed and using a speed radar
20 something that you've been trained to do?

21 A Yes, sir.

22 Q And tell us a little bit about the training that
23 goes into that.

24 A Well you -- it's about a week-long class at the
25 academy and then every three years you recertify, but you

Adam L. Antley - Direct Examination by Mr. Bell

1 go through a classroom setting where they teach you to
2 principals or radar, how it all started, you know the early
3 on uses for police radar and how it's progressed from the
4 50's and 60's until now. It teaches you the considerations
5 to be mindful of when -- when using radar to observe or
6 make speeding violations or observe speeding violations and
7 it teaches you how to test the radars, how to -- how to
8 know the vehicles that you're looking at.

9 Q And at the time of this incident, were you
10 certified as a radar operator?

11 A Yes, sir.

12 Q And are you certified still today?

13 A Yes, sir.

14 Q At any point in time, have you had your
15 certification revoked for any reason?

16 A No, sir.

17 Q Okay.

18 MR. BELL: Now I beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (State's Exhibit Number 1 was marked for
21 identification.)

22 BY MR. BELL:

23 Q Corporal, I'm showing you a picture. Can you tell
24 me what that is a picture of?

25 A It's an aerial view of I-20 and the surrounding

Adam L. Antley - Direct Examination by Mr. Bell

1 roads and businesses around I-20.

2 Q Does it fairly and accurately represent the area
3 that you were working on that day?

4 A Yes, sir.

5 Q And at this particular time when the incident
6 occurred?

7 A Yes, sir.

8 MR. BELL: Your Honor, permission to ask the
9 trooper to step down for a moment?

10 THE COURT: Of course.

11 BY MR. BELL:

12 Q Trooper, if you'll join me down here.

13 (The witness stepped down from the witness stand.)

14 MR. BELL: Your Honor, at this time, the State
15 would move State's 1 into evidence.

16 MR. WILLIAMS: No objection, Your Honor.

17 THE COURT: State's 1 is in evidence.

18 (State's Exhibit Number 1 was entered into
19 evidence.)

20 MR. BELL: Permission to publish, Your Honor?

21 THE COURT: Of course.

22 BY MR. BELL:

23 Q Trooper, I'm handing you a laser pointer. If you
24 would stand off to the side and also if you would step over
25 towards me so the court reporter can hear you.

Adam L. Antley - Direct Examination by Mr. Bell

1 Would you please show us both the direction you
2 were facing and where you were posted on the shoulder.

3 A I was sitting right here on the side of I-20 just
4 past the bridge, and I was looking in this direction. The
5 front of my car was facing this direction. The traffic I
6 was monitoring was coming from here traveling this way when
7 I was looking out through my rearview mirror.

8 Q Trooper, would you please take a seat.

9 (The witness returned to the witness stand.)

10 BY MR. BELL:

11 Q Trooper, the area that you've just identified for
12 the jury, what county is that area located in?

13 A Lexington.

14 Q Is that within Highway Patrol's jurisdiction?

15 A Yes, sir.

16 Q Now, as you're posted on that shoulder looking in
17 your rearview mirror, what can you tell us about what
18 happened in this case?

19 A I saw a green Ford F150 traveling in the left lane,
20 the lane closest to the median wall, I think to some people
21 it's also known as the fast lane or the passing lane. In
22 that area there's three lanes -- normally three lanes of
23 traffic and right where I was sitting there was actually
24 also a fourth lane where traffic is entering in from U.S.
25 378, but I observed a green F150 that was passing the other

Adam L. Antley - Direct Examination by Mr. Bell

1 traffic in the area. I could tell that it was going a lot
2 faster than the rest of the traffic on the road.

3 Q Now, do you typically pull people over for going 5
4 miles an hour over the speed limit?

5 A No, sir, typically I don't.

6 Q What sort of leeway is typically given in these
7 speeding cases?

8 A I think just about everybody out there is running
9 around 10 miles over the speed limit. I believe it's
10 common knowledge to everybody and it seems like everybody
11 says, well don't you give us 10; no. It would be mindless
12 or pointless to stop everybody running 10 over or 5 over
13 when everybody is out there doing it.

14 Q Looking at this vehicle approaching in your
15 rearview mirror and passing your vehicle, did that vehicle
16 appear to just be going 10 miles an hour over the speed
17 limit?

18 A No, sir, not at all.

19 Q Did it appear to be in excess of that?

20 A Yes, sir.

21 Q Ultimately do you run your radar and get an
22 official reading on that vehicle?

23 A Yes, sir, before I even read radar, the estimate I
24 made was in excess of 90 miles an hour. I activated the
25 radar and it gave the reading of 93 doppler, excuse me, the

Adam L. Antley - Direct Examination by Mr. Bell

1 doppler toned radar gave was clear. I watched the vehicle
2 for just a second or two as it, you know, 93 miles an hour
3 appeared on the radar screen and I confirmed that that was
4 the vehicle that the radar was picking up at the time.

5 Q And if that vehicle was going 93, how many miles
6 per hour over the speed limit in that area would it be?

7 A 33.

8 Q Does that seem unusual in your experience?

9 A Very, at that time of the day, yes, sir.

10 Q Now, once you clocked that vehicle speeding 33
11 miles an hour over, how did you proceed?

12 A I put my car in gear as quick as I could, activated
13 lights, blue lights and siren and tried to get over to that
14 left lane as quickly as I could to get it stopped.

15 Q What kind of vehicle were you operating at the
16 time?

17 A I had a 2011 Dodge Charger that was black unmarked.

18 Q And do you typically operate with a partner in the
19 same vehicle as you?

20 A No, sir.

21 Q If you need backup, do you have to radio for it?

22 A Yes, sir.

23 Q How fast do you have to accelerate to catch up with
24 the individual you clocked?

25 A I was over 100. I try not to look at my speed too

Adam L. Antley - Direct Examination by Mr. Bell

1 much when I'm catching up because with the lights and siren
2 cut on, the other traffic, you got to pay attention to what
3 they're doing because it sometimes can make people do or
4 take action they wouldn't normally take I guess, swerve or
5 slam on brakes in front of you and stuff. So I know I was
6 in over 100 trying to catch up to the vehicle.

7 Q About how long did it take you to close distance?

8 A A quarter to a half a mile at the most.

9 Q How did the vehicle react when you pulled up behind
10 with your blue lights on?

11 A He changed to the -- he changed to another lane
12 first, the second lane, and traveled for a short distance,
13 moved to the right lane, continued to travel. The spot
14 that I initially -- we were initially in whenever I got
15 behind him there was a guardrail next to the emergency lane
16 and then after the guardrail ended where I thought the
17 vehicle would probably pull over, I was hoping they would
18 pull over because there's more room where you don't have to
19 worry about working right next to guardrail and they
20 continued on, continued to travel for about a mile or so,
21 somewhere close to a mile I guess.

22 Q So when you initially closed that distance, did the
23 changing -- did the vehicle changing lanes they were
24 acknowledging your presence?

25 A It appeared so, yes sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q In your opinion, should they have pulled over
2 sooner than they did?

3 A It seemed weird to me that they didn't and it just
4 depends on the driver when they pull over, but it seemed
5 like there were plenty of opportunities.

6 Q Now upon pulling the vehicle over, did you notice
7 anything or were you able to judge anything as to how many
8 occupants may have been in the vehicle?

9 A When I got behind them -- when I closed the
10 distance, got behind them and was waiting on them to pull
11 over, I could see them moving around a lot. I could see
12 them both -- it appeared like they were reaching, putting
13 on or attempting to put on seatbelts; I see that a lot, you
14 know working in traffic, stopping cars. I've grown
15 accustomed to looking for that whenever -- whenever a
16 vehicle is pulling over. In this case it was a single cab,
17 a Ford pickup. I had a pretty clear view of -- through the
18 back glass of the two people, the two occupants that were
19 in there.

20 Q Seeing individuals move around like that put you on
21 caution at all?

22 A It can. The fact combined with the length of time
23 they took to pull over, kind of makes me nervous to what
24 they were doing.

25 Q Upon stopping the vehicle, tell us about how you

Adam L. Antley - Direct Examination by Mr. Bell

1 approach a situation like that.

2 A I walk up on the passenger side because if I'm on
3 the driver's side, I'm extremely close to the traffic. I
4 was always trained if possible to go to the passenger side.
5 It gives you more room for, I guess, driver error, meaning
6 somebody coming down the road that pays too much attention
7 to the lights and cross the line or something. You don't
8 have to worry about getting clipped by a mirror. So I go
9 to the driver, proceed to the passenger side as much as
10 possible. In this case, that's the side of the truck I
11 went to.

12 Q And was the window up or down?

13 A When I went up, I'm not sure what it was whenever
14 they passed me, but whenever I walked up to it, it was
15 down.

16 Q And were you able to confirm how many occupants
17 were in the vehicle?

18 A Yes, sir.

19 Q And how many?

20 A There were two.

21 Q Okay. And what race were they?

22 A Both were black males.

23 Q Okay. Did they appear to be the same age?

24 A No, the driver appeared to be around twice the age
25 of the passenger, I believe.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q And when you first looked in the vehicle and
2 confirmed how many occupants, what was the next thing that
3 you visually noticed?

4 A I could smell alcohol coming from the vehicle as I
5 stood at the passenger's open window.

6 Q Okay. And how about when you saw the movement in
7 the cab and thought they might be manipulating their
8 seatbelts; did you have a chance to see if their seatbelts
9 were secure?

10 A When I was standing there upon walking up, both of
11 them were, they were holding the seatbelt, the buckles in
12 their hands. They weren't actually buckled into the, they
13 weren't buckled into the seatbelt, just only attached to
14 the seat.

15 Q Did you see anybody in your experience do that
16 before?

17 A Yes, sir.

18 Q Typically what is the purpose of holding it in
19 place like that?

20 A To make it appear that you were wearing it.

21 Q Now you said you smelled alcohol. Did you
22 determine where the alcohol was coming from?

23 A Not which person, but I could just smell it coming
24 out of the truck. It's not -- I didn't smell it when I got
25 out of the car, but once I stood at the passenger window, I

Adam L. Antley - Direct Examination by Mr. Bell

1 could smell it. While I was standing there talking with
2 them, I could see next to the -- it was a manual
3 transmission or the truck had a manual transmission. Next
4 to the gear shifter that's in between the -- in between
5 the, I guess in between the two front -- between the driver
6 and the passenger, next to that gear shifter, I could see a
7 box. It looked like it was originally a 12 pack of Bud
8 Light that had been cut in half to make a 6 pack instead of
9 buying I guess a 6 pack with the plastic things that hold
10 the cans together, somebody had taken a 12 pack and cut it
11 in half and just had a 6 pack made out of that.

12 Q Now, when you smelled alcohol and saw a 6 pack; is
13 that in and of itself an arrestable offense?

14 A No, sir.

15 Q How did you proceed?

16 A While sitting there speaking with them, I saw what
17 appeared to be a Bud Light can in there. I asked if there
18 was, I asked if they had been drinking. The -- the
19 passenger ended up, Mr. Mims, ended up saying that he had
20 been drinking and there was -- ended up being an open Bud
21 Light can in the passenger area of the pickup truck while I
22 was speaking with him.

23 Q Did you seize that can?

24 A Yes, sir.

25 Q What did you do with that?

Adam L. Antley - Direct Examination by Mr. Bell

1 A I poured it out on the ground right next to where I
2 was standing, crunched the can up and threw it in the back
3 of the truck.

4 Q And based on your training and experience, did the
5 contents of that can smell like alcohol?

6 A Yes, sir, it looked like alcohol when I poured it
7 out.

8 Q Now, did you eventually confirm the identities of
9 these two individuals in the vehicle?

10 A Yes, sir. When I first walked up I asked the
11 driver for his driver's license and it took him several,
12 you know -- you know more time than normal to find it. He
13 kept talking about things, other things other than just
14 looking for his license. I ended up asking the passenger
15 for his ID or license while I was waiting on the driver to
16 produce his.

17 Q I apologize for interrupting you, but why would you
18 ask for a passenger's ID?

19 A Well, he had admitted that he had been drinking an
20 open container of beer. So if anything, he was going to
21 get a ticket for having an open container of beer in the
22 vehicle.

23 Q Now, is it your discretion on an open container
24 whether you issue a ticket or whether it's an arrestable
25 offense?

Adam L. Antley - Direct Examination by Mr. Bell

1 A Yes, sir.

2 Q Now, what did the ID's of these individuals reveal?

3 A I got the passenger's first, Mr. Mims, he handed me
4 a Florida identification card and on his identification
5 card his name was listed as Kendrick Lamont Mims.

6 Following or after I got his ID, the driver produced his
7 South Carolina driver's license that identified him as
8 Brian Vanderhall.

9 Q How did you proceed?

10 A While speaking with him, after giving the open
11 container at that point, they'd also been looking for the
12 registration. They had started digging the glove box and I
13 couldn't really see what all was in there. I opened the
14 passenger door so I could see what all they were reaching
15 for. While they did that, the entire time they were
16 talking about another vehicle that had cut them off on the
17 interstate, about somebody else that had some road rage.

18 It just appeared to me that each time that I asked
19 a question about either who they were or what was in the
20 truck or where they were going or coming from it was like
21 they were trying to shift focus to something else.

22 Q Now, do you recall if they gave you a description
23 of the vehicle that was causing them problems?

24 A I believe they said like a white car or white Honda
25 or something like that.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q Do you recall seeing a white vehicle when you saw
2 them pass by?

3 A There wasn't a white car right there close to them
4 that I remember, no, sir, and there wasn't anybody else
5 that I saw going the same speed as them.

6 Q And have you had a chance to review the video from
7 your vehicle from this stop?

8 A Yes, sir.

9 Q And do you recall there being a white vehicle in
10 your recording?

11 A Not that I recall, no, sir.

12 Q Now, could you estimate how many traffic stops
13 you've done in your time, back in 2013 how many traffic
14 stops you had conducted?

15 A I'd say around 2 to 3,000 that year.

16 Q Is it abnormal for individuals to be somewhat
17 nervous when dealing with law enforcement?

18 A No, sir, a lot of people are -- are nervous.

19 Q Was the demeanor of these individuals in this, that
20 green truck, Mr. Mims and Mr. Vanderhall, was it outside
21 the normal level of nervousness you deal with?

22 A Yes. Usually the normalness or the nervousness I
23 see causes the driver to either not speak very much or kind
24 of just speak very softly. They were more -- they were
25 very controlling, very matter of fact. You know, when I

Adam L. Antley - Direct Examination by Mr. Bell

1 walked up there, we were speeding weren't we, is what they
2 said to me. Usually it's why did you stop me; oh, I didn't
3 realize I was speeding, but they readily admitted they were
4 speeding. You know, readily admitted that they were wrong,
5 that it was this other car that were -- that was bothering
6 them on the road, I guess.

7 You know, at one point, I wish you had stopped both
8 of us. It's just they -- they were very helpful; most
9 people are not. They were very -- I guess when I say
10 overly helpful as if they were guilty; we sped, we were
11 speeding or he was speeding, just not something I normally
12 see.

13 Q Did you ever get an answer as to where the vehicle
14 was coming from?

15 A They said Georgia.

16 Q Were they able to narrow it down for you?

17 A Later they were. Vanderhall said they were coming
18 from the other side of Augusta. Mims said about 66 miles
19 on the other side of Augusta or other side of the line or
20 something like that.

21 Q Were those answers readily given to you?

22 A No, sir, they weren't. I had to ask several times,
23 but you know, he was very plain or very generic, Georgia or
24 Augusta, the other side of Augusta; answers like that. It
25 was never, they never could give a specific location of

Adam L. Antley - Direct Examination by Mr. Bell

1 they were coming from his house or his friend's house or
2 anything like that.

3 Q When you approach a vehicle, you smell alcohol, you
4 see a 6 pack or a 12 pack and you see an open container,
5 how do you typically proceed then?

6 A I'm going to make sure that the driver or whoever
7 is driving the vehicle, since there's open containers in
8 there, I'm going to make sure that he hasn't been drinking,
9 make sure he's not impaired or that he shouldn't be
10 driving.

11 Q Did you test the driver, Mr. Vanderhall, in this
12 incident?

13 A I did. I asked him to exit the vehicle and walk to
14 the rear, to meet me at the rear of the car.

15 Q And did you do what is called a field sobriety test
16 on him?

17 A I did.

18 Q And how did he fair?

19 A I didn't observe any clues that he was under the
20 influence at that time.

21 Q How did you proceed at that point?

22 A After speaking with -- with him for a few minutes
23 about, he spoke more about the other driver that had cut
24 him off. You know, and anytime I kept asking about things
25 that were going on at that instant, the truck, the speed,

Adam L. Antley - Direct Examination by Mr. Bell

1 where they were coming from, he kept shifting focus back to
2 this other vehicle that was -- that was causing road rage
3 or something, the way he described it.

4 Q Is that the white vehicle you spoke of earlier?

5 A Yes, sir.

6 Q Is that the vehicle you couldn't locate when you
7 viewed your dash video footage?

8 A Yes, sir.

9 Q Now, once you finished the field sobriety test on
10 Mr. Vanderhall, why not just end the traffic stop at that
11 point?

12 A I wasn't done with -- with my investigation as far
13 as what, you know, as far as what was going on in the
14 vehicle with the occupants at the time.

15 Q And tell me about why you had reason to hold the
16 occupant, Mr. Mims on the scene?

17 A Well he's -- I mean he had violated the open
18 container law.

19 Q Now, did you eventually make further contact with
20 Mr. Mims?

21 A I did.

22 Q Can you tell me how that went?

23 A Yes, sir. I went back to the -- I went by -- after
24 ending my conversation with Vanderhall, I had him sit on
25 the bumper of his truck. I went back to Mr. Mims and asked

Adam L. Antley - Direct Examination by Mr. Bell

1 him -- well I opened the door and I asked him to exit the
2 vehicle and told him I was going to check him for weapons,
3 pat him down for weapons.

4 Q Now, is removing drivers and passengers from
5 vehicles something that you are trained to do or something
6 that you're not trained to do?

7 A I'm trained to do it.

8 Q What is the purpose of being allowed to do that?

9 A Well safety reasons, to -- to further investigate
10 crimes. I mean, it's just --

11 Q Is it, I apologize, go ahead.

12 A -- I'm, I'm done.

13 Q Did you have any backup on the scene?

14 A No, sir.

15 Q Were you the only officer there?

16 A Yes, sir.

17 Q So how many individuals did you have in the
18 vehicle?

19 A Well, there was two and I was having to speak with
20 Vanderhall. There was one outside the truck and one inside
21 the truck.

22 Q So were you outnumbered?

23 A Yes, sir.

24 Q Now, why would you pull somebody out of a vehicle
25 to check for them for weapons?

Adam L. Antley - Direct Examination by Mr. Bell

1 A Safety, I mean if he's got a weapon, you know, I'm
2 not -- not, it's just not safe. If he's got a weapon that
3 he hasn't told me or he hasn't produced a concealed weapon
4 permit for, we might check weapons to make sure that I'm
5 safe; that's he's safe.

6 Q Now, can you walk us through some of the things
7 that would have led you to believe that he might possibly
8 be armed?

9 A Yes, sir. The whole -- the whole stop, I -- it's
10 a -- you know, after doing it for several years, you kind
11 of get a hair on the back of your neck stands up; you get a
12 feeling and in this case, I guess it started off with the
13 fact that they took a very extended amount of time to pull
14 over and stop. Then after they did pull over and stop and
15 while they were pulling over and stopping, there was a lot
16 of movement in the vehicle by both of them. Whenever I was
17 up there talking with them, they were mostly helpful, you
18 know, shifting focus or trying to shift my focus as to the
19 questions I asked, wanting to talk about other things,
20 wanted to point or point my attention to another driver
21 that I -- that I didn't see or didn't know what they were
22 speaking of as far as the other reckless driving that they
23 spoke of.

24 There was open containers in the vehicle, their
25 stories weren't matching up as far as exactly where they

Adam L. Antley - Direct Examination by Mr. Bell

1 were coming from, the purpose of their trip or anything
2 like that. Whenever --

3 Q Was the level of excessive speeding abnormal to
4 you?

5 A Very, yes, sir.

6 MR. WILLIAMS: Objection; leading.

7 THE COURT: Rephrase the question.

8 BY MR. BELL:

9 Q In your experience, did the speeding cause any
10 concern to you?

11 A Yes, sir, it's not very often you get a vehicle at
12 93 miles an hour at five o'clock in the afternoon.

13 Q Technically is that an arrestable offense?

14 A It is.

15 Q Is that something left in your discretion?

16 A Yes, sir.

17 Q Now, when you asked Mr. Mims out of the vehicle;
18 tell us about that.

19 A When I asked him to exit the vehicle, he stepped
20 out and as soon as he stepped out, he -- he was holding his
21 hands down around his pants and he was kind of hunched
22 over; he wouldn't stand up straight. It appeared that he
23 was trying to hold something up in his pants.

24 Q Is that abnormal in your experience?

25 A Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q How did you proceed?

2 A Well, I had already told him that I was going to
3 pat him down. I asked him to put his hands on the car.
4 Instead of immediately doing that, he said I'm going to and
5 then he asked, you want me to do what, almost like he
6 didn't hear me, but I was, I mean I was standing right
7 there beside him whenever I was talking to him. I wasn't
8 yelling at him; I wasn't being rude. I was just simply
9 telling him what I would like him to do and he wasn't doing
10 it at that point.

11 Q How many times did you ask him to comply?

12 A I guess 2 or 3; I don't --

13 Q And did he comply?

14 A Eventually he put his hands or he put his hands up
15 there on the side of the truck so that I could pat down
16 his -- pat down his person.

17 Q And did you pat him down?

18 A Yes, sir.

19 Q Tell us what a pat down is.

20 A Well, I started at the point where whenever he was
21 hunched over holding around his pants, it looked like he
22 was holding something near his groin. So that's the first
23 place I started. For us I was trained to pat down as
24 you're checking for weapons, whether it be guns, knives,
25 anything like that; anything that could potentially harm --

Adam L. Antley - Direct Examination by Mr. Bell

1 harm you.

2 Q Is a pat down invasive?

3 A No, sir. We check the outer clothing. We don't go
4 in pockets; we don't look up shirts and all that stuff.
5 We're just merely making sure that you don't conceal any
6 weapons around the area most people keep weapons.

7 MR. BELL: Your Honor, permission to ask Trooper
8 Antley to step down.

9 THE COURT: You may step down, yes, sir.

10 (The witness stepped down from the witness stand.)

11 BY MR. BELL:

12 Q Now, would you demonstrate for the jury how you
13 would conduct a typical pat-down.

14 A Well, if you were outside of the car, I would ask
15 you to put your hands on, on the edge of the car. I would
16 ask you to take a step back. I would ask you to spread
17 your feet out -- wider, that way it puts you at a -- at a
18 position of disadvantage so if I -- if I come in here to
19 pat you down and I feel something that -- that I think is a
20 weapon, at least at this point, you're not standing up
21 straight on me where it's easier for me to control you if
22 something goes bad I guess.

23 So at this point, whenever I have them standing
24 like this so that I can pat them down, I take a foot, put
25 it inside here to kind of control the person. I leave,

Adam L. Antley - Direct Examination by Mr. Bell

1 normally leave one hand here on their back and I start here
2 by checking the belt, come around; after I check the whole
3 belt on both sides, then I would normally like the inside
4 of the thigh and groin area on both sides and then I would
5 check the legs down to the ankles and back up.

6 Q Thank you, Corporal, if you would take a seat.

7 (The witness returned to the witness stand.)

8 BY MR. BELL:

9 Q Is that how you went about the patting down on Mr.
10 Mims?

11 A With him, I didn't start at the belt; I went --
12 well I didn't go around the belt first. I started with the
13 belt and went straight down to the groin because that's
14 where it appeared -- appeared that he was concealing
15 something.

16 Q Was what you just showed the jury the same level of
17 invasiveness that you may have used with Mr. Mims?

18 A Yes, sir.

19 Q Did you reach in any of his pockets?

20 A No, sir.

21 Q Did you rough him up at all?

22 A No, sir.

23 Q Is all of this recorded on your vehicles dashboard
24 video?

25 A Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q Now, as you patted down and went towards his groin,
2 tell us what happened.

3 A I found a hard object inside his pants that it was
4 obvious to me it was not any part of his anatomy.

5 Q And roughly what size was the object?

6 A It was big enough when I put the, you know, the
7 palm and the fingers of my hand, I could feel a hardness on
8 the tips of my fingers and on the palm.

9 Q How does that make you react?

10 A I was nervous.

11 Q What did you think it could possibly be?

12 A I thought it was a gun.

13 Q Now at any point, did you question him as to what
14 that item was?

15 A Yes, sir. I said what's this in your pants?

16 Q And do you recall his response?

17 A I don't have anything.

18 Q Is that the only time you asked him?

19 A I -- I think I asked him more than once what was in
20 there. I asked him to, you know, at that point when I felt
21 that, I asked him to go down, get on his knees, because I
22 thought it was a weapon. I wanted to get him down where he
23 could not reach it. I was trying to watch his hands to
24 make sure he didn't reach down towards his pants, but my --
25 my plan or my intention was to get him down either on his

Adam L. Antley - Direct Examination by Mr. Bell

1 knees or on his belly, put handcuffs on him and then
2 retrieve whatever it was, which I thought was a weapon,
3 inside his -- that was inside the front of his pants.

4 Q Did you try to get him to his knees?

5 A Yes, sir, I told him more than once.

6 Q And why would you try to get someone to their
7 knees?

8 A He was much larger than me. I didn't want to reach
9 inside of his pants or try reaching in there to retrieve
10 what I thought to be a weapon with him in a position where
11 he could easily fire or resist.

12 Q Are you still solo at this point?

13 A Yes, sir.

14 Q Does he comply with your order to get on the
15 ground?

16 A No, sir.

17 Q Do you recall how many times you asked him to
18 comply?

19 A Two or Three.

20 Q At this point, are you de-escalating or escalating?

21 A Oh, I'm escalating, my voice and my commands
22 because he's not listening with me just asking him nicely
23 or talking to him in a normal voice so I escalate my voice
24 and tell him to get on his knees; do it now.

25 Q As he fails to comply, how does that make your

Adam L. Antley - Direct Examination by Mr. Bell

1 reaction?

2 A I'm just getting ready for what's going to happen
3 next; I'm not sure what it is. I'm trying to, trying to
4 maintain control of him and control of the situation, but I
5 can, I can tell that it's not going well -- going to.

6 Q Ultimately, when he failed to comply, how did you
7 then proceed?

8 A Well, I took a hold of his left arm after I had
9 told him several times to go down to his knees to -- to
10 comply; he wasn't paying me any attention. I took a hold
11 of his left arm. I was going to attempt what's called an
12 arm-bar take down, is for me to take his arm, rotate and
13 put him -- put him on the ground by force because there
14 again, I -- I thought it was a weapon. I wasn't sure what
15 it was exactly. I knew it was hard and I knew he didn't
16 want me to know what it was or it felt to me he didn't want
17 me to know what it was because he said he didn't have
18 anything and it was obvious to me something was there.

19 Q Is an arm-bar take down what might be considered a
20 destructive maneuver?

21 A What do you mean by destructive?

22 Q Is there a likelihood of injury to the person you
23 perform it on?

24 A There can be, yes, sir.

25 Q And why would that occur?

Adam L. Antley - Direct Examination by Mr. Bell

1 A Well, because they're -- they're standing straight
2 up on their feet and I'm taking them off balance to the
3 ground. I've already got a holding point, I'm going to
4 have a holding point on the person's arm so they're only
5 going to have one arm to catch their self. So more than
6 likely, they're, either they're chest, stomach, possibly
7 their face might hit the ground.

8 Q As far as the move itself though, is it intended to
9 cause injury to the arm that you're manipulating?

10 A No, sir.

11 Q And were you intending in any way to injure Mr.
12 Mims's arm?

13 A No, sir.

14 Q Do you believe that you used any sort of excessive
15 force in manipulating his arm?

16 A Not at all.

17 Q When you ultimately attempted this arm-bar take
18 down, were you successful?

19 A I didn't even get to the point where I actually had
20 started to put pressure on his arm and as soon as I got
21 hold of his arm, he looked to his right, snatched away and
22 took off running.

23 Q What does law enforcement call it when someone
24 takes off running?

25 A Say what now?

Adam L. Antley - Direct Examination by Mr. Bell

1 Q What does law enforcement call it when someone
2 takes off running from the scene of a stop?

3 A We call it bush balling.

4 Q And why do you call it that?

5 A To be honest with you I don't know. That's what it
6 was called when I got on the Highway Patrol. It's kind of
7 I guess, pretty funny when you hear somebody say it on the
8 radio.

9 Q At that point, did you pursue Mr. Mims?

10 A I did.

11 Q And what direction did he head?

12 A We ran off the -- off the eastbound shoulder
13 straight into the wood lines at the south, I guess, you
14 know, the interstate doesn't actually run a true west/east
15 in that area, but we ran directly -- directly away from the
16 eastbound lanes into the woods.

17 Q Now what month was this?

18 A February.

19 Q What was the temperature like?

20 A It was pretty chilly outside.

21 Q Is that your preferred running weather?

22 A No, sir.

23 Q Tell us about the foot chase?

24 A Well we -- we -- Mr. Mims took off first. I
25 immediately took off after him. He was -- had his hands in

Adam L. Antley - Direct Examination by Mr. Bell

1 front of him like he was still trying to hold on to
2 whatever was in his pants. I immediately told him to stop
3 or I'm going to tase you. I couldn't see his hands, I
4 wasn't sure -- still wasn't sure what he had and at this
5 point I'm -- I'm -- I'm trying not to get into a physical
6 altercation with him in these woods.

7 Q Is your goal as a law enforcement officer when
8 dealing with a suspect to stay on the same level as them as
9 far as potential aggression goes?

10 A No, sir, no.

11 Q Can you tell us a little bit about the levels of
12 escalation that law enforcement utilizes?

13 A Well we -- our use of force on anyone starts at --
14 at officer presence, just being on scene or -- or dealing
15 with a suspect in any other form. That's the first level,
16 I guess, of authority or the first level of -- of, force
17 that you -- that's there. You're there and you're giving
18 commands in a normal -- normal manner, excuse me.

19 The -- from -- after officer -- after officer
20 presence is verbal commands where you're giving commands
21 for somebody to do something whether it be commands like
22 may I see your driver's license or commands like get on the
23 ground. From there there's soft hand control, which is
24 things like joint locks or manipulations where you're using
25 pressure points or something to get -- in an attempt to get

Adam L. Antley - Direct Examination by Mr. Bell

1 somebody to comply with what you're asking them to do.

2 Q Is a arm-bar take down an example of that?

3 A An arm-bar take down is a -- it would be more of a,
4 it's in that range. It's a take down. It's not -- I guess
5 it's not -- it's -- it's above officer verbal commands, but
6 not in the range of using intermediate weapons like OC
7 Spray, baton strikes, or taser.

8 Q At what point does a taser become deployed?

9 A Well when -- for us -- or for, I guess, law
10 enforcement in general, when, when all the steps prior to
11 that have failed or the steps prior to that -- in this
12 situation, I was there in my uniform, I told him -- gave
13 him commands of what to do. I attempted, I was going to
14 attempt an arm-bar take down when he snatched away and
15 pulled away from me, but at the time I had a hold of his
16 arm.

17 So I was trying to control him just by using my
18 hands and that didn't work. It's obvious to me at this
19 point grabbing a hold of him is not going to be the answer
20 while he's sprinting away from me in the woods. That's why
21 I escalated to the taser.

22 Q Do you have any idea what he is concealing in his
23 pants at that time?

24 A No, sir.

25 Q Now, tell us about the first deployment of the

Adam L. Antley - Direct Examination by Mr. Bell

1 taser?

2 A Well, as we got several feet into the woods, it
3 appeared that I'm going to be tripped on a root or
4 something or he just wants to slip, but Mr. Mims fell. As
5 he fell, he went face first and I was catching up to him
6 and as soon as he fell and started to get up almost like as
7 if you're doing a pushup, he pushed up with his hands and
8 started to get up where his rear end, thighs and butt area
9 was facing me.

10 As soon as he started to get up, I was telling him
11 to stay on the ground. He was still trying to get up. So
12 I pulled the taser aiming towards the thigh and -- and the
13 area toward his rear end.

14 Q Did you strike him?

15 A I did.

16 Q And was it effective?

17 A I guess it -- it appeared to be at first, but as
18 far as over all, it didn't. It didn't completely control
19 him. The -- when the taser -- when I deployed the taser,
20 it appeared that I thought I could see the dart striking
21 him in the upper thigh in the buttocks area; I was a couple
22 of feet from him when it happened. The -- I can -- I
23 remember him kicking and I remember him flipping over and
24 facing me. Once he's on the ground now, he's on the ground
25 with his feet in the air in between me and him as I'm

Adam L. Antley - Direct Examination by Mr. Bell

1 trying to come in to try and grab hold of him and while
2 he's laying on the ground with his -- he's flipped over on
3 his back now. He starts kicking his feet and he's swiping
4 trying to grab the leads to the taser is what it appeared
5 to me.

6 Q Were you able to secure him at that time?

7 A No, sir.

8 Q Was he able to regain his sprinting?

9 A He was.

10 Q Did you reinitiate pursuit at that point?

11 A I did. I continued to -- I continued to chase him
12 through the woods about another 20 yards or so. Just at
13 the edge of the woods there's a barbed-wire fence. It's an
14 old -- it's not like a cyclone or chain link fence, but
15 it's a -- like an old fence you might see around a cow
16 pasture or something. It's got large square holes in it;
17 at the top it's lined with a couple of strands of barbed
18 wire. Whenever I got -- whenever I was coming up to the
19 fence, Mims -- he was -- he kind of dove over it or -- or
20 rolled over it one of the two, but he got over it pretty
21 quick.

22 As I was running up to the fence, I change the
23 taser cartridge because there's one that's on the end of
24 the taser that's ready to be used and then there's an extra
25 one that stays on the bottom of it that you can change out

Adam L. Antley - Direct Examination by Mr. Bell

1 if the first one -- if you for whatever reason, you know,
2 you need a second cartridge. So while I was running, I had
3 taken the first one, stripped it off, threw it on the
4 ground and, and inserted the second cartridge into the end
5 of the taser.

6 Q Did you warn him that you were going to deploy
7 again?

8 A Yes, sir.

9 Q And what was your hope in telling him that?

10 A I was hoping he was going to stop.

11 Q Would you have tased him if he stopped?

12 A No, sir.

13 Q Ultimately, did you deploy the taser the second
14 time?

15 A I did. When he got -- when he jumped over the
16 fence or went over the fence, I attempted to climb it and
17 when I attempted to climb it or as I was coming to it, I
18 reached out with the taser, could see clearly at his back,
19 pulled the trigger on the taser, it deployed the prongs and
20 I was -- as he -- as the taser went off, I thought I could
21 hear him moan like normal sounds when people get hit with
22 it, but the taser leads, it actually looks like fishing
23 lines, what connects the -- or it's about the size of
24 fishing line is what connects the little darts to the
25 cartridge itself. They got wrapped up in that barbed wire

Adam L. Antley - Direct Examination by Mr. Bell

1 fence and then as I was trying to climb over it with the
2 taser still in one hand, I don't know if it popped the
3 leads or it, him falling down on the -- on the ditch back
4 on the other side of the ditch, something caused it to
5 disconnect and it didn't subdue him.

6 Q Did he continue running?

7 A He did. At the time I tried to climb over the
8 fence. The barbed wire cut through my pants and cut into
9 my left thigh. And as I was trying to get untangled off
10 the fence with the all the -- with all the gear on, he was
11 already running across the Davega Drive Drive. There was a
12 car that was coming up. It was a little red car, a female
13 driver. And she blew the horn at him as he ran across the
14 street in front of her because she almost hit him.

15 Q At any point in time, did you pull your firearm?

16 A Later on after I got -- after I had chased him.
17 Well, he crosses the road; the car blows the horn; I try to
18 go over the fence to get or try to get it unhooked from the
19 fence and as I take my right leg and try to throw it over
20 and loose my footing and I flip completely over and land on
21 my back on the other side of the fence.

22 It hurt and I think I said like damn it or
23 something like that because it hurt pretty bad. And at
24 that point, he's still running away from me up like a paved
25 or paved driveway that goes into a little business area.

Adam L. Antley - Direct Examination by Mr. Bell

1 So as we're running up in there, as I'm running across the
2 Davega Drive and coming up that driveway, I've already used
3 the taser twice, I still don't know what's in his pants, I
4 do. I put the taser up and pulled my firearm out.

5 Q Did you warn him that you were drawing your weapon?

6 A At some point, when we get back in there, I think I
7 at least told him, you know, let me see your hands; don't
8 make me shoot you.

9 Q Is shooting somebody something you look forward to?

10 A No, sir, not at all.

11 Q Did you try to do everything possible to avoid
12 that?

13 A Yes, sir.

14 Q Did you fire your gun in this incident?

15 A No, sir, I did not.

16 Q How much further did you have to chase him?

17 A Somewhere between a hundred and 200 yards, I guess.

18 Q And what does that run back to?

19 A There's -- there's some type of church back there,
20 some church office buildings in the area where we ran,
21 there's a long driveway that kind of goes up a slight hill
22 and it leads to a little small parking area with a building
23 that is right there surrounded by woods.

24 Q Now, at any point in time, did you lose visual
25 contact with him?

Adam L. Antley - Direct Examination by Mr. Bell

1 A Whenever he cleared -- or whenever he went around
2 the building, I lost sight and that's about the time where
3 I had drawn my firearm. You know, whenever in training,
4 you always -- in training you always are told, you know,
5 to -- you know in a situation like this, when you're in a
6 foot pursuit or something like that, you've got to slow
7 down enough to be able to not over pursue them. By that I
8 mean not run out into an area where you're not sure what's
9 waiting for you on the other side and so the point where he
10 crossed around the corner of a building or went around the
11 corner of a building, I didn't see or I couldn't see him at
12 that point.

13 So I slowed down and came around the building, took
14 a quick peek with my firearm drawn just to clear the corner
15 to make sure he wasn't standing there waiting.

16 Q Did you regain visual contact?

17 A I did. As soon as I came around the corner, he was
18 not -- he was not close to the building. He was actually
19 about maybe 20 to 30 yards past or away from me. He had,
20 he was not running at that point; he was walking into the
21 woods. It appeared, to me -- it appeared that he was
22 getting tired. I was getting tired.

23 Q Now the individual that you saw when you cleared
24 the corner of that building, were they wearing the same
25 clothing as Mr. Mims when you initiated contact with him?

Adam L. Antley - Direct Examination by Mr. Bell

1 A Yes, sir.

2 Q Did there appear to be any differences at all?

3 A No, sir.

4 Q Was the gentleman also an African American that you
5 saw around the corner?

6 A Yes, sir.

7 Q Same height?

8 A It appeared to be, yes, sir.

9 Q The same build?

10 A Yes, sir.

11 Q Same color of pants?

12 A Yes, sir.

13 Q All right. So how far, how long in all is he out
14 of your visual sight?

15 A Less than or somewhere between 20 to 30 seconds at
16 the most. Long enough for whenever I got caught in the
17 fence, he got a little of bit of a head start on me and I
18 had fallen down. I slowed down intentionally when I got to
19 the building to clear it -- some, no more than a half a
20 minute.

21 Q What was he doing when you saw him in the distance?

22 A He was walking to the woods facing away from me.

23 Q Did you close distance with him?

24 A I did.

25 Q And what did you see him doing at that point?

Adam L. Antley - Direct Examination by Mr. Bell

1 A When we got into the woods, I still had my firearm
2 drawn and he was facing away from me and he had his hands
3 in front of him. I told him, you know, show me your hands,
4 get on the ground and I was giving commands the whole time
5 I'm chasing him, I'm yelling at him to stop, get on the
6 ground, but the point when we got into the woods, I was
7 probably the distance from about me to the -- to the
8 prosecutor's table there. He was facing away from me, I
9 saw him reach and I could see his elbows, I couldn't
10 actually see his hands because they were concealed; I was
11 looking at his back.

12 I saw his arms reach down to appeared to be towards
13 the groin area, I saw him pull up. I saw him lean down,
14 bend over at the waist and put a bag on the ground. When
15 he put that bag on the ground, he immediately went right
16 beside the bag with both hands, scooped leaves up on top of
17 the bag -- didn't dig a hole, but just put leaves on top
18 and he turned around and he started walking kind of
19 straight towards me.

20 Q And ultimately did he surrender to you?

21 A He did. Once he -- once he started walking
22 straight towards me, I told him to put his hands up. He
23 put his hands up like this and he walked within about from
24 here to the bailiff and at that point he fell backwards on
25 his rear end and pretty much laid back with his arms

Adam L. Antley - Direct Examination by Mr. Bell

1 straight out away from him.

2 Q And why did he do that?

3 A It appeared he was tired. I was telling him to --
4 I told him to get over, roll over and put his hands behind
5 his back; he said he can't and it appeared that he was wore
6 out and tired I guess. I'm not a hundred percent sure why
7 he laid all the way back like he did.

8 MR. BELL: Permission to approach the witness, Your
9 Honor?

10 THE COURT: Yes, sir.

11 BY MR. BELL:

12 Q I'm showing you another overhead. Does this
13 overhead fairly and accurately represent the pursuit route
14 that you would have taken?

15 A Yes, sir.

16 Q Does it encompass the stop area as well?

17 A Yes, sir.

18 MR. BELL: Your Honor, at this time the State would
19 move State's 2 into evidence?

20 MR. WILLIAMS: No objection, Your Honor.

21 THE COURT: State's 2 is in evidence.

22 (State's Exhibit Number 2 was entered into
23 evidence.)

24 MR. BELL: We move to publish State's 2, Your
25 Honor?

Adam L. Antley - Direct Examination by Mr. Bell

1 THE COURT: You may publish. Just give me a minute
2 to come around there where I can see it too.

3 You want the officer to step down.

4 MR. BELL: If he could, Your Honor.

5 THE COURT: All right. He can do that.

6 BY MR. BELL:

7 Q Trooper, I've handed you a laser pointer. If you
8 would please indicate on State's 2 where the initial stop
9 took place.

10 A It was right in this area here. That's -- this is
11 how it's pointing. There's three lanes and that's the
12 emergency lane. So we were somewhere right around in here.

13 Q And when he -- when Mr. Mims bush bonded as you
14 call it, will you show us what direction he took off in?

15 A Like I said, the green Ford that I stopped was on
16 the shoulder, I was directly behind it and he ran -- he
17 turned to his right and ran and took a -- pretty much
18 almost a straight line straight into the woods in this area
19 here.

20 Q Trooper would you take another step back so that
21 the whole panel can see it?

22 Now, would you trace with the laser pointer and
23 then narrate a little bit for us the rest of the route that
24 was taken during the foot pursuit.

25 A When we started, we came into the woods, I'd say

Adam L. Antley - Direct Examination by Mr. Bell

1 right in this area. We got about maybe a third of the way
2 into the woods is where he first fell down, the first time
3 I had pulled the taser. After he got up and kept running,
4 we got here; this is where that fence is. The fence runs
5 along this whole section here, but when we came out, I
6 remember that when I came over the fence, we weren't
7 directly across from this driveway, we were just a little
8 bit down from it. The car that had blown the horn had, it
9 must have been because he ran out in front of them, was
10 traveling in this direction. But we came up to the fence
11 here is where I deployed the taser the second time.
12 Whenever I was stuck on the fence, he was running across
13 the road here and up this driveway and I fell over the
14 fence, lost my campaign hat off the top of my head right
15 here on the edge of this road and I followed him. We ran
16 pretty much up the shoulder of this driveway. I don't
17 remember there being any cars parked there, obviously, when
18 all of this occurred, but there's some parking spaces.

19 We ran up the shoulder of this driveway right here
20 and the corner of the building is, I think it's right here
21 in that area according to that picture.

22 Q Trooper, would you please circle the building
23 you're indicating as that picture with the little shadow in
24 it?

25 A That appears to be the building right there in that

Adam L. Antley - Direct Examination by Mr. Bell

1 area.

2 Q And what corner of the building did he pass?

3 A The one where I lost him and I couldn't see him is
4 whenever he ran this way and turned and started going back
5 this way. I was still here so when he got on the other
6 side, on this side of it I could not see him.

7 Q Ultimately, where did the pursuit end?

8 A There's a parking lot or a small little area to
9 park and turn around right here on this side of the
10 building. We were probably initially -- initially he was
11 about 30 yards in the woods. I was about 20 yards in the
12 woods and I arrested him about 20 yards in the woods.
13 He -- when he ran in, he got about 30 yards in or so and I
14 had gotten about 20 yards in because I was about 10 yards
15 from him whenever I saw him remove the item from his pants
16 and he walked back towards my direction whenever he
17 surrendered. Once he surrendered I got him in handcuffs
18 and I immediately went to where I saw him put the bag down
19 or the item down and cover it with leaves. I grabbed it,
20 picked it up and carried it back to him and I waited there
21 with him until some other units got there.

22 Q Thank you, Trooper, you can take your seat.

23 Trooper, tell us about the item that you found on
24 the ground under the leaves?

25 A It was in a shopping bag. It was hard. It felt

Adam L. Antley - Direct Examination by Mr. Bell

1 like the same hardness that I felt before. It was about as
2 big as my hand or maybe a little bigger than my hand, but
3 it was a pretty -- a large package wrapped in black tape
4 and cellophane inside of the grocery bag.

5 Q At any point in time did you conduct any sort of
6 field test on the substance of that bag?

7 A I didn't use a field test, but I -- whenever we --
8 once we got out the woods, there were some other -- well
9 some other troopers got there and helped me get him out the
10 woods because he -- he wouldn't stand up on his own and I
11 was too tired to pick him up and carry him out or help him
12 out. But once some other troopers got there, they -- I let
13 them help him out the woods. I walked behind, directly
14 behind them with the package that he had taken out of his
15 pants.

16 Once we got to that little parking lot that we had
17 run through, I took my knife out my pocket, stuck it in the
18 package that was wrapped in black tape and cellophane and
19 stuck it in maybe a quarter of an inch, enough to just pull
20 back the wrapping. I could see it appeared to be a light
21 powder. When I pulled my knife, there was white powder on
22 the tip of my knife.

23 Q And in your training and experience as a law
24 enforcement officer are you trained to be able to identify
25 at least visually what substances may be?

Adam L. Antley - Direct Examination by Mr. Bell

1 A It appeared to me that -- I am and it appeared to
2 me that it appeared to be a powder cocaine.

3 MR. BELL: Please mark this as 3.

4 (State's Exhibit Number 3 was marked for
5 identification.)

6 BY MR. BELL:

7 Q Corporal, I'm handing you State's 3 for
8 identification; would you please identify the items in that
9 picture?

10 A The top item is the package that, that I, that was
11 inside the grocery bag that Mr. Mims covered up with
12 leaves. The items below it is the taser; it's missing the
13 two cartridges, they're not, they're not in this photo.
14 And then right there in the -- it appears the cut I made
15 into the packages is --

16 Q If you would not hold it up at this point in time.
17 Do those items fairly and accurately present the
18 way that you located them or had them on you that night?

19 A Yes, sir.

20 Q And is the item on top, which you identified as
21 having the cocaine -- the substance that looked like powder
22 cocaine in it, is that how it was originally packaged?

23 A Yes, sir, that's how I found it, minus that grocery
24 bag that it was in.

25 Q When was this picture taken?

Adam L. Antley - Direct Examination by Mr. Bell

1 A This was taken at the office approximately -- or
2 just once I got back to our office and was entering this
3 stuff into evidence.

4 MR. BELL: The State would move to State's 3 into
5 evidence.

6 MR. WILLIAMS: No objection.

7 THE COURT: State's 3 is in evidence without
8 objection.

9 (State's Exhibit Number 3 was entered into
10 evidence.)

11 BY MR. BELL:

12 Q A couple more quick questions for you, Trooper.
13 How many troopers showed up to assist you at the
14 end of the pursuit?

15 A I believe four total and then two Lexington County
16 deputies.

17 Q Did those individuals have any meaningful
18 interaction with either the pursuit or the evidence?

19 A No, sir.

20 Q Did you transport Mr. Mims?

21 A No, sir, he was -- after -- after everything was
22 over with -- after he was in handcuffs, he was breathing
23 heavily and just based on the fact that he had been
24 drinking and that his -- it had just appeared that he was
25 pretty labored, we called the ambulance to come check him

Adam L. Antley - Direct Examination by Mr. Bell

1 out and they decided just to take him up to the hospital
2 just to get him -- just to make sure he was clear, that
3 nothing medically was wrong with him.

4 Q Do you recall if one of the troopers that arrived
5 was Trooper Ellis?

6 A Trooper Ellis did come to the scene, yes, sir.

7 Q Do you recall his interaction?

8 A Trooper Ellis came and assisted with helping me or
9 helping me get Mr. Mims out of the woods. You know,
10 once -- once I stayed in the woods or I stayed in the woods
11 with Mr. Mims and the package until -- until Ellis and some
12 other troopers came and helped him out the woods and then I
13 walked out behind them.

14 Q Ultimately, did you submit the bag that you located
15 under the leaves into evidence?

16 A The -- the package that was inside the grocery bag,
17 yes, sir, I did.

18 Q Did you put it in any sort of container that has a
19 label so that you could identify it later?

20 A Yes, sir.

21 Q What was that called?

22 A It's called a BEST Kit.

23 Q And do you recall doing one for this case?

24 A Yes, sir.

25 Q Okay. Ultimately, where did you submit that

Adam L. Antley - Direct Examination by Mr. Bell

1 evidence?

2 A Into the -- the evidence locker at our Lexington
3 Office, which is, again on the third floor of the Lexington
4 Police Department.

5 Q Is that the final interaction that you would have
6 had with that evidence?

7 A Yes, once I logged it into the log, that's the last
8 time I saw it.

9 Q Okay. Was it in your care, custody, and control
10 from the time that you removed it out of the leaves in the
11 woods until the time that you submitted it to the drop
12 box -- the evidence drop box?

13 A Yes, sir.

14 Q At any point in time, did you ever hand it off to
15 anybody?

16 A No, sir. I might have shown it to the troopers
17 over there, but I -- at no point did it leave my, my
18 sight -- my -- my general area.

19 Q Aside from penetrating the exterior with your
20 knife, did you manipulate that evidence in any other way?

21 A No, sir.

22 MR. BELL: Your Honor, permission to approach?

23 THE COURT: Yes, sir.

24 (There was a bench conference out of the hearing of
25 the jury and the court reporter.)

Adam L. Antley - Direct Examination by Mr. Bell

1 MR. BELL: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (There was a pause in the proceedings.)

4 (State's Exhibit Number 4 was marked for
5 identification.)

6 BY MR. BELL:

7 Q Now, Trooper, typically when you conduct a traffic
8 stop, do you record that stop?

9 A Yes, sir.

10 Q And how is it recorded?

11 A On the -- there's a camera inside of the car and
12 there's a body mic that's -- it's about the size of like
13 old pagers used to be or a small cell phone that it clips
14 to your belt and it records audio and the camera is inside,
15 inside the car, mounted inside the windshield facing out
16 towards the front of the car.

17 Q Did your Charger come with a video system and body
18 mic system at the time of this incident?

19 A Yes, sir, it did.

20 Q And was it properly recording?

21 A Yes, sir.

22 Q Trooper, I'm handing you what's marked for ID as
23 State's 4. Have you had a chance to review the contents of
24 that disc?

25 A Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q And how do you know that is the same disc that you
2 reviewed the contents of?

3 A My initials are on it.

4 Q Are the contents of this disc the contents of your
5 video recorder from the incident?

6 A Yes, sir.

7 Q And do they fairly and accurately represent the
8 incident as it occurred on February 18th?

9 A Yes, sir.

10 MR. BELL: Your Honor, at this time, the State
11 would move State's 4 into evidence.

12 MR. WILLIAMS: No objection, Your Honor.

13 THE COURT: State's 4 is in evidence without
14 objection.

15 (State's Exhibit Number 4 was admitted into
16 evidence.)

17 MR. BELL: Permission to publish, Your Honor?

18 THE COURT: Yes, sir, you may publish.

19 MR. BELL: I apologize, Your Honor, the sounds not
20 playing.

21 TH WITNESS: It would not be any sound to it.

22 MR. BELL: Okay.

23 THE COURT: Say that again.

24 THE WITNESS: There's not going to be any -- what
25 you just saw is a 30 second pre-record; there's no audio

Adam L. Antley - Direct Examination by Mr. Bell

1 during that portion; it just captures the 30 seconds prior
2 to me cutting the blue lights on.

3 MR. BELL: Okay.

4 THE WITNESS: It should come on once I start
5 getting on the road.

6 (The video was playing for the Court and the jury.)

7 (The video was stopped.)

8 BY MR. BELL:

9 Q Trooper, the individual that just asked you is
10 there anything we can do about people like that and who was
11 that.

12 A That was Mr. Vanderhall, the driver.

13 Q Okay. And if another voice is heard on this video,
14 who would that belong to?

15 A Mr. Mims.

16 Q Okay. And is Mr. Mims present in the courtroom?

17 A He is.

18 Q Where is he seated?

19 A Next to the Mr. Williams, his attorney, at this
20 table over here.

21 (The video resumed playing.)

22 (The video was stopped.)

23 BY MR. BELL:

24 Q Trooper, we heard a sudden shift in the quality of
25 sound from the voices that we're hearing; what caused that

Adam L. Antley - Direct Examination by Mr. Bell

1 shift?

2 A It's just the distance that the microphone was
3 getting away from that car. The further it gets, the --
4 the -- I'm not sure exactly how far it'll reach, but I
5 guess it's getting towards as far as it'll reach, the
6 quality is breaking down.

7 Q Do you know roughly what the reception is on this
8 thing?

9 A Whenever I got it, the guy -- you know, we were
10 told that it -- I guess in a straight line with clear sight
11 and no obstructions, a half a mile, but it's at this point
12 through the trees it might not be as good.

13 Q Are those body mics that you carry intended to go
14 on foot pursuits?

15 A No, sir, they're -- I mean they're made to, you
16 know, capture what's right there around the car I guess.

17 (The video resumed playing.)

18 (The video was stopped.)

19 BY MR. BELL:

20 Q Trooper, at this point, what's going on?

21 A When I -- when I called Lexington, I called the
22 dispatcher and said that I was 1067 and that's our code for
23 meaning that I had somebody in custody. So at this point I
24 just placed him under arrest and I'm trying to -- I just
25 told them, you know, if somebody could get my campaign hat.

Adam L. Antley - Direct Examination by Mr. Bell

1 It was on the side of the road; and I'm trying to direct
2 them where I'm at. I initially told them during the foot
3 pursuit that we had crossed Cromer Road, but it was
4 actually Davega. Cromer Road is about a mile back. It's
5 on the other side of 378; it's the other frontage road. I
6 was just mistaken whenever I was running on foot, I said
7 the wrong road name.

8 Q What's a campaign hat?

9 A It's the hat that everybody sees troopers wearing.

10 Q Why did you lose it?

11 A When I tripped over the ditch it came off -- or
12 flipped over the fence, it came off my head.

13 (The video resumed playing.)

14 (The video was stopped.)

15 BY MR. BELL:

16 Q Trooper, is that you?

17 A No, sir.

18 Q Do you know who it is?

19 A I think that's -- after listening to him talk on
20 the radio just now, I think it's Trooper Kyle Fowler. He's
21 the one that radioed to me. He actually tried to lock my
22 car and it wouldn't lock without having the keys. That's
23 Trooper Fowler.

24 Q And what is he looking for?

25 A I'm really not sure.

Adam L. Antley - Direct Examination by Mr. Bell

1 Q Was that F150 supposed to have left?

2 A No, sir. I told him when he got there to, to
3 arrest the guy for speeding, for the speeding violation
4 because it was jailable. So I told him to go ahead and
5 arrest the driver for that at that point; and then called
6 me back and said they were gone, when he called back on the
7 radio.

8 Q Is there an offense for leaving a traffic stop?

9 A Depending on, I guess, the circumstances. I mean
10 if it's a -- it was resisting arrest I guess. But there's
11 not, I'm not sure where to go with that.

12 Q Okay.

13 (The video was resumed).

14 (The video was stopped.)

15 MR. BELL: Permission to approach, Your Honor?

16 (There was a bench conference out of the hearing of
17 the jury and the court reporter.)

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen of the jury panel, in talking with the solicitor
20 and Mr. Williams, there's about another 18 or 20 minutes of
21 this tape most of which is consistent with the last few
22 minutes we have seen. Rather than publish that to you,
23 that video is in evidence. You will have that video with
24 you in the jury room at the time of your deliberation.

25 If you want to watch the tape from beginning to

Adam L. Antley - Direct Examination by Mr. Bell

1 end, you will be certainly welcome to do so when you have
2 it in your jury room for your deliberations or if you want
3 to watch just the last 18 to 20 minutes of it. It's
4 entirely up to y'all, but we're not going to publish that
5 part at this time since that is substantially the remainder
6 of the 18 to 20 minutes. All right.

7 All right. Solicitor, you may continue with your
8 direct of Trooper Antley.

9 MR. BELL: Thank you, Your Honor.

10 BY MR. BELL:

11 Q Trooper, in the last 18 or 20 minutes of that
12 video, is there anything important to your knowledge?

13 A No, sir, just -- it sits there on the side of the
14 road until somebody, not myself, another one of the guys
15 goes and picks the car up, go down to the next exit, turn
16 around and bring it over there to where we were at, but the
17 spot where they park it over there, you can't see anything
18 at that point. I think the ambulance is already there
19 attending Mr. Mims.

20 Q Why are they attending to Mr. Mims?

21 A As I said he's just extremely exhausted and out of
22 breath from -- from the -- from the pursuit. I didn't -- I
23 was worried that there might be, you know -- you know, I
24 don't know how conditioned he was as far as medically, but
25 you know after a pursuit like that, especially --

Adam L. Antley - Direct Examination by Mr. Bell

1 especially since I tasered him twice and I didn't want that
2 to cause a problem medically, a heart problem, or anything
3 like that. So we just felt it best to call and get him
4 checked.

5 Q About I believe about 18:10 on that video, you
6 yelled something along the lines of, I'm going to get a
7 dog. Could you tell us about that?

8 A I said I was going to get a dog meaning I had told
9 them -- I had told -- I had already radioed to the
10 dispatch, you know, to get a dog, get a K-9 because if he
11 had got -- if he had continued too much more, I didn't, I
12 didn't know how much further in these woods I was going to
13 be able to go and especially when I knew it was going to
14 get dark soon. But we would call up, you know, call
15 Lexington County and get a canine if they had to track him
16 or send a dog to apprehend him. I wasn't -- I just wasn't
17 sure where it was going, so I wanted to have that option if
18 I needed it.

19 Q Trooper, when you deposited the BEST Kit that we
20 spoke of earlier into the evidence locker that contained
21 that package of cocaine, did you place it into a box or did
22 you place it just as the BEST Kit into the evidence locker?

23 A I just put the BEST Kit into the evidence locker.

24 MR. BELL: I beg the Court's indulgence?

25 THE COURT: Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 (There was a pause in the proceedings.)

2 (State's Exhibit Number 6 was marked for
3 identification.)

4 MR. BELL: Your Honor, permission to approach.

5 THE COURT: Yes, sir, of course.

6 (There was a bench conference out of the hearing of
7 the jury and the court reporter.)

8 MR. BELL: Thank you, Judge.

9 THE COURT: All right. Thank you, Solicitor.

10 Thank you, Mr. Williams.

11 BY MR. BELL:

12 Q Trooper, do your notes reflect what the BEST Kit --
13 Control Number for the BEST Kit you submitted would have
14 been?

15 A Not on -- not on this -- not on this report that I
16 have in front of me, but there is a -- there is a chain of
17 custody that I completed with that BEST Kit Form. But I
18 don't know if the -- I'd have to look at it to see if the
19 actual BEST Kit Number was on it. I know it, you know, my
20 signature and stuff would be on the outside of the package,
21 but --

22 Q If I showed you a copy of the Chain of Custody Form
23 with your signature, would that refresh your memory as to
24 the Control Number on the BEST Kit?

25 A Yes, sir.

Adam L. Antley - Direct Examination by Mr. Bell

1 MR. BELL: Permission to approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir, of course.

4 BY MR. BELL:

5 Q Corporal, can you identify the documents I'm
6 handing you?

7 A That's the -- our Chain of Custody Form for
8 Department of Public Safety.

9 Q And do you see your signature anywhere on that
10 document?

11 A Yes, sir.

12 Q And what is that signature attesting to?

13 A I was trying to sign my name saying I -- you know,
14 I'm the one that's putting in the -- in the evidence drop
15 box.

16 Q And what date did you submit it?

17 A The 18th of February, 2013.

18 Q How does that compare with the incident date?

19 A It's the same day.

20 Q Now, on that same form does it indicate what the
21 Control Number of the BEST Kit you submitted would have
22 been?

23 A It does.

24 Q Would you read that into the record?

25 A SLED BEST Kit Number B227395.

1 MR. BELL: No further questions at this time, Your
2 Honor. However, we would request the ability to recall
3 Corporal Antley.

4 THE COURT: All right. I'll grant you that
5 ability.

6 MR. BELL: Thank you, Your Honor.

7 THE COURT: You may step down. At this time,
8 you're subject to cross-examination and perhaps redirect,
9 perhaps recross; and you may not discuss your testimony
10 with anyone during this luncheon recess. Thank you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, perhaps now would be a good time to take our
14 luncheon recess. I'd remind you during this recess, you
15 may not discuss the case with anyone, that includes your
16 fellow jurors, lunch mates, family, friends, or anyone
17 else. You may not read, watch or listen to any news
18 reports about the case, should there be any. You may not
19 use your computer, cellular phone, or any other electronic
20 device with communication capabilities to obtain or
21 disclose information about the case which is prohibited.

22 Information about the case which is prohibited
23 includes, but it is not limited to the following:
24 Information about a party, a witness, an attorney or a
25 court officer, news accounts of the case present or should

1 there have been any in the past, information collected
2 through juror research on any topics raised or testimony
3 offered by any witness or information collected through
4 juror research on any other topic the juror might think
5 would be helpful in deciding the case.

6 Remember you decide the case based on the evidence
7 and testimony of sworn witnesses testifying before you in
8 court and any physical items of evidence that may be in
9 evidence.

10 With that being said, I would ask you to please be
11 back promptly at 2:30; if you'd please be back promptly at
12 2:30. I hope y'all have a nice lunch. Thank you. Thank
13 you very much.

14 (The jury left the courtroom at 12:51 p.m.)

15 THE COURT: Anything further from the State,
16 Solicitor?

17 MR. BELL: Nothing from the State, Judge.

18 MR. WILLIAMS: Nothing from the defendant.

19 THE COURT: Is Mr. Mims on bond or in custody?

20 MR. WILLIAMS: He is not in custody until Your
21 Honor places him in custody, Your Honor. He is
22 obviously -- he is out on bond at this point.

23 THE COURT: All right. Mr. Mims is in custody of
24 the Lexington County Detention Center.

25 MR. WILLIAMS: Thank you, Your Honor.

Adam Antley - Cross-Examination by Mr. Williams

1 THE COURT: Sheriff, if you would take into
2 custody.

3 (This case was in recess for lunch.)

4 THE COURT: Anything from the State before we bring
5 in our jury, Solicitor?

6 MR. BELL: No, Your Honor.

7 THE COURT: Defense, Mr. Williams?

8 MR. WILLIAMS: Nothing from the defendant, Your
9 Honor.

10 THE COURT: Okay.

11 (The jury entered the courtroom at 2:31 p.m.)

12 **CROSS-EXAMINATION**

13 **BY MR. WILLIAMS:**

14 Q Corporal Antley, we've heard kind of a detailed
15 testimony I guess, if you will, about factors that
16 influenced how you reacted that particular day and why it
17 led you to taking these individuals out of the car and
18 things like that; and obviously, you have a video because
19 the video -- that video turns on what, actually 30 seconds
20 before your blue light is turned on, right?

21 A Yes, sir.

22 Q And that's what you were trying to explain to the
23 jury is that it's running at all times, correct?

24 A From what I understand, yes, sir, it's also
25 recording through a hard drive and for the 30 seconds prior

Adam Antley - Cross-Examination by Mr. Williams

1 to that stop, once you activate the blue lights, you cut
2 the camera on record and it captures those 30 seconds. If
3 you don't -- if you don't activate the blue lights or cut
4 the camera on, then after a certain amount of time, that,
5 all that stuff that was burnt to the hard drive is I guess
6 getting deleted or whatever.

7 Q At any point in time, did you ever check before
8 that 30 seconds to see if there was indeed a white Honda,
9 if you will, that was driving up and down the interstate
10 driving erratically, fast or what have you, something that
11 you thought would not be the correct way of driving? Did
12 you go back and check your tape in any way?

13 A The only -- the only thing I could check was the 30
14 seconds that -- prior to it. I don't -- I didn't have any
15 other thing to check.

16 Q So you're saying that even though -- even though
17 this machine functions, if you will, so that you can
18 capture the first 30 seconds before your blue light comes
19 on, it doesn't possess the ability to go beyond the 30
20 seconds to capture what was happening before the 30
21 seconds; is that right?

22 A No, sir, I believe there is a -- there is a way for
23 it to be done; I just wasn't trained or given the authority
24 to do it. You have to -- from what I understand, you have
25 to have a pass code to be able to do that. But as far as I

Adam Antley - Cross-Examination by Mr. Williams

1 can recall in the time that I had been sitting there, which
2 I wasn't sitting there long whenever this occurred, I never
3 observed a Honda that was driving in, as he told me, a
4 reckless manner, or I would have stopped him, but I didn't,
5 I didn't see it. And no, sir, I didn't have the ability to
6 go back and look at that.

7 Q Well -- and essentially what both of the
8 individuals told you in reference to where they were from,
9 the driver told you he was from Ridgeway and when you
10 checked his paperwork, it indicated indeed he was from
11 Ridgeway; the car was registered in Ridgeway, right?

12 A Yes, sir.

13 Q So they were honest to you in that regards and then
14 Mr. Mims gave you his ID card which gave his full name?

15 A Yes, sir.

16 Q So there was no -- there -- it wasn't like an alias
17 or any information that he gave you on that; it was his
18 correct name insofar as you understood?

19 A Yes, sir, from what I understood, yes, sir.

20 Q And he said that he told you he was coming like
21 from Georgia, I want to say, on the other side of Augusta.
22 And you had said something about that there was something
23 suspicious between how they said they were coming from
24 Georgia or one's from the other side of Georgia, something
25 like that?

Adam Antley - Cross-Examination by Mr. Williams

1 A Yes, sir, just they never gave me like a clear
2 answer of where exactly they were coming from, just, you
3 know, they'd say Georgia; well, where at in Georgia? Well,
4 the other side of Augusta; it's just pretty generic because
5 as soon as you cross I-20 into the State of Georgia, you're
6 in the Augusta area. It just seemed off.

7 Q Well, I guess -- I guess the point I'm trying to
8 get to, I guess, they were both consistent with what they
9 said and who cares?

10 A Well, I do.

11 Q If they say they're from Augusta or if they that
12 they're from Rock Hill or they say they're from Charleston;
13 who cares; what's the point?

14 A Well, where they -- where they're actually from
15 does not matter as much to me as -- as them both giving the
16 same answers, being able to give a specific answer. Giving
17 a general answer, both of them saying the other side of
18 Augusta; the other one saying 66 miles on the other side of
19 Augusta. It's not as important about where exactly, the
20 physical location, but them giving the same story. If they
21 can't give the same story or if they don't give the same
22 story, to me it seems that it might not be true or
23 something could be off.

24 Q Well, if I were driving down the road, would you
25 ask me where I was coming from?

Adam Antley - Cross-Examination by Mr. Williams

1 A It depended on the circumstances.

2 Q If I was driving fast coming down the road, would
3 you ask me where I'm coming from?

4 A Usually I ask about everybody I stop where you're
5 coming from and where are you going?

6 Q What difference does that make?

7 A It makes a difference to me. I ask a question as a
8 law enforcement officer, it's my job to just be a robot on
9 the side of the road; I talk to people.

10 Q I understand. Okay. So there was a little
11 difference, one said from the other side of Augusta and one
12 saying 66 miles on the other side of Augusta and I believe
13 you said that when you saw them going down the road the
14 fact that one was speeding made you nervous. It makes me
15 nervous too. But that seemed to heighten your sensibility
16 is the fact the guy was doing 93 going down I-20. Is that
17 one of the factors that kind of keyed you into how you were
18 going to make the stop or handle the stop?

19 A Not how I was going to handle it. I didn't say it
20 made me nervous, I just said that it was unusual to be
21 going that type of speed that time of day. Normally I --
22 normally don't see that type of -- that high of speed that
23 often for one; and two it was during rush hour. I just
24 don't see that many people doing that type of speed.
25 That's my experience.

Adam Antley - Cross-Examination by Mr. Williams

1 Q I'm sorry. I believe you said that they looked
2 like they might have been moving around in the truck?

3 A There was movement in the truck whenever I was
4 behind them.

5 Q And that made you nervous, it seemed unusual; is
6 that right?

7 A Well, it makes me wonder what they're moving for.

8 Q Well, you used the word made me nervous, right,
9 about what they're doing? Made you nervous about what they
10 were doing because you saw them moving in the truck; is
11 that right?

12 A Yes, sir, that's what I said.

13 Q Well, I mean you said it earlier. Is it not true
14 now, but it was true earlier; I mean, is that what you
15 meant that you saw two guys moving in the truck and it made
16 you nervous?

17 A Well, yes, sir.

18 Q What else made you nervous about these two guys in
19 this truck that led you to believe that maybe there might
20 be more to this than just a speeding case?

21 A It was the totality of everything going on. The
22 fact that they were -- the fact that they were speeding in
23 and of itself is nothing and none of these factors that I
24 talked about earlier in of itself mean, really mean a whole
25 lot, but when you combine all of them together, in my

Adam Antley - Cross-Examination by Mr. Williams

1 training and my experience, to me it appeared that
2 something more was going on than just a little simple
3 speeding violation or just an open container violation. It
4 appeared to me that there was something more afoot.

5 Q Well, the way they pulled over, I think you
6 remarked on that, that they were in the fast lane, that
7 they went to the middle lane, then they went to the slow
8 lane, and then they pulled over, but they didn't pull over
9 exactly where you thought they should have pulled over?

10 A Well, it's not that they didn't pull where I
11 thought they should, it's just that once they got -- once I
12 got my eye on it, it was clear that they -- you know they
13 obviously changed lanes, they knew I was going to, that I
14 thought they knew I was stopping them. And then when they
15 got in the slow lane and all the movement that was going on
16 inside of the truck, they continued in the slow lane where
17 there was plenty of room. You can see in the video where I
18 started to begin the -- I had already cut the siren off
19 once they knew I was coming.

20 I activated the siren and chirped it a couple of
21 times again just to say hey, I am still here because to me,
22 at the time, it didn't appear that -- it appeared that they
23 could have stopped or should have been stopping sooner than
24 what they were.

25 Q So they pulled over and actually the area where

Adam Antley - Cross-Examination by Mr. Williams

1 they pulled over didn't have much of an emergency parking
2 area, did it? It's too narrow. If you look at the truck
3 when they pulled over, they had to pull over a little bit
4 on the grass there, didn't they; it was a narrow, I guess
5 the Highway Department's saving money. But it wasn't much
6 of an area to pull a vehicle over was it?

7 A Well, I mean it's the emergency, it's about the
8 same there as everywhere else. It's not -- I mean it's the
9 emergency lane.

10 Q Well, and now you've already said all these things
11 made you a little nervous so clearly you called in the tag
12 to the highway, to the dispatch to let them know you were
13 stopping a vehicle, right?

14 A Yes, sir.

15 Q Did you wait until you found out who the driver or
16 the owner of the truck was or anything like that?

17 A Waiting for what?

18 Q Waited for the dispatch to tell you -- did you ask
19 them what the owner of the tag was before you got out of
20 the car because --

21 A No, sir.

22 Q -- you can't always hear that?

23 A No, sir, I didn't, I didn't ask for that.

24 Q But you were not to that stage where you were so
25 nervous that you felt like you needed to call for backup,

Adam Antley - Cross-Examination by Mr. Williams

1 right?

2 A No, sir, not at the time. I wasn't -- I mean I
3 didn't think I had bank robbers on my hands, I just like I
4 said, it led me, it raised my suspicions during my time --
5 during my encounter with them.

6 Q Well, you actually took one guy out of the vehicle
7 and did a field sobriety test on him. The film is accurate
8 in regards to what you did that day, right?

9 A Yes, sir.

10 Q So you took him over there and you did the field
11 sobriety test, HGN Test, Horizontal Gaze Nystagamus Test on
12 him; you did that on him and it looked like he was not
13 intoxicated, right?

14 A I didn't observe anything that led me to believe he
15 was, no, sir.

16 Q So that's why you didn't do any further field
17 sobriety tests on him?

18 A I mean, he had complained about a problem with his
19 leg as soon as I started the HGN test.

20 Q Did you ask him to do any other tests?

21 A No, sir, I did not.

22 Q He was just complaining about his leg?

23 A As soon as I asked him to you know stand together,
24 feet together arms down by his side, he said something
25 about his leg. And I said I'm not asking you to walk in a

Adam Antley - Cross-Examination by Mr. Williams

1 line, I just want to look at your eyes is what I told him.

2 Q Did that raise your suspicions that maybe he was
3 DUI and didn't want to do the rest of the field sobriety
4 test?

5 A No, sir.

6 Q Okay. So you get -- you get them pulled over and
7 then you go to the passenger. Now, generally the offenses
8 that are committed going down the road are normally
9 attributed to the driver, right; the passenger is not
10 driving are they?

11 A No, sir. That's correct, yes, sir.

12 Q So you go up to the passenger and you ask him who
13 his name is and you ask him where he's coming from; why did
14 you do that, what was the purpose behind that?

15 A You mean initially whenever I stopped them or --

16 Q Yeah.

17 A -- or after I gave Vanderhall the sobriety test?

18 Q Yeah, when you stopped them initially.

19 A Well, I went to the passenger side because that's
20 the side I usually always try to go to on the interstate
21 and even on back county roads, I always try to go to that
22 side just because it's safer.

23 Q That's right, safety reasons because those trucks
24 come down that have those side mirrors and stuff you can
25 clip somebody pretty easy, couldn't you?

Adam Antley - Cross-Examination by Mr. Williams

1 A Yes, sir.

2 Q So when you pulled -- when you actually went to the
3 passenger window, the passenger side and the window was
4 down, did that seem to put you ill at ease, the fact that
5 the window was down; was it normal that the window would be
6 down?

7 A What do you mean by ill at ease?

8 Q Well you -- you testified a lot of things that kind
9 of made you nervous, kind of made you think that something
10 might be more this and was the fact that the window was
11 down and it was cold -- I mean you said it was cold?

12 A Yes, sir, it was.

13 Q Did that -- did that seem to you like, I don't
14 know, that maybe they're smoking marijuana or something in
15 the truck and they're just letting it air out or -- I don't
16 know what you were thinking; did you think that was maybe
17 something weird or anything like that?

18 A No, sir, I don't know when he put the window down.
19 I mean, it wasn't weird, no, sir.

20 Q So that didn't bother you. But you -- did you open
21 the car door or did he open the car door?

22 A I did.

23 Q And why did you open the car door?

24 A Because they were -- whenever they were reaching
25 around looking for registration and all that stuff, I could

Adam Antley - Cross-Examination by Mr. Williams

1 not see where they were reaching.

2 Q And -- and you were fearful that they might be
3 reaching for some sort of weapon or something?

4 A Well, I wouldn't say fearful, but there's always a
5 possibility on every traffic stop that there might be a
6 weapon in the car. There's a lot of, I mean there's a lot
7 of incidents with holders these days; there's a lot of
8 people that don't have concealed permits, but also be
9 unlawful to have a weapon in their vehicles. So it's
10 something I do look for, yes.

11 Q Was there anything distinctive about those two
12 individuals that made you more fearful than not, I mean
13 did -- did one of them look meaner than the other one, or
14 was there something that, that made you think that maybe
15 they would have a weapon or something like that? How they
16 looked?

17 A You said more than who?

18 Q More than normal. I mean obviously if you have two
19 little old ladies riding down in the truck, would you treat
20 them the same way; would you come around, open up the door
21 and make sure they didn't have any weapons in their -- in
22 their purses if they were 70 years old?

23 A Well, these weren't two ladies that were riding in
24 the car. I don't understand what your question is.

25 Q The point of it is, you were treating them a little

Adam Antley - Cross-Examination by Mr. Williams

1 bit differently than you would if there were two little old
2 ladies driving around in a truck?

3 A Well, I can't answer that question. You're asking
4 me to say what I would do in a hypothetical situation and
5 it's not hypothetical.

6 Q Okay. So after you talked to Mr. Mims and you get
7 his -- get his information, you remark about something
8 that's in the truck and I think you testified that it
9 looked like a 12 pack which had been cut in half; is that
10 right?

11 A Yes, sir, I had seen it done before where you -- it
12 was a 12 pack of beer comes in a cardboard box and you take
13 a razor blade and cut the 12 pack in half and they have two
14 6 packs.

15 Q Kind of like your egg cartons, if you don't have
16 the money to buy a dozen eggs you can go to the grocery
17 store and sometimes they sell 6 eggs?

18 A Some of them do, yes, sir.

19 Q So when you were looking at this 6 pack, if you
20 will, did it have all the beer containers in the, in the 6
21 pack?

22 A I don't believe it did, no, sir, because there was
23 one that was -- there was one that was open.

24 Q And where is that one that was open; where was it
25 located?

Adam Antley - Cross-Examination by Mr. Williams

1 A Right next to it in a bag or something. It was, I
2 can't tell you exactly where it was located. I remember
3 asking if, you know, what was in the bag, if there was an
4 open container in the bag and that's what I was -- or
5 that's what was produced was an open Bud Light 12 ounce
6 can.

7 Q So you're saying that the 6 Bud beers were in the
8 bag in the -- in the cardboard container and the one Bud
9 was in the same paper bag or --

10 A No, sir, I'm saying I don't recall whether all of
11 them were in that half of a twelve pack or not. I don't
12 recall if there were six in there or whether there were two
13 in there or three in there. I just remember distinctly
14 there being a twelve pack carton that had been cut in half.
15 I can't tell you exactly how many was in there and really,
16 to be honest with you, I didn't get the chance to look at
17 it again after later in the, during the traffic stop, I
18 didn't have a chance to even look at it anymore.

19 Q What was the name of the driver that you arrested?

20 A Brian Vanderhall.

21 Q Well, you arrested Mr. Vander, what's his name,
22 Vanderhall?

23 A I believe Vanderhall.

24 Q When you arrested Mr. Vanderhall, you filled out an
25 incident report and you indicated that you thought that he

Adam Antley - Cross-Examination by Mr. Williams

1 was using alcohol and drugs; do you remember doing that?

2 A That I filled out an incident report saying he was
3 using alcohol and drugs? I mean I remember filling out an
4 incident report.

5 Q Would it be helpful if I gave you a copy to look
6 at?

7 A Sure, that's fine.

8 Q You know what I'm -- I'm referencing the little
9 check marks where you have the little boxes and you put
10 down what --

11 A Okay. Yes, sir, I do recall that.

12 Q Okay.

13 A I mean I don't recall clicking them, but if says
14 that on the report, then I must have had to click them.
15 That was a couple of years ago.

16 Q Okay. Certainly. So you check off on those little
17 boxes that -- that Vanderhall and -- is using drugs and
18 alcohol. Did you smell alcohol about Vanderhall?

19 A I believe I -- I mean to be honest with you, I
20 can't tell you a hundred percent whether I smelled alcohol
21 on his breath at the back of the truck whenever he got out;
22 he lit that cigarette. Whenever I asked him to put it out,
23 he took big drag of it and I'm not sure if, you know, I
24 can't distinctly say what I smelled on his breath. I know
25 I smelled it coming out of the truck.

Adam Antley - Cross-Examination by Mr. Williams

1 Q Well, you made him do a field sobriety test, you
2 made him do an HGN, which is an indication that you thought
3 he was using alcohol, right?

4 A Well, I mean, the HGN test is not just for alcohol,
5 but yes, sir, I gave him the HGN just to make sure he had
6 not been drinking because the truck smelled of alcoholic
7 beverage, the passenger admitted to it. I wanted to make
8 sure that Vanderhall was not under the influence or
9 impaired as far as his driving.

10 Q And he had one can; is that right, one can that you
11 found in the cab of the truck that had not been, which was
12 essentially empty, wasn't it?

13 A The can that I poured out and put in the back of
14 the truck?

15 Q Well, let me ask you this: Is the video that we
16 looked at, is that -- is that an accurate reflection of
17 what happened on that date, the amount of liquid that came
18 out of the can that we see on the video? Would that be
19 accurate in terms of how much came out of the can?

20 A Yes, sir.

21 Q And I believe you said you crushed it, right?

22 A Yes, sir.

23 Q By crushing it, I assume you crushed it with your
24 hand and then threw it in the trunk of the car, I mean the
25 bed of the --

Adam Antley - Cross-Examination by Mr. Williams

1 A The bed of the truck, yes, sir.

2 Q Did you -- you obviously didn't stand on it to
3 crush it like that?

4 A No, sir.

5 Q Okay. All right. So you had this -- you had this
6 beer container, which is crushed, you threw it, you threw
7 it in the bed of the truck and so now you have an open
8 container charge and I believe the solicitor asked you
9 this, whether or not you had to arrest anybody based on
10 this open container charge or not and your response was,
11 you don't have to?

12 A Yes, he asked if it was in my discretion and I said
13 it was. You can either be, I mean you can get arrested for
14 open container or you can get a summons and be released for
15 open container; there's both of those options.

16 Q And that's, it's totally up to you, right, just
17 like speeding?

18 A Yes, sir.

19 Q You don't have to be arrested for that 93 in a 60;
20 it's totally up to you?

21 A That's correct, yes, sir.

22 Q And did you charge Vanderhall with the open
23 container?

24 A No, sir.

25 Q Okay. So you charged -- but you did charge him

Adam Antley - Cross-Examination by Mr. Williams

1 with the trafficking in drugs, didn't you?

2 A Yes, sir.

3 Q Okay. So up until this point in time, you found an
4 open container which you crushed and you've thrown it in
5 the back and you've got him speeding. So then you start
6 searching for guns, weapons; is that right; what were you
7 searching for in the cab of the truck?

8 A What was I searching for in the cab?

9 Q What were you looking -- what were your intentions
10 at that point in time?

11 A That was the point in time when --

12 Q You could have just given them a ticket, couldn't
13 you, a courtesy summons, a blue ticket?

14 A Could I, yes, sir, they could have gotten tickets,
15 not at that point I wasn't, I haven't even got done with
16 what I was doing at that point.

17 Q Well what, you had enough to charge them?

18 A Yes, sir, but I didn't. I didn't think that was
19 all that was going on. I mean, whenever I'm standing
20 there, I give Vanderhall his sobriety test, I get him out,
21 frisk him, I go to give Mr. Mims -- he's already admitted
22 to having an open container; I go to get him, frisk him,
23 but my intention, being there's a beer one of them had in
24 the car, there's a lot of other things in the vehicle that
25 I can't tell what everything is because there was bags

Adam Antley - Cross-Examination by Mr. Williams

1 here, boxes there, but my intention is to get both of them
2 out of the vehicle and question to see what else is in
3 there; is there anymore open containers in the vehicle to
4 try and see if maybe Vanderhall might have had one as well.
5 Because at that point, you know the passenger, Mims,
6 admitted to having an open container. Because really and
7 truthfully I'm not sure why he admitted to an open
8 container, but he admitted to the open container, in my
9 experience. All drivers won't admit to open container
10 because it tends to lead someone to believe they might be
11 driving under the influence, but I had not done or was not
12 completed with my investigations as far as what else was
13 inside that vehicle at that point.

14 Based on the fact that they had an open container,
15 I had probable cause to search the truck to see if there
16 was any more open containers in there.

17 Q You really didn't believe the fact that maybe they
18 might have been coming from Augusta and that they'd only
19 had one beer and the fact that there might have been some
20 white Honda that -- you didn't believe any of that?

21 A I didn't say I didn't believe it.

22 Q Okay.

23 A I mean I don't know -- I didn't know exactly what
24 to believe at that point and what not to believe. I was
25 taking information they were giving me and to be honest,

Adam Antley - Cross-Examination by Mr. Williams

1 Mr. Williams, I didn't have a whole lot of time to, this
2 was a lot of on the fly stuff.

3 Q Why didn't you call for backup? If you had these
4 two guys and all these suspicions that you had, why didn't
5 you call for backup at that point in time?

6 A At that point in time, I didn't feel I needed it at
7 that point in time. I'm used to working on my own all the
8 time and normally six o'clock in the afternoon there's not
9 a whole lot of -- there's not a whole lot of backup
10 available as far as just, you know, routine stuff like
11 that. I mean it's just, I'm used to working on my own.

12 Q All right. Well, you subsequently got the truck,
13 didn't you, you subsequently found the truck or someone
14 seized the truck and someone went through the truck, didn't
15 they?

16 A Not that I know of, no, sir.

17 Q Are you telling me that the vehicle that you
18 stopped that had these two guys in there which you suspect
19 was hauling marijuana or whatever drug, cocaine, or some
20 drugs, was never searched after you arrested Mr.
21 Vanderhall?

22 A Well, Vanderhall, he came to Lexington the next day
23 and turned himself in. I don't -- I never had any
24 interaction with the truck after that point.

25 Q Okay. So you never searched the truck?

Adam Antley - Cross-Examination by Mr. Williams

1 A I didn't, no, sir.

2 Q Do you know if anybody did?

3 A I don't recall anybody going through it. I'm not
4 sure.

5 Q Okay. So when you get my client, Kendrick Mims,
6 out of the truck and you see him, you think he's, something
7 weird is going on because he's pulling his pants up, right?

8 A I don't remember him pulling them up. He was
9 actually, he was bending over and just holding the pants.
10 He didn't get out and grab them up like -- well every time
11 I get out of my patrol car or even when I stand up from
12 this witness stand, I grab both sides of my belt and pull
13 it up because it always falls down. That's not what he
14 did; he was leaned over at the waist holding himself around
15 the groin area and it just, to me it was, it looked like
16 something was in there.

17 Q Were his pants too big because a lot of young guys,
18 I don't know about -- I don't know how old he is, but a lot
19 of young guys, they wear big pants that are too big for
20 them. Were these pants, did they look too big for him?

21 A I mean I can't say whether they were too big for
22 him; that's -- I mean, I don't know.

23 Q Did he have a belt on?

24 A I don't recall.

25 Q Okay. So he's pulling his pants up and you think

Adam Antley - Cross-Examination by Mr. Williams

1 he's grabbing something in his groin area, so you suspect
2 it might be a gun or something?

3 A I first thought it was a weapon, yes, sir.

4 Q So -- and you said you questioned him again to do
5 something and he says what or what do you mean or something
6 like that or I'm doing it; what did he say?

7 A I can't remember his exact words. It was, I had
8 asked him to put his hands on the car and I think he said,
9 I think he said what is it you want me to do or something.
10 I'm not a hundred percent without looking at the video
11 again. I'm looking at the report.

12 Q Well, let's talk about Mr. Vanderhall. So far
13 you've got him speeding and you did the HGN test on him?

14 A Yes, sir.

15 Q Why did you -- why did you put him up against the
16 car to be frisked?

17 A Because I was fixing to turn my back on him and try
18 to deal with -- speak with Mr. Mims. The more I talked to
19 Vanderhall, even after I gave him the HGN, the more he just
20 made my suspicions arise that he could possibly be armed,
21 possibly could be something more than just a simple
22 speeding violation.

23 Q How often do you frisk people on the side of the
24 road for speeding violations?

25 A Well, I don't always get, I don't get people out of

Adam Antley - Cross-Examination by Mr. Williams

1 the car just for speeding violations.

2 Q Why did you get these guys out of the car?

3 A To get -- first to give Vanderhall the HGN and then
4 I got Mims out talking about the open container.

5 Q Okay.

6 A To answer, if you -- usually when I get somebody
7 out the car for whatever reason, if there is a -- if there
8 is a good likelihood that they could be concealing a
9 weapon, whether they're -- they have on a thick heavy coat
10 or I can't see the waist down and it looks like there could
11 be a bulge in their jacket, pants, something like that, if
12 it gives me a reason to believe I should check the person,
13 I do. If it's summertime and they're wearing shorts and no
14 shirt, I don't frisk them because it doesn't -- to me
15 there's obviously nothing that I see anything that could be
16 hidden in the sides of those pants or waistband or whatever
17 it may be.

18 Q Did you ever find a gun?

19 A Did I -- no, sir, I never found a weapon.

20 Q So there was no weapon found in the truck. Mr.
21 Vanderhall, you didn't find a weapon when he turned himself
22 in. You didn't find a weapon on Mr. Mims, right?

23 A No, sir, I did not.

24 Q As a matter of fact, you didn't find any drugs or
25 Mr. Mims when you actually arrested him, did you?

Adam Antley - Cross-Examination by Mr. Williams

1 A No, sir, I didn't find any drugs on Mr. Mims's
2 person when I arrested him.

3 Q Throughout this whole video, exactly at what point
4 did you tell anybody they were under arrest?

5 A At the point where, I mean I don't know if you can
6 actually hear it in the video, but not long after I, not
7 long after we were in the woods whenever Mims was
8 handcuffed, that's when he was advised that he was under
9 arrest.

10 Q So all this stuff went on. I mean you got these
11 two guys, you get the driver out of the car, you do the HGN
12 test; you get -- you get my client out of the car and he's
13 got an open container, you frisk them both. My guy runs
14 and you never tell anybody they're under arrest until you
15 say find these drugs in the -- in the field somewhere and
16 then you tell them they're under arrest, right?

17 A No, sir, I never said I found drugs in a field
18 somewhere. I said I found drugs -- or I said I found a
19 package with a white powder in the leaves after watching
20 Mims appear to remove them from his pants, put it on the
21 ground and cover it up with leaves while I was standing
22 closer to him than you're standing to me right now. That's
23 what I said; that was my testimony.

24 Q Why didn't you tell them they were under arrest?

25 A When; I did.

Adam Antley - Cross-Examination by Mr. Williams

1 Q At any point in time?

2 A Once Mims was handcuffed, he was advised he was
3 under arrest.

4 Q Okay. All right. Now, I think you've already told
5 us that you tased him. You first tried to throw him down
6 or use an arm tackle with him to put him to the ground,
7 right?

8 A I said I was going to attempt a arm-bar take down.

9 Q And when he didn't cooperate with you throwing him
10 to the ground and he took off, that's what happened, right;
11 I mean that's what happened?

12 A What's that?

13 Q You tried to put him to the ground and he took off?

14 A I had ordered him to go down to his knees. I don't
15 know if he knew that I was gonna attempt to put him, to use
16 the arm-bar takedown or not. I didn't tell him, hey, I'm
17 gone put you on the ground or I'm going to tackle him as
18 you said, I didn't tell him that. That was what I was
19 planning on doing, because he was not voluntarily going to
20 his knees as I had asked him to do several times.

21 Q What do you think went through his head when he was
22 on his knees?

23 A I have no clue.

24 Q I know. You never know what's in anybody's mind,
25 do you?

Adam Antley - Cross-Examination by Mr. Williams

1 A No, sir.

2 Q But you tell him to go on his knees and you attempt
3 to arm tackle him and he takes off?

4 A No, sir, I asked him, go down to your knees, very
5 calmly. I'm not yelling at him the first time I asked him
6 then I asked him what it was in his pants; he said he
7 didn't have anything. I said there's something here; just
8 go down to your knees. He didn't do it. After he didn't
9 do it several times, then yes, sir, I said go down to your
10 knees right now. At that point, he still -- he said I'm
11 about to, I'm about to and then he turned and ran.

12 Q All right. So how far off of the highway was he
13 before you shot him the first time with the taser?

14 A How far from the interstate?

15 Q From the location where the vehicle was pulled
16 over, how many steps was it before you shot him with the
17 taser?

18 A I'm not sure how many exact steps. It was between
19 the -- we were probably halfway through the wood line from
20 where the woods start to from where that little fence is.
21 When I look back through there, it's about maybe 25, 30
22 maybe 30 yards worth of woods or about halfway through it.

23 Q So he ran 30 yards before you tased him; is that
24 about right?

25 A I can't, I can't say yes or no on that. I know we

Adam Antley - Cross-Examination by Mr. Williams

1 had got into the wood line. He fell, I told him to stay
2 down, he went to get up and when he went to get up, I tased
3 him.

4 Q Well, at some point, at some point in the -- in the
5 video, you said something like I've already shot, I've
6 already tased you twice, warning him that you'd already
7 tased him twice?

8 A I wasn't talking to him, I was on the radio. I
9 said he had been tased twice.

10 Q So you were telling somebody else that you had --

11 A I was -- I was on the radio telling my dispatcher
12 than when I was giving the description, he had been tased
13 twice. I think I told him he was a black male, black
14 shirt, black pants, I told him we were going on Cromer
15 Road, which in fact was Davega Road.

16 Q You were wrong about that?

17 A About the road, yes, sir.

18 Q Is that when he fell -- at some point in time, he
19 fell; did he fall before he went over the fence or after he
20 went over the fence?

21 A He fell in the woods once whenever we first ran
22 into the wood line, he fell. I don't -- I don't know if
23 he, if he, if he kicked a root or something and tripped or
24 if he just lost his footing and tripped, but when he fell I
25 told him to stay on the ground because I was running in

Adam Antley - Cross-Examination by Mr. Williams

1 behind him. When he went to get up, that's when I deployed
2 the taser the first time.

3 Q So that's the first time you tased him. Was that
4 before he got on the fence or after?

5 A That was before, yes, sir.

6 Q Is that when he had his feet up in the air and his
7 feet were kicking up in the air?

8 A After the -- after the taser was deployed is when
9 he started kicking his feet at me.

10 Q Did you think he was having a seizure?

11 A No, sir.

12 Q Well, why would his feet be kicking in the air?

13 A Well, they weren't like wildly like -- it was to
14 me, he was, whenever I went and I got close, his feet were
15 kicking almost like -- like you were trying to kick
16 somebody that was walking on you if you're on your back;
17 that's what it appeared to me.

18 Q So then he jumped the fence and you tased him
19 again?

20 A Yes, sir.

21 Q Then he runs further around these buildings and he
22 gets out of your sight and that's when you pull your
23 service weapon?

24 A Yes, sir.

25 Q Service revolver -- you call it a service revolver?

Adam Antley - Cross-Examination by Mr. Williams

1 A No, sir, it's not a revolver.

2 Q Because it's not a revolver anymore; it's got more
3 bullets in it, doesn't it?

4 A It does.

5 Q How many bullets does it have in that gun?

6 A Eleven.

7 Q What did it used to have in the revolver?

8 A I believe six or seven, I'm not sure. I never -- I
9 was never issued one.

10 Q And you tell him that you've got your gun out; is
11 that right; did you tell him that?

12 A I don't know if I tell him I've got my gun out. At
13 some point, when he is walking towards me in the woods, I
14 believe I remember telling him, don't make me shoot you
15 because he wouldn't show his hands. He kept having his
16 hands concealed. There again, I still -- up to the point
17 that I actually pulled it out and saw that it was a big
18 package of white powder, I still thought it was a weapon
19 the whole time.

20 Q Let's talk about that big package. At some point,
21 we're probably all going to get a chance to look at it, but
22 at least in the picture, referring to State's Exhibit
23 Number 3, this is that package that we referenced, right?

24 A Yes, sir.

25 Q And this is the taser, how big is that taser; about

Adam Antley - Cross-Examination by Mr. Williams

1 that big?

2 A No, sir, it's smaller than that.

3 Q Do you have one on you?

4 A Yes, sir.

5 Q Can you show it without shooting me, just kind of
6 hold it up?

7 A Yes, sir. There's two cartridges. That's what's
8 in the picture.

9 Q Is that the same one?

10 A It should be, yes, sir.

11 Q And it's one that it's X-26; right, that's the one
12 assigned to you?

13 A Yes, sir.

14 Q So the item that you have, the item that the, that
15 the -- that Mr. Mims has in his pants is bigger than that?

16 A Well, I don't know exactly how big it is, but
17 according to that picture, yes, sir. As far as what I felt
18 in the pants, I wasn't sure exactly how big it was, I just
19 knew that I could feel the hardness about the length of my
20 hand.

21 Q Can you -- can you stretch your hand from end to
22 end on that taser.

23 A I mean --

24 Q The package, if you'll step down here and --

25 MR. WILLIAMS: Can he step down, Your Honor?

Adam Antley - Cross-Examination by Mr. Williams

1 THE COURT: Yes, sir.

2 BY MR. WILLIAMS:

3 Q Step down and show the jury the size, if you will.

4 (The witness stepped down from the witness stand.)

5 BY MR. WILLIAMS:

6 Q So the package we're talking about is bigger than
7 the palm of your hand?

8 A Yes, sir.

9 Q Actually bigger that way too?

10 A Yes, sir.

11 Q Thank you, sir.

12 (The witness returned to the witness stand.)

13 BY MR. WILLIAMS:

14 Q Now when you said that you checked him out,
15 searched him and you felt something hard in his groin area?

16 A Yes, sir.

17 Q I assume by referencing the groin area, you're
18 talking about the thigh; are you talking about the leg, the
19 fatty part of the leg; is that what you're talking, is that
20 what you're referencing?

21 A No, the groin area, his groin.

22 Q Okay. Is that right in front?

23 A Yes, sir.

24 Q And these pants that he had on, what kind of pants
25 were they?

Adam Antley - Cross-Examination by Mr. Williams

1 A He had some jeans or -- or it could be jeans I
2 guess, black.

3 Q Jeans. Do you have a pair of jeans?

4 A Do I have jeans; yes, sir.

5 Q Would you normally have difficulty putting
6 something like that in a pair of your jeans?

7 A Yes, sir.

8 Q Well, I'll move on. After you got him arrested,
9 after you went back to the Lexington County Jail -- and I
10 assume you take him to the Lexington County Jail after he
11 goes -- he goes to the hospital first because of his
12 medical condition, right?

13 A I didn't take him to the jail.

14 Q Somebody took him to jail, right?

15 A Yes, sir.

16 Q When he goes to the jail, I assume he doesn't get
17 to keep his clothing on that he normally has in the
18 civilian world, right?

19 A No, sir.

20 Q He changes out to a jumpsuit of some color?

21 A That's normal procedure, yes, sir.

22 Q Okay. Did you seize the pants that he had --

23 A No. I'm sorry.

24 Q -- I was going to ask you if you seized them so
25 that you could use them at trial for trial purposes?

Adam Antley - Cross-Examination by Mr. Williams

1 A No, sir.

2 Q Well, if we had those jeans here today then
3 obviously you could see whether or not -- I don't want to
4 steal a line, if it doesn't fit or anything like that, but
5 the point of it being is that you could at least see the
6 size of the jeans, the size of the person, and to see
7 whether or not that would have fit easily, whether or not
8 you might be able to see it; you could have had all that,
9 right?

10 A If I would have seized them?

11 Q Yeah.

12 A I guess they would have been in here in court.

13 Q Did you -- did you -- did you tell anybody you
14 thought you might need the jeans for trial purposes?

15 A No, sir.

16 Q Okay. Okay. So y'all run, you get him around the
17 building, you actually lose sight of him, you see him 30
18 yards from you and he's actually pointing in the other
19 direction and he his hands in front of him, right?

20 A Well, they're not completely in front of him at
21 that point. He's walking into the woods and as he's
22 walking away, I -- seems like I can remember seeing one
23 side of his body, but I can't see, it's not like he's
24 walking in the woods like this or he's not -- like he's
25 facing where I can see his hands.

Adam Antley - Cross-Examination by Mr. Williams

1 He's walking away from me with his hands in front
2 of him. Whether he's holding them down like you just were
3 or not, I'm not sure. I couldn't see the front. I could
4 just see him walking away from me and his hands weren't
5 clearly visible.

6 Q And you're yelling at him telling him to look, I
7 don't want to shoot you?

8 A Telling him to stop, show me your hands, get on the
9 ground, telling him you're not going to get away, there's a
10 dog coming, I told him all those things.

11 Q And is that when he gets on his knees and tries to
12 hide the cocaine?

13 A Well, whatever it was --

14 Q The white substance, whatever it is?

15 A Whenever we got into the woods -- whenever --
16 whenever I got into the woods behind him, he was still just
17 walking slowly away from me. He wasn't running at that
18 point, he was just walking and wouldn't look at me. I got
19 about the distance between from here to that projector or
20 here to the prosecutor's desk, no further than that. He
21 stopped. I give him commands the whole time you know, show
22 me your hands, get on the ground, he does this, pulls
23 something up out. I see a bag that wasn't -- he didn't
24 pick anything up off the ground. I can see that clearly,
25 but he does this and I see his elbows come up like he's --

Adam Antley - Cross-Examination by Mr. Williams

1 arms come up like it appeared to remove something either
2 from his stomach or waist area. And then I see a bag go
3 down to the ground while he's holding onto it with both
4 hands. Having that he leans over -- he doesn't put his
5 knees on the ground, he doesn't sit down beside it, he just
6 leans over, grabs a scoop of leaves with both hands and
7 just covers it one time and then he turns around and walks
8 straight towards me.

9 Q So while you're -- you're about a distance from you
10 to me?

11 A That would be the furthest I would -- I would say.
12 That's probably as far as it could have been.

13 Q Well let me get to where you think it was?

14 A Like I said just now, it's somewhere the distance
15 between here and that projector stand or the prosecutor's
16 desk, that would be about as far as it would be.

17 Q Okay. So we're about this distance?

18 A Yes, sir.

19 Q And he knows you're right there, right?

20 A Yes, sir, I have to hope he did. I was yelling at
21 him the whole time.

22 Q You're in the woods now, is it such a thick woods
23 that you can't see anything, but you could see in the
24 woods; it wasn't a thick woods with bushes and stuff,
25 right?

Adam Antley - Cross-Examination by Mr. Williams

1 A No, sir, it wasn't that thick.

2 Q So he knows you're there. He calmly bends over and
3 puts it on the ground and covers it up in leaves and turns
4 around and looks at you; then he starts walking forward to
5 you?

6 A Yes, sir. And as weird as it looks, that's the way
7 it looked that day.

8 Q Okay. So he's too tried to do anything else. You,
9 he lays --l ays down, you cuff him. How long is it before
10 the next officer comes on scene besides you?

11 A It's a few minutes, maybe, it felt like forever,
12 but probably 3 or 4 minutes I guess. I'm not sure.

13 Q Who was the first officer to get on the scene?

14 A It would be -- I think it was supervisor at the
15 time.

16 Q Would that be Chris Shelton?

17 A Well, he was a supervisor, but he was not my direct
18 supervisor. The first person on the scene was my Corporal,
19 Brian Kyzer.

20 Q And Corporal Kyzer, does he drive a Highway Patrol
21 car? Obviously, he does. Well, I don't know.

22 A And he --

23 Q Was he on duty at the time?

24 A Yes, sir, he was on duty. He was working that day.
25 He was driving a patrol car.

Adam Antley - Cross-Examination by Mr. Williams

1 Q Now, the vehicle that you had was an unmarked
2 stealth vehicle, right?

3 A Yes, sir.

4 Q What type of vehicle did Corporal Kyzer possess?

5 A I believe at the time he had a Crown Vic.

6 Q Now did -- as a corporal, I assume he makes arrests
7 on the road for speeding, drunk driving, whatever; he does
8 the same thing you're doing now, right? I assume you still
9 arrest people for going down the road too fast; he would do
10 the same thing, right?

11 A I do still make arrests.

12 Q So that means that the vehicle that he possessed
13 had a video camera, right?

14 A Yes, sir.

15 Q So his vehicle pulls in where you're at, where the
16 drugs are with his video camera, right?

17 A It didn't pull into actually where we were. He --
18 he pulled -- there's another entrance to the church that he
19 initially pulled into that's not the driveway that we went,
20 that we ran down. He pulled into the cul-de-sac next to
21 that.

22 Q So how close did his vehicle get to -- when you saw
23 him, was he in his car or out of his car?

24 A When I first saw him, I saw him pull up. I could
25 see his headlights coming through and I'm using -- I took

Adam Antley - Cross-Examination by Mr. Williams

1 the taser off and used the lights because I didn't have a
2 flashlight on me, but I used the light that was on my taser
3 kind of waving it to get him to see where I was because we
4 were still -- I had gotten Mims partially -- you know, I
5 got him up and then he, I just couldn't carry him or
6 support his weight to get him out of those woods so we just
7 stayed where we were until I got somebody to come help me
8 get him out of the woods.

9 Q He had his blue lights on, didn't he?

10 A Corporal Kyzer? I mean I would imagine he probably
11 did on the way there. Whether he had them on when he
12 pulled up, I'm not sure.

13 Q You don't remember seeing his blue lights on at the
14 scene?

15 A I'm not sure. I mean I would think they would be,
16 but I just --

17 Q You've got an officer chasing a suspect you'd have
18 blue lights on, wouldn't you?

19 A That's why I said they probably were, but I just, I
20 don't recall that, no, sir.

21 Q So since the blue lights were on, his camera would
22 have been operational, wouldn't it?

23 A Yes, sir.

24 Q Have you looked at his camera to see if there's
25 anything on his video to show anything about this event?

Adam Antley - Cross-Examination by Mr. Williams

1 A I have never got -- I never watched his video, no,
2 sir.

3 Q All right. Who was the next person that showed up
4 on the scene?

5 A I believe it was -- it was -- I believe it was
6 Deputy Ellis who's, it was Trooper Ellis, but he's a deputy
7 now.

8 Q Okay. So he's a -- he's a county guy?

9 A He works for Lexington County now, yes, sir.

10 Q Did he pull down to where you were? Was he close
11 to you?

12 A I believe so.

13 Q And does he have a video camera?

14 A He should have, yes, sir.

15 Q And were his blue lights on?

16 A I mean, I imagine they were. I can't say whether
17 they were or not, but I'm pretty sure they were and they
18 should have been if he --

19 Q Go ahead, I'm sorry. I didn't mean to interrupt
20 you?

21 A You can see a couple of them coming down the
22 interstate as they were trying to get to where we were and
23 they were on then. So --

24 Q Did you check to see if there was a video that
25 showed anything about where it was located or him doing

Adam Antley - Cross-Examination by Mr. Williams

1 anything or --

2 A I never saw the video, no, sir.

3 Q How many other officers actually come down to the
4 scene where you were at?

5 A I believe Snyder was the only one that was there
6 before the ambulance got there.

7 Q Okay. And Snyder is a --

8 A He's a trooper.

9 Q A trooper?

10 A Yes, sir.

11 Q So he's got blue lights and cameras and stuff like
12 that?

13 A Yes, sir and I haven't reviewed his or was never
14 able to review his video either.

15 Q Who were the two troopers that were out there on
16 the interstate looking around the ground like they're
17 looking for something?

18 A One of them was Trooper Fowler and the other one
19 appeared to be Trooper Lind.

20 Q And they were searching the road for something in
21 front of your patrol car and next to the wood line, weren't
22 they?

23 A Yes, sir. After watching the video, at the time
24 whenever -- whenever they -- whenever I frisked him
25 earlier, I wasn't sure exactly what they were looking for,

Adam Antley - Cross-Examination by Mr. Williams

1 but one thing I can think is the -- when tasers deploy,
2 we're supposed to collect that cartridge for evidence and I
3 imagine that could have been what they were looking for,
4 but I'm not sure exactly what they were looking for. If it
5 was that or just looking back, I don't remember --

6 Q Is that what, I'm sorry, I didn't mean to cut you
7 off; go ahead?

8 A I mean I just don't remember exactly what they were
9 looking for.

10 Q Well, if they were looking for it next to the road,
11 that would have meant that you would have shot the taser
12 right there at the vehicle, wouldn't it?

13 A I mean, I don't, like I said, that's why I'm not
14 sure what exactly they were looking for and I don't know if
15 at that time they knew exactly where the taser was deployed
16 or not.

17 Q Did any other officer see the location where this
18 package was found in these leaves? Any other officer that
19 you're aware of see the location where the package was
20 found?

21 A Did they see the --

22 Q The area -- did they see it in the area where you
23 said you saw it with the leaves on it?

24 A Did they see the package itself sitting on the
25 ground?

Adam Antley - Cross-Examination by Mr. Williams

1 Q With the leaves on it?

2 A No, sir. I picked the package up as soon as I
3 rolled -- as soon as I got Mr. Mims handcuffed, as soon as
4 I got him handcuffed and rolled over, I retrieved it from
5 the ground.

6 Q And then at some point in time, you show it to
7 these other officers just like that --

8 A Well, when he got there I was -- when they got
9 there, I had it in one hand and was holding on to him with
10 the other.

11 Q All right. Did you -- you obviously took the
12 package and turned it over to evidence where at some point
13 in time someone is going to do a chemical analysis of it.
14 Did you ask that they perform any type of DNA or any type
15 of fingerprint analysis to determine who had had control or
16 possession of the item?

17 A No, sir.

18 Q Do you know where Mr. Vanderhall is today?

19 A Today?

20 Q Yes, sir?

21 A No, sir, I don't.

22 Q When you charged Mr. Vanderhall on these charges,
23 when you filled out your report for the subsequent trial we
24 had in the case, you indicated that the evidence that you
25 had against Mr. Vanderhall was a large cellophane package

Adam Antley - Redirect Examination by Mr. Bell

1 containing a white powder substance, which is this item
2 right here? That is the evidence which you are saying Mr.
3 Vanderhall is guilty of possessing?

4 A Yes, sir.

5 MR. WILLIAMS: Your Honor, I think that's all the
6 questions I have.

7 THE COURT: Thank you, Mr. Williams. Redirect,
8 Solicitor?

9 MR. BELL: Thank you, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. BELL:

12 Q Trooper, in approaching this vehicle, if all the
13 other surrounding circumstances were the same, the
14 speeding, the slow departure off to the shoulder of the
15 road, the movement in the cab, had all of the same things
16 occurred and you approached that vehicle and two little old
17 ladies had been inside of it, would your actions have been
18 the same?

19 A Yes, sir, I have arrested little old ladies before
20 that didn't turn out to be so little.

21 Q Was it the surrounding circumstances of this case
22 that caused you to act the way you did upon approach of
23 that vehicle?

24 A I'm sorry; what was your -- could you repeat that
25 one more time please?

Adam Antley - Redirect Examination by Mr. Bell

1 Q Is the reason that you acted the way you did in
2 this particular case with this particular vehicle because
3 of the circumstances surrounding the speeding and the
4 traffic stop and the approach to the vehicle?

5 A Yes, sir. Everything I did was based on the
6 information I was getting and what I was seeing, hearing,
7 smelling. I had never met Kendrick Mims. I had never met
8 Brian Vanderhall. I had never seen that green truck never
9 before in my life and everything that day was my first
10 interaction with any of them. So I -- I didn't have any
11 reason to -- to do anything different than -- than what the
12 evidence I saw or the situations that I was put in.

13 Q Do you recall Mr. Williams questioning you about
14 why you checked boxes that Mr. Mims was under the influence
15 of drugs and alcohol?

16 MR. WILLIAMS: Objection, Your Honor, that wasn't
17 the question.

18 THE COURT: Rephrase the question, Solicitor. I
19 don't know remember the precise question, but you can ask
20 the court reporter to play it back if you need to.

21 BY MR. BELL:

22 Q If I showed you a copy of your incident report,
23 would it refresh your memory as to what boxes you checked
24 relating to Mr. Vanderhall or Mr. Mims?

25 A Yes, sir.

Adam Antley - Redirect Examination by Mr. Bell

1 Q Do you have a copy of your report on the stand with
2 you today?

3 A No, sir, my copy is on the table.

4 MR. BELL: I beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (There was a pause.)

7 BY MR. BELL:

8 Q Now, before we go any further, these incident
9 reports that you generated, your narrative of the case,
10 when are those recorded?

11 A Immediately after the -- or I guess when I get back
12 to the office and type them.

13 Q So when you drafted the incident report for this
14 particular case, that would have occurred after these
15 gentlemen were arrested or after Mr. Mims was arrested?

16 A Yes, sir, I mean I did it that night at the same
17 time I did the, logged the evidence in and everything like
18 that. That was -- that was -- this all happened about just
19 prior to six o'clock. I remember that it was -- I remember
20 not getting home that night until almost midnight because
21 I -- I mean -- I remember joking with my supervisor about
22 it, you know, the next day because he was tired, I was
23 tired because we didn't get home until late.

24 Q Now, would you have collected the cocaine from this
25 case before or after you drafted this incident report?

Adam Antley - Redirect Examination by Mr. Bell

1 A That would have been before. That incident report
2 was done after the fact, after everything was over with.

3 MR. BELL: Permission to approach the witness, Your
4 Honor?

5 THE COURT: Yes, sir.

6 BY MR. BELL:

7 Q Trooper, I'm handing you two pages of your incident
8 report, is that the incident report you generated pursuant
9 to this case?

10 A Yes, sir.

11 Q Now, would you locate the section where it refers
12 to Mr. Vanderhall for me?

13 A Yes, sir.

14 Q What do the boxes referring to drugs and alcohol
15 reflect as to Mr. Vanderhall in your report?

16 A It says using alcohol, no; using drugs, unknown.

17 Q So was it your opinion when you drafted that report
18 that Mr. Vanderhall was or was not under the influence of
19 drugs?

20 A Under the influence -- I mean I didn't feel that he
21 was. I didn't have any reason to believe he was.
22 Otherwise, I would have put it in here.

23 Q Now, those same boxes, how were they reflected on
24 Mr. Mims section of the report?

25 A On Mr. Mims's it says using alcohol, I checked yes;

Adam Antley - Redirect Examination by Mr. Bell

1 drugs, yes.

2 Q Now, that report you testified earlier would have
3 been generated once again before or after the cocaine was
4 recovered?

5 A After.

6 Q Did you find the cocaine on Mr. Vanderhall?

7 A No, sir.

8 Q Did you charge Mr. Vanderhall the same as you
9 charged Mr. Mims?

10 A As far as the drug charge?

11 Q That's correct.

12 A Yes, sir.

13 Q Do you recall what else you charged Mr. Vanderhall
14 with?

15 A Speeding 93 in a 60 and littering.

16 Q From start to finish -- from the time that you
17 initiated your blue lights to the time you took Mr. Mims
18 into custody in the woods, do you know roughly how long or
19 how much time had elapsed?

20 A I think it was around 10 to 11 minutes from what I
21 remember from viewing it.

22 Q Does that 10 to 11 minutes include your initial
23 approach to the vehicle?

24 A Yes, sir.

25 Q Does it include Mr. Vanderhall's field sobriety

Adam Antley - Redirect Examination by Mr. Bell

1 test?

2 A Yes, sir.

3 Q Does it include your conversation with Mr. Mims in
4 the passenger seat?

5 A Yes, sir.

6 Q Does it include removing him from the vehicle and
7 attempting the pat downs?

8 A Yes, sir.

9 Q Does it include the foot chase that followed?

10 A Yes, sir.

11 Q All of that occurred within 10 to 11 minutes?

12 A Right at 10, yes, sir, I believe so.

13 Q During this traffic stop, at any point, did you
14 feel like you were unnecessarily extending the amount of
15 time you kept them on the side of the road?

16 A No, sir.

17 Q Now Mr. Williams had you present your taser to the
18 jury. I don't want you to touch it all for me, but with
19 Your Honor's permission, I'd ask Trooper Antley if you
20 would stand up so the jury can see the size of your primary
21 firearm. Would you please indicate without touching the
22 firearm where it is located to the jury?

23 A (Standing) It's here in my holster.

24 Q Is that firearm bigger than your taser?

25 A Yes, sir.

Adam Antley - Redirect Examination by Mr. Bell

1 Q Are typical firearms bigger than taser's?

2 A Yes, sir. I mean they're, some are bigger; some
3 are smaller, but most of the time when I think of a
4 firearm, I think of a -- like a semi-automatic type pistol.
5 They're always -- they're usually larger than a taser.
6 There are some, my backup weapon is larger than my taser.

7 Q Are firearms ever covered by anything?

8 A Yes, sir.

9 Q Can you give me an example?

10 A It may be like inside the pants like holsters,
11 little neoprene holsters because a lot of times it's kind
12 of hard to keep a firearm just in your pants without it
13 being secured in some way, shape or form. So --

14 Q Do some of those things add size or bulk to the
15 firearm?

16 A It can, yes, sir.

17 Q So when you felt the bulge in Mr. Mims' pants, was
18 the size consistent or inconsistent potentially with a
19 firearm?

20 A I thought -- I thought it was a firearm. It felt
21 like it was hard and it was in an area that it could have
22 been a firearm.

23 Q Trooper, if you would please step down one more
24 time. I'd ask that you stand over here so the court
25 reporter can hear you. I'm showing the jury State's Number

Adam Antley - Redirect Examination by Mr. Bell

1 2, which is the area of the foot pursuit. Once again can
2 you indicate roughly where the pursuit ended.

3 A It ended in the woods here on the other side of
4 this building.

5 Q And when your fellow troopers and deputies showed
6 up to back you up, do you recall where they pulled their
7 vehicles up? For instance Trooper Kyzer?

8 A I remember Kyzer being over here in this large
9 cul-de-sac because that's where the -- that's also where
10 the ambulance ended up pulling is in that large cul-de-sac.

11 Q And is that cul-de-sac separated by anything to the
12 area where you were?

13 A There's a grass yard and a few small trees that
14 were there.

15 Q Would that have obstructed the view?

16 A It could have, yes, sir.

17 Q Would you please take your seat again. Did those
18 additional units arrive after you recovered the baggy from
19 the ground or the bag from the ground?

20 A Yes, sir.

21 Q Even if their cameras were pointed directly at your
22 location when they arrived, would you recovering the bag
23 off the ground be on their video?

24 A I don't believe you could have seen through the
25 trees, but I can't be absolutely -- I don't know for sure,

Adam Antley - Redirect Examination by Mr. Bell

1 but we were in the woods. We weren't in the parking lot
2 when I recovered it; we were in the woods.

3 Q Chronologically, were those units even in a
4 position to record your recovering that bag at the time
5 that you did?

6 A No, sir, it took them a couple of minutes before --
7 it was several minutes before everybody got there.

8 Q Now, one last short series of questions, Trooper.
9 Once again, how many years had you been in law enforcement
10 back in 2013?

11 A Almost five.

12 Q And have you ever been involved in a case relating
13 to narcotics before?

14 A Yes, sir.

15 Q Was it just one or two or more?

16 A Multiple I guess. I've made arrests for anything
17 from marijuana, cocaine, crack, methamphetamine, pills,
18 other controlled substances. I've made weapons charges.

19 Q In your experience as a law enforcement officer, do
20 the people who were caught with illegal substances
21 typically own up to it or do they try to get rid of it?

22 A Very rarely have I ever had anybody just flat out
23 own up to possessing something knowingly that was illegal.

24 Q Are you aware of whether or not Mr. Vanderhall's
25 case is still pending?

Adam Antley - Recross-Examination by Mr. Williams

1 A It -- from what I understand it is pending.

2 MR. BELL: Your Honor, no further questions for
3 Trooper Antley?

4 MR. WILLIAMS: Just two quick questions.

5 **RECROSS-EXAMINATION**

6 BY MR. WILLIAMS:

7 Q Obviously, Officer, you didn't check any of the
8 videos to see what was reflected on the videos, did you,
9 the video cameras of the other vehicles?

10 A No, sir, I haven't seen the other videos.

11 Q And did you say just a few minutes ago when the
12 solicitor was talking about how long this thing went on,
13 that 10 or 11 minutes included the foot chase?

14 A I believe so, yes, sir.

15 Q So the video that we watched, are you saying that
16 this video is only 10 or 11 minutes that we watched?

17 A No, sir, his question was different. I thought his
18 question was from the time it started until the time that I
19 arrested Mims; the entire video was, I mean the entire time
20 from the time that I made the stop to the time Mims was
21 taken to the hospital was about an hour, but from start to
22 finish from the time I activated the blue lights to the
23 time that I, you know, arrested Mims in the woods was about
24 10 to 11 minutes from what I recall.

25 Q So if -- if we sit down and look at this video and

Adam Antley - Recross-Examination by Mr. Williams

1 put a watch on, put a clock on it, we can sit there and
2 watch this video from the time the blue lights are on up
3 until the time in which you actually apparently have him
4 arrested and it's only going to be 10 or 11 minutes on this
5 video?

6 A I'm not a hundred percent about the exact stop
7 watch time, but that's what I believe.

8 MR. WILLIAMS: That's all the questions I have,
9 Your Honor.

10 THE COURT: Thank you. Thank you very much,
11 Corporal Antley. You may step down.

12 All right. Solicitor, you may call your next
13 witness.

14 MR. BELL: Thank you, Your Honor. I call Deputy
15 Adam Clayton to the stand.

16 THE COURT: All right.

17 ADAM CLAYTON

18 having been duly sworn, testified as follows:

19 THE CLERK: Have a seat, sir. Once you're seated,
20 state your full name, spelling your last for the record,
21 please.

22 THE WITNESS: My name is Adam Clayton. Last name
23 is C-L-A-Y-T-O-N.

24 ///

25 ///

Adam Clayton - Direct Examination by Mr. Bell

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BELL:

Q Deputy, tell us a little bit about your background.

A I've been in law enforcement 15 years and I've had a K-9 for 15 years. I've been with Lexington County a little over 10, almost 11 now.

Q Were you still working K-9 in February of 2013?

A Yes, sir.

Q And do you recall responding to assist Highway Patrol on February 18th of 2013?

A Yes, sir.

Q Do you recall the nature of the reason you were responding to assist?

A Dispatch advised that Highway Patrol had requested K-9 for a bush-bond, which as stated earlier, somebody had run from him.

Q Why would a K-9 be contacted for that situation?

A He -- we didn't know that he had caught him at the time and so he could have been running off into the woods and so he needed a dog to come find him.

Q And at the time, was your dog trained for tracking?

A Yes, sir.

Q And ultimately did you ever have to deploy the dog?

A No, sir.

Q Where were you responding to?

Adam Clayton - Direct Examination by Mr. Bell

- 1 A Where was I responding to?
- 2 Q Yes.
- 3 A The side of the interstate to the traffic stop.
- 4 Q Did you pull up behind Trooper Antley's vehicle?
- 5 A Yes, sir.
- 6 Q Is that where you left your vehicle?
- 7 A Yes, sir.
- 8 Q What did you do when you arrived?
- 9 A When I arrived -- I don't recall if we were told
10 then or in route that he had actually caught the guy on
11 foot. So when we arrived, we knew that we weren't gonna
12 track and we knew that he was down in the woods somewhere
13 so we started walking towards that direction.
- 14 Q And did you walk off the side of the interstate?
- 15 A I did.
- 16 Q Did you encounter any barriers as you walked
17 through those woods?
- 18 A I did.
- 19 Q What kind of barrier was it?
- 20 A Well, as he stated, you come down off the
21 interstate and it goes into the woods and the woods were
22 dense and 20 to 30 yards into the woods there was a
23 barbed-wire fence and a little more woods another 20 to 30
24 yards and then a road.
- 25 Q And did you continue to attempt to follow what you

Adam Clayton - Direct Examination by Mr. Bell

1 believed the foot pursuit path was?

2 A We were able to follow the path.

3 Q Did you find anything along the way that told you
4 you were on the right path?

5 A I did.

6 Q What did you locate?

7 A Trooper Antley's campaign hat.

8 Q Okay. And where did you locate it?

9 A Right along side of the road. Once we came, went
10 into the woods for a little ways, crossed over the fence
11 where we saw where they crossed over the fence, went a
12 little bit further in the woods and came out on Davega; is
13 that right? What's the name of that road there?

14 Q We'll cover that in just a minute.

15 A I'm not sure of the name of it.

16 Q Did -- on finding that hat, what did that indicate
17 to you?

18 A That's where he went; that's the direction that he
19 went in.

20 Q Troopers typically leave their hats behind in your
21 experience?

22 A No, sir.

23 Q Do they like their hats?

24 A Oh, yeah.

25 Q Deputy, if you'd step down for me.

Adam Clayton - Direct Examination by Mr. Bell

1 (The witness stepped down from the witness stand.)

2 BY MR. BELL:

3 Q I'm going to show you State's Number 2, if you
4 would walk to the far side and talk back towards the Court
5 Reporter. If you'd stand back so the jury on the end can
6 see. Would you indicate roughly where you think you
7 located the campaign hat at, to the best of your
8 recollection?

9 A Well, it's the first time I've seen this so let's
10 see, that's the road I was referring to as Davega and where
11 is I-26 in reference to this.

12 Q Can you tell me.

13 A Here; is that it?

14 Q That is an interstate.

15 A Okay. Well that, all right. Well, then it would
16 have to be along here somewhere wherever we came out of the
17 woods. If the traffic stop was here, then we came through
18 the woods that hat was right here somewhere.

19 Q The area that you indicated, what is that right
20 beyond?

21 A This side?

22 Q Correct. What did he have to cross to get to that
23 area?

24 A You have to cross Davega Road and get into more
25 woods.

Adam Clayton - Direct Examination by Mr. Bell

1 Q Just to clarify, what do you have to cross as you
2 leave the interstate and cross through the woods to get to
3 that road; is it that barbed-wire fence?

4 MR. WILLIAMS: Objection to leading, Your Honor.

5 THE COURT: Rephrase the question, Solicitor.

6 THE WITNESS: I understand. When we left the
7 interstate, as I stated, we went down the embankment into
8 the woods; 20 or 30 yards, there's a barbed-wire fence.
9 You could plainly see where they went over it. We cross it
10 there; went a little bit farther through the woods; the
11 barbed-wire fence approximately middle ways there, go a
12 little bit farther, a little bit farther through the woods
13 and came out on this road and his campaign hat was just
14 laying on one side of the edge, the grassy area.

15 BY MR. BELL:

16 Q What side of the barbed-wire fence was it on?

17 A The opposite of the interstate.

18 Q All right. Deputy, if you would take a seat.

19 After locating the hat, what did you do?

20 A We continued in the direction that we were going
21 and again, at -- at this point, I don't recall if it was
22 told to us on the radio exactly where it was because once
23 you hit the road, it's kind of hard to follow. You can't
24 follow signs anymore. So I'm assuming that we just went,
25 followed the road because we're going in the same

Adam Clayton - Direct Examination by Mr. Bell

1 direction. So I picked his hat up and just kept going in
2 the same direction and we ended up running into them around
3 the corner.

4 Q Ultimately, did you locate Corporal Antley?

5 A We did.

6 Q Do you recall where you made contact with him at?

7 A I believe we made contact with him in that
8 cul-de-sac.

9 Q Was he out of the woods at that point?

10 A Yes.

11 Q Do you recall whether he had anybody in custody at
12 that time?

13 A I recall that he had someone in custody.

14 Q Did everything that you witness after arriving on
15 the scene match up with the reason that you're responding
16 to dispatch?

17 A Yes, sir.

18 Q And what did it appear had occurred?

19 A That he had performed a traffic stop and somebody
20 ran from the vehicle that he stopped and he chased them on
21 foot and caught them.

22 Q Did you have any interaction with any of the
23 evidence in this case?

24 A I did not.

25 Q Did you have any other substantive interaction in

Adam Clayton - Cross-Examination by Mr. Williams

1 this case?

2 A No, sir.

3 Q Please answer any questions Mr. Williams may have
4 for you.

5 **CROSS-EXAMINATION**

6 BY MR. WILLIAMS:

7 Q Officer, you weren't sitting in the courtroom
8 during all the testimony from Officer Antley?

9 A I believe I missed the first few minutes, sir.

10 Q But you caught -- you caught most of it?

11 A I believe I did.

12 Q Okay. So you were looking at an exhibit and I know
13 you couldn't exactly identify; you said you hadn't seen it
14 before?

15 A Just today.

16 Q Okay. Is it State's Exhibit Number 2; is that the
17 one you were looking at that you said you hadn't seen
18 before; is that the one?

19 A Yes, sir.

20 Q And am I correct when you said that you said that
21 this was an interstate and you said it was I-26?

22 A I-20, sorry, I'll correct myself. Thanks for
23 pointing that out.

24 Q Well, did you go to I-26 or to I-20 on that
25 particular day?

Adam Clayton - Cross-Examination by Mr. Williams

1 A I-20, you're correct; I was wrong.

2 Q And this was after you were sitting in here
3 listening to his testimony, right?

4 A I just misspoke.

5 Q Let me ask you about your dog that you have. What
6 kind of dog do you have?

7 A He's a German Shephard.

8 Q And what is the vehicles -- not vehicles. Dogs are
9 trained in different manners, right; you have attack dogs,
10 you have protection dogs, you have drug dogs, you have
11 cadaver dogs; what kind of dog is your dog?

12 A He's a full service patrol dog.

13 Q What does that mean?

14 A That means that he can track people, he can find
15 drugs and he can apprehend people.

16 Q Okay. Did you have your dog with you on this
17 particular occasion?

18 A I did.

19 Q And did you have him out of your -- I assume he
20 rides in your car with you, right?

21 A Yes, sir.

22 Q Did you get him out of your car?

23 A No, sir.

24 Q Well, if you had gotten him out of your car with
25 you, it would have assisted you in terms of finding where

Adam Clayton - Cross-Examination by Mr. Williams

1 Officer Antley was, wouldn't it?

2 A Correct.

3 Q And it may have assisted you with finding the
4 location where the alleged drugs were placed, wouldn't it?

5 A He is narcotics trained, yes, sir.

6 Q So if you'd taken your dog, if you'd merely taken
7 your dog out of the car and walked along the route where
8 you suspect that Corporal Antley was, went across that
9 fence that we just talked about and went in the general
10 area where my client supposedly placed some drugs down,
11 your dog could have sniffed the area and made a
12 determination if drugs had ever been located on the ground,
13 couldn't it?

14 A It's a possibility.

15 Q But you didn't do that did you?

16 A I did not.

17 Q Weren't asked to do that?

18 A No, sir.

19 MR. WILLIAMS: That's all the questions I have,
20 Your Honor.

21 THE COURT: Redirect, Solicitor?

22 MR. BELL: Briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 BY MR. BELL:

25 Q Deputy, were you aware of whether or not the

Adam Clayton - Cross-Examination by Mr. Williams

1 narcotics had already been recovered when you arrived on
2 the scene?

3 A No, sir.

4 Q When you got to the cul-de-sac were you aware of
5 whether or not they had been recovered?

6 A No, sir.

7 Q At any point in time, were you ever asked to deploy
8 a K-9 because they couldn't locate narcotics?

9 A No, sir.

10 Q And once again, why were -- why were you initially
11 dispatched to this location?

12 A I was dispatched to that location because we were
13 advised by our dispatch that a trooper was in a foot
14 pursuit from a traffic -- following a traffic stop and that
15 they -- at that time, they weren't sure if he had caught
16 the person, so we needed to come and respond to track the
17 suspect.

18 Q And upon arrival, what did you learn had occurred
19 as far as the foot pursuit?

20 A Either while we were in route or when we were on
21 scene, we learned that he had -- that Trooper Antley had
22 caught him.

23 MR. BELL: No further questions, Your Honor.

24 MR. WILLIAMS: No questions, Your Honor.

25 THE COURT: Thank you. Thank you very much,

Adam Clayton - Cross-Examination by Mr. Williams

1 Deputy.

2 THE WITNESS: Yes, sir.

3 THE COURT: We're going to take our afternoon
4 recess, ladies and gentlemen. We'll take about a 15 minute
5 recess. Please do not discuss the case with anyone during
6 this recess. Thank you very much.

7 (The jury left the courtroom at 3:45 p.m.)

8 THE COURT: Court will be in recess 15 minutes.

9 MR. BELL: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (A brief recess was observed.)

12 THE COURT: Anything from the State before we --
13 please be seated. I'm not speaking loud enough and I
14 apologize. I can't see that far anyway so if you go on and
15 sit down, I won't know the difference.

16 All right. Anything from the State before we bring
17 in our jury, Solicitor?

18 MR BELL: Your Honor, we just ask that Deputy Adam
19 Clayton be released from his subpoena.

20 THE COURT: Any objection?

21 MR. WILLIAMS: No objection.

22 THE COURT: Of course. Thank you. Thank you for
23 being with us, Deputy Clayton.

24 MR. BELL: Nothing further, Your Honor.

25 THE COURT: All right. Anything from the defense,

Phillip Ellis - Direct Examination by Mr. Bell

1 Mr. Williams?

2 MR. WILLIAMS: No, Your Honor.

3 (The jury entered the courtroom at 4 o'clock.)

4 THE COURT: Are y'all keeping the same seats? I
5 tried to figure that out on my own, but --

6 All right. If you'd please continue to give the
7 parties your complete and undivided attention as you have
8 done throughout the trial of this case.

9 Solicitor, you may call your next witness.

10 MR. BELL: Thank you, Your Honor. The State would
11 call Deputy Phillip Ellis to the stand.

12 THE COURT: All right. Deputy Ellis, if you'd come
13 around and be sworn for us, please.

14 PHILLIP ELLIS,

15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat please, sir. Once you're
17 seated, state your full name spelling your last please?

18 A Phillip Ellis. Last name, E-L-L-I-S.

19 **DIRECT EXAMINATION**

20 BY MR. BELL:

21 Q Deputy, who are you employed by?

22 A Lexington County Sheriff's Department.

23 Q How long have you been with them?

24 A A little over two years.

25 Q And in February of 2013, who were you employed by?

Phillip Ellis - Direct Examination by Mr. Bell

1 A South Carolina Department of Public Safety.

2 Q And how long was your stint with Highway Patrol?

3 A Six and a half years.

4 Q Is that the extent of your law enforcement
5 experience or is there anything else?

6 A No, sir, that's it.

7 Q Prior to that, were you in school?

8 A I was.

9 Q What school did you go to?

10 A University of South Carolina.

11 Q What year did you graduate?

12 A December of 2006.

13 Q Now, do you recall responding to assist one of your
14 fellow troopers on February 18th of 2013?

15 A I do, sir.

16 Q Do you recall the nature of the call that you were
17 responding to?

18 A I don't remember exactly if I was monitoring their
19 channel, which I did a lot as a Richland Trooper or if I
20 was dispatched to it, but I knew that he was -- somebody
21 was running from Deputy Antley and I was coming to help
22 him.

23 Q Ultimately, do you recall where you arrived to?

24 A Yes, sir, Davega Drive.

25 Q Were you on the interstate side or the interior

Phillip Ellis - Direct Examination by Mr. Bell

1 side of that road? In other words, were you on the Davega
2 side or the interstate side of that tree line?

3 A I was on the Davega Side.

4 Q Ultimately where did you stop your vehicle?

5 A That little -- if I'm not mistaken, I believe it's
6 that little cul-de-sac is where I pulled in and was able to
7 find him.

8 Q And when you pulled up, where was Trooper Antley
9 located?

10 A In the woods.

11 Q Was he by himself?

12 A No, sir.

13 Q How many individuals were with him?

14 A I believe his Corporal and the young man sitting
15 over there next to his attorney.

16 Q How far into the woods were they?

17 A Probably 20 or 30 yards.

18 Q Did you ultimately make contact with him?

19 A I did, sir.

20 Q And what was your understanding of the situation
21 once you made contact?

22 MR. WILLIAMS: Objection; calling for hearsay, Your
23 Honor.

24 THE COURT: Rephrase the question, Solicitor.

25 ///

Phillip Ellis - Direct Examination by Mr. Bell

1 BY MR. BELL:

2 Q Did you recover -- where or what had occurred when
3 you pulled to the -- the incident location?

4 A After speaking with Corporal Antley, he advised me
5 that he was arresting the gentleman for cocaine or he had
6 cocaine.

7 Q Did you ever see the cocaine?

8 A I believe I did. I believe he showed it to me.

9 Q Did you have any other substantive interaction in
10 this case?

11 A No, sir.

12 Q Do you recall where your dashboard camera would
13 have been facing?

14 A No, sir, I do not. It would have been facing out
15 to the woods, but I don't know if it would have been facing
16 where they were or not. It was in the heat of the moment
17 when I pulled up.

18 Q Did you question the defendant at all?

19 A No.

20 Q Please answer any questions Mr. Williams may have?

21 THE COURT: Thank you, Solicitor.

22 Mr. Williams.

23 MR. WILLIAMS: Thank you, Your Honor.

24 ///

25 ///

Phillip Ellis - Cross-Examination by Mr. Williams

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. WILLIAMS:

Q Officer, you said I believe he showed it to me?

A Yes, sir.

Q Is any significance with the fact that you said, I believe he showed it to me versus he showed it to me?

A I believe he did. I'm not going to say something a hundred percent if I'm not sure.

Q That's all the questions I have.

THE COURT: Redirect?

MR. BELL: No further questions, Your Honor.

THE COURT: Thank you. Thank you very much, Deputy. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Solicitor, you may call your next witness.

MR. BELL: Thank you, Your Honor. We'd also ask to release Deputy Ellis.

MR. WILLIAMS: No objection, Your Honor.

THE COURT: All right. Thank you. You may be released from your subpoena. Thank you for being with us today.

THE WITNESS: Thank you, Your Honor.

MR. BELL: The State would call First Sargent Christopher Shelton to the stand.

Christopher Shelton - Direct Examination by Mr. Bell

1 CHRISTOPHER SHELTON,
2 having been duly sworn, testified as follows:
3 THE CLERK: Once you're seated, state your full
4 name, spelling your last on the record please.

5 THE WITNESS: My name is Christopher Shelton,
6 S-H-E-L-T-O-N.

DIRECT EXAMINATION

7
8 BY MR. BELL:

9 Q Who are you employed by?

10 A The South Carolina Highway Patrol.

11 Q How long have you been with them?

12 A April, 24 years.

13 Q And what is your current role with Highway Patrol?

14 A I am the Post Commander here in Lexington County.

15 Q And in February of 2013, what was your role?

16 A I was a Sargent.

17 Q Tell us about some of your duties as a Sargent back
18 in 2013?

19 A One of them was the evidence custodian.

20 Q And do you recall recovering any of the evidence
21 relative in the case today?

22 A I do.

23 Q Where did you recover that evidence from?

24 A The evidence locker.

25 Q And where is that located?

Christopher Shelton - Direct Examination by Mr. Bell

1 A At the Administrative Office.

2 Q Now any time it comes to the deposit or pickup of
3 evidence in a case, do you maintain a log?

4 A We do.

5 Q Did you bring a copy of that log with you today?

6 A I did.

7 Q Is that log something that you keep in the ordinary
8 course of your business?

9 A Yes, sir.

10 Q Now, do you recall putting your signature on that
11 form?

12 A Yes, sir.

13 Q And do you recall what date that occurred?

14 A It was February the 20th, 2013.

15 Q Now, tell us a little bit about retrieving evidence
16 from that locker; how does that go?

17 A Well the -- the way our locker is, we have a --
18 a -- a room within our office. Our office is over here at
19 111 Maiden Lane, which is actually across the street from
20 here. Inside there is sealed room, but outside of that we
21 have a drop box that has locks on it. The trooper or the
22 officer would in turn -- we have a drop box log that the
23 trooper would come in, he would write the -- the
24 information along with the case, the case number in regards
25 to this would -- would be this case number on this one was

Christopher Shelton - Direct Examination by Mr. Bell

1 13DW031306HP32.

2 He would write that information down on the log
3 book and write that information down on the book and in
4 doing so, he would fill out a Chain of Custody and -- and
5 at the same time he would complete a SLED BEST Evidence Kit
6 and then at the completion of that, he would drop that into
7 the evidence drop box; it's locked; it is secured, prior to
8 me coming in as far as me taking the evidence from that
9 drop box.

10 Q Now, when you pick up the evidence in this
11 particular case, do you recall whether or not it was a BEST
12 Kit?

13 A It was.

14 Q And do you recall whether or not that BEST Kit had
15 signed a control number?

16 A It did.

17 Q And do BEST Kits have -- do any two BEST Kits have
18 the same control number?

19 A They do not.

20 Q Are they unique?

21 A They are unique. As -- as stated on the Chain of
22 Custody that Corporal Antley filled out and I even notated
23 it on the Chain of Custody, the BEST Kit number that's
24 assigned was B, the control number was B227395, which was
25 actually -- I notated it myself on the Chain of Custody.

Christopher Shelton - Direct Examination by Mr. Bell

1 Q When you removed that evidence from the drop box,
2 where do you take it?

3 A I actually took it out. It is sealed so there's no
4 way for me to actually open it up. It's sealed within the,
5 the SLED's evidence bag that SLED has. The only thing I do
6 is I go into our Police Central Login System, I type in the
7 essential information.

8 Once I've done that, it prints out a label just as
9 for tracking purposes. Once I've done that, I again it's
10 for purposes of as far as itemizing it or as far as
11 sticking it on the, the Chain of Custody. Once I've done
12 that, I then transfer it, put it in my car and I drive down
13 to our Central Evidence Facility, which is located on Shop
14 Road.

15 Q Where did you put it in your car?

16 A In my trunk.

17 Q Does anybody else have access to your vehicle?

18 A No, sir.

19 Q Who has keys to the vehicle?

20 A Just me.

21 Q At any point in time, did you leave your vehicle
22 unattended?

23 A No, sir.

24 Q Did you allow anybody else access to your vehicle?

25 A No, sir.

Christopher Shelton - Direct Examination by Mr. Bell

1 Q From the time that you removed that evidence from
2 that drop box until the time that you got over to CEF, I
3 believe that's what you called it, was it in your sole,
4 care, custody, and control?

5 A Yes, sir.

6 Q And was that evidence when you removed it from your
7 trunk in the same condition as when you removed it from the
8 drop box?

9 A It is.

10 Q Ultimately, did you remove that evidence from your
11 trunk and take it inside of the Central Evidence Facility?

12 A I did.

13 Q What did you do with it once you were inside the
14 facility?

15 A At that point in time, I transferred it from my
16 custody to First Sargent Mendel Rivers.

17 Q Did you have any other interaction with the
18 evidence once it was handled -- once it was handed off to
19 Rivers?

20 A No, sir.

21 Q Please answer any questions Mr. Williams may have
22 for you.

23 THE COURT: Mr. Williams.

24 ///

25 ///

Christopher Shelton - Cross-Examination by Mr. Williams

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. WILLIAMS:

Q Chris, you're First Sargent now; is that correct?

A That is correct.

Q And in that you are First Sargent, your responsibilities entail what, the entire Lexington County area troopers in the entire Lexington County area?

A That's correct.

Q Do you have any other counties besides Lexington County?

A I do not.

Q And on February of 2013, you were a Sargent?

A I was a Sargent.

Q Now, in that you were a Sargent, is that like a shift sargent meaning that you -- that you are responsible for certain shifts or were you just one underneath the First Sargent? Am I -- have I been clear? Were you more on the road in charge of the other troopers?

A I was in charge of two rotating shifts at that point in time.

Q Okay. And -- and the reason I'm asking that is that you're the approving officer on the work that was done by -- by Officer Antley in terms of his reports and stuff like that, you're the approving officer that goes through what he does and then type in that you've read it and stuff

Christopher Shelton - Cross-Examination by Mr. Williams

1 like that, right?

2 A Currently or back then?

3 Q Back then in 2013.

4 A Well. Actually on -- on 2/18/13 I had taken on --
5 on a temporary, I guess you can say, an interim role as the
6 Interim Post Commander at that point in time because our
7 current First Sargent at that time had actually transferred
8 to Richland County effective February 2nd of 2013. So --

9 Q So you were not, on that particular day, your job
10 was not that of being supervisor of two rotating shifts; is
11 that right?

12 A I was more or less of the interim role as the Post
13 Commander, I guess you could say.

14 Q Okay. And really the reason I'm asking these
15 questions is that you've referenced an evidence log and
16 you've referenced an evidence location, which is, it's not
17 at the Highway Patrol in terms of Columbia, it's not at the
18 Lexington Sheriff's Department, but the Highway Patrol
19 rents 3 or 4 offices from the Town of Lexington over here
20 on Maiden Lane; is that correct?

21 A We rent one location.

22 Q You just rent one location?

23 A That's correct.

24 Q One, well it's more than one room, isn't it?

25 A One office space.

Christopher Shelton - Cross-Examination by Mr. Williams

1 Q Got you. Got you. But you don't have individuals
2 that man that particular area 24 hours a day, that location
3 on Maiden Lane; you don't have an -- if we walk over there
4 now, well, is it after 5? If we walk over there and knock
5 on the door, will there be an officer normally there?

6 A Probably not.

7 Q Right, there are no hours like at the Sheriff's
8 Department. You go over to the Sheriff's Department, you
9 going to find somebody there, aren't you, hopefully?

10 A I would assume so.

11 Q So -- and that's because you don't have as many
12 troopers as you do people that work at the sheriff's
13 department, right?

14 A Yes.

15 Q And because of the procedure in that you're a
16 highway patrolman, your procedures say that you maintain
17 the evidence that your patrol officers seize, right?

18 A Correct.

19 Q You don't mix and mingle; you don't go to the
20 Sheriff's Department and turn your items over to Lexington
21 County Sheriff's Department, right?

22 A That's correct.

23 Q Okay. So you have an area over on Maiden Lane that
24 you rent from the town, an office space, and there's no
25 individual that Antley would have turned these items over

Christopher Shelton - Cross-Examination by Mr. Williams

1 to. He has -- does it look like the post office box like
2 they have at the sheriff's department, meaning is it like a
3 stand-up deal, where you know, it's got a lock on it and
4 you slide it in and you can't get it out; is it one of
5 those deals?

6 A We do have one, but that's not what it's put in.

7 Q Describe, if you will, what it looks like?

8 A A locker with a lock on it.

9 Q Okay. So --

10 A Like a -- like a locker in a locker room? Like a
11 men's locker room, a ladies locker room.

12 Q Okay.

13 A It's tall.

14 Q Is it to the floor?

15 A It is.

16 Q Okay.

17 A To the wall.

18 Q Is it about the same size as a locker in the men's
19 locker room?

20 A It could be.

21 Q Okay. All right. So if Trooper or Sargent
22 whatever designation; I'm old as you know and I refer to
23 everybody as like Trooper. But if an officer comes in
24 there and takes his evidence, he opens up the locker and he
25 places the item in there and then he locks it back, right?

Christopher Shelton - Cross-Examination by Mr. Williams

1 Is that correct?

2 A That's correct.

3 Q So it's not exactly like at the sheriff's
4 department where if you put an item in there, you can't get
5 that item back. I mean you actually -- when you open up
6 the locker, anybody that's got evidence in there is
7 available for anybody who opens up the locker?

8 A No, sir.

9 Q It's not; tell me how it is?

10 A Well, once it's locked, it's locked.

11 Q Okay.

12 A Whoever the evidence custodian is, is the one
13 that's going to be the one that's opening the locker.

14 Q Okay. Is he the only one with a key?

15 A That is correct.

16 Q And it's on this, on this particular time with you
17 the only one with a key?

18 A Myself and a backup. We have a primary evidence
19 custodian and a backup evidence custodian. I am the
20 primary evidence custodian and I have a backup evidence
21 custodian. We're the only two that have access to the
22 evidence.

23 Q Okay. So in February the 18th of 2013, you had
24 access to it as well as the backup evidence custodian; who
25 would that have been?

Christopher Shelton - Cross-Examination by Mr. Williams

1 A I'm not even sure who the backup evidence custodian
2 would have been. I believe it was -- I want -- for some
3 reason I want to say, I want to think it was, it was
4 Sargent Hughes. For some reason I'm wanting to say Sargent
5 Hughes was still here or right there in transition and I
6 want to think that Sargent Hughes was still here at that
7 point in time.

8 Q Do you change assignments based on rank or do you
9 change assignments based on the months involved or anything
10 like that?

11 A Well, obviously it's dealing with the rank
12 structure at the same time personnel change, but it's
13 dealing with the rank structure for the most part.

14 Q All right. And when we were talking about a BEST
15 Kit, which is basically the method of maintaining control
16 over the items which were seized, so that when it leaves
17 your location and it goes to SLED or wherever it goes to be
18 analyzed, it's consistent so that you know what items are
19 taken to wherever you took it to be analyzed, right; I mean
20 that's the reason why you have a BEST Kit and the BEST
21 numbers and all that so that you keep up with it, right?

22 A I mean, obviously that's something that's -- I
23 think SLED is going to have to answer more than I'm going
24 to have to answer.

25 Q Okay. So you picked it up two days -- you took it

Christopher Shelton - Cross-Examination by Mr. Williams

1 out of the locker two days after the event supposedly
2 happened; is that right?

3 A That's correct.

4 Q All right. And the reason you know that is because
5 you've looked at your sheet, you saw your signature. Did
6 you assign any numbers to it? I think you said you
7 assigned the number to it?

8 A No, we -- the numbers that are assigned to it is,
9 is basically generated off a CAD System that every -- every
10 call that a trooper is -- whether it be a traffic stop or
11 wreck or any -- any kind of call that -- that a trooper
12 deals with is assigned a number. That number stays with
13 that call for its lifetime. That number would be that call
14 number and that's how that number is assigned to that case.

15 In this case it was the 13 is the year and the BW
16 goes to the dispatch center, which is Blythewood and then
17 at the same time the 03106 is actually the call number and
18 the HP is for the Highway Patrol; 32 is the County Code No.
19 That's how that number is generated.

20 Q Great. Tell me what 1306 call number means?

21 A It is the --

22 Q You said it's the call number?

23 A Right. It is the 031306; what is it?

24 Q What is the call number?

25 A That's the number of call for that year.

Christopher Shelton - Cross-Examination by Mr. Williams

1 Q Okay. Okay. So that number represents the
2 dispatch number that was dispatched on that particular
3 year. It was the 1300th call that came over the dispatch?

4 A That's -- that's correct.

5 Q Okay.

6 THE COURT: 1300.

7 MR. WILLIAMS: 13,000. One thousand 3 --

8 THE COURT: 031306?

9 BY MR. WILLIAMS:

10 Q Did you say --

11 THE COURT: 031306?

12 THE WITNESS: The 31306.

13 THE COURT: It's more than 1300.

14 BY MR. WILLIAMS:

15 Q 31,000? Obviously I'm dyslexic. 01306; so it's
16 031, correct?

17 A 031, yes, sir.

18 Q Okay. Now, this information -- obviously it's a
19 sticker or something that you put on the box or bag to keep
20 up with it; is that right?

21 A That's correct.

22 Q Do you recall how large the item was that you took
23 with you?

24 A I don't.

25 Q Well, do you know what is in that BEST Kit at the

Christopher Shelton - Cross-Examination by Mr. Williams

1 time that you take it two days after this event occurs?

2 A I could tell you that it's -- I mean as stated here
3 on the -- on the chain of custody, it's a cellophane
4 package containing a white powder substance; field weight
5 1,000 grams.

6 Q All right. That information which is on that BEST
7 Kit, is the information which has been provided by the
8 officer who makes the seizure; is that correct?

9 A That's correct.

10 Q No one else has been involved in determining that
11 particular identifying information, which is on the bag,
12 right? Or on the BEST Kit?

13 A That is correct.

14 Q On that particular item, does it reference anything
15 about a Dillard's bag?

16 A No, sir.

17 Q Now, you were the supervising officer on this case,
18 so you knew that this item was allegedly found in a
19 Dillard's bag, didn't you?

20 A I'm just going -- well when you say the supervising
21 officer, I was not the supervising officer out on the
22 scene.

23 Q Well, you were the approving officer, correct?
24 Approving officer?

25 A As far as to what though?

Christopher Shelton - Cross-Examination by Mr. Williams

1 Q What -- I don't know. I mean on these forms, on
2 these incident reports that are turned over; if it lists
3 your name as C.M. Shelton --

4 A Just because it's approving officer, doesn't mean
5 I -- I -- as far as reading line by line as far as that
6 goes?

7 Q What does that mean; what are you approving?

8 A Mr. Williams, I look at 3,000 wreck reports a year
9 too.

10 Q Okay. So --

11 A So my name is on 3,000 wreck reports a year at the
12 same time.

13 Q Whether or not you had seen them or not, correct?

14 A That's what I'm saying as far as that goes. What
15 I'm telling you is on the Chain of Custody it says
16 cellophane package containing white powder substance, field
17 weight 1,000 grams. On the other copy, SLED Drug Analysis
18 Request Report, cellophane package white powder substance.
19 Requesting Officer A.L. Antley, signature of Officer A.L.
20 Antley.

21 Q Can I ask you to look at the Supplemental Incident
22 Report and tell me, reading this if this refreshes your
23 memory about anything on this case.

24 A No, sir, it's not going to refresh my memory.

25 Q It's not?

Christopher Shelton - Cross-Examination by Mr. Williams

1 A I mean, it's not. The only thing I had to do with
2 this case is dealing with the Chain of Custody.

3 Q So you don't know if the items which were found and
4 marked by the BEST Kit were found in a Dillard's shopping
5 bag, paper bag, a jacket, a pair of pants or anything,
6 right?

7 A No, sir.

8 Q Okay. Now, your task in terms of receiving these
9 items two days after -- after these items were allegedly
10 found was to take these to Blythewood; is that correct?

11 A No, sir, Shop Road.

12 Q Shop Road?

13 A Central Evidence.

14 Q All right. And what is located at Central
15 Evidence? Is that -- is there a chemical location,
16 analysis place there?

17 A No, sir, it's our Central Evidence Facility. It
18 just houses evidence.

19 Q Okay. Go ahead.

20 A It just houses evidence.

21 Q So you take it from one box to another box?

22 A No, sir, I take it to the --

23 Q One location to another location?

24 A -- First Sargent Mendel Rivers.

25 Q Okay. And you deliver your box or your -- that you

Christopher Shelton - Redirect Examination by Mr. Bell

1 seized out of your BEST Kit to him and then now he's going
2 to take this to some other location; is that right?

3 A I'm not sure exactly what he's going to do with it.

4 Q Okay. But -- but he's not a chemist; he's not
5 going to be the one to testify about the chemical analysis
6 or anything like that?

7 A I'm sure when you ask him that question, I know
8 he's going to tell you the answer.

9 Q Was anything else seized in this case, to your
10 knowledge?

11 A No, not to my knowledge.

12 Q Hence, Dillard's bag, anything?

13 A Not to my knowledge.

14 Q Any tests done? Are you aware of any tests that
15 were done besides the chemical analysis like fingerprints
16 or DNA or anything like that?

17 A Not to my knowledge.

18 MR. WILLIAMS: That's all the questions I have,
19 Your Honor.

20 THE COURT: Redirect, Solicitor?

21 MR. BELL: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BELL:

24 Q First Sargent, is it your job to reinvestigate
25 every incident report that you sign off on?

Christopher Shelton - Redirect Examination by Mr. Bell

1 A No, sir.

2 Q What is the purpose of having a supervising officer
3 sign off on reports?

4 A Simply as signing off on the report.

5 Q Does that mean that did or did not complete the
6 proper paperwork?

7 A No, sir.

8 Q It's just something that you put your signature on?

9 A That's correct.

10 Q Now one more time, would you read the description
11 of the item contained in the BEST Kit that Trooper Antley
12 submitted to that evidence locker?

13 A You talking about from the Chain of Custody?

14 Q That's correct.

15 A Cellophane package containing white powder
16 substance, field weight 1,000 grams.

17 Q And do you recall recovering this evidence from
18 that evidence locker?

19 A Yes, sir.

20 Q Did the item that you recovered from the evidence
21 locker appear to match the description that Trooper Antley
22 left in the report?

23 A It was sealed into evidence as far as SLED BEST
24 Kit.

25 Q Do you recall if the weight matched?

Christopher Shelton - Redirect Examination by Mr. Bell

1 A I can't tell you as far as -- describe it as far as
2 the weight match or anything of that nature on that side.

3 Q Did anything -- when you took custody of that
4 evidence, strike you as unusual or odd?

5 A I don't -- I don't really recall on that side of it
6 as far as that goes.

7 Q Do you recall any red flags when you recovered that
8 evidence?

9 A I can't sit here and -- sit here and say yay nor
10 nay on that.

11 Q If you were to recover evidence, but it didn't
12 match in the report, would you take it?

13 A Well, I wouldn't have a choice but to take it as
14 far as that goes. I mean that's -- it's evidence and that
15 would be my job on that side of it.

16 Q Would you report the fact that you believe that the
17 evidence you recovered doesn't match what was supposed to
18 be submitted?

19 A If it was improprieties in there then I would say I
20 would do my part on the -- on the lines of that, yes.

21 Q Do you recall having to do anything on your part in
22 this case?

23 A No, sir.

24 Q Was there any physical damage to the locker when
25 you showed up to recover the evidence?

Christopher Shelton - Redirect Examination by Mr. Bell

1 A It was not.

2 Q Did there appear to be any forced entry?

3 A No, sir.

4 Q Any idea what Trooper Hughes is up to now?

5 A He works in headquarters.

6 Q Still employed by Highway Patrol?

7 A He is.

8 MR. BELL: No further questions, Your Honor.

9 MR. WILLIAMS: No questions, Your Honor.

10 THE COURT: Thank you. Thank you very much.

11 THE WITNESS: Thank you.

12 THE COURT: You may step down. Any objections to

13 Sargent being excused?

14 MR. WILLIAMS: The defendant has no objection.

15 MR. BELL: No objection from the State, Your Honor.

16 THE COURT: Thank you. Thank you again for being

17 with us.

18 All right. Solicitor, you may call your next

19 witness.

20 MR. BELL: Thank you, Your Honor. The State would

21 call Mendel Rivers, Trooper Mendel Rivers.

22 MENDEL RIVERS,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat, sir. Once you're seated,

25 state your full name, spelling your last for the record

Mendel Rivers - Direct Examination by Mr. Bell

1 please.

2 THE WITNESS: Mendel Rivers, R-I-V-E-R-S.

3 **DIRECT EXAMINATION**

4 BY MR. BELL:

5 Q Sir, who are you employed by?

6 A South Carolina Highway Patrol.

7 Q And what is your current rank over there?

8 A First Sargent.

9 Q And what does your job duty entail?

10 A My job duty entails I'm the supervisor of the
11 Central Evidence Facility that is located at -- on Shop
12 Road where we store and preserve all evidence as collected
13 by the DES Officers.

14 Q And do you recall handling any evidence in the case
15 of State v. Kendrick Mims?

16 A Yes, sir.

17 Q Do you recall when you first came into contact with
18 that evidence?

19 A Yes, sir. According to the Chain of Custody, I
20 first came into contact with the evidence on February the
21 20th of 2013.

22 Q And did you put your signature on that Chain of
23 Custody you're referring to?

24 A I did.

25 Q Does that Chain of Custody that you're referring to

Mendel Rivers - Direct Examination by Mr. Bell

1 indicate a BEST Kit number?

2 A It does; SLED BEST Kit number B227395.

3 Q Does it also reference a case number?

4 A It does; case number 13BW031306HP32.

5 Q Now, who did you receive the evidence from on
6 February 20th?

7 A First Sargent Shelton.

8 Q And do you recall what form it was in when you
9 recovered it from him?

10 A Repeat the question?

11 Q Do you recall what form it was in; what kind of
12 packaging it may have been in?

13 A I don't recall. It states a SLED BEST Kit so
14 that's what I would take according to the Chain of Custody
15 that it was in, which is provided by SLED.

16 Q Now, when you recover a piece of evidence over at
17 CEF, what is it your job to then do with it?

18 A Our job in Central Evidence is to take possession
19 of the -- the evidence that needs to be analyzed and needs
20 to be transported over to SLED for a laboratory -- for the
21 analysis to take place. What we do at that point is
22 initially we look at all the paperwork and make certain
23 that the paperwork is in the proper order as well as the
24 integrity of the package itself. With everything then in
25 place and in order, we will take possession and we will

Mendel Rivers - Direct Examination by Mr. Bell

1 secure it in our -- our drug locker in our facility.

2 Q Now, upon taking custody of the evidence from First
3 Sargent Shelton, had you noticed that the description in
4 the Chain of Custody did not match the item you were
5 receiving?

6 A The description from what I could see, which the
7 BEST Kit itself in the evidence bag that it has has a form
8 that is required to go inside that -- that BEST Kit and
9 that evidence bag that is already sealed. That is the
10 requirement in the instructions from SLED in order for it
11 to be done that way. So the instructions that are provided
12 on the envelope, that's the same state that we would find
13 that evidence in. So sometimes we are able to see and
14 recognize what the -- the item itself is shown and saying
15 compared to what is on the Chain of Custody. What was able
16 to see appeared to match what is described on the Chain of
17 Custody itself.

18 Q Had the item you received not matched the
19 description in the Chain of Custody, would you have notated
20 that somewhere?

21 A I would not because it would be -- because of the
22 fact it's already sealed. We're going by the description
23 that's been provided by the collecting officer as we
24 receive it. If there are some notations that need to be
25 made, then we make that notation. In this case and in this

Mendel Rivers - Direct Examination by Mr. Bell

1 instance, I do not see any additional comments that were
2 put there with my initials. I would say that it was
3 received in the form in which has been described.

4 Q Did you have any reason to believe whatsoever that
5 the evidence you were receiving had or had not been
6 tampered with since it was initially put in the drop box?

7 A No, sir.

8 MR. BELL: Permission to approach the witness, Your
9 Honor?

10 THE COURT: Certainly.

11 BY MR. BELL:

12 Q Could you tell me what case that box I'm handing
13 you belongs to?

14 A According to the labels that are -- are -- that are
15 on this box, it is Case Number 13BW031306HP32. The
16 Investigating Officer, Antley and the name Mims slash
17 Vanderhall, as well as their paperwork that is provided in
18 this sleeve which in this instance on this box this sleeve
19 is going to provide for us the original Chain of Custody
20 that remains with the evidence and tracks all this movement
21 and it does bear the very same information.

22 MR. BELL: For the Court's edification, that is an
23 item that is marked for identification purposes as State's
24 6.

25 ///

Mendel Rivers - Direct Examination by Mr. Bell

1 BY MR. BELL:

2 Q Now, when you received the evidence from First
3 Sargent Shelton, was it in that same container that we're
4 looking at here today?

5 A It was not in this container, no, sir.

6 Q Why is it now in that container?

7 A It is now in container because that -- once the
8 evidence has been analyzed at SLED and is ready to be
9 returned back to our facility, it comes back in a ziplock
10 bag that is already -- well not a ziplock bag, but a
11 heat-sealed evidence bag. Because of the size of the bag,
12 we stored it in this box for storage purposes in order to
13 put it on our shelf.

14 Q Upon receiving the evidence back from SLED, who put
15 the evidence inside of that box?

16 A I'm not exactly sure who put it in this box. The
17 Chain of Custody shows that the evidence was picked up from
18 SLED by one of my Central Evidence Technicians, D.K. Fouty,
19 who returned it to the site.

20 Q In reviewing the packaging you're looking at, would
21 it appear that that individual followed CEF's protocol's?

22 A He did.

23 Q If you would, please; do you have a set of keys on
24 you, Trooper? If you would please at this time open that
25 package; this is State's 6?

Mendel Rivers - Direct Examination by Mr. Bell

1 A They seal them pretty good.

2 THE COURT: You got your knife, Sargent? You want
3 one?

4 THE WITNESS: There we go.

5 BY MR. BELL:

6 Q I know it's going to be difficult to hide it, but
7 if you would withdraw the contents of that box without
8 holding it up for display at this point? Do you have any
9 way of identifying the contents of the box that you
10 removed?

11 A Yes, I do, on the backside of the sealed bag.

12 Q And how are you able to identify the contents?

13 A It matches the description that has been applied
14 along the Chain of Custody. It also has the original SLED
15 evidence bag that is required for it to be sealed in prior
16 to us delivering it to -- to SLED for analysis which bears
17 the name of the sealing officer, which is A. Antley, his
18 signature, the agency, SCHP, date sealed 2/18 of '13.

19 Q Now, that SLED bag you're referring to also is
20 referred to as a BEST Kit?

21 A Yes, it is.

22 Q And does that BEST Kit have the control number
23 printed on it?

24 A Yes, it has Control Number B227395.

25 MR. BELL: Your Honor, please let the record

Mendel Rivers - Direct Examination by Mr. Bell

1 reflect that the contents of State's 6 for ID is now marked
2 as State's 5 for ID.

3 (State's Exhibit Number 5 was marked for
4 Identification.)

5 BY MR. BELL:

6 Q Is there a date written on that BEST Kit as to when
7 it was created.

8 A The date being the date sealed 2/18 of '13.

9 MR. BELL: I beg the Court's indulgence?

10 THE COURT: Yes, sir.

11 BY MR. BELL:

12 Q The item that you're holding in your hand that is
13 marked as State's 5 for identification purposes, is that
14 the item that you received from First Sargent Shelton on
15 February 20th of 2013?

16 A It appears to be, yes, sir.

17 Q And did you ultimately log that evidence into CEF?

18 A Yes, sir, according to the Chain of Custody, I did.

19 Q And to be clear, subsequent to that, did that
20 evidence leave CEF for any reason?

21 A Yes, sir, it left on February 21st of 2013 for the
22 purposes of going to SLED for analysis.

23 Q And did you ultimately receive that item back to
24 CEF?

25 A Yes, sir. Received it back on March 19th of 2013.

Mendel Rivers - Cross-Examination by Mr. Williams

1 Q Do you have any reason to believe, whatsoever, that
2 there was any tampering done with the evidence between the
3 time it was sent to SLED and returned?

4 A No, sir.

5 Q To clarify, who would have transferred that
6 evidence over to SLED?

7 A One of my technicians, D.K. Fouty, transported it
8 and transferred it over on February 21st of 2013.

9 Q And how would it have been received back from SLED?

10 A It's received in the current state that it's in
11 now.

12 Q Who would receive it back from SLED?

13 A On this particular situation, this day it was D.K.
14 Fouty. It just depends on whoever is going over there at
15 that time and they let us know when evidence is ready to be
16 returned. Whoever that technician will be will be the one
17 that actually returned it back to our facility for storage.

18 Q Please answer any questions defense may have for
19 you.

20 THE COURT: Thank you, Solicitor.

21 Mr. Williams.

22 MR. WILLIAMS: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. WILLIAMS:

25 Q First Sargent Rivers, the item that you're looking

Mendel Rivers - Cross-Examination by Mr. Williams

1 at, do you independently recall that item or is your memory
2 based on the numbers that you're seeing on the package?

3 A It's based on the description looking at the
4 particular Chain of Custody, the description and the
5 uniqueness of it. It's not something that we see on a
6 regular basis. So it kind of helps jar my memory.

7 Q And was -- was the item that you received on the
8 20th from First Sargent Shelton, was it in the same package
9 that you're looking at now?

10 A The only difference is, is that it is currently in
11 a large ziplock bag. It was not in that ziplock bag. It
12 was in the SLED analysis evidence bag that is in this
13 ziplock bag. It was in that.

14 Q Okay. So there is, there is a separate SLED bag
15 which the items are normally placed in when it goes to
16 SLED; is that correct?

17 A That's correct, part of the BEST Kit that they
18 provide.

19 Q So the bag that you're actually looking at is a --
20 is a regular ziplock bag like you could find at your house
21 or my house or gallon storage types of things?

22 A Yes, and those bags are sealed and secured within
23 this ziplock bag.

24 Q Okay. So it's not exactly in the same shape as
25 you're looking at it now as when it was taken to SLED?

Mendel Rivers - Cross-Examination by Mr. Williams

1 A Minus the ziplock bag.

2 Q So it was in a -- now the SLED bag that it was
3 taken to SLED in; was that a clear bag or was that a
4 colored bag?

5 A It is a clear bag.

6 Q All right. And is it inside the ziplock bag you
7 possess there?

8 A Yes, sir, it is.

9 Q And when you received this item, did you take it
10 directly from First Sargent Shelton?

11 A Yes, sir.

12 Q So he didn't just drop it in a box there or
13 something like that; he gave it to you, you signed off on
14 the sheet or custodial sheet, if you will, some Chain of
15 Custody form and then you placed it in a secure location
16 and then you directed that a technician from Shop Road take
17 it to SLED; is that right?

18 A Yes, I, First Sargent Shelton came to our facility
19 in my office, that's where possession took place. It was
20 notated on the Chain of Custody that is provided that
21 follows the evidence throughout its movement and at a later
22 date, the evidence was transported over to SLED for
23 analysis by one of my other technicians.

24 Q You perform those services in securing this
25 evidence, testing this substance; all you -- all you did

Mendel Rivers - Cross-Examination by Mr. Williams

1 was transport the items that were secured by some other
2 officer to SLED to be analyzed?

3 A Yes, sir.

4 Q So you don't know what was seized and the condition
5 it was seized, you just know that when you received those
6 items, you took those items to SLED?

7 A I know the condition in which it was received on
8 the part of the description that was provided on the
9 evidence Chain of Custody and that the integrity of the
10 package was secure. It was sealed and I know that it was
11 in that state when I received it and once it left our
12 facility.

13 Q And that information was provided by Officer Antley
14 when he filled out the form and placed the item in the BEST
15 Kit?

16 A Yes, the paperwork that is provided inside the BEST
17 Kit is the paperwork that we -- we look at and compare.

18 Q Which came from Officer Antley?

19 A In this case, I received it from First Sargent
20 Shelton. I know -- I don't know who actually completed it.
21 It would appear that, that Corporal Antley did complete the
22 paperwork.

23 Q And not First Sargent Shelton?

24 A Like I said, I don't know as far as -- what we're
25 required to do on these Chain of Custody's is that the

Mendel Rivers - Cross-Examination by Mr. Williams

1 person that is -- has possession of it, they print their
2 name and their initial beside it so that it does dictate to
3 us who that person was and that it was actually them. Any
4 other notations that may be made anywhere else, if there's
5 not an initial by it, then I have no way of verifying who
6 actually wrote that.

7 Q Is there included in that package and heat-sealed
8 piece of plastic that would have been about the white
9 substance that was in the BEST Kit?

10 A Yes, that is the SLED drug analysis evidence bag
11 that has to be sealed and it does have the initials and
12 signature of Corporal Antley.

13 Q How many years you been an officer with the Highway
14 Patrol?

15 A Twenty-four and a half years.

16 Q About the same as Chris Shelton has?

17 A Yes, sir, I have a little bit more experience than
18 he does.

19 Q I can see that. The -- obviously the items, when
20 they're seized from a suspect, subject, whatever you want
21 to call him, they're in another container of some kind
22 because it wasn't -- it'd just blow away in the dust, blow
23 away in the wind.

24 Does your bag include the bag which the substance
25 was in when it was seized, which it should have been in

Mendel Rivers - Cross-Examination by Mr. Williams

1 from a suspect, subject, whatever you want to call the
2 individual who would -- they would have taken this from?

3 A Are you referring to this bag I currently hold?

4 Q I am.

5 A Okay. I cannot tell. I do not see that from this
6 point, in regards to our department evidence bag.

7 Q If you will look at State's Exhibit No. 3 to make
8 sure my question is getting to you the right way, in case
9 I'm confusing. Obviously, whatever item that was that was
10 seized has some sort of packaging about it to keep it
11 together?

12 A Yes, sir.

13 Q Is there anything in that bag that indicates that
14 that same packaging would have been in the bag that you
15 have?

16 A It is. It is in this bag.

17 Q All right. So whenever it gets to its final
18 location where it's going to be analyzed, all of the items
19 that are reflected in State's Exhibit No. 3 would have been
20 in the bag to be analyzed, tested or what have you?

21 A As far as I know.

22 Q Okay. Now was there a Dillard's bag --

23 THE COURT: You're saying all of the items
24 included?

25 MR. WILLIAMS: No. No. All of the items -- I

Mendel Rivers - Redirect Examination by Mr. Bell

1 understand. That may be misleading.

2 MR. WILLIAMS:

3 Q All of the items dealing with the contraband would
4 have been in the bag; not referring obviously to a taser,
5 because I assume you didn't seize the taser?

6 A No, I did not.

7 Q Okay. And you wouldn't be testing the taser?

8 A No, I don't seize them nor do I test any of those
9 things. We just preserve and we protect.

10 Q Okay. So there was no Dillard's bag or any other
11 items that were seized into evidence as far as you know?

12 A I do not recall.

13 Q Thank you, First Sargent?

14 THE COURT: Redirect?

15 MR. BELL: Very briefly.

16 **REDIRECT EXAMINATION**

17 BY MR. BELL:

18 Q We talked a lot about the Chain of Custody Form.
19 What is the overall purpose of these Chain of Custody
20 forms?

21 A The purpose of the Chain of Custody Form is to --
22 to actually give a description of what person is involved,
23 who the Investigating Officer is, who collected the
24 evidence. It is also notated to where it gives a brief
25 description and pertinent information related to the day

Mendel Rivers - Recross-Examination by Mr. Williams

1 that it took place that it was actually seized or recovered
2 as well as who the suspects may be in this situation. The
3 main purpose of the Chain of Custody is to insure that the
4 evidence, that there's a tracking system that shows every
5 moment that this evidence moved that there's a notation to
6 say who actually moved it or whose possession that it was
7 in to include the date as well as the reason for why it may
8 have been moved all the way to its final destination.

9 So that's the purpose of the Chain of Custody to
10 insure that there's integrity, that the -- we can actually
11 look back and determine who actually had possession of that
12 particular evidence at any given time.

13 Q And from your review of the Chain of Custody so
14 far, does there appear to be any gaps in time that are not
15 accounted for in the chain?

16 A No, sir.

17 MR. BELL: No further questions, Your Honor.

18 THE COURT: Recross?

19 RECROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q And of course, your knowledge with this item deals
22 with the time in which you received it from First Sargent
23 Shelton to the time in which it was taken by a technician
24 in your command to the SLED Chemist to be analyzed?

25 A Yes.

1 MR. WILLIAMS: That's all the questions I have,
2 Your Honor.

3 THE COURT: Thank you. Thank you very much, First
4 Sargent. Thank you. Thank you for being with us today.

5 THE WITNESS: Thank you, Your Honor.

6 MR. BELL: Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 May the First Sargent be excused.

9 MR. WILLIAMS: No objection, Your Honor.

10 MR. BELL: Your Honor, I'm not sure how he wants to
11 handle the evidence, but if he doesn't need to be here for
12 the evidence.

13 THE WITNESS: Someone has signed for the evidence.

14 THE COURT: The evidence now goes to my court
15 reporter and goes to the clerk's office. It's marked for
16 identification.

17 Isn't that correct, Madam Clerk.

18 THE CLERK: Yes, sir, Your Honor, it's in my
19 custody and the reporter's now.

20 THE WITNESS: So I can get you to sign for it.

21 THE COURT: I had him leave it there just to --
22 because you didn't want him to display it. If you want me
23 to send the jury out?

24 MR. BELL: Your Honor, I certainly have no problem
25 with it. I've been told in the past that if it's just ID,

1 we're still supposed to leave it in custody of law
2 enforcement, but if the Clerk is going to make an
3 exception, I'm welcome to that.

4 THE COURT: Well, I think we ought to answer that
5 question.

6 Mr. Foreman, ladies and gentlemen of the jury,
7 please step to your jury room. Do not discuss the case
8 with anyone during this recess.

9 (The jury left the courtroom at 5 o'clock p.m.)

10 THE COURT: What does the Court Reporter's Manual
11 say, Madam Court Reporter?

12 THE COURT REPORTER: I take possession of anything
13 that's been put into ID. It does not go back to a jury.

14 THE COURT: Can you tell me where that's at in
15 y'all's notebook?

16 THE COURT REPORTER: I'll have to find it.

17 Judge, I don't believe it's on the -- in the
18 manual -- It was in an appendix that was sent to the --

19 THE CLERK: Hold on, I'm trying to get it.

20 THE COURT: It's marked State's Exhibit No. 5 for
21 identification.

22 Am I the only one looking this up.

23 MR. BELL: Yes, sir.

24 THE COURT: Well I shouldn't be.

25 THE CLERK: No, sir, Your Honor, I'm looking too.

1 MR. WILLIAMS: Your Honor, on behalf of the
2 defendant, if the only issue that we're concerned about is
3 the fact that the court reporter is maintaining custody
4 overnight until this case is tried tomorrow and the
5 question of it being placed into evidence or not is
6 determined, then on behalf of the defendant, we will waive
7 that exception, Your Honor, if that will solve --

8 THE COURT: No, it won't solve this problem. I get
9 testy as the day goes along. I want the answer to the
10 question. And I want the First Sargent protected and the
11 Clerk and the Court Reporter.

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: I want the answer to the question.
14 I've never been in a trial in how many years, Mr. Williams?

15 MR. WILLIAMS: A long time, Judge.

16 THE COURT: 39 years, 10 years as a Judge, 20 years
17 as a prosecutor, 11 years as a police officer. I've never
18 been in a trial to where something is marked as a Court's
19 Exhibit for identification purposes only and it didn't go
20 to the court reporter and then to the clerk. So if I've
21 been doing it wrong all those years, I just -- I just want
22 the right answer because I'm not -- and I'm not upset with
23 anybody at all, particularly the First Sargent -- with
24 anyone or Mr. Williams or the Solicitor.

25 I don't mean that at all. I just want to make sure

1 that I get the answer so that next when somebody says that
2 I can say hu-uh (negative response), here it is right here.

3 THE COURT REPORTER: He's got it. He's printing it
4 out, Judge.

5 THE COURT: I asked him to print it out.

6 THE CLERK: Did you find it.

7 THE COURT REPORTER: He found it out.

8 THE COURT: I already told him to print it out.

9 Y'all excuse me momentarily.

10 You got another witness?

11 MR. BELL: Your Honor, I'd very much like to get to
12 our SLED witnesses who have been patiently waiting, but I
13 understand we are at the end.

14 THE COURT: No, I'm ready to work.

15 MR. BELL: Yes, sir.

16 THE COURT: I would be delighted to work. I'll ask
17 our jury about it to make sure.

18 (There was a brief recess.)

19 THE COURT: According to what my law clerk has
20 given me a copy of, Court Reporter Manual, State of South
21 Carolina, South Carolina Administration has approved August
22 16th, 2011, indicates this manual is issued pursuant to
23 Order of the Supreme Court to supercede all previously
24 issued manuals. On page 16 of the manual, item C, is
25 entitled Retention and Disposition of Exhibits. All

1 exhibits, whether marked for identification or in evidence
2 shall remain in the custody of the court reporter
3 throughout the proceedings. The proceedings which last
4 more than one day, it is the court reporter's
5 responsibility to see that exhibits marked for
6 identification or evidence are secure at the end of the
7 day. Items such as weapons, drugs, cash, et cetera must be
8 secured with the clerk of court for safekeeping if the
9 court reporter exits the courtroom.

10 So I think if an item is marked in evidence or for
11 identification in a one-day trial, it of course would stay
12 in possession of the court reporter during that period of
13 time, during that day she would exit the courtroom.
14 Weapons, cash, drugs would be in the custody of the clerk
15 for security of the evening hours. I think once it's
16 marked, according to clerk, according to the Court
17 Reporter's Manual, it's in custody of the court reporter to
18 then be forwarded to the clerk when the court reporter
19 exits.

20 Do you agree, Solicitor?

21 MR. BELL: I do. I appreciate the correction and
22 apologize for the delay in court.

23 THE COURT: No, that's quite all right. That's
24 part of court.

25 Good trial lawyers can't tell time. That's what he

1 told me, Mr. Williams.

2 MR. WILLIAMS: Obviously, I agree.

3 THE COURT: Thank you. Thank you very much.

4 Now if the First Sargent needs some type of
5 documentation, the Clerk, Madam Clerk, I would ask you to
6 provide that.

7 THE CLERK: Okay. I've never signed for it before
8 until the trial is over.

9 THE COURT: I don't know that you have to sign for
10 it, but I mean -- I think you could give him a document
11 that indicates State's Exhibit 6 and 5 are property of the
12 Court and marked into evidence at that time.

13 THE CLERK: I can make a copy; have you got your
14 Exhibit Sheet?

15 THE COURT REPORTER: I do.

16 THE CLERK: I can take and make a copy of her
17 Exhibit Sheet and I can sign on that.

18 THE COURT: All right.

19 THE CLERK: Just showing that it's in the custody
20 of the Court, Your Honor.

21 THE COURT: Right. I would just ask you to do
22 that.

23 THE CLERK: Yes, sir.

24 THE COURT: Thank you. Thank you very much.

25 THE COURT REPORTER: I've got it all filled out

1 except for your signature down at the bottom.

2 THE CLERK: I'm going to just make a copy of it to
3 give to him.

4 THE WITNESS: I just need you to sign my Chain of
5 Custody that the receipt is gone from me to you and you
6 keep a copy of this and that may be all that I need.

7 THE COURT REPORTER: Judge, I have seen this happen
8 before and it had gone in as a Court's Exhibit.

9 THE CLERK: That has?

10 THE COURT REPORTER: After you sign it and it goes
11 in as a Court's Exhibit and it stays with the whole record.

12 THE CLERK: Because there is a co-defendant in this
13 case and then I'll be in the Chain of Custody with the
14 drugs for his trial.

15 THE COURT: Depending on -- depending on the
16 verdict --

17 THE CLERK: Yes, sir.

18 THE COURT: -- in this, in this case. Of course,
19 I've never seen where the Clerk becomes and testifies
20 necessarily when an individual is found guilty and the case
21 is reversed on appeal and is tried the second time. I've
22 never -- never seen a case where the Clerk is called in the
23 Chain of Custody, have you Mr. Williams?

24 MR. WILLIAMS: Absolutely not, Your Honor.

25 THE COURT: I've never seen it. I've obviously

1 seen them testify on documentation and certification, but
2 Brenda, you said you've seen it before?

3 THE COURT REPORTER: Yes, sir, we take a copy of
4 the Chain of Custody and mark it as a Court's Exhibit.

5 THE COURT: All right. All right.

6 THE CLERK: Just in my 33 years, I've never done
7 it.

8 THE COURT: Well, Brenda, Madam Clerk, maybe you
9 and Brenda are like First Sargent Rivers and First Sargent
10 Shelton. Maybe Brenda's got a little bit more experience.

11 THE CLERK: Thank you, I'm younger.

12 THE COURT: Oh, this had to do with age?

13 THE COURT REPORTER: Yes, thanks, Judge.

14 THE COURT: I didn't know that.

15 THE COURT REPORTER: Thanks, Judge, I caught that.

16 THE COURT: Thank you.

17 All right. Anything before we bring in our jury,
18 Solicitor?

19 MR. BELL: No, Your Honor.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: Nothing from the defendant, Your
22 Honor.

23 THE COURT: I'm going to make sure the jury doesn't
24 mind working.

25 MR. BELL: Yes, ma'am.

1 THE COURT: Bring us our jury please.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Then you have Ms. Crooks and Ms. --

4 MR. BELL: Lynn Black, Your Honor.

5 THE COURT: -- Ms. Black; is that right.

6 MR. BELL: Yes, Judge.

7 THE COURT: And is Ms. Black the chemist?

8 MR. BELL: Yes, sir.

9 THE COURT: All right. That's your only two
10 witnesses left, Solicitor?

11 MR. BELL: I apologize, Your Honor?

12 THE COURT: Only two witnesses?

13 MR. BELL: Your Honor, we would need to recall
14 Trooper Antley for the --

15 THE COURT: Yes, sir.

16 (The jury entered the courtroom at 5:15 p.m.)

17 THE COURT: All right. Welcome back, Mr. Foreman,
18 ladies and gentlemen of the jury.

19 The State has two additional witnesses present this
20 afternoon that he can call and present. I would like to do
21 that. I would like to press on with those two witnesses,
22 but however, I want to make sure y'all are willing to -- to
23 continue on, press on with me with. Child care issues,
24 anything like that? Is everybody kind of good to go for a
25 while longer?

Adam Antley - Direct Examination by Mr. Bell

1 All right. Hearing no objections, thank you.

2 Thank you very much.

3 Solicitor, you may call your next witness.

4 MR. BELL: Thank you, Your Honor. At this time,
5 the State would recall Trooper Antley to the stand.

6 THE COURT: All right. Come around.

7 THE CLERK: Still under oath, Your Honor?

8 THE COURT: You're still under oath, yes, sir,
9 Corporal.

10 **DIRECT EXAMINATION**

11 BY MR. BELL:

12 Q Trooper, the exhibit marked for ID purposes, it's
13 State's 5. Would you take a look at that item, please. Do
14 you recognize that item?

15 A Yes, sir.

16 Q What is it?

17 A The first thing here is a -- the SLED -- the BEST
18 Envelope Kit or the BEST Kit, the bag that I signed on the
19 date that -- that all this occurred, the 18th of February
20 2013. It's got my printed name and my signature on it, the
21 bag that I sealed.

22 Q And what is the BEST Kit Control Number?

23 A B227395.

24 Q And is that the same BEST Kit that you filled out
25 and secured the cocaine evidence in the case of State v.

Adam Antley - Cross-Examination by Mr. Williams

1 Kendrick Mims?

2 A Yes, sir.

3 Q Now, the contents of that bag, is that exactly how
4 you seized the evidence on the scene?

5 A No, sir, not exactly.

6 Q Do you know why it would appear different in that
7 bag now?

8 A I imagine they could have gone ahead and tested it
9 at SLED.

10 Q And is that the evidence in the BEST Kit that you
11 submitted in the post office box you mentioned earlier in
12 your testimony?

13 A Yes, sir, it looks like the original package, the
14 one I took a picture of next to the taser. It looks like
15 that's also in here, cellophane and black tape. So but
16 it's the same thing that I put into evidence, into that
17 lock box.

18 Q Please answer any questions Mr. Williams may have
19 for you.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: Just one.

22 **CROSS-EXAMINATION**

23 **BY MR. WILLIAMS:**

24 Q Did you not seize the Dillard's bag that supposedly
25 was in?

Adam Antley - Cross-Examination by Mr. Williams

1 A It was, I mean there was a Dillard's bag. It was a
2 Dillard's bag, the Foot Locker bag, this was inside or that
3 little -- the package that's in that picture was inside
4 those two bags.

5 Q Did you not seize those two bags which this item
6 purportedly was in?

7 A I picked them up, I don't know what you mean by
8 seize. I mean I didn't take them home, no, sir.

9 Q Did you take them to the evidence locker?

10 A Well, they went to the office with me with the
11 package of -- here.

12 Q Do you know where they are?

13 A Well, once I took the wrapped package of what I
14 believe to be cocaine out of them that night, the Dillard's
15 bag and the Foot Locker bag were discarded in the trash
16 can. They weren't -- they didn't have any more of what I
17 thought to be drugs inside of them.

18 Q No questions, Your Honor.

19 THE COURT: Redirect?

20 MR. BELL: No, Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Corporal, you may step down.

23 All right. You may call your next witness.

24 MR. BELL: Thank you, Your Honor. The State would
25 call Ms. Patricia Crooks to the stand.

Patricia Crooks - Direct Examination by Mr. Bell

1 PATRICIA CROOKS,
2 having been duly sworn, testified as follows:
3 THE CLERK: Have a seat please, ma'am.
4 THE WITNESS: Thank you.
5 THE CLERK: Once you're seated state your full
6 name, spelling your last please.
7 THE COURT: All right.
8 THE WITNESS: Patricia Crooks. C-R-0-0-K-S.

DIRECT EXAMINATION

9
10 BY MR. BELL:

11 Q Good evening, Ms. Crooks?
12 A Good evening.
13 Q Ms. Crooks, are you still employed by the South
14 Carolina Law Enforcement Division?
15 A No, I am not. I'm retired.
16 Q And how long have you been retired?
17 A About a year and a half.
18 Q Do you miss it?
19 A I miss the people.
20 Q How long were you working with SLED?
21 A About 30 years.
22 Q And what was your role over there at SLED?
23 A The last job was in the evidence room.
24 Q And how long were you working in that position?
25 A Probably about 6 or 7 years.

Patricia Crooks - Direct Examination by Mr. Bell

1 Q Can you tell us a little bit about the purpose of
2 your job working in evidence at SLED?

3 A Yes. SLED maintains a secure evidence room. When
4 evidence is submitted to SLED by a submitting officer, that
5 evidence -- evidence is logged in and the person who logs
6 the evidence in places that evidence in the evidence room.
7 Once Forensic Scientist or Forensic Technician requests
8 that evidence for examination, I pull the evidence,
9 transfer it to myself, and in turn transfer that evidence
10 the person who is picking it up.

11 The evidence is then examined and after
12 examination, that evidence is returned to the evidence
13 room. When submitting agencies come into the evidence room
14 to, into the login section to submit evidence, I always
15 check to see if they had any evidence that was ready to be
16 returned to the agency and if so, at that time, it was
17 returned to the agency.

18 Q Thank you, Ms. Crooks. Now do you keep any sort of
19 log that documents all of this movement that you were just
20 telling us about?

21 A Yes, we have an electronic Chain of Custody that
22 tracks the evidence as soon as it comes into SLED until it
23 is returned to the submitting agency.

24 Q And do you recall handling evidence in the case of
25 the State v. Kendrick Mims?

Patricia Crooks - Direct Examination by Mr. Bell

1 A What I recall is, maybe not this specific evidence
2 because I handled tens of thousands of pieces of evidence.
3 I can identify this evidence by this unique laboratory
4 number that's assigned to the evidence L13 means it came in
5 2013 and it was the 2440th case we had.

6 Q Now regarding the Chain of Custody, Ms. Crooks, did
7 you bring a copy of that Chain of Custody with you today?

8 A Yes, I have it here.

9 Q Is that Chain of Custody something that y'all
10 ordinarily keep in the typical course of your business
11 there at SLED?

12 A Yes.

13 Q Now, in looking at that Chain of Custody, how do
14 you know the Chain of Custody you have in front of you
15 matches that evidence that you were just handling?

16 A Because this Chain of Custody has this same unique
17 laboratory number on it as this evidence does.

18 Q And one more time, would you repeat the lab number
19 present on the Chain of Custody Form?

20 A That's L132240.

21 Q Would you repeat that number?

22 A L1302440.

23 Q To clarify, am I correct in saying it's 130440?

24 A Correct.

25 Q And does that number match the lab number on the

Patricia Crooks - Direct Examination by Mr. Bell

1 evidence you handled?

2 A Yes, it does.

3 Q Now, what is the first date that SLED came into
4 possession of that evidence?

5 A That was on February the 21st of 2013.

6 Q And who initially took possession of it?

7 A It was logged in by a Forensic Technician, Amy
8 Stephens.

9 Q Who is Amy Stephens?

10 A Amy works in the Evidence Control in the login
11 section.

12 Q When you were working with SLED, did you know Ms.
13 Stephens?

14 A Yes.

15 Q Did she have essentially the same duties as
16 yourself at the time?

17 A No, there are two separate parts of Evidence
18 Control. One is the initial area and that's where evidence
19 is actually logged in, assigned a unique bar code. That
20 person, the person who logged this evidence in would have
21 then placed it in a specific place in the Evidence Room.
22 In this case it would have been Evidence Room 150 and we
23 have a special place for -- that all drugs are kept.

24 Q Now, after it was submitted to that intake room you
25 just mentioned, when did you come into contact with it?

Patricia Crooks - Direct Examination by Mr. Bell

1 A I came into contact with it the same day and I took
2 custody of the evidence and transferred it to Forensic
3 Technician, excuse me, Forensic Scientist, Lynn Black.

4 Q Okay. Now, I could ask you this to clarify, what
5 date did that evidence end up at the intake storage room?

6 A February 21st, 2013.

7 Q And what date did you remove it from the intake
8 storage room?

9 A February 21st, 2013.

10 MR. BELL: Permission to approach the witness, Your
11 Honor?

12 THE COURT: Yes, sir.

13 MR. WILLIAMS: Your Honor, I have a matter of law
14 to take up with the Court outside the presence of the jury.

15 THE COURT: All right. Thank you. Mr. Foreman,
16 ladies and gentlemen, you may step to your jury room. Do
17 not discuss the case during this brief recess.

18 (The jury left the courtroom at 5:30 p.m.)

19 THE COURT: All right. Mr. Williams?

20 MR. WILLIAMS: Your Honor, this witness has
21 testified as to when this witness had received the items
22 and their first time that they received the item. I know
23 of no easy way to make this objection, but as I saw the
24 Solicitor going up there to obviously receive the report,
25 we would object to any further questioning with regards to

Patricia Crooks - Direct Examination by Mr. Bell

1 when she received these items or didn't receive these items
2 as well as would you look at that again or would you check
3 this again and items like that, Your Honor.

4 MR. BELL: Your Honor, I think I at least need the
5 ability to approach and see the report she's reading from.
6 The certified Chain of Custody that we were sent relating
7 to this case indicates on our form that the evidence was
8 logged into the Evidence Room on February 21st and Ms.
9 Patricia Crooks took it out of evidence on February 26th.
10 So I would like to see the Chain of Custody she brought
11 with her and see if there is an error or if I'm reading
12 this incorrectly.

13 THE WITNESS: That was my mistake.

14 THE COURT: Her response to me just now was that
15 was my mistake. I think you can correct it. I think it's
16 Rule 607. I say correct it, I mean the credibility is up
17 to the jury anyway and plus 803 -- 803 although that's the
18 Hearsay Rule, 803(5) recorded recollections to refresh her,
19 refresh her memory.

20 So I would allow it.

MOTION FOR MISTRIAL

22 MR. WILLIAMS: Your Honor, I would make for the
23 record, a motion for a mistrial on the basis on what the
24 Solicitor is actually doing amounts to leading in a
25 different form and he's correcting a witness'S testimony

Patricia Crooks - Direct Examination by Mr. Bell

1 where clearly it would have indicated a gap in the Chain of
2 Custody.

3 THE COURT: All right. Mr. Williams, I would -- I
4 would deny the motion for a mistrial on several grounds.
5 State v. Rolands, State v. Raven, Croft, Bilton, there's a
6 manifest necessity that -- and of course a mistrial is
7 within my discretion whether to grant it or not to grant it
8 and I don't see that that testimony is such nor the
9 rehabilitation of the witness as such.

10 Since you can impeach your own witness now under
11 607, it's such that it would be a manifest of necessity for
12 me to grant a mistrial. Further, under Rule 611(b), of
13 course you should not use leading questions, but at the
14 same time, on Direct Examination of a witness except as may
15 be necessary to develop a witness's testimony and, of
16 course, coupling that with 607, I would respectfully deny
17 the motion for a mistrial.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: Anything further, Mr. Williams?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: Solicitor?

22 MR. BELL: No, Your Honor.

23 (The jury entered the courtroom at 5:35 p.m.)

24 THE COURT: All right. Thank you, ladies and
25 gentlemen, for your patience with the Court.

Patricia Crooks - Direct Examination by Mr. Bell

1 Thank you, Mr. Williams.

2 Solicitor, you may continue.

3 MR. BELL: Thank you, Your Honor.

4 BY MR. BELL:

5 Q Now, Ms. Crooks, do you have your Chain of Custody
6 for this case in front of you?

7 A I do.

8 Q Would looking at your Chain of Custody refresh your
9 memory?

10 A Yes, it does.

11 Q Now, once again, what is the date that the evidence
12 was deposited into the Evidence Room with SLED?

13 A February 21st, 2013.

14 Q Now, the next line down on your Chain of Custody
15 Form, what date is that?

16 A February the 26th, 2013.

17 Q And what occurred on that day?

18 A I removed the evidence from the Evidence Room and
19 transferred custody of the evidence to Forensic Scientist,
20 Lynn Black.

21 Q Now did you eventually receive the evidence back
22 from the chemist?

23 A Yes, I did.

24 Q And on what date was that?

25 A On March the 12th of 2013.

Patricia Crooks - Direct Examination by Mr. Bell

1 Q And what did you do with it?

2 A I took custody of that evidence, returned it to a
3 place in the evidence room on the drugs for return shelf
4 and then on March the 19th, I took custody of that evidence
5 again and transferred that to the agency, who picked it up
6 was David Fouty of the South Carolina Highway Patrol.

7 Q Did you have any further contact with the evidence,
8 Ms. Crooks?

9 A No, I did not.

10 Q Ms. Crooks, State's Number 5 for ID that you have
11 in front of you, is that the item that you're referring to
12 that you were transferring along these dates?

13 A Well, this was the number I was transferred, the
14 SLED laboratory number, but it's also marked as State's
15 Exhibit 5.

16 Q Do you normally receive back the BEST Kit in the
17 same condition as you sent it to a chemist?

18 A Well, no, because the chemist would have opened it
19 to examine the evidence.

20 Q Please answer any questions Mr. Williams may have
21 for you.

22 A Thank you.

23 THE COURT: Mr. Williams?

24 MR. WILLIAMS: Thank you, Your Honor.

25 ///

Patricia Crooks - Direct Examination by Mr. Bell

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:3 Q Ms. Crooks, earlier when you gave the date that you
4 received it or that you had your first contact with it on
5 February the 21st of 2013, you were in error on that
6 particular statement, weren't you?

7 A That's correct. I misspoke on that.

8 Q And the first time that you actually had any
9 contact with this, with this item was actually on February
10 26th of 2013?

11 A That's correct.

12 Q And when you testified earlier about the numbers
13 that were on the -- I think you originally said 02240 and
14 then it was corrected with the Solicitor to 02440; is that
15 correct?

16 A That's correct.

17 Q So you were in error on that particular item too?

18 A Correct.

19 Q That's all the questions I have.

20 THE COURT: Thank you.

21 Any -- anything in redirect, Solicitor.

22 MR. BELL: No, Your Honor.

23 THE COURT: Thank you very much. Thank you. Thank
24 you for being with us.

25 THE WITNESS: Thank you.

1 THE COURT: It's nice to see you.

2 THE WITNESS: Good to see you too.

3 THE COURT: Any objections to Ms. Crooks being
4 excused, Solicitor?

5 MR. BELL: No, Your Honor.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: You may be excused.

9 THE WITNESS: Okay.

10 THE COURT: How long will your next witness be,
11 Solicitor? Do you have an idea?

12 MR. BELL: Your Honor, State's side should be at
13 very most 20 minutes, Your Honor.

14 MR. WILLIAMS: It's probably going to take me 10 or
15 15, Your Honor.

16 THE COURT: All right. Perhaps now would be a good
17 time to take our evening recess, ladies and gentlemen. I
18 remind you during this recess, do not discuss this case
19 with anyone, fellow jurors, family, friends or anyone else.
20 Do not read, watch or listen to any news accounts about the
21 case. Do not do any research, independent research or any
22 research on the internet as to that information that I have
23 told you is prohibited. And I will question you about that
24 in the morning as far as that's concerned.

25 With that being said, I'm going to release you for

1 the remainder of the evening and ask you to please be back
2 promptly at 9:30 in the morning; promptly at 9:30 in the
3 morning. Thank y'all. Thank y'all very much. I hope you
4 have a pleasant evening.

5 (The jury left the courtroom at 5:44 p.m.)

6 THE COURT: All right. Mr. Williams, although the
7 State has not yet rested, do you object if I advise Mr.
8 Mims of his rights this evening so he can think about it
9 over the evening hours?

10 MR. WILLIAMS: I do not object to the Court's
11 instruction on that, Your Honor.

12 **QUESTIONING OF THE DEFENDANT BY THE COURT**

13 THE COURT: All right. If you would please come
14 around for me, Mr. Mims?

15 KENDRICK MIMS,

16 having been duly sworn, testified as follows:

17 THE COURT: Now, tell me, tell me your full name.

18 THE DEFENDANT: Kendrick Lamont Mims, sir.

19 THE COURT: And how old are you, Mr. Mims?

20 THE DEFENDANT: 34.

21 THE COURT: How much education do you have?

22 THE DEFENDANT: 11th grade.

23 THE COURT: Today are you under the influence of
24 any medication, drugs or alcohol?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you have anything that -- today do
2 you have any medical, emotional, or mental problem that
3 keeps you from understanding what you're doing today?

4 THE DEFENDANT: No, sir.

5 THE COURT: I need to go over some things with you.
6 I do this with everyone who is on trial and I need your
7 responses to be under oath. That's why I had our clerk to
8 place you under oath.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Probably tomorrow morning we will reach
11 the stage of the trial where the State rests and at that
12 time, your side, the defense, will have the opportunity to
13 present evidence for the jury to consider. Do you
14 understand that?

15 THE DEFENDANT: No, sir.

16 MR. WILLIAMS: Tomorrow will be the stage where you
17 can testify if you wish to testify. Do you understand what
18 he's telling you.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In that regard, once the State rests,
21 you may call witnesses to testify on your behalf and if you
22 choose to testify yourself, you may do so; do you
23 understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: No one can force you to testify. You

1 have an absolute right to remain silent and if you choose
2 not to testify, I will tell the jury that they cannot hold
3 your silence against you in any way. I will tell them that
4 they are not to even discuss that in the jury room; do you
5 understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If your side offers no evidence at all,
8 in other words, if neither you nor anyone on your behalf
9 testifies or offers any exhibits, then your attorney will
10 get to make the last argument to the jury. Otherwise, the
11 prosecutor gets to make the last argument; do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Williams, Solicitor, does Mr. Mims
15 have a record that would subject him to impeachment under
16 Rule 609?

17 MR. BELL: Your Honor, he does not have a record
18 that we could use for impeachment.

19 THE COURT: All right. Therefore, I would not have
20 to be concerned with that.

21 Again, Mr. Mims, the decision about whether you
22 testify or not is your decision to make and yours alone.

23 THE DEFENDANT: Uh-huh (affirmative response).

24 THE COURT: I expect that you have conferred with
25 your attorney and perhaps others whose opinions you value

1 on very important decisions, but the decision about whether
2 you testify or not is your call to make, your decision; do
3 you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anyone exercised any undue
6 influence over you to choose to testify or not testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you have questions you would like to
9 ask me about your right to testify or not testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you understand your right to testify
12 or not testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'm going to give you over
15 the evening hours and perhaps you can confer with your
16 attorney again, if you need to, and I will revisit that
17 question with you in the morning.

18 Thank you very much, Mr. Mims.

19 THE DEFENDANT: Yes, sir.

20 MR. WILLIAMS: Your Honor, on behalf of my client,
21 he did wish for me to incur -- to inquire as to whether or
22 not he would be in custody Lexington County Sheriff's
23 Department tonight or whether or not he would be traveling
24 home.

25 THE COURT: He -- he'll be in custody of the

1 Lexington County Detention Center.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: Thank you. Thank you very much.

4 All right. Anything further, Solicitor.

5 MR. BELL: No, Your Honor. As a quick scheduling
6 issue, and I know I was way off the mark earlier. We have
7 two witnesses remaining, one of which is the chemist. Your
8 Honor knows that's fairly straightforward. We do intend to
9 call an expert with regards to the street valuation of a
10 narcotic and that witness should also take no longer than I
11 would assume 20 or 25 minutes.

12 THE COURT: All right. We'll, we'll certainly
13 press on.

14 Anything from the defense, Mr. Williams.

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: Thank you. Thank you very much. Court
17 will be in recess until 9:30 in the morning.

18 MR. BELL: Thank you, Judge.

19 (Court was in recess for the day.)

20 **THURSDAY, FEBRUARY 11, 2016**

21 THE COURT: Mr. Williams, as we wait on this juror,
22 do you mind if I, do you object if I continue on and ask
23 Mr. Mims concerning the right to testify or not testify?

24 MR. WILLIAMS: No, Your Honor, I don't.

25 ///

1 **QUESTIONING OF THE DEFENDANT BY THE COURT**

2 THE COURT: All right. Will you come around to the
3 podium for me please, Mr. Mims?

4 MR. BELL: Your Honor, may I have an opportunity to
5 clarify something prior to him being questioned on that
6 issue.

7 THE COURT: Yes, sir.

8 MR. BELL: Your Honor did ask the State whether or
9 not he has a record we would seek to impeach him with.
10 Your Honor, we stand by what we said yesterday that under
11 609(a)(2) we do not have any crimes of dishonesty or false
12 statement that we would seek to use. However, of course if
13 he takes the stand and does open the door, he does have an
14 extensive record with relating to all sorts of different
15 things from resisting arrest to other drug offenses and
16 felony evasion of police that assuming we would overcome
17 403, we would seek to use against him.

18 THE COURT: All right. Well if that occurs, just
19 stand up and say you have a matter of law.

20 MR. BELL: Yes, sir.

21 THE COURT: Rather than just asking your questions.

22 MR. BELL: Yes, sir.

23 THE COURT: Okay. All right. Come around, Mr.
24 Mims.

25 Madam Clerk, would you place Mr. Mims under oath

1 for me please.

2 THE CLERK: Yes, sir, Your Honor.

3 KENDRICK LAMONT MIMS,

4 having been duly sworn, testified as follows:

5 THE COURT: As you recall, Mr. Mims, I discussed
6 with you yesterday your right to testify or not to testify;
7 do you recall that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I gave you over the evening hours
10 to have an opportunity if you wanted to take it, to discuss
11 that further with your attorney; do you recall?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you had enough time to talk with
14 your attorney about the issue?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you had enough time to make up
17 your mind?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need any more time to make up
20 your mind?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you made your decision as to
23 whether or not you're going to testify or not testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And is that your decision?

1 THE DEFENDANT: My decision, sir.

2 THE COURT: Made of your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And what is your decision.

5 THE DEFENDANT: I'm not going to testify, sir.

6 THE COURT: You're not going to testify. All

7 right. Thank you. Thank you very much.

8 THE DEFENDANT: Thank you.

9 THE COURT: Mr. Williams, if you don't mind -- and
10 you don't have to answer this question, quite frankly, if
11 you don't mind informing the Court, however, whether you're
12 going to offer any evidence or testimony?

13 MR. WILLIAMS: I don't believe so, Your Honor.

14 THE COURT: All right. Thank you. Thank you very
15 much.

16 And do y'all have any requests to charge
17 specifically.

18 **JURY CHARGE CONFERENCE**

19 MR. BELL: Your Honor, the State would request a
20 charge on joint possession due to the fact that there were
21 two individuals in the vehicle. Of course, under
22 constructive possession law, Mr. Vanderhall supposedly
23 could have possession of those narcotics while they were in
24 the vehicle just as well as Mr. Mims. We don't want the
25 jury to believe that it simply has to belong to one or the

1 other. Under the law, two people can both have possession.

2 As well, we would ask for a charge of flight, Your
3 Honor. There is a strong nexus in this case between the
4 fact that he had an item that was concealed in his pants
5 that he did not want to reveal to the trooper. He then
6 took off running. Eventually that item was identified, or
7 at least the State's allegation it was identified as
8 cocaine. We do believe that is a very strong nexus between
9 the criminal activity and the reason he did try to evade
10 the police.

11 Your Honor, we would ask as well that possession
12 and PWID not be charged as lesser-included due to the fact
13 that this is a possession case, Your Honor, based strictly
14 on weight and there's been no inference of necessarily at
15 this point, sale or anything of that nature or distribution
16 at this particular incident which would fall outside of
17 possession and possession with intent to distribute
18 statute.

19 THE COURT: As to flight, I thought about that last
20 night and I couldn't quite remember the name of the case.
21 I didn't take the opportunity to look it up. It's a case
22 out of Charleston County. It's either breaking and
23 entering a motor vehicle or possession of motor vehicle
24 where flight evidence was offered and my understanding of
25 the law then and now is flight is evidence of guilt and it

1 is not such that a flight charge would be given to the
2 jury.

3 In other words, you can argue, you can argue that
4 it's consciousness of guilt, but it is not to be charged to
5 the jury. I don't know if that language is also in Baker
6 or Pagan because I don't think there was actually a charge
7 in Baker or Pagan about flight. I can -- I can try to look
8 that up. That case has got a little age on it.

9 MR. WILLIAMS: State v. Grant, Your Honor, is the
10 old case on that.

11 THE COURT: Is that the --

12 MR. WILLIAMS: It's a 1980 case.

13 THE COURT: Is that the case out of Charleston
14 County?

15 MR. WILLIAMS: I don't know that it was out of
16 Charleston County, it was one that Justice Anderson has
17 remarked on.

18 THE COURT: Justice Anderson.

19 MR. WILLIAMS: Justice Anderson.

20 THE COURT: Ralph King?

21 MR. WILLIAMS: Ralph King, Your Honor. What he has
22 indicated in his instruction -- in his charge book, about
23 never -- essentially never instructing flight.

24 THE COURT: See, that's what I -- that's what I
25 thought the law was that you do not instruct flight. Let

1 me see if Grant is our case.

2 MR. WILLIAMS: I have the site on that, Your Honor,
3 but I don't know if there is a more --

4 THE COURT: I have the site, I didn't realize it.
5 Did you look at that, Solicitor.

6 MR. BELL: Your Honor, I looked at the Pagan case
7 and the Pagan case, as far as I recall, I certainly will
8 rely on the Court, but as far as I recall, it is not
9 mentioned --

10 THE COURT: I don't think it is because I don't
11 think it was charged and I don't think it was charged. I
12 don't think they even asked to charge it in Pagan or -- I
13 just looked at flight cases, but the one where it was
14 asked, I think the law is that you do not charge it. Let
15 me see if that's what Grant says.

16 And you were saying that Judge Anderson indicates
17 it's not to be charged?

18 MR. WILLIAMS: That's correct, Your Honor.

19 THE COURT: I think that's the status of the law.
20 Just give me a minute.

21 Yes, State v. Grant, defendant was convicted in
22 General Sessions Court, Charleston County and the Honorable
23 Clyde, Late Honorable, well he's still Honorable, but he's
24 Late, Clyde A. Eltzroth, Jr. in Rogers held that charge on
25 law of flight given in Rogers trial was in error and

1 necessitated a new trial. It is not appropriate for the
2 judge to charge on flight.

3 You can, of course, shepardize it for me,
4 Solicitor, and see if that law has been changed, but that's
5 always been my understanding of the law.

6 MR. BELL: Yes, sir.

7 THE COURT: And I thought it was a stolen car. Let
8 me see. I don't know if any of y'all would remember Judge
9 Eltzroth?

10 MR. BELL: No, Your Honor.

11 MR. WILLIAMS: I think I do, Your Honor.

12 THE COURT: It is not by way of criticism of Judge
13 Eltzroth, but do you remember the cartoon character Foghorn
14 Leghorn? His voice was very similar to that and he always
15 had a dog on the bench with him. And he fired a law clerk
16 one time and somebody said, Well, why did you fire your law
17 clerk and he said well, he didn't treat my dog right and
18 you can always replace your law clerk, but it's hard to get
19 a good dog. He was quite a character; quite a character.

20 MR. BELL: Your Honor, the State would certainly
21 concede the point on the charge so long as the Court so
22 long as, of course, we have the ability during closing to
23 argue flight.

24 THE COURT: All right. Now joint possession, I'm
25 having my law clerk -- he didn't print it out, but he is,

1 actual and constructive, I thought that charge was part
2 of --

3 MR. WILLIAMS: Of the statute.

4 THE COURT: -- of that general charge, but I'll
5 look at it.

6 MR. WILLIAMS: It does, Your Honor, include mere
7 presence in that the drugs were not found on his person.

8 THE COURT: Let me look at that charge. Because
9 it's different from hand of one hand of all.

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: Do you agree?

12 MR. BELL: Yes, Your Honor.

13 THE COURT: Okay. Let me look at that actual and
14 joint charge.

15 We have a jury?

16 THE BAILIFF: Yes, sir.

17 MR. WILLIAMS: Your Honor, there is one actually
18 matter, a different matter aside from the charges that I
19 would -- that we would request the Court to entertain. We
20 have -- I think we have two witnesses left, the chemist and
21 then we have Investigator Gunter or Detective Gunter, whose
22 testimony as I understand it, is simply to talk about the
23 value, the monetary value of the drugs that were found.

24 Your Honor, we would object to his testimony in
25 that it's not relevant to the facts in this particular

1 case, meaning he wasn't present at the scene, the issue of
2 how it was, whether or not it was baggies or something like
3 that. He was going to testify that this is how it's,
4 that's how you could tell that he is a distributor of the
5 drugs or something like that. In essence, the only thing
6 that he could testify to would be the street value of the
7 drugs involved, which we don't see it being -- it's more
8 prejudicial than probative. It's not probative of any
9 issue that needs to be decided by the jury in this case.

10 THE COURT: All right. Solicitor?

11 MR. BELL: Thank you, Your Honor. I believe that
12 the primary case that's sort of a rule and progeny on this
13 right now is still State v. Jamison, Your Honor, located at
14 372 S.C. of 649, that's a Court of Appeals case of 2007 and
15 it's rather on point, Your Honor. But the entire reason
16 that they allowed wholesale and retail valuation in that
17 case was because they found that the valuation of a
18 narcotic such as cocaine is outside of the typical
19 knowledge of an average juror and that in this particular
20 case, it would go towards evidence that this -- nobody
21 would leave this amount of this value of cocaine in the
22 middle of the woods, which makes it much more likely that
23 Mr. Mims is the one who had it on him and dropped it in the
24 woods as opposed to him just happening -- just happening to
25 stumble across approximately \$30,000 worth of cocaine in

1 the woods.

2 So we do believe that that sort of testimony would
3 be proper and relevant in this case, Your Honor.

4 THE COURT: Do you have a copy of Jamison?

5 MR. BELL: I do not have a copy but I'll be happy
6 to get one for you though.

7 THE COURT: I'll get it. 372 S.C. --

8 MR. BELL: 649, Your Honor.

9 THE COURT: 649. All right. Mr. Williams, you
10 familiar with that one?

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: All right. I will allow that very
13 limited in scope as within the State v. Jamison decision
14 for whatever weight and value it may have. I think it
15 would be circumstantial evidence in that -- at the location
16 where Mr. Mims surrendered so to speak. It was found that
17 large amount of cocaine or I don't know if it's large or
18 small, but I know that 997 grams of cocaine and that it
19 would be unlikely, that a third party had hid that amount
20 of cocaine in the woods with whatever value it has and
21 there be a dot to connect that he surrendered -- he
22 happened to surrender in inches of feet where that amount
23 of cocaine was located. You are certainly protected on the
24 record, Mr. Williams.

25 MR. WILLIAMS: Thank you, Your Honor.

1 MR. BELL: Thank you, Judge.

2 THE COURT: My possession charge, actual and
3 constructive reads as follows: To prove possession, the
4 State must prove beyond a reasonable doubt that the
5 defendant had both the power and the intent to control the
6 disposition or use of the cocaine. Possession may be
7 either actual or constructive. Actual possession means
8 that the cocaine was in the actual physical custody of the
9 defendant. Constructive possession means that the
10 defendant had dominion and control or the right to exercise
11 dominion or control over either the cocaine itself or the
12 property on which the cocaine was found. Mere presence at
13 the scene where the drugs were found is not enough to prove
14 possession.

15 The defendant's knowledge and possession may be
16 inferred when a substance is found on the property under
17 the defendant's control; however, this inference is simply
18 an evidentiary fact to be taken into consideration.

19 Actually that part is really not relevant as far as
20 dominion and control over the property and the final
21 sentence of this charge is two or more persons may have
22 joint possession of a drug. So both mere presence and
23 joint possession are in the definition of constructive
24 possession.

25 All right. Anything further before we bring in our

1 jury.

2 MR. BELL: No, Your Honor.

3 MR. WILLIAMS: Nothing from the defendant, Your
4 Honor.

5 (The jury entered the courtroom at 9:51 a.m.)

6 THE COURT: All right. Good morning, ladies and
7 gentlemen of the jury panel. Welcome back. Y'all have
8 changed places; several of you have. I hope y'all had a
9 pleasant evening.

10 We're continuing the trial of the case by the
11 presentation of evidence and testimony by the State in its
12 case in chief. If you would please continue to give the
13 parties your complete and undivided attention as you have
14 done throughout the trial of this case.

15 Solicitor, you may call your next witness.

16 MR. BELL: Thank you, Your Honor. The State would
17 call Ms. Black to the stand.

18 THE COURT: All right. If you'd come around and
19 join us please, Ms. Black?

20 LYNN BLACK,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat, please, ma'am. Once
23 you're seated, state your full name, spelling your last on
24 the record, please.

25 THE WITNESS: My name is Lynn Black. B-L-A-C-K.

Lynn Black - Direct Examination by Mr. Bell

DIRECT EXAMINATION

1

2 BY MR. BELL:

3 Q Good morning, Ms. Black.

4 A Good morning.

5 Q Ms. Black, who are you employed by?

6 A I work for the South Carolina Law Enforcement
7 Division commonly known as SLED in the laboratory, the
8 Forensic Services Laboratory.

9 Q And how long have you been with SLED?

10 A I've been with SLED approximately 7 and a half
11 years.12 Q Ms. Black, would you mind telling us a little bit
13 about your background?14 A Certainly. I have a Bachelor of Science Degree in
15 Chemistry from Kentucky, Wesleyan College; a Certificate of
16 Medical Technology from the University of Louisville and a
17 Master of Science Degree in Forensic Science from Marshall
18 University.19 Prior to my job at SLED, I worked as a Drug
20 Analyst at the Georgia Bureau of Investigation in Atlanta,
21 Georgia for about 8 years.22 Q And can you tell us a little bit -- a little bit
23 more about your specific duties with SLED?24 A My duties at SLED include -- well I'm a Drug
25 Analyst at SLED, but my duties include receiving and

Lynn Black - Direct Examination by Mr. Bell

1 analyzing substances brought in by law enforcement
2 personnel; and I determine whether they are controlled
3 substances or not.

4 Q And have you ever testified in court before
5 relevant to that information?

6 A Yes, sir, I have.

7 Q How many times?

8 A Approximately 122.

9 Q And as part of your job, have you ever had to deal
10 with or test cocaine specifically?

11 A Yes, sir.

12 Q Have you ever testified in court related to cocaine
13 specifically?

14 A Yes, I have.

15 MR. BELL: Your Honor, at this time, we would move
16 to qualify Ms. Black as an expert in Forensic Chemistry?

17 MR. WILLIAMS: No objection, Your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 normally a person cannot give opinion testimony. Normally
21 when a person testifies, they must testify as to either
22 what they saw, heard or sensed by smell or something of
23 that nature. However, there is an exception when someone
24 is qualified because of education, experience or training
25 in a particular area or theory. They are permitted to give

Lynn Black - Direct Examination by Mr. Bell

1 their opinion in certain areas if the Court qualifies them
2 that way.

3 This witness, Agent Lynn Black, will be testifying,
4 will be qualified in the area of Forensic Chemistry and
5 Drug Analysis to give opinion testimony in those areas. It
6 does not mean that you must accept the opinion or the basis
7 of the opinion, but it is evidence for you, the jury, to
8 use in any way you see fit.

9 Thank you, Solicitor, you may continue.

10 MR. BELL: Thank you, Your Honor. Permission to
11 approach the witness?

12 THE COURT: Yes, sir.

13 BY MR. BELL:

14 Q Ms. Black, I'm handing you what is marked as
15 State's 5 for ID purposes. Will you take a look at that
16 item for us?

17 Ms. Black, did you ever receive that item for
18 testing?

19 A Yes, I did.

20 Q And how do you know that you received that item for
21 testing?

22 A I know that by the unique Crime Lab case number
23 that is on this yellow barcode sticker. Also the inner bag
24 has that same laboratory case number. Also my initials and
25 the date are on this and on the inner bags also are the

Lynn Black - Direct Examination by Mr. Bell

1 same laboratory case number and my initials as well.

2 Q Now, would you please read that laboratory case
3 number into the record for us?

4 A That would be L13-02440.

5 Q And what was the date that you initialed?

6 A The date that I initialed is February 28th, 2013.

7 Q Now, when you receive evidence, where do you
8 actually receive it from?

9 A I receive it down in the login section at the
10 laboratory.

11 Q And can you tell us about how you go about
12 retrieving evidence from that location?

13 A When I am ready to receive evidence, I usually go
14 down and pick up a batch of evidence. I usually don't pick
15 up one at a time unless it's a specific reason to do that.
16 I -- I'm pretty sure in this case, that it was a batch that
17 I picked up and I usually will go down to login and I will
18 have e-mailed them ahead of time and tell them that I'd be
19 down to pick up evidence and I give them a list of what
20 cases I'm going to pick up and they'll tell me when I can
21 come down and have time to retrieve the evidence.

22 So I go downstairs and at that point in time, Ms.
23 Pat Crooks was the lady who would retrieve evidence for not
24 just me, but all the Forensic Scientists in the laboratory,
25 and so she would have the box of evidence for me and she

Lynn Black - Direct Examination by Mr. Bell

1 would scan all the evidence to herself, each piece of
2 evidence will have this barcode or a similar barcode on it
3 and usually they're, like I said, there's numerous pieces
4 of evidence and she'll scan them to herself and then she'll
5 scan it to me.

6 Everybody in the lab has a barcode sticker that
7 they keep with them that is -- will show that the evidence
8 will be in their possession when it is scanned to them. So
9 that's what I did. I went downstairs, got all the evidence
10 scanned to me and then I took it upstairs and we have a
11 drug vault in my lab, in my section and that's where I
12 would keep my evidence until I'm ready to test it.

13 Q How much distance is between the area you pick up
14 the drugs and the area you take them for testing?

15 A The login section is on the first floor and I'm on
16 the fourth floor.

17 Q And do you ever leave the building with the drugs?

18 A No, sir.

19 Q Were they ever out of your custody during that
20 transfer?

21 A No, sir.

22 Q Can you tell us a little bit about what a BEST Kit
23 is?

24 A A BEST Kit, BEST is actually an acronym for Best
25 Evidence Sample Testing. It's a kit that SLED came up with

Lynn Black - Direct Examination by Mr. Bell

1 to kind of help law enforcement to submit drug evidence.
2 It's specifically for drug evidence and what it is, is a
3 manila envelope, a large manila envelope a little bigger
4 than, you know, an 8 x 11 sheet of paper and inside is a
5 tamper evident plastic bag and then paperwork that the
6 submitting agencies will fill out and submit to SLED.

7 They have to request -- there are several copies of
8 the request and one of them goes inside the BEST Kit and
9 then they -- they keep one and they submit one when they
10 bring it in so that the login person can use that
11 information to enter into our computer system, but that's
12 generally how the evidence will come in. They will
13 actually put the tamper-evident bag, which is what this bag
14 is. You can see it here; it's got green on the top; that's
15 the tamper-evident bag that's in the BEST Kit and they will
16 put their evidence in there and then it's got a sticky, the
17 green part is a sticky glue, if you will, that they will
18 tear off a piece of plastic that's stuck to it and then
19 they'll fold it over and that sticks to the bag and keeps
20 the bag closed until -- it's tamper evident, so if you mess
21 with that seal, it's very evident, as the name implies,
22 that somebody has messed with it. And that's when I'm
23 opening up my evidence, I look at that to make sure that
24 that seal is intact.

25 But the BEST Kit, like I said, they'll put that bag

Lynn Black - Direct Examination by Mr. Bell

1 back into that manila envelope and that's what I get as
2 part of my evidence. I'll get a whole box full of just
3 manila envelopes that have -- the login person will put the
4 unique Crime Lab sticker on there, Once they enter all the
5 information into the computer system, they will generate
6 this sticker and place it on that manila envelope.

7 The BEST Kit also has that B number that's been
8 thrown around, the BEST Kit number and that is on the
9 envelope and it's also on the tamper-evident bag and that's
10 a way to track that evidence as well.

11 Q Ms. Black, do any two BEST Kits have the same
12 control number?

13 A No, they do not. They are unique.

14 Q And what is the purpose of that?

15 A To be able to track the evidence. We -- we don't
16 use that barcode in our computer system, but it's a way for
17 the submitting agency to keep track of it and also if
18 they're calling us to ask about a particular case,
19 sometimes they might have the same case number in various
20 cases, but they can tell us the BEST Kit number and we can
21 look at that in our computers, in the documents that we've
22 scanned into the computer to know which case they're
23 specifically talking about.

24 Q And the control number on this specific BEST Kit,
25 what is that?

Lynn Black - Direct Examination by Mr. Bell

1 A It is B227395.

2 Q And upon receiving that BEST Kit, did you examine
3 it to see if there was any evidence of tampering?

4 A Yes, I did.

5 Q Did there appear to be any?

6 A There did not appear to be any.

7 Q Now, once you get it back to your lab, can you talk
8 to us a little bit about how you go about testing
9 substances such as this?

10 A Yes, in general, I will take the evidence, I'll
11 take a batch of evidence, because I just don't do one test
12 at a time. I'll put a whole batch on, but I will open only
13 one piece of evidence at a time. So I will take the
14 evidence, take the bag out of the manila envelope and
15 inspect it to make sure that the seal is intact, that the
16 bag doesn't have any holes in it and I will write on the
17 bag actually that particular thing, I'll say seal intact
18 and I have that on here and the date that I opened the
19 evidence with my initials.

20 I also handwrite the case number, the laboratory
21 case number on the bag and then I will open it. Like as I
22 said, this is the part where the officer sealed it where
23 the green is. I will open it at the other end using
24 scissors and I will take out whatever the substance,
25 packaging, whatever it is and either open it, in this

Lynn Black - Direct Examination by Mr. Bell

1 particular case I believe I had to cut it open; yes, I had
2 to cut it open and get the substance out because when I
3 would weigh it, I'm going to take a net weight; I don't
4 want the packaging on there. I want just the substance and
5 I had to place it -- had to place it in another bag because
6 it would not fit back into the packaging.

7 It was a compressed powder substance. It was kind
8 of hard, but when it came out of the bag, it just kind of
9 fell apart. There's still some chunks in there, but it's
10 mostly powder. But that's what I will -- I will weigh it
11 and then take a small part of it for my analysis.

12 Q Talk a little more about weighing it; how precise
13 are your measurements related to weight?

14 A Well, within any measurement, there's always, you
15 know, some uncertainty, but our policies and procedures
16 are, that are in place, you know, are to assure that the
17 measurement that we take is as accurate as possible. With
18 this particular one, I had to take it to a balance that had
19 a very large weighing pan because it was such a large
20 thing. My normal balance is small because mostly we deal
21 with small amounts of substances, but this one was so
22 large, I had to take it to a bigger balance and like I
23 said, it kind of fell apart when I cut it open.

24 So what I did was, the bag that it's in, which is a
25 ziplock bag, I placed that onto the balance and tear it,

Lynn Black - Direct Examination by Mr. Bell

1 which means I'm zeroing out that weight, whatever the
2 weight is of the bag by itself, I zeroed that out and then
3 I placed the substance in the bag and placed the bag with
4 the substance in it on the balance and then I get a net
5 weight of that substance and that's what I recorded.

6 Our balances are checked once a year by the company
7 that makes them, Mettler-Toledo. We also weekly check the
8 calibration of the balance. We use specific stainless
9 steel weights that are calibrated and have certificates of
10 calibration as well and so I do that before, especially
11 this balance, which is not used that often. It was either
12 done that day or the day before, you know, the balance
13 calibration was checked.

14 Q Once you're done weighing it, what do you do next?

15 A Then I'll take a small piece for my analysis. I
16 had a small piece for my color or chemical test and I took
17 a small part of it for my instrumental test.

18 Q And ultimately did you run the substance contained
19 in that BEST Kit through tests, different tests?

20 A Yes, sir.

21 Q And as part of your practice, do you generate a
22 report that reflects the findings of your tests?

23 A Yes, sir, I do.

24 Q And is that a report that you keep in the ordinary
25 course of your business?

Lynn Black - Direct Examination by Mr. Bell

1 A Yes.

2 Q Is it a report that you would typically rely on for
3 your testimony in Court?

4 A Yes, sir.

5 Q And did you bring a copy of that report with you
6 today?

7 A Yes, I did.

8 MR. BELL: Permission to approach the witness, Your
9 Honor?

10 THE COURT: Yes, sir.

11 BY MR. BELL:

12 Q May I see that report, Ms. Black?

13 (State's Exhibit Number 7 was marked for
14 Identification.)

15 BY MR. BELL:

16 Q Ms. Black, I'm handing you back what is now marked
17 for ID as State's 7; what is that?

18 A It's a copy of my report in this particular case.

19 Q And how do you know that report belongs to this
20 particular case?

21 A I know this because of the SLED Lab Number. It
22 also has the agency case number and also two defendant's
23 names and also I know it's my case because my signature is
24 at the bottom.

25 Q And anywhere on there, does it reflect the control

Lynn Black - Direct Examination by Mr. Bell

1 number belonging to the BEST Kit that you tested?

2 A Yes, it also has that.

3 Q Would you please read that BEST Kit number?

4 A B227395.

5 Q Now, would you start to tell us a little bit about
6 what your testing found?

7 A Would you like me to go into the testing itself
8 or --

9 MR. WILLIAMS: Your Honor, I would object to
10 testimony about what she found until after the item has
11 been placed into evidence and that is -- it would appear to
12 be proper.

13 THE COURT: All right. Solicitor?

14 MR. BELL: Your Honor, at this time, the State
15 would move State's 5 into evidence?

16 MR. WILLIAMS: And, Your Honor, we would object in
17 that the Chain of Custody has not been proven to its
18 fullest extent, Your Honor.

19 THE COURT: All right. I would allow State's 5
20 into evidence. I think there has been, based on State v --
21 not the here Williams, but State v Williams. Thank you.

22 You may proceed, Solicitor.

23 MR. BELL: Thank you, Your Honor.

24 BY MR. BELL:

25 Q Ms. Black, if you would continue telling us about

Lynn Black - Direct Examination by Mr. Bell

1 your findings in the case related to that BEST Kit?

2 A I found that it was positive for cocaine.

3 Q And did you come back with a weight for that
4 cocaine?

5 A Yes, I did.

6 Q And what was the weight?

7 A It was 997 grams.

8 Q And you said a little bit earlier that there is
9 always some uncertainty with weighing an item. Is it
10 possible that there could be 497 grams worth of
11 uncertainty?

12 A I would not think that would be possible, no, sir.

13 Q Would you consider that likely or unlikely?

14 A Unlikely.

15 Q Now, do you ever reflect on your reports what
16 schedule a substance is classified as?

17 A Yes, sir.

18 Q And how do you --

19 A In the normal course of business, we do, yes.

20 Q And how do you denote that?

21 A It's by C -- this one particular is C-II, which
22 means it's a controlled substance in a II.

23 Q And would that match for cocaine?

24 A Yes, sir, it does.

25 Q Now, once you're done weighing and testing the

Lynn Black - Direct Examination by Mr. Bell

1 substance, what do you do with it then?

2 A Then I would package it back up. In this case, I
3 would -- or any case I put the laboratory case number, I
4 write it back on the bag that I put it in. I also put the
5 packaging in a separate bag as well. And it also has the
6 laboratory case number and my initials on it and then I
7 place all of it back into this bag, which originally was
8 just a ziplock bag, but I also heat sealed it up here.

9 We took it and we have smaller bags that we put our
10 evidence in, but this was so large I had to go for a much
11 bigger bag, but I heat seal it, initial it, and date it,
12 and then I also generate the barcode sticker like this and
13 place that on there so it can be scanned back to login.

14 Q And are you aware of whether or not that BEST Kit
15 was ultimately returned to its proper agency?

16 A Yes, according to our Chain of Custody, it was
17 returned to the submitting agency.

18 MR. BELL: Your Honor, at this time, the State
19 would seek to move State's 6 into evidence.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: I assume that that's just the box.

22 MR. BELL: Correct.

23 MR. WILLIAMS: We don't have any objection to that,
24 Your Honor.

25 THE COURT: State's 6 is in evidence without

Lynn Black - Cross-Examination by Mr. Williams

1 objection.

2 (State's Exhibit Number 6 was entered into
3 evidence.)

4 BY MR. BELL:

5 Q Ms. Black, if you would please answer any questions
6 Mr. Williams has for you?

7 A Yes, sir.

8 THE COURT: Thank you, Solicitor.

9 Mr. Williams.

10 MR. WILLIAMS: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. WILLIAMS:

13 Q Agent Black, the -- your involvement with this case
14 as the chemist obviously only began once this item was, you
15 went down to retrieve this item from whoever your
16 technician person was that had received it, right?

17 A That's correct.

18 Q So you have -- you have no obviously, absolutely no
19 contact with this case with regards to where this item was
20 found, who found this item, the condition of this item when
21 it was found, anything like that; is that correct?

22 A That's correct.

23 Q Now, the item --

24 MR. WILLIAMS: If I can approach, Your Honor?

25 ///

Lynn Black - Cross-Examination by Mr. Williams

1 BY MR. WILLIAMS:

2 Q This item right here, there appears to be a bag.

3 Is this -- this bag right here, is this a bag that I'm

4 hold -- that I have my fingers on right here?

5 A Yes, sir, that's the packaging that it came in.

6 Q When you say that's the packaging that it came in,

7 is that a law enforcement type of package that it came in?

8 A No, sir, that was just some cellophane, layers of
9 cellophane. It also had, according to my notes, there was
10 some, some sort of oily substance in between the layers.
11 It was really messy when I cut open into it, but that was
12 the packaging when I cut into it, that's where the cocaine
13 powder was in and then I placed that packaging in a ziplock
14 bag.

15 Q If I asked you to look at Defense Exhibit Number
16 3 -- and I'm sorry, State's Exhibit Number 3, does that
17 appear to be the same packaging that -- what you're
18 referencing right here?

19 A Yes, sir, it appears to be the same.

20 Q And am I to understand that when you received this
21 item, it was in this packaging that I have my hand on right
22 here?

23 A Correct.

24 Q And that package was inside another package?

25 A That package was inside the BEST Kit, the

Lynn Black - Cross-Examination by Mr. Williams

1 tamper-evident BEST Kit bag.

2 Q All right. So this package was inside a law
3 enforcement type of package?

4 A Correct.

5 Q And this package itself is what appears to be the
6 packaging on the photograph that you have there?

7 A That's correct.

8 Q And when you examined -- I assume you took it out
9 of the BEST Kit, took this package out of the BEST Kit?

10 A Yes, sir.

11 Q And did you examine this package before you did
12 anything with it?

13 A I'm sure I looked at it. I didn't, you know, I
14 don't examine it to make sure there's no holes or anything
15 because a lot of times law enforcement will cut into it to
16 do a field test. I don't recall if that was on there. I'd
17 have to -- you'd have to look at the packaging to see.

18 Q So you don't know whether or not it had a hole in
19 it or not?

20 A I do not.

21 Q Did you do some sort of analysis on what the oily,
22 you said that there were several layers; is that correct?

23 A Correct; several layers of cellophane.

24 Q All right. Now, when you use the word cellophane,
25 is that like different from Saran Wrap?

Lynn Black - Cross-Examination by Mr. Williams

1 A I would equate it to Saran Wrap, yes, sir.

2 Q So what we're referring to is that there was a
3 bunch of Saran Wrap wrapped around a bunch of items and had
4 some oily layers between the Saran Wrap?

5 A Yes, sir, I did not count the layers of cellophane
6 or the layers of oil, I just know when I cut into it, it
7 was quite messy and, you know, I just wanted to get the
8 powder of it as soon as I could.

9 Q So the powder was touching the oily layers?

10 A No, sir, the inner layer was just cellophane or
11 Saran Wrap, but --

12 Q Okay.

13 A -- in between, you know, when I cut through it,
14 some of the oily stuff oozed out of the other layers.

15 Q Is there a reason why in State's Exhibit Number 3,
16 the package appears to be dark and clearly this looks like
17 salt or baking soda when you look at it here it looks
18 white?

19 A I'm not sure -- sure I understand you. Can I see
20 the picture and --

21 Q Sure. Sure?

22 A What are you referring to in that package?

23 Q I'm referring to the substance that looks like it's
24 white that looks like salt or looks like baking soda or it
25 could be cocaine. It's -- clearly it's white?

Lynn Black - Cross-Examination by Mr. Williams

1 A Correct. Well, when you wrap something up in a lot
2 of cellophane, it's going to look -- it may not look the
3 same color in all that cellophane and the oil or whatever
4 else was between the layers can cause the color to be
5 distorted, not to mention there's quite a glare in the
6 picture too.

7 Q So is it your testimony that had we had the item
8 which was taken in State's Exhibit No. 3, if we had that
9 item in the same condition that it was in on that
10 particular date and brought that item back here, it would
11 be dark looking, black looking?

12 A It's possible.

13 Q Possible, well, it would have to look the same if
14 it's the same item, right?

15 A I'm not sure I understand your comparison there.

16 Q Well, I'm comparing the two --

17 A Would you rephrase it.

18 Q Okay. I'm comparing the two items that are
19 supposed to be the same.

20 A Correct.

21 Q One's black and one's white?

22 A Correct. I don't -- I don't consider that black,
23 but that that's -- everybody has a different opinion of
24 colors.

25 Q All right. Tell me what color you think that is?

Lynn Black - Cross-Examination by Mr. Williams

1 A It looks silvery and shiny.

2 Q Okay.

3 A I mean the taser looks black, yes, but I mean, if
4 you look at the -- the bag that it came in, in there, I
5 mean it has the powder all over it now, which makes it look
6 a different color as well, today.

7 Q So when you took this item, you first weighed it,
8 right?

9 A Correct.

10 Q What was the weight on it?

11 A 997 grams.

12 Q And how heavy is that in -- in, I know that is a
13 measurement of heavy, but pretend that I'm -- went to
14 Clemson. So tell me how -- so kind of tell me how much
15 that would kind of like weigh in terms of pounds or
16 something like that?

17 A It's a little over 2 pounds.

18 Q Okay. And what was the measurement, if you had to
19 measure the width and the length of the package that you
20 had?

21 A That, I do not know. I did not take measurements
22 of it. You can look at the packaging in there and kind of
23 estimate how big it was.

24 Q So you would say that the item that State's Exhibit
25 Number 5 is an accurate representation of how it appeared

Lynn Black - Cross-Examination by Mr. Williams

1 when you received it on that day in terms of volume and in
2 terms of length and width?

3 A The packaging, yes.

4 Q The packaging --

5 A But the substance has broken apart and is -- is --
6 looks much bigger because it was compressed when it was in
7 the package.

8 Q Uh-huh (affirmative response).

9 A It was compressed, but as soon as I opened it up
10 and had to get it out of that package, it just kind of fell
11 apart and a lot of it's still in chunks, but some of it is
12 in powder, so it looks a lot larger than it was.

13 Q Well, it at least should have been the size of this
14 particular package, which is reflected on State's Exhibit
15 Number 13 -- State's Exhibit Number 3, right?

16 A Yes, sir.

17 Q Now, did you do any -- any type of fingerprint
18 analysis or DNA analysis on any of the items which you
19 received?

20 A No, sir, there was no request for those.

21 Q And did you find a Dillard's shopping bag or a Foot
22 Locker bag in any of the items that you received?

23 A No, sir, those were not submitted to me.

24 Q No receipt from Dillard's or anything like that?

25 A No, sir.

Lynn Black - Cross-Examination by Mr. Williams

1 Q When you do your testing, I think you said you
2 actually tested twice, right?

3 A I do. I did two types of tests.

4 Q And the two types of tests are what?

5 A One of them was a chemical also known as a color
6 test and the other was an instrumental test.

7 Q All right. And you say chemical test, a color
8 test, is it kind of like a Data Master, meaning are you
9 testing and using some sort of light to see where it shows
10 up on the spectrum when you test your -- test your chemical
11 because it's going to look a certain color when you check
12 it out?

13 A No, sir, it's actually taking a small portion of
14 the -- of the substance and exposing it to specific
15 chemicals and I'm looking for a color change and, you know,
16 no instruments. All it is is a plate with wells in it and
17 you place a little small part of the sample in there and
18 then I have specific chemicals that I put on that and I'm
19 looking for specific color changes. It gives an indication
20 of what the substance could be or what class of substance
21 it could be. It does not give me, you know, specific
22 substances that it could be.

23 Q So you're saying when you test it for the color, it
24 doesn't tell you what substance it is?

25 A No, it just gives a class of substances or just an

Lynn Black - Cross-Examination by Mr. Williams

1 indication of what it could be. It just gives me a
2 direction to go, where to go with my next test.

3 Q All right. So how much of this substance that you
4 have here did you use in that test?

5 A A very small amount, probably maybe the size of
6 pencil eraser, probably less than that really.

7 Q Less than a pencil eraser?

8 A Yes, sir.

9 Q And how many times do you -- do you do that
10 particular test?

11 A In this particular case, I only did it, did one
12 test, the color test.

13 Q Okay. So you took an amount a little bit smaller
14 than a pencil eraser out of here?

15 A Correct.

16 Q And you tested it for color?

17 A Yes, sir.

18 Q What color was it?

19 A The particular chemicals that I used, it turned it
20 blue. And then I used a second chemical and then it
21 stayed. And that's an indication of what we call the
22 caines family, like cocaine is part of that, benzocaine,
23 lidocaine, procaine, a lot of those substances will turn
24 the chemicals that I use blue.

25 So that's why it's just an indication what that

Lynn Black - Cross-Examination by Mr. Williams

1 substance could be. That's why we go to the second test,
2 which is an instrumental test, which is the confirmatory
3 test.

4 Q Okay. So that, but that is the amount that you
5 actually tested, a little bit smaller than a pencil eraser?

6 A Correct, it's called a representative sample.

7 Q And where in this large bag did you, did you pull
8 that representative sample from?

9 A Probably since it had fallen apart, probably the
10 middle of it is my general way that I do things.

11 Q Do you remember?

12 A I just know that when I have a large substance like
13 that, I will dig down in the middle of it and take a
14 portion of it. This one just fell apart so that it was,
15 you know, I didn't have to dig; it was already in pieces
16 and powder. So --

17 Q What other substances did you find in your
18 sampling?

19 A Aside from cocaine?

20 Q Yes.

21 A The only thing I can tell you is that my
22 instrumental test showed that there was another cutting
23 agent in it.

24 Q All right. So there's a second test that you run,
25 which is -- how do you do that test?

Lynn Black - Cross-Examination by Mr. Williams

1 A The instrumental test that I used was Gas
2 Chromatography-Mass Spectrometry, which is a mouthful and
3 we call it GCMS for short. It's basically sending the
4 sample through two chemical analyzers and the first
5 chemical analyzer is called the Gas Chromatograph. And in
6 this instrument, the sample is broken down into its
7 components and then each of those components goes directly
8 into the second chemical analyzer, which is called a Mass
9 Spectrometer.

10 And in this instrument, the sample is broken down
11 into the smaller fragments and they're called ions. I also
12 run known drug standards through these two instruments.
13 And what you get at the end kind of looks like a bar graph.
14 And so what I do is compare the bar graph of the unknown
15 sample to those of the known drug standards and based on
16 both tests, the color or chemical test and the GCMS I can
17 make a positive identification of a substance.

18 Q So when you -- did you do that on the same sample
19 that you referenced that had already turned blue or did you
20 take another sample?

21 A It was another sample, yeah. Once you do the color
22 test, you can't use it again.

23 Q You can't use it again?

24 A Correct.

25 Q So the other sample that you used was about the

Lynn Black - Cross-Examination by Mr. Williams

1 same size of a pencil eraser?

2 A Approximately, yes.

3 Q And what was the other substance that you
4 determined was in that sample besides cocaine?

5 A I cannot say for certain because I did not have a
6 standard for this since it is not a controlled substance,
7 but it is possibly a substance called levamisole, which is
8 a common cutting agent used with cocaine or crack. It's --
9 it's a de-worming agent that veterinarians use and -- but
10 it's, like I said, it's commonly used as a cutting agent in
11 cocaine and crack; that's normally where I see it.

12 Q And what amount of the sample did it, was the
13 cutting, that was the cutting agent in your sample?

14 A That I cannot say for certain. Since I did not do
15 a quantitation on the cocaine and I wouldn't do one of the
16 cutting agent either. I cannot tell you how much of that
17 cutting agent was in there, but it's typical for cocaine
18 sellers to do that. They want to cut their cocaine or
19 whatever they're selling with something else to make it go
20 further so they can get more money.

21 Q So it would be impossible -- or at least -- at
22 least -- well it wouldn't be impossible now, but at least
23 you wouldn't know how much of a cutting agent was in here
24 and how much might have been cocaine or not cocaine?

25 A No, sir.

1 MR. WILLIAMS: That's all the questions I have,
2 Your Honor.

3 THE COURT: Redirect, Solicitor?

4 MR. BELL: Your Honor, the State would move for
5 State's 7 to be entered into evidence; that would be the
6 drug report, Your Honor?

7 MR. WILLIAMS: Only subject to my prior objections
8 dealing with the chain, Your Honor.

9 THE COURT: All right. State's 7 is in evidence
10 subject to objection.

11 (State's Exhibit Number 7 was entered into
12 evidence.)

13 THE COURT: Anything further, Solicitor?

14 MR. BELL: No further questions, Your Honor.

15 THE COURT: Thank you. Thank you very much, Agent
16 Black, for being with us. You may step down.

17 Any objections to the witness being excused?

18 MR. BELL: None from the State.

19 MR. WILLIAMS: None from the defendant, Your Honor.

20 THE COURT: Thank you. You may be excused.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Solicitor, you may call
23 your next witness.

24 MR. BELL: Thank you, Your Honor. At this time the
25 State would call Lieutenant Samuel Gunter to the stand.

Samuel B. Gunter - Direct Examination by Mr. Bell

1 SAMUEL B. GUNTER,
2 having been duly sworn, testified as follows:
3 THE CLERK: Have a seat. Once you're seated, state
4 your full name, spelling your last please, for the record.
5 THE WITNESS: Samuel B. Gunter. G-U-N-T-E-R.
6 **DIRECT EXAMINATION**
7 BY MR. BELL:
8 Q Lieutenant, who are you employed by?
9 A Lexington County Sheriff's Office.
10 Q And what is your current role with Lexington County
11 Sheriff's Office?
12 A I'm Lieutenant over the Lexington County
13 Multi-Agency Narcotics Enforcement Team.
14 Q And what is that typically called in short?
15 A The MET Team.
16 Q And what is your role specifically with the MET
17 Team?
18 A I supervise the agents.
19 Q And how many agents do you supervise?
20 A Eleven.
21 Q And what are the primary duties of the MET Team?
22 A Narcotics enforcement.
23 Q Can you give us a few examples of what kind of
24 operations you run?
25 A We use informants, we buy drugs, we execute search

Samuel B. Gunter - Direct Examination by Mr. Bell

1 warrants based off of our probable cause buys.

2 Q Now, can we back up and let you tell us a little
3 bit about your education?

4 A I attended Northern Illinois University. I've been
5 with the Sheriff's Office for since 1991 so 24 and a half
6 years. During that time, I obviously, my first position
7 was road deputy. From there I went into narcotics,
8 highway/roadway interdiction. From there I went and did
9 parcel interdiction, then I worked as a regular, normal
10 agent.

11 At that point, after about 10 years, I left
12 narcotics and went major crimes; from there, property
13 crimes where I was an investigator, then a Community
14 Services Sargent and now Lieutenant over narcotics.

15 Q So could you estimate how long you've worked
16 specifically in narcotics?

17 A Approximately 13 years.

18 Q And how many of those 13 years was spent on the
19 field side of working narcotics?

20 A Roughly 10 years.

21 Q And the other 3 years consists of what?

22 A Supervising the narcotics unit.

23 Q Now, in your 10 years of working the field side of
24 things, were you involved in any cocaine related cases?

25 A Yes, sir.

Samuel B. Gunter - Direct Examination by Mr. Bell

1 Q And were you related in what are called controlled
2 buys; were you involved in controlled buy cases?

3 A Yes, sir.

4 Q And could you tell us a little bit about what the
5 purpose of a controlled buy is?

6 A The purpose ultimately to have the suspect
7 distribute a quantity of -- in this case, what we're
8 talking about cocaine -- to you, whether it be directly to
9 an undercover agent or to a confidential informant that's
10 working for law enforcement.

11 Q And through those kind of cases are you authorized
12 to allow a certain amount of currency to be exchanged in
13 order to complete --

14 A Yes, sir.

15 Q -- the cocaine purchase?

16 A Yes, sir. We buy it.

17 Q So are you familiar with what the typical pricing
18 of cocaine is when it's located on the street?

19 A Yes, sir.

20 Q And could you estimate roughly how many controlled
21 buy cases you've worked in your 13 years narcotics career?

22 A That I specifically worked and was in charge of in
23 13 years, it's got to be close to a thousand.

24 Q And in the most recent 3 years of your narcotics
25 experience, have you been able to keep up with what cocaine

Samuel B. Gunter - Direct Examination by Mr. Bell

1 prices are typically on the street?

2 A I do, because one of my duties is that I oversee
3 the funds that we distribute. When an agent comes to me
4 and tells me how -- what he's looking to go buy, I have to
5 know approximately how much money he's going to need to
6 make that buy or we may be getting screwed. We may be
7 getting, kind of getting ripped off and we have to be
8 cognizant of that fact.

9 Q Okay. And aside from the valuation, are you
10 familiar with the typical presentation of cocaine as it is
11 found on the street?

12 A Yes, sir.

13 Q Could you estimate how many just general cocaine
14 cases you've worked?

15 A That -- I've been involved in some shape, form or
16 manner, whether it be an assisting agent or supervising
17 agent, it's going to be into the thousands.

18 Q Lieutenant, have you ever testified in court before
19 relevant to your experience as a narcotics officer?

20 A I have.

21 Q What courts have you testified in?

22 A Magistrate's Court, General Sessions Court in both
23 the State and Federal Court.

24 Q Have you -- excuse me, have you testified more than
25 once?

Samuel B. Gunter - Voir Dire Examination by Mr. Williams

1 A Yes, sir.

2 Q Have you ever not been qualified as an expert?

3 A No, sir.

4 MR. BELL: Your Honor, at this time, the State
5 would seek to qualify Lieutenant Samuel Gunter as an expert
6 in cocaine and its valuation?

7 THE COURT: All right. Mr. Williams?

8 MR. WILLIAMS: May I question the witness, Your
9 Honor?

10 THE COURT: Yes, sir, you may.

11 **VOIR DIRE EXAMINATION**

12 BY MR. WILLIAMS:

13 Q Detective Gunter, you testified that you worked as
14 a narcotics officer on many occasions and that you have
15 testified in court on many occasions. In those times that
16 you have testified in court, on how many occasions have you
17 testified as an expert dealing with valuation of cocaine?

18 A Cocaine specifically, I don't recall any
19 specifically as to cocaine valuation. I have done -- I've
20 done different drug valuations, but specifically cocaine, I
21 can't recall any.

22 MR. WILLIAMS: Your Honor, that's all the questions
23 I have?

24 THE COURT: All right. Anything further, Mr.
25 Williams?

Samuel B. Gunter - Voir Dire Examination by Mr. Williams

1 MR. WILLIAMS: We would object to his
2 qualifications as being an expert.

3 THE COURT: All right. Thank you. Thank you very
4 much.

5 I think that would go to the weight and not the
6 admissibility of the witness's testimony.

7 Again, ladies and gentlemen, you heard me say this
8 previously, normally a person cannot give opinion
9 testimony. Normally when a person testifies as to what
10 they either saw, heard, or sensed by smell, or something of
11 that nature. However, there is an exception, when someone
12 is qualified because of education, experience, or training
13 in a particular field, profession, or science, they're
14 permitted to give their opinion in certain areas if the
15 Court qualifies them that way.

16 This witness, Lieutenant Gunter, will be qualified
17 to testify in the area of cocaine and cocaine's evaluation
18 to give opinion testimony in that area and the basis of
19 that opinion. It does not mean you must accept the
20 opinion, but it is evidence for you, the jury, to see in
21 any way, to use in any way you see fit. Thank you.

22 Solicitor, you may continue.

23 Thank you, Mr. Williams.

24 MR. BELL: Thank you, Judge. Permission to
25 approach the witness.

Samuel B. Gunter - Direct Examination Continued by Mr. Bell

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. BELL:

4 Q Lieutenant, I'm handing you what is marked and
5 entered as State's 5; would you take a look at the contents
6 of that bag? In your training and experience, what does
7 that substance appear to be to you?

8 A Cocaine.

9 Q You sure about that?

10 A That's what it looks like, yes, sir.

11 Q From what you have in your hand, does it appear to
12 be a little or a lot?

13 A A lot.

14 Q If you were to seize that off of the street during
15 your time as a narcotics officer, what would you charge an
16 individual with?

17 A Trafficking in cocaine.

18 Q Now, are you aware of what a thousand grams is
19 called?

20 A Kilo.

21 Q And what is that short for?

22 A Kilogram.

23 Q Is there an also another term that is used
24 sometimes to refer to that, slang terms?

25 A Most of the time it's referred to as a kilo.

Samuel B. Gunter - Direct Examination Continued by Mr. Bell

1 Q And have you ever dealt with a kilo of cocaine
2 before?

3 A I have.

4 Q And what you have in your hand, is that, what would
5 you estimate that weighs?

6 A A kilo. 2.2 pounds typically is what a kilo is.

7 Q And are you aware of what typical pricing ranges
8 would be as it relates in South Carolina to a kilo of
9 cocaine?

10 A Currently it's between 30 and \$35,000.

11 Q And what kind of, what kind of value is that
12 generally referred to when you buy a kilo all at once?

13 A If you're buying a kilo, you're buying wholesale
14 prices, if that's what --

15 Q And typically if it's broken down and further
16 distributed, does it maintain the same valuation?

17 A No, sir.

18 Q How is the valuation affected?

19 A It increases. In other words, as -- you get a
20 discount for buying in bulk. As you break it down further,
21 the price goes up.

22 MR. BELL: I beg the Court's indulgence?

23 THE COURT: Yes, sir.

24 BY MR. BELL:

25 Q One more quick question, Lieutenant. Are you aware

Samuel B. Gunter - Cross-Examination by Mr. Williams

1 of how much one gram would sell for if broken down?

2 A Right now, typically around a \$100 a gram.

3 Q And how many grams are in a kilo?

4 A 1000.

5 Q Please answer any questions Mr. Williams may have
6 for you.

7 THE COURT: Thank you, Solicitor.

8 Mr. Williams?

9 **CROSS-EXAMINATION**

10 BY MR. WILLIAMS:

11 Q What was the value in 2013?

12 A Approximately -- of what a gram or a kilo.

13 Q What you're testifying to; either one?

14 A A kilo was about 30 to \$35,000.

15 Q So the market is stagnant; is that correct?

16 A It's all about supply and demand.

17 Q And does it matter if it's good -- if it's good
18 cocaine or bad cocaine?

19 A No, sir.

20 Q It doesn't matter?

21 A Typically not.

22 THE COURT: What is good cocaine? Just explain
23 that question to me; you talking about quality?

24 MR. WILLIAMS: Quality.

25 ///

Samuel B. Gunter - Cross-Examination by Mr. Williams

1 BY MR. WILLIAMS:

2 Q Does it matter if one has more cocaine in the
3 substance that you're selling or less?

4 A Well, obviously it matters to the person that's
5 buying it, but you don't know what you're getting until
6 after you've bought it.

7 Q Would you pay more if it had more cocaine in it?

8 A Typically not, no, sir.

9 Q Well --

10 A Typically what happens is the guy who buys it and
11 it doesn't have much cocaine in it is getting ripped off.

12 Q Okay. Okay. And the purpose of the cutting agent
13 in the cocaine is to what?

14 A Make more money for the guy selling it.

15 Q Okay. So if the guy is buying it, if it had more
16 cocaine in it, you would get a better deal than if it had
17 less cocaine in it; is that correct? Because you could
18 step it down; you could make more --

19 A Yes, ultimately the guy that's buying the cocaine
20 is looking to step on it. Now -- now if he's buying
21 cocaine that's already been stepped on too much, he's not
22 going to be able to do that so his cocaine is not going to
23 be valued on the street as much.

24 Q Do you know what the -- what the quality of the
25 cocaine you're looking at is?

Samuel B. Gunter - Recross-Examination by Mr. Williams

1 A No, sir, I do not.

2 MR. WILLIAMS: I don't have any more questions,

3 Your Honor.

4 THE COURT: Redirect, Solicitor?

5 **REDIRECT EXAMINATION**

6 BY MR. BELL:

7 Q Just for clarification, Lieutenant, not all of us
8 have so much experience in narcotics. What do you mean by
9 stepping on it?

10 A Typically they're going to take that cocaine and
11 they're going to add more cutting agent to it and turn one
12 kilo of cocaine into multiple kilos.

13 Q And do people selling cocaine in bulk advertise the
14 fact that they like to cut the substance to make it appear
15 like more?

16 A Absolutely not. They want the guy buying it to
17 think they're getting pure cocaine.

18 Q No further questions.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: Just one question.

21 **RECCROSS-EXAMINATION**

22 BY MR. WILLIAMS:

23 Q Were you involved with this particular cocaine in
24 any degree whatsoever?

25 A No, sir.

1 Q That's all the questions I have.

2 THE COURT: Thank you. Thank you very much,
3 Lieutenant. Thank you for being with us.

4 THE WITNESS: Yes, sir.

5 THE COURT: Any objections to Lieutenant Gunter
6 being excused?

7 MR. BELL: No, Your Honor.

8 MR. WILLIAMS: None from the defense, Your Honor.

9 THE COURT: Thank you. You may be excused.

10 THE WITNESS: Thank you, sir.

11 THE COURT: All right. Solicitor, you may call
12 your next witness.

13 MR. BELL: Your Honor, I beg the Court's
14 indulgence?

15 Your Honor, at this time, the State would rest its
16 case.

17 THE COURT: All right. Thank you. Thank you very
18 much, Solicitor.

19 As you've heard, ladies and gentlemen, the State
20 has rested and you have heard all the evidence and all the
21 testimony you're going to hear from the State in its case
22 in chief. I now have a matter of law to take up, so we'll
23 take and perhaps now would be a good time anyway. We'll
24 take us about a 15 minute recess.

25 Let me see where we're at administratively. Please

1 do not discuss the case during this brief recess. Thank
2 you. Thank you very much. You may go into your jury room.

3 (The jury left the courtroom at 10:43 a.m.)

4 THE COURT: All right. Any motions, Mr. Williams?

5 **MID-TRIAL MOTIONS**

6 MR. WILLIAMS: Yes, Your Honor. We'd move for a
7 directed verdict of not guilty on the basis that the
8 evidence in light most favorable to the -- the light --
9 taken in the light most favorable to the State is
10 insufficient as a matter of law for my client to be
11 convicted of trafficking in cocaine.

12 THE COURT: Thank you, Mr. Williams.

13 MR. WILLIAMS: Thank you, Your Honor.

14 THE COURT: Solicitor?

15 MR. BELL: Your Honor, I believe the testimony of
16 Trooper Antley coupled with the dashboard cam corroborating
17 the first half of his testimony, the initial officers
18 corroborated where the foot chase ended up and where they
19 were located at the edge of the woods, as well as the
20 chemist who was able to testify of the substance located
21 was cocaine and a kilo's worth. Based on the testimony and
22 that evidence, we certainly believe in the light most
23 favorable to the State that we should survive directed
24 verdict, Your Honor.

25 THE COURT: Thank you. Thank you, Solicitor.

1 Anything further, Mr. Williams?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: All right. In ruling on the directed
4 verdict motion, the Court views the evidence in the light
5 most favorable to the State and the non-moving party and
6 must submit the case to the jury if there is any direct or
7 substantial circumstantial evidence which reasonably tends
8 to prove the guilt of the accused or from which is guilt
9 may be fairly and logically deduced, the Court must concern
10 itself solely with the existence or non-existence of the
11 evidence from which a jury can reasonably infer guilt.

12 In ruling on the motion where the State has also
13 provided not only direct, but circumstantial evidence, the
14 Court must determine whether the evidence presented is
15 sufficient to allow a reasonable jury to find the defendant
16 guilty beyond a reasonable doubt.

17 In the light of the testimony that has been
18 presented by Corporal Antley, Deputy Clayton, Deputy Ellis,
19 both the number of chain witnesses, Agent Black and
20 Lieutenant Gunter, I would respectfully deny the motion for
21 directed verdict. I think there is sufficient direct
22 testimony of Corporal Antley himself and circumstantial
23 evidence for which the case must be submitted to the jury.

24 In viewing the video cam, observing the flight of
25 the defendant, also in viewing that video cam, observing

1 the actions of the co-defendant at that time, Mr.
2 Vanderhall and the observations of the -- the flight and
3 the officer's testimony concerning the observations and the
4 discovery of the drugs. So motion for directed verdict is
5 denied.

6 Mr. Williams, I take it when they come out, I
7 typically tell the jury where we're at administratively,
8 direct my attention to the -- say something about the
9 presumption of innocence. I direct my attention to the
10 defense attorney. I take it that you would then rest
11 formally?

12 MR. WILLIAMS: We would, Your Honor.

13 THE COURT: All right. And then I'll tell the jury
14 what that means and then we'll be ready for closing
15 arguments. Do you want to take a recess and we'll go
16 directly into closing arguments when the jury gets back?

17 MR. WILLIAMS: I would, Your Honor, and I would
18 also ask that -- which is -- in that he will not be
19 testifying, had he testified there would be a change in the
20 standard obviously and that would be based on the totality
21 of the evidence. I'd ask the record to note that we would
22 have made that motion for directed verdict at the close of
23 his case also, Your Honor.

24 THE COURT: And I will note that on the record. If
25 I fail to note it, just please, please remind me.

1 MR. WILLIAMS: All right.

2 THE COURT: All right. So y'all want to take about
3 15 minutes, Solicitor?

4 MR. BELL: Your Honor, if I could put one more
5 thing on the record.

6 THE COURT: Yes, sir.

7 MR. BELL: Given Mr. Williams cross-examination of
8 the chemist and partially of Lieutenant Gunter, we do want
9 to insure that Your Honor's charge relating to trafficking
10 does include the portion of the statute that -- and I am
11 paraphrasing, I apologize, I can quote directly shortly --
12 but paraphrasing, it says that the trafficking statute
13 specifically states the weight of cocaine includes any
14 mixtures containing cocaine.

15 THE COURT: Give me a copy of that.

16 MR. BELL: Yes, Your Honor.

17 THE COURT: Just print it out for me during the --
18 during the break. I've been looking, that's what I've been
19 looking at the entire time. I've been trying to locate
20 that language and my -- I was not successful in locating
21 that, Solicitor, but if you'd print it out for me and make
22 a copy for Mr. Williams.

23 MR. BELL: Yes, Your Honor.

24 THE COURT: Okay. All right. We'll take about a
25 15 minutes recess and we'll be ready to go. Thank you.

1 Thank you very much.

2 (A brief recess was observed.)

3 THE COURT: How long y'all need to argue?

4 MR. BELL: I always underestimate, so let me
5 overestimate it for -- I think 20 minutes, Your Honor.

6 THE COURT: Thank you. Mr. Williams?

7 MR. WILLIAMS: 20 minutes, Your Honor.

8 THE COURT: Thank you.

9 MR. WILLIAMS: Maybe 30 minutes, Your Honor, I've
10 been corrected by the peanut gallery.

11 (The jury entered the courtroom at 11:11 a.m.)

12 THE COURT: All right. Welcome back, ladies and
13 gentlemen. As you recall, the State has rested. You've
14 heard all the evidence, all the testimony you're going to
15 hear from the State in its case in chief. The defense may
16 now present evidence and testimony if the defense chooses
17 to do so. As I told you at the beginning of the trial, a
18 criminal defendant is always presumed to be innocent
19 regardless of the seriousness of whatever the crime may be.
20 A criminal defendant is always entitled to the presumption
21 of innocence. He doesn't have any burden to prove himself
22 or herself innocent. However, a defendant may present
23 evidence and testimony if the defendant chooses to do so.

24 So we will turn our attention to Mr. Williams and
25 ask Mr. Williams, does the defense intend to present any

1 evidence or testimony?

2 MR. WILLIAMS: No, Your Honor, we're ready to
3 argue.

4 THE COURT: All right. Thank you. Motions are
5 noted for the record, Mr. Williams, and I would reaffirm my
6 previous rulings thereon.

7 You've now heard all the evidence and all the
8 testimony you're going to hear in the trial of this case.

9 We're now at the point in the trial of the closing
10 arguments by the attorneys. Closing arguments are
11 different from opening statements. They are true
12 arguments. The attorneys may comment on the facts, the
13 inferences to be drawn from the facts and how the facts in
14 those inferences apply to the law, the elements of the law
15 as I will instruct you on those elements after the
16 conclusion of the closing arguments.

17 I understand the procedure that we will follow is
18 first the Solicitor will close on behalf of the State,
19 thereafter followed by Mr. Williams, thereafter followed by
20 my instruction. I would ask you as you've done throughout
21 the trial of the case, please give the attorneys your
22 complete and undivided attention.

23 Thank you very much.

24 With that being said, Solicitor, you may address
25 the jury.

CLOSING ARGUMENTS

1
2 MR. BELL: Thank you, Your Honor and Mr. Williams.
3 May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BELL: Actions speak louder than words. That's
6 the principal that we talked about yesterday when I first
7 spoke with you. Actions speak louder than words. I stand
8 by that today. And I don't want you to get me wrong, it's
9 not just Mr. Mims' actions I want you to judge. By all
10 means, I encourage you to judge the actions of this
11 Trooper, Corporal Antley. I am sure he'd be happy for you
12 to judge his actions because he has nothing to hide.

13 Let's talk about Mr. Mims's and Trooper Antley's
14 actions. Mr. Mims's actions are fairly short. He's a
15 passenger in a vehicle, pulled over for going 33 miles an
16 hour over the speed limit. The vehicle pulls over on the
17 blue lights, goes further past the guardrail than it should
18 have; you'll see the video, judge for yourself. You can
19 almost taste the hesitation of that vehicle pulling all the
20 way over to the shoulder.

21 The trooper walks up, examines the area, open
22 container, seatbelts being held as if they're buckled, but
23 they really aren't. Some issues and hesitations about
24 where they're coming from ultimately leads to Mr. Mims
25 lawfully being asked to leave the vehicle so he can be

1 checked for any weapons.

2 The trooper demonstrated to you just as he did to
3 me here in court, that as he was going about the pat-down,
4 he felt something in the groin area of Mr. Mims and that is
5 when Mr. Mims's action spoke so much louder than his words.
6 Because what were his words? Trooper says, Hey, what's
7 that? He says I ain't got nothing on me, sir; and the
8 trooper says, Hey, what is that? As he's indicating to the
9 bulge coming out of his pants.

10 Mr. Mims's response; that ain't nothing, sir, but
11 his actions said it was something. A lot of something,
12 because shortly thereafter, the trooper then asked him to
13 get down on his knees and comply because he won't reveal
14 what he has in the front of his pants. And at that point,
15 you'll see the trooper go and attempt that arm-bar takedown
16 and he barely gets his hands on Mr. Mims when Mr. Mims
17 tears his arm away, bolts off into the woods. Actions
18 speak louder than words.

19 Now even after being tased twice, he continued to
20 run. He's running awfully hard about nothing that's in his
21 pants. Eventually about .3 or so of a mile away, the
22 trooper closes distance and says the only time that he was
23 out of his field of vision was when Mr. Mims rounded a
24 corner and the trooper had to slow down just long enough so
25 that he could secure the corner and go around it without

1 being ambushed.

2 As he comes around the corner, he can see Mr. Mims
3 right away, the same individual matching every single
4 detail, off in the woods. He continues to close that
5 distance and that is when he sees with his very own eyes
6 Mr. Mims with his back to him in the woods, he said about
7 20 or so yards. He says he can't see his hands, but what
8 he can see is his elbows lift up as if he's pulling
9 something out of his pants and then it drops down to the
10 ground between his legs and then he takes those leaves and
11 piles it on top. Actions speak louder than words. Those
12 are Mr. Mims' actions.

13 Now, I am happy to also talk about Corporal
14 Antley's actions. And you'll have the video to see for
15 yourself once again. And, of course, you only get the
16 first half until Mr. Mims runs out of frame, but then you
17 can hear the body mic for a little while until it gets out
18 of reception, but what you're going to see that Trooper
19 Antley is on the side of the road an hour before he gets
20 off shift monitoring for speeding.

21 The truck comes; he clocks it at 93 miles an hour.
22 He initiates a stop like he would on any other vehicle
23 going that fast, pulls onto the side of the vehicle, walks
24 up. He's not showing any aggression whatsoever, very
25 calmly, politely, courteously, speaks to the occupants;

1 asked them for their registration. He's very patient as
2 they take a while; you can hear them fiddling around trying
3 to find things.

4 He then sees them holding the buckle and all that
5 and he asked Mr. Vanderhall, the driver, to get out of the
6 vehicle and he does that field sobriety test on him. Judge
7 his actions because if you watch his actions during that
8 field sobriety test, he is incredibly kind to Mr.
9 Vanderhall. He shows no force. He doesn't hold them there
10 and try to make him stand on one leg for an hour and hop
11 scotch down the road. He does that little eye test and
12 then he was pretty much convinced at that point and he
13 wasn't trying to find a reason to charge him with anything.

14 He then moves on over to the open container that
15 Mr. Mims claims was his to investigate that issue. That is
16 when he asked Mr. Mims ultimately out. Right away he tells
17 him, Hey, man, I'm going to get you out; I just need to pat
18 you down for weapons, okay? He says will you put your
19 hands on the truck; and then Mr. Mims says Do what? And he
20 says just put your hands on the truck. And he never raises
21 his voice at that point and very calm.

22 Ultimately he goes about the pat down as he talked
23 about. Judge for yourself if you think he's being
24 aggressive, shoving his hands in his pockets or jerking him
25 around because I think you'll find that his actions were

1 speaking much louder than words in that he was going about
2 his business as he would with anybody.

3 Ultimately he detects that object in the groin. We
4 all know what happens next; he starts asking for compliance
5 from Mr. Mims and he won't tell him what it is and he won't
6 get on his knees. It is only then after the trooper has
7 located a concealed object that he starts to raise his
8 voice. Shortly thereafter, I think it's two or three times
9 he asked him to get on his knees is when Mr. Mims takes off
10 running.

11 The trooper pursues and he says, Stop, man. Get
12 down. I'm going to tase you. Tells him, warns him; Stop
13 or I'm going to have to tase you. Mr. Mims keeps running
14 and he does get tased. However, he's able to pull those
15 leads out and continue running. He's able to jump that
16 barbed-wire fence. All the while, you're going to hear the
17 trooper saying, Stop, man. Don't make me tase you again.
18 I'm going to tase you again. He goes on. Mr. Williams
19 says he shot Mr. Mims with that taser. However, the barbed
20 wire gets caught upon the wires and he yanks it out. We're
21 back to square one.

22 You're going to hear the trooper curse as he tries
23 to barrel over that barbed-wire fence and he gets cut up on
24 his groin. Ultimately he gets back on his feet and they
25 continue running down that road. You have a map you can

1 look at. And as they're running, you're going to hear the
2 trooper say, Stop, get down. Don't make me shoot you, man.
3 That is the plea of a trooper who was an hour before
4 getting off of his shift, wants nothing less in his life
5 than to have to deploy a pistol and potentially kill a
6 human being.

7 His actions, please, by all means, judge Trooper
8 Antley's actions.

9 Ultimately you won't be able to hear the body mic
10 anymore because it gets out of reception; it gets very
11 spotty. You will hear around 18:12 I believe in that, in
12 that video, you'll hear something along the lines of Hands,
13 Shoot. And what the trooper says is happening at that
14 point is that after Mr. Mims has put the bag down and now
15 Mr. Mims starts walking back towards the trooper. Instead
16 of just getting down, like the trooper was asking, so he
17 says again something along the lines of don't make me shoot
18 you or I'm going to have to shoot you; get down.

19 Trooper Antley gave Mr. Mims every courtesy and
20 every chance to comply so that he wouldn't have to
21 experience pain or potentially be killed. Trooper Antley's
22 actions were kind.

23 Now, there was a line of questioning about how
24 Trooper Antley might have acted, had the occupants of the
25 vehicle been two little old ladies instead of two black

1 men. I think we all know what that line of questioning was
2 designed to get at and I think Trooper Antley was very
3 clear that any occupants, given the situation and the
4 events that occurred up to the point where he approached
5 and even found out that the individuals were African
6 American, he would have treated anybody the same in that
7 scenario. If it was my grandmother and he had to ask her
8 out of the car, I don't think he could have been any nicer.
9 Actions speak louder than words.

10 So let's talk about some of the defense
11 contentions. One is that the trooper never actually saw
12 the bag come directly out of Mr. Mims' pants, that maybe I
13 guess it was already on the ground. Well, you heard our
14 expert get up here and talk about the value and he said
15 between 30 and \$35,000. I don't know exactly where it
16 falls in there; maybe it's a little less; maybe it's a
17 little more. Either way you put it, that's a lot of money.
18 How likely is it that somebody had just left that much
19 cocaine sitting in the middle of the woods where Mr. Mims'
20 just happened to surrender. Very unlikely.

21 Another issue that was brought up by defense was
22 the fact that cutting agents are often used in cocaine to
23 increase the weight and that, I guess, somehow the fact
24 that cutting agents are used means that the actual cocaine
25 weight is less. Well, the Judge is going to talk to you

1 about the law. He's going to charge you on what exactly
2 trafficking means. And our law is very clear on that.
3 It's cocaine or any mixture of cocaine thereof; it's all
4 the exact same thing by law.

5 Now let's go over about what exactly trafficking
6 is. Trafficking is simply the possession of something over
7 400 or more grams. In this case, it has nothing to do with
8 movement. You don't have to prove that he took it from
9 here to there. It's just that he had possession of 400 or
10 more grams. You heard from our chemist, who even told you
11 they had to bring out the special scale because it was so
12 big. They had to have somebody come in and essentially
13 calibrate it that day or the day before because it's so
14 rarely used. And then ultimately, her report reflects the
15 weight is 997 grams; 3 grams shy of a kilogram or a kilo or
16 a Ki, 30 something thousand dollars worth wholesale. And
17 then beyond that when you break it down to a gram, it's
18 about a \$100 a gram is what Lieutenant Gunter told you.
19 I'm no mathematician, but y'all can figure that one out;
20 it's a lot of money.

21 So what does possession mean? Well, we talked
22 about that a little bit during our opening; it's actual or
23 constructive. The actual was me holding a pen; it's in my
24 possession. Constructive possession is me, I don't know,
25 let's say putting that pen down and taking leaves and

1 putting on top of it and then walking away. Constructive
2 possession, it's just the same as actual under the law.

3 And I think Trooper Antley told you about that too
4 that typically when he locates individuals with narcotics
5 on them, they typically don't want to keep it on their
6 body. They try to throw it down because they don't want to
7 be caught and they want to be able to argue that they
8 weren't in possession of it.

9 Now, Mr. Vanderhall has been brought up a few
10 times. He was the driver of the vehicle. His case is
11 still pending at our office. He's charged the exact same
12 way as Mr. Mims. Mr. Mims had committed to trial first.
13 The issue of whether or not the cocaine might have been his
14 and maybe he threw it at Mr. Mims and made Mr. Mims take it
15 and run.

16 Ladies and gentlemen, actions speak louder than
17 words. You judge based on the video of what you think
18 happened, but beyond that, you're going to hear that under
19 the law there is such thing as joint possession; that two
20 or more individuals can both have possession of something
21 at the same time. It doesn't have to just belong to one or
22 the other. If you believe they both knew it there or
23 Vanderhall knew it was there, so long as you still believe
24 Mims knew it was there and they had it on him, he's still
25 guilty, possession.

1 Now, all of this comes down to one concept and it
2 is the concept that makes our justice system better than
3 any other one on this planet. It is the fact that we
4 require individuals be found guilty beyond a reasonable
5 doubt; best in the world. It may not be perfect, but it's
6 the best. As I told you earlier, beyond a reasonable doubt
7 is not an impossible standard. It's a very high one and it
8 is one that we welcome, but it is not an impossible
9 standard because the judge is going to tell you, you don't
10 have to be a hundred percent certain. It's not beyond all
11 doubt, a reasonable doubt.

12 At the end of this trial, all you have to be firmly
13 convinced of the defendant's guilt. Actions, they speak
14 louder than words.

15 Watch the video. Watch it as many times as you
16 need to. Watch how Trooper Antley approached the scene.
17 Listen to how he pursued Mr. Mims. His actions were the
18 absolute pinnacle of restraint. His actions show that he
19 has earned that campaign hat and he deserves that badge.
20 Mr. Mims's actions show that as soon as the officer or the
21 trooper realized he had something concealed, he ran. He
22 said it was nothing and he ran. He didn't run a little
23 ways, he didn't run uncontended; he ran about .3 of a mile
24 through the woods, up a hill, around a building, back into
25 the woods, all while being tased twice and being chased

1 with a gun, ultimately to pull out almost a kilo of cocaine
2 and try to hide it in the woods.

3 Actions speak louder than words, ladies and
4 gentlemen.

5 I ask that you keep that in mind as you deliberate.
6 I ask that you return a verdict that speaks the truth, that
7 Mr. Mims is guilty of trafficking 400 or more grams of
8 cocaine in Lexington County. Thank you.

9 THE COURT: Thank you. Thank you very much,
10 Solicitor.

11 Mr. Williams?

12 MR. WILLIAMS: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of
15 the jury, I want to thank you for attention for the last
16 two days. It's almost over and it gets to be your time
17 where you can actively make decisions. The judge will
18 normally tell you; I think he may have already told you
19 this, that you don't -- you don't start making decisions on
20 guilty or innocence until after all the evidence is in,
21 until after you've heard the arguments of counsel, until
22 after you've heard the judge tell you what the instructions
23 of the law are because he is the judge of the law and you
24 are the judge of facts and that's the way it should be.

25 My client, Kendrick Mims, is getting a trial today

1 on the charge of trafficking in cocaine. He almost didn't
2 get that trial. If he hadn't gotten that trial, we
3 wouldn't have you twelve jurors here today. We wouldn't be
4 asking witnesses questions. All because Kendrick did
5 something stupid and he's my client, I know he is, but he
6 ran and you don't know what goes on. It's kind of like a
7 shadow.

8 If anybody is old enough to remember the shadow;
9 who knows what evil lurks in the minds of man, you know.
10 There are all kind of little sayings that you can say where
11 you try to impart something to someone whether or not it
12 applies or not. So knowing this statement that was made in
13 opening argument and that is that actions speak louder than
14 words.

15 I actually looked it up to see what was the
16 origination of that phrase. It actually comes from a 17th
17 Century Proverb, which references as the solicitor has
18 indicated what his mother used to say. It references that
19 you're supposed to do what you tell someone you're going to
20 do. My mother used to tell me that all the time when I
21 promised I'd, you know, take out the -- take out the trash
22 or that I would -- that I would clean up my room and she
23 would say, Well, Son, actions speak louder than words.

24 So that's actually what that proverb and what that
25 phrase goes to. To a certain extent, it's applicable here

1 and it's yours because when you were sworn as a -- as a
2 juror, you swore that you would truthfully listen to the
3 evidence, make decisions based on the evidence and then
4 based on your unbiased opinions, that y'all would make a
5 decision as to the guilt or innocence of my client. So
6 your actions by doing that, will fulfill the requirement of
7 your words. That's actually where the phrase comes from
8 though. It's kind of interesting to know these kind of
9 things.

10 I take a different light on this. When I look at
11 what set things in motion, it would be a shame today if we
12 had to explain to Mr. Mims's mama that he died over an open
13 container. He had already been tased twice. The gun was
14 out and it's all because he stupidly ran from the police
15 officer. I don't know what he was thinking. I don't think
16 anybody knows. But if you look at how the events unrolled
17 maybe that will help you determine what actually happened.

18 We know that, that Trooper Antley was working
19 radar. He was determining the speed of people going down
20 the interstate. He determined that this truck went by him
21 doing 93 miles an hour in a 60 mile an hour zone and the
22 one thing that he could observe was that it was a green
23 F150 truck, had two occupants in it. I think he said that
24 they were two males, black African American males; one was
25 older than the other one. The driver was about twice the

1 age as the passenger and his words, they started moving in
2 the cab, made me nervous.

3 His words, they moved from the fast lane to the
4 middle lane to the slower lane and they didn't immediately
5 pull over in an area where I thought they should have
6 pulled over, but he pulled over in a different location.
7 These are triggers; no pun intended. These are things
8 which are getting your -- getting your attention. So he,
9 he calls in the license tag and gets out and he walks over
10 to the passenger side and the window was down.

11 He remarked on the window was down a little maybe
12 unusual because it's cold; I don't know. He's talking to
13 them. You hear him talking about the open container.
14 You'll have the video again so you can look at it again. I
15 want you to look at the video again because the one thing I
16 told you in opening argument is that a video is not subject
17 to change. It is what it is, what it is, what it is. The
18 video shows exactly what happened.

19 So the trooper walks up there and he says about
20 this open container and you see him reach in there. If you
21 can tell me how much liquid came out of his reportedly a
22 can and squashed and thrown in the back of the truck then
23 you have better eyesight than I do. But that's -- you see
24 him throw something in the back of the truck and he talks
25 to the defendant and he said I thought it was okay to drink

1 beer through a passenger. He's not driving.

2 Well, obviously, it's against the law. It didn't
3 used to be against the law, but it is now against the law
4 of course, I'm giving my age on that. But it is against
5 the law. So he had the choice, the officer had the choice
6 that he could charge him and could actually take him to
7 jail, I think he said, for an open container or he could
8 have given a warning ticket, a blue ticket, a courtesy
9 summons. You have to make your own mind as to what was
10 going on here.

11 He gets the -- he gets the driver out and the
12 drivers -- he does a field sobriety test on the driver and
13 he said he thought it was unusual he kept talking about
14 this white Honda. Well, if you're really interested in
15 finding out if there was a white Honda that had been
16 driving erratically, I guess what you should have done was
17 checked that tape and gone back and pulled that 30 second,
18 you remember that discussion and I know that was
19 interesting for you because I'm sure we've all been stopped
20 by a police officer. Now, we learn that they actually have
21 cameras now that will automatically pick up the 30 seconds
22 from when you turn the blue light on, but actually it's
23 recording at all times. I know, at all times. If the
24 police officer is around you with a camera, it is recording
25 at all times. But in any event, they didn't check that.

1 So he, he gets the individual out and does the
2 field sobriety test and he's concerned about the guy in the
3 truck; he doesn't appear to be concerned about the guy in
4 the truck because he's sitting there talking to him and I
5 mean, if Kendrick had a gun, he could have had a gun and
6 could have pulled it out and came around done whatever. At
7 what point in time, if you think that there is a gun or if
8 you think there's anything more than an open container and
9 a speeding, do you actually call for backup. That's why
10 you have backup. That's why you call it in. But he didn't
11 do that.

12 He gets Kendrick out and he's talking to him about
13 what is that package there; what is that sorello; what's
14 that blunt box doing there. You know all of this, I
15 haven't seen that. I haven't seen any of that. I haven't
16 seen a blunt box. I haven't seen anything that allegedly
17 was in that truck that was seized.

18 So he gets Kendrick out and he's talking to him and
19 Kendrick, he grabs him, tells him to get out and put his
20 hands up on the car. He's already done it to the driver.
21 How many individuals do you know that have been stopped for
22 a speeding case or for an open container case who have
23 actually been up against the car being searched? Well, he
24 gets him out and he's allegedly grabbing something in his
25 legs, tells him, What you got there? I got nothing; I

1 don't have anything.

2 So he throws him, throws him down; it's a take
3 down, that's what he's trying to do, it's a physical move,
4 it's like playing football, I guess, tells him to get to
5 his knees. I don't know what goes in your mind if someone
6 tells you to get to your knees like that, but he's scared
7 and he runs.

8 Now the solicitor would have you believe that the
9 reason why he's running is because he possessed all of
10 these drugs in his jeans. I don't recommend you trying
11 that, but I would suggest to you that's probably difficult
12 to do. Not only does he have all these drugs in his jeans,
13 he runs from Trooper Antley 200 yards, jumps fences,
14 somehow it doesn't come out. I mean that's what you're
15 asked to believe. So I guess if you believe that, you
16 believe that.

17 Well he says that he tases him twice. He pulls the
18 leads out of his body and after he's used his cartridges
19 up, he pulls out his weapon, which has 11 shots in it. I
20 don't know why you have 11 versus 12, but he has 11 and he
21 comes around the corner because he's afraid and
22 fortunately, my client is so tired that he is walking. It
23 would be bad to be shot for an open container, wouldn't it?

24 But anyway, he says for whatever reason, he's as
25 far as from me as to this wall, 20, 30 feet, my client is

1 walking. He places the bag, he covers it up with leaves;
2 it's incredible. I mean it's incredible. The same guy who
3 ran all this distance is just going to say, okay, I'm going
4 to cover it up; you don't see me. I'm going to cover it up
5 with leaves and then he comes back and then he's arrested.

6 Here is why we have standards and here is why we
7 have a requirement that the State has to prove its case
8 beyond a reasonable doubt. The defendant doesn't have to
9 do anything. He's already told you he's not guilty. He's
10 resting on you to make that determination if they've proven
11 their case beyond a reasonable doubt. Because that is the
12 State's case at that point because then you learn that even
13 though there were at least four or six other officers out
14 there, nobody has a video camera. No one has looked at a
15 video camera. One officer is brought to testify, who was
16 actually on the scene and he is asked did you see the bag
17 that Trooper Antley had; he said I believe so. And do you
18 remember what my cross-examination question was; well do
19 you know? No, if I can't testify a hundred percent then
20 I'm going to say I believe so. That's their proof. Where
21 are all the other four to six officers. Where is the
22 ambulance people who examined him and had to cart him off
23 to the hospital because he had been electrified. Wouldn't
24 they have seen the bag maybe?

25 Speaking of the bag, do you remember how it was

1 allegedly packaged? It was a Dillard's bag, I'm sorry.

2 This package was inside a Foot Locker bag, which was inside
3 a Dillard's bag and all that's in my client's britches.

4 Well what happened to the Dillard's bag and the
5 Foot Locker bag; I threw that away. Why did you throw that
6 away? Why would you throw it away? Why wouldn't you just
7 keep it? Why wouldn't you keep it to show that indeed
8 that's what it was in; why wouldn't you take those items;
9 why wouldn't you fingerprint those items; why wouldn't you
10 do DNA? You've got two defendants that have been charged.
11 Why wouldn't you do that to at least to determine who had
12 actually touched the drugs, if either one of them had?

13 Well you got -- you got the other guy with the
14 truck, you can watch what he's doing. He's throwing stuff
15 in the back of the truck; he's waiting around and he just
16 takes off. Anybody ever check his truck? No. Did he come
17 here and say, Well, yeah, he had drugs, I saw him run; no.

18 So that's the case. That is the case. So the only
19 other witnesses who have testified would be Adam Clayton.
20 You know why they brought him? Just like in all stories,
21 you like to have a human interest story. You know, you
22 like to have a spin to it; you like to put a little sugar
23 on the story. Adam came there and he is the K-9 Officer
24 and he came there and he retrieved Trooper Antley's
25 campaign hat for him. Well that's, that's good. This K-9

1 Officer could have had the dog, could have taken that dog,
2 could have gone to the area where they say that these drugs
3 were allegedly found, could have had proof of that,
4 everybody and their brother probably has a cell phone
5 except you jurors who are in here today, which you
6 shouldn't have. Somebody could have taken a picture of the
7 area, but that wasn't done. So that's what the officer
8 testifies to.

9 Trooper Shelton, I'm sorry, First Sargent Shelton,
10 Chris Shelton, says and we were going through these
11 investigative reports and it says approving officer and he
12 says I haven't read that. I don't know anything about
13 that. Well why, why is your name on here? You know what
14 he said about that; he's the approving officer. His
15 testimony was only as to what they called the Chain of
16 Custody of drugs and there's a reason why you talk about
17 Chain of Custody because when you introduce -- when a
18 chemist does analysis of items, you want to prove that
19 there hasn't been a change, someone hadn't tampered with
20 it -- it's the same drugs that were seized on such and such
21 a date, that's why we've got all these numbers and stuff
22 like that, that's why they keep up with it.

23 What we learned is that if you're with the Highway
24 Patrol, you actually rent a building, it's right over here
25 at Lexington Town Hall; you know where it is; it's right

1 there on Maiden Lane. You go up to the second floor. You
2 can walk up there; you don't have to pass a guard or
3 anything. You can walk up the stairway, you can walk down
4 the hallway and there's a door that says Highway Patrol.
5 They don't have anyone staffing that 24 hours; they don't
6 have anyone staffing that on regular hours, but you've got
7 to have a key to go in the door. You go in the door and
8 there's a locker there that the troopers can put their
9 items in.

10 Well the reason why that's important is that two
11 days later, Chris Shelton, First Sargent Shelton, goes and
12 takes this item, which has been marked by Trooper Antley
13 and he takes this item and he takes it down to Shop Road
14 and turns it over to First Sargent Mendel Rivers, who then
15 turns it over to one of his technicians who then takes it
16 down to SLED.

17 Now, we never heard from that technician. His name
18 is like Fouty, but he didn't testify, but that's kind of
19 the chain as to how it works. Once it's turned over and
20 then it's handed up to another technician and we heard Ms.
21 Crooks. She made a couple mistakes. We all make mistakes.
22 You can't really jump all over a witness because they make
23 mistakes because I make mistakes too. But anyway, she made
24 a couple mistakes when she was talking about numbers, but
25 her real purpose was to say that these items were received

1 by her and that she marked them in and some chemist did the
2 analysis on them.

3 Well I'm going to suggest to you that if anything
4 was wrong with these drugs, it happened before that and I
5 didn't realize it until I started looking at the exhibits.
6 You'll have these; State's Exhibit Number 3 and State's
7 Exhibit Number 5, which is the white substance. I don't
8 know why the color in this picture is so much different
9 than that white substance. I think there was a statement
10 that maybe it was the glossiness of it. You will see that
11 there is some tape on the white bag that supposedly was in
12 around the edges, but that it's clear, I mean it's white
13 and you'll have this; you can look at it.

14 That goes to two, that goes to two items. Whether
15 or not it's the same item, that's something you decide.
16 Whether or not you think that item is so big it wouldn't
17 fit in his jeans; all these items. And part of the reason
18 why I was talking about the Lexington Highway Patrol Office
19 is not that I feel, you know, I have anything to add about
20 the Highway Patrol, but it's just how easy it is to go in
21 there and just walk in and find the locker.

22 I don't know how many items they have in there, and
23 grab one of them and take it down to SLED two days later.
24 Well, that's what Chris Shelton does. He testifies about
25 what Rivers does. You had Ms. Crooks, you had Agent Black,

1 who is the chemist, who testifies that she took an amount
2 about the size of an eraser and tested it, that tested as
3 to cocaine and then we heard Detective Gunter talk about
4 how expensive that was, what the value was; 30 to \$35,000.

5 Well you know, it would have been nice to know that
6 when my client was arrested and finally got out of the
7 hospital and was taken over to the jail when they checked
8 him that he had, I don't know, rolls of cash on him because
9 if you got 30 to \$35,000 worth of drugs, you probably going
10 to have a bunch of money on you. Did you hear anybody say
11 that?

12 And the thing that really sticks, why wouldn't you
13 keep his pants; why wouldn't you keep his pants? You know,
14 this was -- this was -- this was a situation which almost
15 turned, almost turned real bad and I just hope that when
16 you analyze this that you remember what, I hope your
17 actions speak louder than my words.

18 I hope you go by your jurist oath and you make sure
19 that the State has proven to you beyond a reasonable doubt
20 that my client is guilty of this offense and that you have
21 an explanation for all of these things which the State
22 didn't do, all of the witnesses that he didn't bring, all
23 of the holes that they have in their story because if they
24 don't have the answer to those questions, then it's your
25 duty to find him not guilty. Thank you.

1 THE COURT: Thank you. Thank you very much.

2 **JURY CHARGE**

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, if you would please give me your complete and
5 undivided attention. I'm now going to charge and instruct
6 you on the law that you are to apply to the facts of the
7 case as you find the facts to be. The way I instruct a
8 jury in a case such as this is I charge the general
9 criminal law that applies to all cases in South Carolina.

10 When I change from one topic or one subject matter
11 to the next, I will give you the caption of that particular
12 subject matter I'm fixing to cover. After I cover the
13 general law, I will instruct you on the specific charge in
14 the indictment. Thereafter, I will charge you the form of
15 the verdict.

16 Charge, arrest, indictment is not evidence: The
17 indictment charges the defendant with trafficking in
18 cocaine 400 or more grams. I remind you again, that the
19 fact that the defendant was arrested, charged, and indicted
20 in this case is not evidence in this case and cannot be
21 considered by you as evidence of guilt in this case, nor
22 does it create any presumption or inference of guilt.
23 Again, this document, this indictment is simply the formal
24 written instrument, which contains the charge made against
25 the defendant. It is the formal document which brings this

1 case before the court.

2 Presumption of innocence: As I have told you
3 previously, the defendant has pled not guilty to the
4 indictment and that plea puts the burden on the State to
5 prove the defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is never
7 required to prove himself innocent. I instruct you that it
8 is an important rule of the law that the defendant in a
9 criminal trial, no matter what the seriousness of the
10 charge may be, will always be presumed to be innocent of
11 the crime for which the indictment was issued unless you --
12 unless guilt has been proven by evidence satisfying you of
13 that guilt beyond a reasonable doubt.

14 The presumption of innocence does not end when you
15 begin your deliberations, but it accompanies the defendant
16 throughout the trial until you reach a verdict of guilt
17 based on evidence satisfying you of guilt beyond a
18 reasonable doubt.

19 The presumption of innocence has been said to be
20 like a robe of righteousness placed about the shoulders of
21 the defendant which remains with the defendant until it has
22 been stripped from the defendant by evidence satisfying you
23 of the defendant's guilt beyond a reasonable doubt. The
24 presumption of innocence is not a mere legal theory, it is
25 not just a legal phrase, it is a substantial right to which

1 every defendant is entitled unless you, the jury, are
2 satisfied from the evidence of the defendant's guilt beyond
3 a reasonable doubt.

4 Reasonable doubt: What is a reasonable doubt in
5 the law? A reasonable doubt is the kind of doubt that
6 would cause a reasonable person to hesitate to act. The
7 State has the burden of proving the defendant guilty beyond
8 a reasonable doubt. Some of you in the past, may have
9 served as jurors in civil cases where you were told that it
10 is only necessary to prove that a fact is more likely true
11 than not true, such as by the greater weight or the
12 preponderance of the evidence. In criminal cases, the
13 State's proof must be more powerful than that; it must be
14 beyond a reasonable doubt.

15 Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.
17 There are very few things in this world that we know with
18 absolute certainty; and in criminal cases the law does not
19 require proof that overcomes every possible doubt. If
20 based on your consideration of the evidence, you are firmly
21 convinced that the defendant is guilty of the crime charged
22 you must find the defendant guilty. If on the other hand,
23 you think there is a real possibility that the defendant is
24 not guilty, you must give the defendant the benefit of the
25 doubt and find him not guilty.

1 Duties of jury and trial judge: I remind you
2 that during this trial, you and I have certain distinct
3 duties to perform. As the trial judge, it is my
4 responsibility to preside over the trial of this case and I
5 also have the duty to rule on the admissibility of the
6 evidence offered during the trial. You are to consider
7 only the competent evidence before you. You are to
8 consider only the testimony which has been presented from
9 the witness stand and any exhibits which have been made a
10 part of the record in this case. I have the additional
11 duty to instruct you on the law applicable to this case.

12 As the presiding judge, I am the sole judge of the
13 law of this case and it is your duty as jurors to accept
14 and apply the law as I now state it to you. If you already
15 have any idea as to what the law is or what the law ought
16 to be and it does not agree with what I now tell you the
17 law is, you must abandon your idea because you are sworn,
18 you have taken an oath to accept the law and apply the law
19 exactly as I state it to you.

20 In every case tried in this court before a jury,
21 the jury becomes the sole and exclusive judge of the facts
22 in a case. A trial judge cannot intimate, state, comment
23 on, or make any statement to a trial jury about the facts
24 in a case. Since you, the jury, are the sole judge of the
25 facts in this case, you are not to infer from what I have

1 said during the progress of this trial in ruling upon the
2 admissibility of evidence or otherwise or anything that I
3 say now during the course of this instruction to you that I
4 have any opinion about the facts in this case. The law
5 does not allow me to have an opinion about the facts in
6 this case. This is a matter solely for you, the jury, to
7 determine. As jurors, it is your duty to determine the
8 effect, the value, the weight, and the truth of the
9 evidence that has been presented during the trial.

10 Direct and circumstantial evidence: There are two
11 types of evidence which are generally presented during a
12 trial; direct evidence, circumstantial evidence. Direct
13 evidence is the testimony of a person who claims to have
14 actual knowledge of a fact, such as an eyewitness or an ear
15 witness. It is evidence which immediately establishes the
16 main fact to be proven. Circumstantial evidence is proof
17 of a chain of facts and circumstances indicating the
18 existence of a fact. It is evidence which immediately
19 establishes collateral facts from which the main fact may
20 be inferred.

21 Circumstantial evidence is based on inference and
22 not on personal knowledge or observation. The law, our
23 law, makes absolutely no distinction between the weight or
24 the value to be given to either direct or circumstantial
25 evidence, nor is there a greater degree of certainty

1 required of circumstantial evidence than of direct
2 evidence.

3 You should weigh all of the evidence in this case.
4 After weighing all of the evidence, if you are not
5 convinced of the guilt of the defendant beyond a reasonable
6 doubt, you must find the defendant not guilty. If after
7 weighing all of the evidence, you are convinced of the
8 guilt of the defendant beyond a reasonable doubt, you must
9 find the defendant guilty.

10 Credibility of witnesses: Necessarily you must
11 determine the credibility of the witnesses who have
12 testified in this case. As you all know, credibility
13 simply means believability. It becomes your duty as jurors
14 to analyze and to evaluate the evidence and determine which
15 evidence convinces you of its truth. In determining the
16 believability of witnesses who have testified in this case,
17 in using your individual and your collective good judgment
18 and common sense. You may believe one witness over
19 several, or several over one. You may believe a part of
20 the testimony of a witness and reject the remaining part of
21 the testimony of that same witness. You may believe the
22 testimony of a witness in its entirety or reject the
23 testimony of a witness in its entirety. You may consider
24 whether any witness has exhibited to you any interest,
25 bias, prejudice, or other motive in this case. You can

1 also consider the appearance, or the manner, the demeanor
2 of a witness while on the witness stand.

3 Expert witnesses: And you've heard this is not a
4 long version of it, but it's a little bit longer than that
5 version during the course of the trial. The Rules of
6 Evidence ordinarily do not permit witnesses to testify to
7 opinions or conclusions. An exception to this rule exists
8 for witnesses that we call expert witnesses. A witness who
9 by education or experience or training has become an expert
10 in some art, science, profession, or calling may state an
11 opinion as to relevant and material matter in which the
12 witness claims to be an expert and may also state the
13 reasons for the opinion.

14 You should consider any expert opinion received in
15 evidence in this case and like any other evidence, give it
16 the weight that you think it deserves. If you decide that
17 the opinion of an expert is not based on sufficient
18 education or experience or if you conclude that the reasons
19 given in support of the opinion are not sound or that the
20 opinion is outweighed by other evidence, you may disregard
21 the opinion entirely.

22 An expert witness's testimony is to be given no
23 greater weight than that of other witnesses simply because
24 the witness is labeled an expert. Further, you are not
25 required to accept an expert's opinion even though it is

1 not contradicted.

2 Ladies and gentlemen, I instruct you and emphasize
3 that the fact that the defendant did not testify is not a
4 factor to be considered by you in any way in your
5 deliberations and in your consideration of the question of
6 the guilt or the innocence of the defendant. It must not
7 be considered by you in any manner whatsoever. A defendant
8 has the constitutional right to remain silent and the
9 assertion of that right must not be considered by you in
10 your deliberations. I repeat, under your oath, you are to
11 draw no conclusions whatsoever from the fact that the
12 defendant in this case did not testify.

13 The fact, Mr. Foreman, that this defendant did not
14 testify should not even be discussed in the jury room. The
15 burden of proof as I have stated to you is on the State.
16 The defendant is not required to prove his innocence. The
17 burden of proof remains on the State to prove guilt beyond
18 a reasonable doubt.

19 Now, ladies and gentlemen, that concludes the
20 general charges. Momentarily I'm going to charge you the
21 specific offense in the indictment, trafficking in cocaine
22 more than 400 grams. So we have covered charge, arrest,
23 indictment not evidence, presumption of innocence,
24 reasonable doubt, duties of jury and trial judge, direct
25 and circumstantial evidence, credibility of witnesses and

1 the defendant's right to remain silent and not testify.

2 As I say, now I'm going to cover the charge in the
3 indictment.

4 The defendant is charged with trafficking of
5 cocaine 400 or more grams. The State must prove beyond a
6 reasonable doubt that the defendant knowingly sold or
7 manufactured or cultivated or delivered or purchased or
8 brought into this state or provided financial assistance or
9 otherwise aided, abetted, attempted or conspired to sell,
10 manufacture, deliver, purchase or bring into this state or
11 was knowingly in actual or constructive possession or
12 knowingly attempted to become in actual or constructive
13 possession of cocaine 400 -- in amount of 400 or more
14 grams.

15 The State must also prove beyond a reasonable doubt
16 the amount of the cocaine, 400 or more grams, or any
17 mixture containing cocaine was possessed and that amount of
18 course is 400 grams or more.

19 Now the term actual and constructive possession.
20 To prove possession, the State must prove beyond a
21 reasonable doubt that the defendant had both the power and
22 the intent to control the disposition or use of the
23 cocaine. Possession may be either actual or constructive.

24 Actual possession means that the cocaine was in the
25 actual, physical custody of the defendant. Constructive

1 possession means that the defendant had dominion and
2 control or the right to exercise dominion and control over
3 either the cocaine itself or the property on which the
4 cocaine was found.

5 Mere presence at the scene where the drugs were
6 found is not enough to prove constructive possession. I
7 further charge that two or more persons may have joint
8 possession of a drug actual and/or constructive. So the
9 State must prove beyond a reasonable doubt the defendant
10 brought, possessed cocaine either actually or
11 constructively or both in an amount of 400 grams or more.

12 If you would continue to give me your complete and
13 undivided attention, I assure you the end of my instruction
14 is in sight.

15 Jury verdict: Regarding the charge of trafficking
16 in cocaine 400 grams or more, there are two possible
17 verdicts which you may find in this case. There's no
18 significance whatsoever in the order in which I state these
19 possible verdicts; it's simply that one must be stated
20 first. Your verdict may be guilty; your verdict may be not
21 guilty.

22 Mr. Foreman, ladies and gentlemen of the jury, you
23 will deliberate and determine what you, the jury,
24 determines the facts are. If you find that the State has
25 proved its case beyond a reasonable doubt, that is the

1 unanimous decision of the jury.

2 Mr Foreman, you will have this form in there with
3 you, the verdict form. You will see it indicates
4 Indictment, trafficking in cocaine 400 grams or more. We,
5 the jury, unanimously find the defendant and you'll see the
6 word guilty. If your verdict -- if you find in your
7 determination of the facts the State has met its burden of
8 proving its case beyond a reasonable doubt and that is a
9 unanimous verdict by the jury, I would ask you, Mr.
10 Foreman, to check to left of the word guilty, circle your
11 checkmark and the word guilty, sign as the presiding juror
12 and date it.

13 If after your determination of the facts in the
14 case, you find that the State has not met its burden of
15 proving its case beyond a reasonable doubt and that verdict
16 is unanimous, not guilty, I would ask you, Mr. Foreman, to
17 check to left of the two words, not guilty, circle your
18 checkmark, the two words not guilty, sign as presiding
19 juror and date it.

20 Again, ladies and gentlemen, your verdict must be a
21 unanimous one. All twelve of you must agree. Your verdict
22 may not be based on passion, prejudice, sympathy or any
23 other emotion or fact not in evidence in this case. Once
24 you have reached that verdict, that unanimous verdict, as a
25 juror, you have signed and dated the form, if Mr. Foreman,

1 you will then knock on the jury room door, advise the
2 bailiff you have reached the verdict, we will then receive
3 you back into the courtroom at that time.

4 If you have any questions during the course of your
5 deliberations, I would ask you to please write out a note
6 for me and knock on the jury room door, give it to the
7 bailiff and they will deliver it to me. I will try to
8 respond in a timely manner. I will also make arrangements
9 for you to have some type of equipment for which to you can
10 view the video if the jury chooses to do so. I'll make
11 those arrangements with the attorneys and with the Clerk
12 right now.

13 I'm going to ask you to step to your jury room
14 momentarily. Do not begin your deliberations until you
15 have been directed to do so by the clerk or the bailiff.
16 The law requires I meet with the attorneys one final time
17 outside of your presence. If I do not have to bring you
18 out for further instructions, what will happen is,
19 everybody looks great today, our alternate would then come
20 out. The evidence would be delivered to you, all the items
21 that were introduced into evidence and you will be
22 instructed to begin your deliberations.

23 Thank you. Thank you very much. You may now go
24 with your bailiff to your jury room.

25 (The jury left the courtroom at 12:20 p.m.)

1 THE COURT: All right. Solicitor, anything on
2 behalf of the State?

3 MR. BELL: No, Your Honor.

4 THE COURT: Mr. Williams?

5 MR. WILLIAMS: No, Your Honor.

6 THE COURT: If y'all would check the exhibits
7 please and tell me what type of equipment you intend to
8 have the jury if they -- where they can review the video.

9 MR. BELL: Your Honor, the same device that we
10 used, the laptop performance during the trial can be sent
11 back with the jury. It is a physically -- it is physically
12 disabled from connecting to any sort of outside network so
13 it is totally secure. They should not have any chance of
14 being on the internet or anything like that with it.

15 THE COURT: Mr. Williams?

16 MR. WILLIAMS: No objection, Your Honor.

17 THE COURT: All right. Madam Clerk, will you make
18 arrangements to take that in?

19 THE CLERK: Yes, sir.

20 THE COURT: And check the exhibits. Here's the
21 form of verdict and the indictment. Where are those --

22 THE CLERK: This is everything here, Brenda?

23 THE COURT REPORTER: To me, it is. They haven't
24 looked at it yet.

25 THE CLERK: Oh, they haven't looked at it yet?

1 MR. WILLIAMS: That looks like everything. Not
2 that many exhibits. 1, 2, 3, 4, 5, 6.

3 THE COURT REPORTER: Where's the video.

4 MR. BELL: The video is right here.

5 THE COURT REPORTER: Okay.

6 MR. BELL: We're good.

7 THE COURT: Thank y'all for being with us.

8 THE COURT REPORTER: And those.

9 THE CLERK: I got them.

10 MR. BELL: I've got them.

11 THE CLERK: Okay. Tell them --

12 THE COURT: And you're coming back in here?

13 THE CLERK: Yes, sir, I'm coming back.

14 (The computer, exhibits and verdict form were taken
15 to the jury. The jury began deliberations at 12:23 p.m.)

16 (The alternate was brought into the courtroom.)

17 THE CLERK: Your Honor, I apologize, that door was
18 locked so I brought him in this way.

19 THE COURT: You don't have to, you're fine right
20 there, sir.

21 THE CLERK: Sir.

22 THE COURT: You're fine right there. I appreciate
23 you -- I appreciate you being with us. I appreciate you
24 being with us.

25 THE JUROR: All right. Thank you.

1 THE COURT: Thank you. Will you show him out for
2 me, Mr. Bailiff?

3 THE BAILIFF: Certainly.

4 THE COURT: All right.

5 (Court was in recess awaiting the verdict of the
6 jury.)

7 (It was reported that a verdict was reached at 1:03
8 p.m.)

9 THE COURT: All right. Any, I understand we have a
10 verdict. Anything from the State before we bring in our
11 jury, Solicitor?

12 MS. RANKIN: No, sir, I think Mr. Bell is on his
13 way up.

14 THE COURT: I'm sorry, I didn't, I didn't even look
15 up.

16 Anything from the defense?

17 MR. WILLIAMS: Nothing, Your Honor.

18 THE COURT: We'll wait on Mr. Bell. I guess we can
19 have a contempt hearing afterwards, Solicitor, right?

20 MS. RANKIN: I mean I -- sure.

21 THE COURT: I'll appoint Mr. Williams Special
22 Prosecutor.

23 (Mr. Bell entered the courtroom.)

24 THE COURT: All right. Bring us our jury please.
25 How you Sheriff?

1 THE OFFICERS: We're good.

2 THE COURT: We've got extra sheriffs today. Glad
3 to have you.

4 (The jury entered the courtroom at 1:10 p.m.)

5 **VERDICT**

6 THE COURT: All right. Madam Clerk?

7 THE CLERK: Mr. Foreman, have you reached a
8 verdict?

9 MR. FOREMAN: We have.

10 THE CLERK: Please pass it up by the bailiff.

11 THE COURT: All right. The verdict appears to be
12 in the proper form, signed by presiding juror dated today's
13 date. Madam Clerk, will you publish our verdict please.

14 Mr. Mims, will you please stand.

15 THE CLERK: Indictment 2013-GS-32-01463, the State
16 v. Kendrick L. Mims indicted as to trafficking in cocaine
17 more than 400 grams. We, the jury, unanimously find the
18 defendant guilty and it is so signed by Mr. Lopez, Foreman,
19 2/11/2016.

20 THE COURT: Thank you. Thank you very much.

21 THE CLERK: Ladies and gentlemen, if this is your
22 verdict, please indicate each of you by raising your right
23 hand?

24 All hands are raised, Your Honor.

25 THE COURT: Thank you. Thank you very much.

1 Anything for the jury from the State?

2 MR. BELL: No, Your Honor.

3 THE COURT: Defense?

4 MR. WILLIAMS: Yes, sir, request a poll.

5 THE COURT: All right. Thank you. Thank you very
6 much.

7 You may be seated, Mr. Mims.

8 **POLLING OF THE JURY**

9 Madam Clerk, would you please explain that procedure to our
10 jury and conduct the polling process.

11 THE CLERK: Yes, sir. I'll call your juror number.
12 As I call your juror number, hold up your hand so I can
13 recognize you. I will ask you as to the verdict, was this
14 your verdict and is it still your verdict; you will need to
15 respond at that time at the conclusion.

16 Number 160, as to the verdict, was this your
17 verdict and is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: 22, as to the verdict, was this your
20 verdict and is it still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: 161, as to the verdict, was this your
23 verdict and is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: No. 2, as to the verdict, was this your

1 verdict and is it still your verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: 121, as to the verdict, was this your
4 verdict and is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: 64, as to the verdict, was this your
7 verdict; is it still your verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: 195, as to the verdict, was this your
10 verdict; is it still your verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: 135, as to the verdict, was this your
13 verdict; is it still your verdict?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: 113, as to the verdict, was this your
16 verdict; is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: 181, as to the verdict, was this your
19 verdict; is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: 225, as to the verdict, was this your
22 verdict; is it still your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: 140, as to the verdict, was this your
25 verdict; is it still your verdict?

1 THE JUROR: Yes, ma'am.

2 THE CLERK: All jurors polled, Your Honor.

3 THE COURT: Thank you. Thank you very much, Madam
4 Clerk.

5 Anything further for the jury from the defense, Mr.
6 Williams?

7 MR. WILLIAMS: Nothing further for the jury, Your
8 Honor.

9 THE COURT: All right. Thank you.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 momentarily I'm going to release you from your jury service
12 for remainder of the day and of course the remainder of the
13 week. I never criticize nor commend a jury for its
14 verdict, me being the judge of the law and the jury being
15 the judge of the facts of the case charged with the
16 responsibility of returning a verdict, but I will say I
17 commend you for your fulfilling your civic duties, for your
18 focus, for your attention that you have shown to all the
19 parties throughout the trial of this case, for your work
20 ethic. As one of my mentors, Judge Cooper, would always
21 tell a jury panel upon releasing them, I hope you never
22 find yourself part of the system again whether by way of
23 juror or witness or otherwise, but if you do, I hope that
24 the jury that may be sitting over there in that jury box
25 will be as focused and attentive as y'all have been

1 throughout this process.

2 I, of course, must individually recognize Mr. Lopez
3 again. He -- he got the full measure of jury duty this
4 week. There were three cases for trial; he was on all
5 three. The first one, of course ended, when the young lady
6 entered the plea of guilty. The second case ended based on
7 a motion of the Court and, of course, he sat as our
8 foreperson because he had all that experience Monday
9 through Wednesday on the trial of this case; and I know
10 there were some other frequent flyers on this case as well:
11 One, two, three, four. Okay. All right. So that's how it
12 goes.

13 Many times, I like I told you earlier, I don't
14 condone gambling, but having been selected three times, buy
15 a lottery ticket and support education on the way home.

16 This fulfills your jury service in State Circuit
17 Court of Record for the remainder of this calendar year.
18 This actually disqualifies you from jury service in State
19 Circuit Court of Record in the year of 2016. You, of
20 course, can still be called for Magistrate's Court,
21 Municipal Court and such as that; and you would have an
22 exemption for 2017 and 2018 in the State Circuit Court of
23 Record if you were called, if you choose to exercise that
24 exemption.

25 It has been my pleasure and privilege to serve with

1 each and every one of you this week. Thank you. Thank you
2 very much.

3 Mr. Foreman, the Clerk will meet you in the hallway
4 to sign the indictment out in the back. Thank you very
5 much. You are excused.

6 (The jury left the courtroom.)

7 THE COURT: All right. Motions, Mr. Williams?

8 MR. WILLIAMS: Yes, Your Honor. I'd ask the Court
9 to note all prior motions and grant defendant a new trial.
10 The evidence taken as a whole was -- should have been
11 insufficient as a matter of law for the jury to have
12 returned a verdict of guilty.

13 THE COURT: Thank you. Thank you very much. I
14 respectfully deny that motion. I think there was clearly
15 sufficient, if not overwhelming evidence of guilt. The
16 jury being the determiner of the facts of the case and
17 credibility of the witnesses, I do not think Mr. Mims is
18 entitled to a new trial and I'm going to deny that motion.

19 Anything further.

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: Any reason sentence cannot be imposed
22 at this time from the defense?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: From the State?

25 MR. BELL: No, Your Honor.

1 THE COURT: If you'd come around please to the
2 podium, Mr. Mims.

3 SENTENCE

4 THE COURT: All right. Anything from the State
5 additional before sentence is imposed?

6 MR. BELL: No, Your Honor. May I approach with the
7 sentence sheet?

8 THE COURT: Yes, sir.

9 MR. BELL: Penalty provisions are also there.

10 THE COURT: Thank you. Thank you very much.

11 Mr. Williams, anything from the defense?

12 MR. WILLIAMS: Your Honor, I've explained to my
13 client what he's facing sentence-wise and obviously that's
14 25 to 30 based on the charge that he has. I'd ask the
15 Court to note whatever consideration you could give him, I
16 would appreciate it based on the fact that he's 34 years of
17 age. He is -- has a fiance. He has five children. He has
18 three children with this young lady who is here. We're --
19 he's regretful, obviously, of the situation, that happened.
20 We would appreciate any consideration the Court may deem
21 that it might be able to give us.

22 THE COURT: All right. Anything you'd like to say,
23 Mr. Mims?

24 MR. MIMS: Yes, sir. That's --

25 THE COURT: Speak up for me please.

1 MR. MIMS: I said that's basically about what he
2 was just saying, sir. I would just ask you if you could to
3 give me a light sentence, man. Anything you can give.

4 THE COURT: All right. Thank you. Thank you very
5 much.

6 As you know, Mr. Williams, and, of course, I'm sure
7 you've explained it to Mr. Mims, there is very little
8 consideration that I give Mr. Mims based on the sentencing
9 statute.

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: When it's in excess of 400 grams of
12 cocaine, this being 997 basically a kilo of cocaine,
13 according to the testimony a kilo is 2.2 pounds. I will
14 give him what consideration I can, but it is very limited.

15 2013-GS-32-01463, Kendrick Lamont Mims, the jury
16 having returned a verdict of trafficking in cocaine of 400
17 grams or more, the defendant is committed to the State
18 Department of Corrections for a determinate term of 25
19 years and he shall pay a fine of \$200,000. Good luck to
20 you; good luck to you, Mr. Mims.

21 MR. WILLIAMS: Thank you, Your Honor.

22 THE COURT: Thank you. Thank you, Mr. Mims.

23 MR. MIMS: Could I have a word with my fiance.

24 THE COURT: I do not object if the Sheriff would
25 allow that, I do not object, of course, Mr. Mims. I do

1 allow security -- but Sheriff, if you'll allow that, I have
2 no objection.

3 THE COURT: Thank you. Thank you very much.

4 Thank you, Solicitor.

5 Thank you, Mr. Williams.

6 MR. BELL: Thank you, Your Honor.

7

8 * * * * * END OF TRANSCRIPT * * * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
) **Certificate of Reporter**
2 County of Aiken)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 10th and 11th days of February, 2016.

I FURTHER CERTIFY that the foregoing pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 7th day of May, 2016.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

ORIGINAL

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

KENDRICK LAMONT MIMS #367042
Full name and prison number (if any) of Applicant

2018 SEP 11 PM 12:04
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

2018 CP 32031 15

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 E Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS3201463 -Trafficking in Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 11, 2016 - 25 years

A TRUE COPY

Lisa M. Comer

Lex. Co. C.C.C.P., G.S. & F.C.

- (b) _____
- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. denied
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. October 18, 2017
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2017-UP-389
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A TRUE COPY

[Handwritten Signature]

Lex. Co. C.C.C.F., G.S. & F.C.

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

A TRUE COPY

[Handwritten Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? yes

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Robert T. Williams, Sr., Esq., Williams, Hendrix, Steigner & Brink, P.O. Box 849, Lexington, SC 29071

- ii. Taylor D. Gilliam, Esq., Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589

iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing

- ii. Direct Appeal

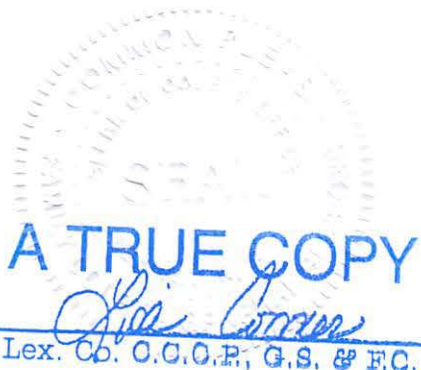
iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No



STATE OF SOUTH CAROLINA)
)
County of Dorchester)

VERIFICATION

I, Kendrick Lamont Mims, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kendrick Mims

SWORN to and subscribed before me this 5th
day of September, 2018.

Luchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2018

A TRUE COPY

Luchean Bryant

Lex. Co. C.C.C.P., G.S. & F.C.

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Kendrick Lamont Mims, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

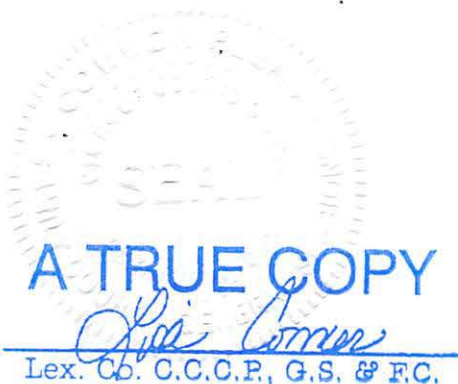
- (1) I am the applicant in this action and I believe I am entitled to redress.
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kendrick Mims
Applicant

SWORN or affirmed to and subscribed before me this 5th day of September, 2018.

Judrea Bryant
Notary Public

My Commission Expires: May 26, 2020



FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

DEC 17 2018

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Kendrick Lamont Mims, #367042

LISA M. CONER
CLERK OF COURT
LEXINGTON, SC

Case No.: 2018-CP-32-03115

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on September 11, 2018, would respectfully show this Court:

I. Procedural History

Kendrick Lamont Mims (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its May 2013 term, the Lexington County Grand Jury indicted Applicant for trafficking cocaine, 400 or more grams (2013-GS-32-01463). Robert T. Williams, Sr., Esquire, represented Applicant on this charge. On February 10-11, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Following deliberations, the jury convicted Applicant as indicted, and Judge McMahon sentenced Applicant to a term of imprisonment of twenty-five years and a fine of \$200,000.

Applicant filed a timely notice of appeal, and Appellate Defender Taylor Gilliam, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issue: "Did the trial judge err in qualifying a sheriff as an expert witness in cocaine and cocaine valuation when the testimony did not assist the jury in understanding the evidence or determining a fact in issue and when the testimony's probative value was substantially outweighed by the danger of unfair prejudice?"

Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on October 18, 2017. *State v. Mims*, Op. No. 2017-UP-389 (S.C. Ct. App. filed October 18, 2017). The remittitur was issued on November 28, 2017.

II. Factual History

Corporal Antley was stationed on Interstate 20 monitoring traffic for speeding violations. Tr. 44-46. Corporal Antley activated his radar at a Ford F150 pickup he saw travelling faster than the rest of traffic and saw the vehicle travelling 93 miles per hour in a 60 mile per hour section of highway. Tr. 51. After the vehicle pulled over, Corporal Antley noticed lots of movement from the two occupants. Tr. 53. Applicant was a passenger in the vehicle. Tr. 56.

Applicant admitted consuming a beer, and Corporal Antley seized and poured out an open container of beer. Tr. 56-57. After performing a field sobriety test on the driver, Corporal Antley spoke with Applicant, asking him to exit the vehicle. Tr. 62-63. When he exited, it appeared Applicant was "holding his hands down around his pants" and "trying to hold something up in his pants." Tr. 65. Corporal Antley performed a pat down of Applicant and found a hard object inside his pants that Corporal Antley believed could have been a weapon. Tr. 69. Corporal Antley asked what Applicant had in his pants and then tried to get Applicant to his knees while watching his hands. Tr. 69-70. Applicant refused to comply. Tr. 70-71. Instead of complying, Applicant broke free and began to run. Tr. 72-73.

Corporal Antley pursued Applicant, who was still trying to hold on to whatever it was in his pants. Tr. 74. Corporal Antley deployed his taser, but it was not effective in stopping Applicant. Tr. 76-77. As he attempted to pursue Applicant over a fence, Corporal Antley again deployed his taser, but again it failed to stop Applicant. Tr. 78-79.

Corporal Antley caught up to Applicant, who appeared tired from running. Tr. 81. Applicant

put his hands toward his groin area, pulled up to remove something, and then is seen by Corporal Antley placing a bag on the ground. After placing the bag on the ground, he immediately covered it with some leaves. Applicant then walked toward Corporal Antley and ultimately surrendered. Tr. 83.

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective Assistance of Counsel.

Applicant wholly fails to set forth any facts to support this general allegation.

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

IV. Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support his general allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Conclusion and Request for Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

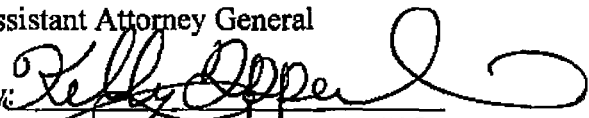
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 13, 2018

STATE OF SOUTH CAROLINA)
)
 COUNT OF LEXINGTON)
)
 Kendrick Mims #365767,)
)
 Applicant,)
)
 Vs.)
)
 State of South Carolina,)
)
 Respondent.)

THE COURT OF COMMON PLEAS
 03115
 CASE NO.: 2018-CP-32-315T

AMENDMENT TO POST-
 CONVICTION RELIEF APPLICATION

2019 NOV 12 PM 4:50
 LISA H. CORP
 CLERK OF COURT
 LEXINGTON

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as if fully repeated herein.

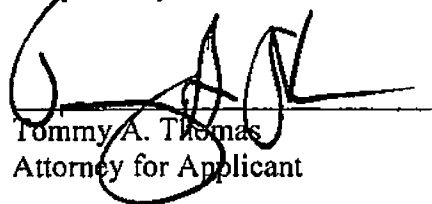
That the Applicant would amend his Application as follows:

1. Applicant was offered a plea for twenty five (25) years. He indicated to his Trial Attorney that he did not want to go to trail and that he wanted to take this offer. That Trial Counsel was ineffective in his failure to convey the Applicant's acceptance of this plea to the prosecution. That the Applicant is informed and believes that at a later date, this plea offer was withdrawn and that as a result, he was prejudiced by the actions of counsel.
2. That Trial Counsel was ineffective for his failure to discuss the case with the Applicant. Applicant never had the opportunity to properly prepare this case for trial with his attorney. Applicant was unable, nor did he have the opportunity to go over the discovery with Trial Counsel. He was never informed of what evidence the State had against him.

3. That the Applicant is informed and believes that there was a problem with the chain of custody in this case. That the Applicant believes that counsel was ineffective in his arguments regarding these deficiencies in the chain of custody.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant

November 4, 2019

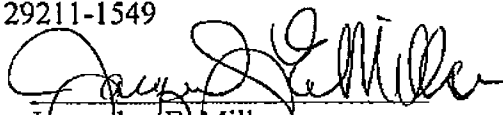
STATE OF SOUTH CAROLINA)
)
 COUNT OF LEXINGTON)
)
 Kendrick Mims #365767,)
)
 Applicant,)
)
 Vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

THE COURT OF COMMON PLEAS
 CASE NO.: 2018-CP-32-⁰³¹¹⁵~~3151~~

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Amendment to Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Taylor Smith, Esq. of the Attorney General's Office, at:

Taylor Smith, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549


 Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 November 4, 2019

A. Summary of Evidence Adduced at Trial

Corporal Antley was stationed on Interstate 20 monitoring traffic for speeding violations. (R. 21–23). Corporal Antley activated his radar at a Ford F150 pickup he saw travelling faster than the rest of traffic and saw the vehicle travelling 93 miles per hour in a 60 mile per hour section of highway. (R. 28). After the vehicle pulled over, Corporal Antley noticed lots of movement from the two occupants. (R. 30). Applicant was a passenger in the vehicle. (R. 33).

Applicant admitted consuming a beer, and Corporal Antley seized and poured out an open container of beer. (R. 33–34). After performing a field sobriety test on the driver, Corporal Antley spoke with Applicant, asking him to exit the vehicle. (R. 39–40). When he exited, it appeared Applicant was “holding his hands down around his pants” and “trying to hold something up in his pants.” (R. 42). Corporal Antley performed a pat down of Applicant and found a hard object inside his pants that Corporal Antley believed could have been a weapon. (R. 46). Corporal Antley asked what Applicant had in his pants and then tried to get Applicant to his knees while watching his hands. (R. 46–47). Applicant refused to comply. (R. 47–48). Instead of complying, Applicant broke free and began to run. (R. 49–50).

Corporal Antley pursued Applicant, who was still trying to hold on to whatever it was in his pants. (R. 51). Corporal Antley deployed his taser, but it was not effective in stopping Applicant. (R. 53–54). As he attempted to pursue Applicant over a fence, Corporal Antley again deployed his taser, but again it failed to stop Applicant. (R. 55–56).

Corporal Antley caught up to Applicant, who appeared tired from running. (R. 58). Applicant put his hands toward his groin area, pulled up to remove something, and then is seen by Corporal Antley placing a bag on the ground. (R. 60). After placing the bag on the ground, he

immediately covered it with some leaves. Applicant then walked toward Corporal Antley and ultimately surrendered. (R. 60).

B. Direct Appeal

Applicant filed a timely notice of appeal and Appellate Defender Taylor Gilliam perfected Applicant's appeal by briefing the following issue for the Court of Appeals:

- I. "Did the trial judge err in qualifying a sheriff as an expert witness in cocaine and cocaine valuation when the testimony did not assist the jury in understanding the evidence or determining a fact in issue and when the testimony's probative value was substantially outweighed by the danger of unfair prejudice?"

Following briefing, the Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion on October 18, 2017. *State v. Mims*, Op. No. 2017-UP-389 (S.C. Ct. App. filed October 18, 2017). The remittitur was issued on November 28, 2017. Applicant commenced this PCR action on September 11, 2018.

II. CURRENT APPLICATION

In his initial application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Ineffective Assistance of Counsel

The State made its return and motion for a more definite statement on December 13, 2018. Applicant, through counsel, amended his application on November 4, 2019, and December 9, 2019, to include the follow allegations:

1. Applicant was offered a plea for five (5) years. He indicated to his Trial Attorney that he did not want to go to trial and that he wanted to take this offer. That Trial Counsel was ineffective in his failure to convey the Applicant's acceptance of this plea to the prosecution. That the Applicant is informed and believes that at a later date this plea offer was withdrawn and that as a result, he was prejudiced by the actions of counsel.

2. That Trial Counsel was ineffective for his failure to discuss the case with the Applicant. Applicant never had the opportunity to properly prepare this case for trial with his attorney. Applicant was unable, nor did he have the opportunity to go over the discovery with Trial Counsel. He was never informed of what evidence the State had against him.
3. That the Applicant is informed and believes that there was a problem with the chain of custody in this case. That the Applicant believes that counsel was ineffective in his arguments regarding these deficiencies in the chain of custody.

Applicant requests relief as follows:

“New Trial”

Attached herewith and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records, including the record on appeal, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant’s claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be

determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable

miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR

applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant contends Counsel failed to prepare him for trial. Specifically, Applicant alleges Counsel did not adequately discuss the case or review discovery with him. When there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *cf. Easter v. Estelle*, 609 F.2d 756, 759 (5th Cir.1980) (recognizing that brevity of time spent in consultation with defendant, without more, did not establish that trial counsel was ineffective). Here, Applicant has failed to show how the outcome of the trial would have been different had Counsel spent more time consulting him or given him a copy of the discovery material. Thus, the State submits this claim is without merit.

Regarding Applicant's claim that there was an issue with the chain of custody in his case, Counsel did challenge the chain of custody several times throughout the trial. In addition to cross-examining each witness who was in possession of the evidence, Counsel moved for a mistrial, alleging the solicitor was leading the SLED evidence custodian. Specifically, Counsel claimed the solicitor was attempting to "correct[] the witness's testimony where it clearly would have indicated a gap in the chain of custody." (R. 195–196). Although the judge denied Counsel's motion, Counsel extensively challenged the chain of custody issues in his closing argument. (R. 271–273). Thus, the State submits this claim is without merit.

Applicant also contends he was offered a plea deal for five years, which he allegedly told his attorney he wished to accept. Applicant claims Counsel was ineffective for failing to convey his acceptance to the prosecution on his behalf. The United State Supreme Court has held that "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). While the State submits this claim is without merit, the State is currently without sufficient information to adequately respond to this claim.

B. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

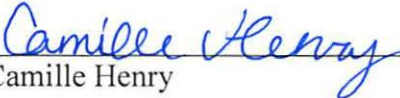
February 7, 2020

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	
)	
)	2018-CP-32-03151
)	
KENDRICK MIMS, #365767)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire
7588 Woodrow Street
Irmo, South Carolina 29063

DATED this 7th day of February, 2020.



 Camille Henry
 Legal Assistant

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNT OF LEXINGTON)	CASE NO.: 2018-CP-32-3151
)	
Kendrick Mims #367042,)	
)	
Applicant,)	THIRD
)	AMENDMENT TO POST-
)	CONVICTION RELIEF APPLICATION
Vs.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his Post- Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as well as the previous amendments, as if fully repeated herein.

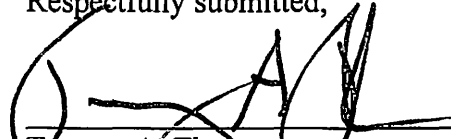
That the Applicant would amend his Application as follows:

1. That the Applicant appeared in Court for what he believed to be a roll call. That Defense Counsel was not present at this appearance. Ben Stitely, Esq. appeared in substitution for Theo Williams.
2. That the Applicant was offered a five (5) year plea offer. He was informed and believe that his case would be continued in order that he could discuss this offer with Mr. Williams. He wanted to accept this offer.
3. What he did not know was that the offer was going to be withdrawn and was in fact withdrawn.

4. That the Applicant is informed and believe that Defense Counsel was ineffective in handling this matter, which resulted in prejudice to the Applicant.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

March 13 2020

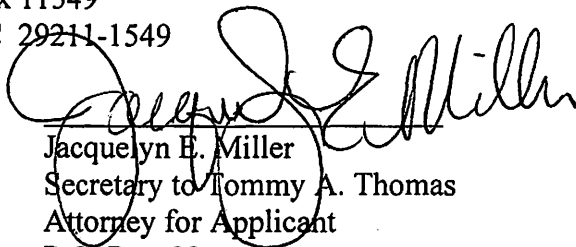
STATE OF SOUTH CAROLINA)
)
 COUNT OF LEXINGTON)
)
 Kendrick Mims #367042)
)
 Applicant,)
)
 Vs.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

THE COURT OF COMMON PLEAS
 CASE NO.: 2018-CP-32-3151

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of a Third Amendment to Post Conviction Relief Application with postage prepaid and the return address clearly shown on said envelope to Taylor Smith, Esq. of the Attorney General's Office, at:

Taylor Smith, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549



Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

Irmo, SC
 March 18, 2020

1 STATE OF SOUTH CAROLINA

2 GENERAL SESSIONS

3 COUNTY OF LEXINGTON

4 -----x

5 KENDRICK L. MIMS,)

6 Plaintiff,)

7 vs.)

8 STATE OF SOUTH CAROLINA,)

9 Defendant.)

10 -----x

11 December 15, 2020
12 Virtual Courtroom

13 B E F O R E:

14 The Honorable Debra R. McCaslin, Presiding Judge

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

16 Tommy A. Thomas, Esq.
17 Attorney for the Plaintiff

18 Lillian L. Meadows Esq.
19 Attorney for the Defendant/State

20

21

22

23

24

24 Transcribed by Bobbi Fisher, RPR, for DCRP, Digital Courtroom

25 Project

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 11:28 a.m.)

3 THE COURT: Good morning to you. First, let me ask you a
4 couple of questions. We are hear on -- can you hear me okay?5 THE DEFENDANT: Yeah, I just want to get in closer, yes,
6 ma'am.7 THE COURT: Okay. We're hear on video to do your PCR
8 hearing. Usually we do these hearings in person but because
9 of COVID, we're kind of stuck with video right now. Your
10 attorney, Mr. Thomas, is online. Can you see him?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. If, at any time, you need to
13 speak with Mr. Thomas, please let me know. I'll get you a
14 phone. It will be private. Then you can speak with him.
15 Okay?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Doesn't matter when. Just any time that you
18 feel like you need to, I'll be more than happy to accommodate
19 you.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: But let me ask you, do you consent to have
22 your PCR hearing heard on video today?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Now, the other thing I need to tell
25 you, you know, when you ask for a post-conviction relief,

1 there are only two things that can happen. First, if I find
2 you are not entitled to post-conviction relief, you will have
3 to serve whatever part of your sentence you have left to
4 serve. I'm sure your lawyer has told you that.

5 THE DEFENDANT: Mm-hmm.

6 THE COURT: On the other hand, if I grant you a
7 post-conviction relief, all I can do is vacate your conviction
8 and send this case back for further proceedings starting from
9 scratch. And that means if any charges were reduced or
10 dropped, you could be facing the original charges again. Do
11 you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Well, Mr. Thomas, I'm going to leave
14 it to you then.

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: And I'll just let all parties know, I have
17 read the transcript and everything else, the application, but
18 I'll let Mr. Thomas take it from here.

19 MR. THOMAS: Yes, ma'am. If it please the Court, I may
20 have missed it, was Mr. Mims sworn?

21 THE COURT: Oh, no.

22 MR. THOMAS: Okay.

23 THE COURT: Mr. Mims, will you raise your right hand.
24 Do I get to swear Theo too?

25 MR. THOMAS: Yes, ma'am.

1 THE COURT: All right. I'm going to swear both of y'all
2 in right now. If you'll raise your right hand.

3 KENDRICK L. MIMS and THEO WILLIAMS,
4 the defendant and the witness, respectively, after having been
5 duly sworn, was examined and testified to as follows:

6 THE COURT: Okay. Let's proceed then.

7 MR. THOMAS: Your Honor, if it please the Court.

8 THE COURT: Yes, sir.

9 MR. THOMAS: We'd call Mr. Kendrick Mims.

10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q Mr. Mims, the Court has given you court's information in
13 regards to post-conviction, and you and I have spoken about
14 that. You are -- one of the -- you're serving time for what?

15 A Trafficking.

16 Q Trafficking cocaine?

17 A Trafficking cocaine, yes, sir.

18 Q And what type of sentence do you have?

19 A Twenty-five years.

20 Q All right, sir. And is that 85 percent?

21 A Yes, sir.

22 Q And what is your max-out date?

23 A 2041.

24 Q '21 or '41?

25 A I think '41. Max-out date? 2041.

1 Q 2041. Okay.

2 And you're 85 percent and not eligible for parole?

3 A Right.

4 Q All right, sir. Now, the Court has advised you of this

5 and I'll ask you again: You understand that the relief that

6 you can receive today is a vacation of your sentence?

7 A Yes.

8 Q And you understand that there are certain risks

9 associated with that. Any cases that were dismissed could be

10 reinstated or if you go back to trial, there's a possibility,

11 if you do not have the maximum, that you could receive

12 additional time. Do you understand that?

13 A Yes.

14 Q And based upon that and our conversation, you're willing

15 and wish to proceed today?

16 A Yes, sir.

17 Q All right, sir. Now, Mr. Mims, let me ask you a little

18 bit about what happened. You were charged with trafficking

19 cocaine; is that correct?

20 A Correct, sir.

21 Q And this was subject to a highway stop by a trooper in

22 Lexington County?

23 A Yes, sir.

24 Q All right, sir. And there were drugs that were found not

25 on you but found at the scene?

1 **A** Correct, sir.

2 **Q** And you were charged with those drugs?

3 **A** Yes, sir. He charged me with them.

4 **Q** Okay. And you had a driver or a co-defendant?

5 **A** Yeah. It was another co-defendant but I don't know what
6 happened to him.

7 **Q** Okay. And were you related to him or what relationship,
8 if any, did you have to him?

9 **A** He was -- well, a close friend of mine. He was like an
10 uncle to me.

11 **Q** Okay. All right. So it was somebody that you knew. It
12 wasn't somebody just --

13 **A** Right. I knew him, yes, sir.

14 **Q** Okay. All right. So you went to trial and you were
15 convicted; is that correct?

16 **A** Yes, sir.

17 **Q** All right, sir. And you had an appeal; is that right?

18 **A** Direct appeal, yes, sir.

19 **Q** And that appeal was denied?

20 **A** Correct.

21 **Q** All right, sir. And you were represented by appellate
22 defense on that appeal?

23 **A** Yes, sir.

24 **Q** Okay. Now, when you were arrested, did you retain
25 counsel or did you have an attorney appointed to represent

1 you?

2 **A** I ended up retaining counsel.

3 **Q** And who was that counsel?

4 **A** Mr. Theo.

5 **Q** All right. And so you were in the county detention
6 center. Did you make bond?

7 **A** Yes, sir, I made bond.

8 **Q** And how long were you out between making bond and this
9 case coming for trial?

10 **A** Three years.

11 **Q** All right, sir. And during that time, I would assume
12 that you made preparations with Mr. Williams?

13 **A** For -- yeah, I was advising him that I never did want to
14 go to trial or whatever.

15 **Q** Okay. All right. Well, we'll talk about that.

16 So in preparing for your case to defend you, Mr. Williams
17 went over the discovery with you. Do you understand what I
18 mean by discovery?

19 **A** I really can't recall if we ever went over discovery. I
20 don't want to say that -- I don't recall (indiscernible)
21 Mr. Theo, and I'm not trying to, you know, (indiscernible).
22 You know, I don't (indiscernible), Mr. Theo?

23 **Q** Okay. You can't -- don't ask any questions at this
24 point.

25 **A** Okay. I'm sorry. I'm sorry.

1 Q No, no, no. No problem.

2 So did he go over with you the evidence that the State
3 had against you?

4 A I mean, not -- there was -- all the way up until it was
5 time for me to go to trial is when I kind of (indiscernible),
6 you know. From my understanding, I didn't know what evidence
7 they had against me. All I know was I was told somebody would
8 plea offering about the five years they was offering to me.

9 Q Okay. We'll get to that.

10 A Okay.

11 Q How many times did you meet with Mr. Williams?

12 A I met with Mr. Williams on three occasions. Every time I
13 had an appointment for roll call.

14 Q Okay. And when you went to roll call, Mr. Williams would
15 go with you?

16 A Yes, he would.

17 Q Okay. And did you understand the charges? I mean, you
18 understand what they charged you with?

19 A Yeah, I understand. They charged me with trafficking,
20 yes, sir.

21 Q Okay. And did you understand the amount of time that you
22 could receive if you were found guilty of this charge?

23 A Yeah. Well, yeah, I did. Like I say, I never did think
24 I was going to be having to face this much time, sir.

25 Q Okay. You never thought that you were going to go to

1 trial on this.

2 **A** I never did. No, I didn't. I really didn't.

3 **Q** Okay. So why did you not think that you were going to go
4 to trial?

5 **A** Because me and Mr. Theo was talking about, you know,
6 about somebody -- I guess (indiscernible) a plea offer and I
7 was -- I was -- I didn't just think I was going to have to go
8 to trial up until December -- around December, I think, of
9 2015, I think.

10 **Q** Okay. All right. So you were going to roll call, to the
11 appearances.

12 **A** Yes, sir. I was going to my roll call.

13 **Q** Okay. And you were going with Mr. Williams.

14 **A** Yeah, Mr. Williams would take me all the time.

15 **Q** Okay. So during -- while that was going on, at some
16 point in time did you receive a plea offer?

17 **A** I mean, like I say, the only plea offer I was hearing
18 about was the five years. That was it. You know? I was
19 going to take it.

20 **Q** Okay. And so you were going to -- so you accepted the
21 five-year plea offer?

22 **A** I let Mr. Theo know I was going to accept it.

23 **Q** Okay. All right. And so you had -- you wanted to accept
24 the five-year plea offer rather than take this case to trial.

25 **A** Yes, sir.

1 Q All right. Now, let's kind of fast forward to the day in
2 December when you went for another appearance and you -- and
3 Mr. Stitely was there with you.

4 A Right. That was the one time Theo was (indiscernible),
5 right.

6 Q Okay. Now -- and why was Ben there with you?

7 A Mr. Theo was in court somewhere else, I think, that day.
8 He said he was in court somewhere else.

9 Q Okay. So Mr. Stitely appeared with you. Did you
10 actually go into the courtroom?

11 A No, sir. We was -- we was in front of the Solicitor's
12 Office. We never did go in front of no courtroom to see no
13 judge.

14 Q All right. And did the offer of the five years plea, did
15 that come up again while you were over at the courthouse?

16 A Yes, sir, it did.

17 Q Okay. And did you tell Ben what you -- that you wanted
18 to accept this offer?

19 A Yes, sir. I told Ben I wanted to accept it, but I was
20 telling him that I wanted to get a continuance so that I could
21 talk with Mr. -- go over this with Mr. Theo.

22 Q Okay. And that was because Mr. Williams was representing
23 you.

24 A Right.

25 Q Okay. And when you and I talked, you said that they

1 were -- you told me two reasons as to why you wanted to have
2 this case carried it over -- carried over. You were in
3 December. Do you remember what those reasons were?

4 **A** I mean, when I was talking to Mr. Theo, he was telling me
5 that, you know, you was going to see -- it was getting closer
6 to the holidays and, you know, see if we can come back at the
7 beginning of 2016 and get the case taken care of then.

8 **Q** Okay. So you wanted to -- you knew that, once you pled,
9 you were going to go to jail.

10 **A** Say it again now.

11 **Q** You knew that once you entered into the plea that you
12 were going to jail?

13 **A** Right.

14 **Q** And you wanted to stay out for the month of December.

15 **A** Right.

16 **Q** Okay. And then I think you said the other reason was
17 because that you wanted to talk to Mr. Williams about this.

18 **A** Yeah, I wanted to talk to Mr. Williams and I had wanted
19 to go over there with him. Being that me and Ben was in
20 court, I mean, when we went over to the courthouse, I was
21 trying to explain, you know, Mr. Ben that I wanted to talk to
22 Theo or whatever, but I don't know what -- you know, him and
23 the Solicitor was talking about because I was outside the door
24 or whatever. But all I wanted was a continuance. You know?
25 Beyond which you -- I really didn't know. I ain't got a trial

1 date until I got back in the car with Misty, and she looked at
2 me, and that's when she was like, "You got a trial date." You
3 know?

4 **Q** So Ben gave you a piece of paper with a trial -- they
5 gave you notice of a trial date when you were there that day
6 with Ben?

7 **A** Right.

8 **Q** All right, sir. And do you remember how far off that
9 date was from when you were there in court on December?

10 **A** It had to have been around February.

11 **Q** Okay. That was tried in February of this next year?

12 **A** February of 2016, yes, sir, I think that's when it was.

13 **Q** Okay. All right. So did you talk to Mr. Williams about
14 this after you were over at the courthouse with Ben?

15 **A** Yes. I had called him. I had called him and told him
16 that they had gave me a trial date and I was letting him
17 know -- you know, I was telling him, Mr. Theo, you know, I was
18 telling you that I never did had wanted to go to trial on this
19 case. And he was telling me that I'm going to have to go. We
20 wanted to make sure we (indiscernible) to go to trial on this
21 case. And that's when I was thinking I wasn't going to have
22 to go to trial.

23 **Q** And that was because you had accepted the plea offer.

24 **A** Well, I had never -- I never did get a chance to accept
25 the plea offer. I was letting Theo know that I would take it.

1 Q All right. So you mean -- what you mean by accepting is
2 that you never got an opportunity to go in the courtroom and
3 plea.

4 A Right. I never did get that opportunity to go in there
5 and plea for the part either. I never did.

6 Q Okay. All right. Now, so it was your understanding that
7 you were going to plead guilty to this. What happened -- why
8 did you go to trial?

9 A I guess when they gave me the trial date and Theo told me
10 that we had -- I had to go to trial, I came back. When I came
11 back up there and talked to Theo about it, he was like, I
12 guess -- I guess Theo tried to go over to the courthouse and
13 talk to them, I guess, you know. I didn't know that he was
14 going to withdraw to try and get a plea the day that Ben took
15 me to court. I didn't know that. I wasn't aware that he was
16 going to do that. I really didn't.

17 Q Right.

18 A And I didn't know that they -- them five years was
19 getting withdrawn that day that Ben took me over to the
20 courthouse.

21 Q Okay. So you learned later that, that day, the five-year
22 offer was withdrawn?

23 A I didn't -- I still didn't know it until I came back in
24 February.

25 Q Got you. Got you. And, at that point in time, you

1 discussed this with Mr. Williams about going to trial?

2 **A** Yeah, I mean, I was still telling him I didn't want to go
3 to trial. I'm pretty sure he knew I was telling him that I
4 didn't want to go. He know I didn't want to go.

5 **Q** Okay. All right. But you ended up going to trial.

6 **A** We ended up going because he told Theo -- I guess he told
7 Theo either plead to the 25 or go to trial.

8 **Q** All right. So the offer changed. In other words, the
9 plea offer at that point changed from five to 25 years.

10 **A** Right.

11 **Q** Okay. And then, at that point in time, that's when you
12 were put in a position of having to try this case.

13 **A** Right, sir.

14 **Q** Okay. And so you did try the case and you received 25
15 years?

16 **A** Right, sir.

17 **Q** Okay. So you got 20 more years above what the plea offer
18 was?

19 **A** Yes, sir.

20 **Q** If you had accepted or if you had appeared in front of
21 the court and pled to that plea offer and received the five,
22 would you be out today?

23 **A** Yes, sir.

24 **Q** Okay. Kendrick, I know that we also had one other issue,
25 which was a chain of custody issue. I'm not going to ask you

1 about that. We'll ask Mr. Williams. But today is your day in
2 court. Now, I'm going to ask you a question, and I'm not
3 implying that I have forgotten something or left something
4 out, but you have waited a long time to be in court today. Is
5 there anything else that you would like to bring to the
6 Court's attention that I may have forgotten or that I may have
7 not brought to the attention of the Court?

8 **A** I mean, you know, it's not really -- I don't have
9 really -- I mean, all I'm asking is I know Ben -- I never did
10 had wanted to go to trial in this case, sir, and that's all
11 I'm asking. I just was -- I really just wanted to get the
12 five years (indiscernible) as fast as possible. You know?

13 **Q** All right.

14 **A** I think you have some -- most of everything up. You
15 know? That's all I'm willing to -- I think it was just maybe
16 a misunderstanding somewhere, and like I say, the day that Ben
17 took me to court, Theo wasn't there with me. And I know if
18 Theo -- if I had any -- if I had a chance to talk to Theo, I
19 know I wouldn't be sitting in prison with 25 years right now.
20 Because that's who I was discussing my case with, you know?
21 That's who I was talking to, Mr. Theo. I mean, he did what he
22 could -- he did what he could to try to help me in trial, but,
23 you know, I'm sitting here for 25.

24 **MR. THOMAS:** Your Honor, I have no further questions.

25 **THE COURT:** Ms. Meadows?

1 MS. MEADOWS: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MEADOWS:

4 Q Good morning, Mr. Mims.

5 A Good morning.

6 Q So about the five-year plea offer, did you ever have the
7 opportunity to discuss it with Mr. Williams either before or
8 after you went to court with Mr. Stitely?

9 A Mr. Williams was telling me about it. You know, he told
10 me that, you know, either Ben said something about five years,
11 you know, and I believe Ben did, trying to get me to take the
12 five years and Ben said I wasn't taking five years. I had
13 just wanted to go over it with Theo. That's all I wanted to
14 do.

15 Q Right. But I'm talking about before that. Did you
16 discuss it with Mr. Williams?

17 A Yeah, I told him -- I told him I would take the five.

18 Q Okay. Now, when you went to court with Mr. Stitely, this
19 five-year plea offer was still on the table; correct?

20 A Right, when I went to court with Mr. Stitely.

21 Q Okay. And what did he tell you about taking the
22 five-year plea offer?

23 A He told me that -- they want to give you the five years
24 but they're going to lock you up today. And I was saying, you
25 know -- I said, Well, I just want to get it continued until I

1 talk to Theo. That's all I kept saying. And I guess when he
2 went back inside the Solicitor's Office, I don't know what was
3 said, you know, but I never did tell him I wanted to go to
4 trial. I never did say I wanted to go trial on this case. I
5 just wanted it continued so I could go over it with
6 Mr. Williams.

7 **Q** Okay. So when you -- did you ask Mr. Stitely to ask for
8 a continuance?

9 **A** Yes, ma'am.

10 **Q** Okay. And what did he say?

11 **A** That's when he came back out with the trial date and said
12 this is the only court appearances that they're going to give
13 you.

14 **Q** Okay. So, at that point, you knew that they would not
15 continue it.

16 **A** Not -- I mean, I tell you this much: I didn't know all
17 what I know now since I have been in about the law. I didn't
18 know that that was going to be, like -- I didn't know that the
19 plea offer was going to be withdrawn. I didn't know that. I
20 wasn't aware of that.

21 **Q** Okay. So back to Mr. Williams, how many times did you
22 meet with him before trial?

23 **A** I met with Mr. Williams, like, the week before the trial.
24 Like I came up there, like, on February the 8th, I think, the
25 week of my trial.

1 Q Okay. And did he go over the discovery with you or
2 discuss the State's evidence?

3 A I mean, like I said, it was just the dash cam.

4 Q Okay. I think that's all the questions I have.

5 THE COURT: All right.

6 Do I mind if I ask Mr. Mims a question?

7 MR. THOMAS: No, ma'am.

8 THE COURT: Okay.

9 EXAMINATION BY THE COURT

10 BY THE COURT:

11 Q Mr. Mims, on the date that you were in with Mr. Stitely
12 at court for roll call and you wanted a continuance, you have
13 testified that you were aware that the five years was on the
14 table.

15 A Yes, ma'am.

16 Q You know, generally how this goes, they say you took your
17 five years today or the offer is off the table and we're going
18 to give you a trial date. Were you aware of that on that
19 date? Is that what Mr. Stitely told you?

20 A No, ma'am. No, ma'am. I mean, it was just -- he was
21 just like basically saying this is the only court date that
22 we're going to give you. I didn't know -- if I had a knew
23 that that plea was going to be withdrawn, ma'am, I'm telling
24 you right now, I wouldn't be sitting in prison for 25 years.
25 I promise you I wouldn't.

1 Q But you also testified that Mr. Stitely said that, if you
2 didn't do the five years today, that you knew you would go to
3 jail today.

4 A Yes. He told me they offered the five years and they
5 were going to lock me up today.

6 Q Right.

7 A But I still didn't know that the five years was going to
8 be withdrawn.

9 Q Okay. All right. That's all I have. And one other
10 thing.

11 A Yes, ma'am.

12 Q You watched the dash cam, which is what we consider
13 discovery, that's evidence in your case.

14 A Okay.

15 Q And you also testified that, for every roll call that you
16 went, Mr. Williams walked over with you.

17 A Yes, ma'am.

18 Q How many -- can you tell me how many roll calls you went
19 to?

20 A To be honest with you, I really can't remember.

21 Q All right.

22 A But I went to a few of them with Mr. Williams.

23 Q Right. And did you meet with him and talk to him on
24 those days about your case?

25 A I mean, we always talk about it. You know, I always

1 mention to him, you know, like -- because he still wanted to
2 go to trial (indiscernible).

3 Q Okay. All right. Well, thank you, Mr. Mims.

4 THE COURT: Mr. Thomas, you can proceed. I'm sorry to
5 interrupt.

6 MR. THOMAS: No, no, no. No, ma'am. No problem. I
7 don't have no further questions.

8 THE COURT: Do you have another witness?

9 MR. THOMAS: Yes, ma'am. If she is on -- I don't know
10 if -- we were talking about her technical -- about her getting
11 in. That would be Misty Davis. I know she was going to sign
12 on at 12:00. And she would be my last witness, Your Honor.

13 THE COURT: Okay.

14 MR. THOMAS: I was just looking to try to see if I could
15 see her on.

16 THE COURT: Well, we have got -- I have got 11:52, so she
17 might not have tried logging on yet.

18 MR. THOMAS: Yes, ma'am.

19 THE COURT: But we will certainly wait on her.

20 MR. THOMAS: If you don't mind, Your Honor. I told her
21 that -- because of -- just because of all the -- you know, the
22 technical situation, that if she had problems and was unable
23 to get on, we're not going to take up the Court's time. We
24 would just waive that witness, Your Honor, because she does
25 have just very brief testimony. But I would like to get it on

1 the record if she appears.

2 THE COURT: Okay. Well, why don't we take, like, a
3 seven-minute break. Don't anybody sign off because I got
4 everybody on. And let's -- I'm going to give her a little
5 after 12:00 to see if we can't get her. Okay?

6 MR. THOMAS: Thank you. Yes, ma'am.

7 (A brief recess was taken from 11:53 a.m. to 12:06 p.m.)

8 THE COURT: Mr. Thomas, have you heard from her?

9 MR. THOMAS: Yes, ma'am. We have her on the phone.
10 Safari would not let her in. She did get in last night. I
11 sent her a refreshed link that I had received from court
12 yesterday, so she's going to try one more time, Your Honor.

13 THE COURT: Okay. Good.

14 MR. THOMAS: And I apologize for the delay. Normally, I
15 like to -- you know, if I have the witnesses in court, I can
16 just put them all up.

17 THE COURT: No, there's no need for an apology. Trust
18 me.

19 MR. THOMAS: Yes, ma'am. Thank you.

20 (Pause in the proceedings.)

21 MR. THOMAS: Your Honor, we just heard from her. We sent
22 her the link. She said she got another error message, so
23 she's going to restart her phone. She doesn't have a
24 computer. And if she gets the same problem, she's going to
25 call us immediately back and we'll just let the Court know and

1 we'll just move on.

2 THE COURT: All right. Bruce, is there a way that we can
3 help her?

4 MR. NORTON: Yes, ma'am. She can call in and just appear
5 on audio. If that's needed, I can give you the call-in number
6 and the access code.

7 THE COURT: Yes.

8 MR. THOMAS: What's that number, please, and I'll...

9 MR. NORTON: Sure. The call-in number is 1-408 --

10 MR. THOMAS: 1-408.

11 MR. NORTON: Yes, sir. 418.

12 MR. THOMAS: 418.

13 MR. NORTON: [REDACTED].

14 MR. THOMAS: [REDACTED].

15 MR. NORTON: And then the access code that she'll need to
16 put in to join is 129 --

17 MR. THOMAS: 129.

18 MR. NORTON: -- 593 --

19 MR. THOMAS: 593.

20 MR. NORTON: -- [REDACTED].

21 MR. THOMAS: [REDACTED].

22 MR. NORTON: And then pound.

23 MR. THOMAS: And then pound.

24 MR. NORTON: Yes, sir.

25 MR. THOMAS: Okay. All right. Let me go -- if I may be

1 excused, Your Honor, I will go and see if we can get a phone
2 call from her.

3 (Pause in the proceedings.)

4 THE COURT: All right. Ms. Davis, my name is Debbie
5 McCaslin, and I'm the judge in this case.

6 THE WITNESS: Yes, ma'am.

7 MISTY DAVIS,

8 the witness, after having been duly sworn, was examined and
9 testified to as follows:

10 THE COURT: Okay. Go ahead, Mr. Thomas.

11 MR. THOMAS: Your Honor, if it please the Court.

12 DIRECT EXAMINATION

13 BY MR. THOMAS:

14 Q Ms. Davis, would you please state your full name for the
15 Court.

16 A Misty Rochelle (ph) Davis.

17 Q All right, Ms. Davis. Now, what type of relationship or
18 how are you related to Mr. Kendrick Mims?

19 A I have children with Kendrick, and we have been together
20 for 18 years.

21 Q Okay. All right. And let me -- and you understand that
22 you're here to tell the truth today?

23 A Yes, sir.

24 Q Not here to reward anyone or help anyone but just to tell
25 the truth.

1 **A** Yes, sir.

2 **Q** All right. Now, Ms. Davis, you are familiar with the
3 criminal charges with Mr. Kendrick Mims?

4 **A** Yes.

5 (Pause in the proceedings.)

6 MR. THOMAS: We have a train.

7 THE COURT: First train I've had on video.

8 MR. THOMAS: It's right out there.

9 BY MR. THOMAS:

10 **Q** Okay. Now, you understand -- you are aware that he is
11 serving time on a drug charge?

12 **A** Yes, sir.

13 **Q** Okay. And were you with him -- you and he were together
14 during the period of time that he was awaiting trial?

15 **A** Yes.

16 **Q** And did you have occasion to actually go with him to
17 Mr. Williams's office?

18 **A** Yes.

19 **Q** Okay. Now, based upon those visits to Mr. Williams's
20 office, do you know of your own knowledge whether or not
21 Mr. Mims wished to try this case or whether or not he was
22 going to accept a plea?

23 **A** He would have liked to accept the plea, but I don't know
24 if he was offered the plea.

25 **Q** Okay. So you don't know whether or not he was offered a

1 five-year plea.

2 **A** No, I'm not aware of that.

3 **Q** Right. But you are aware that he did want to plead --
4 plead to this charge?

5 **A** Yes.

6 **Q** All right. And were you in the car with him after the
7 December meeting with Mr. Ben Stitely over at the courthouse?

8 **A** Yes, I was.

9 **Q** Okay. And there was a call placed to Mr. Williams? Are
10 you aware of that?

11 **A** Yes. As soon as he got in the car, he called
12 Mr. Williams.

13 **Q** Okay. And was that conversation on speakerphone?

14 **A** It was on speakerphone, yes.

15 **Q** So you heard that conversation?

16 **A** Yes.

17 **Q** And during that conversation, was there any mention of a
18 plea or a trial?

19 **A** The conversation that I heard was -- because he had a
20 slip -- a court slip, and I saw "pre-trial" on his slip, and
21 so that was the reason why he called Mr. Williams, explaining
22 to him about the slip that they had gave him in court. You
23 know, he was inquiring about trial, and he said this is not --
24 he said, "I'm not going to trial, am I?" And Theo told him
25 no. You know, he assured him that he was not going to trial.

1 Q Okay. So, to the best of your knowledge, Mr. Mims did
2 not want to take this case to trial.

3 A He did not.

4 MR. THOMAS: Your Honor, I thank you so much for the
5 Court's indulgence. We have no further questions.

6 THE COURT: Absolutely.

7 MR. THOMAS: Yes, ma'am.

8 THE COURT: Ms. Meadows?

9 MS. MEADOWS: I don't have any questions for this
10 witness.

11 THE COURT: Okay. Well, thank you, Ms. Davis.

12 THE WITNESS: Thank you. Have a great day.

13 THE COURT: You too, now.

14 All right. Mr. Thomas, do you need to call anybody else?

15 MR. THOMAS: Your Honor, if it pleases the Court, that's
16 the applicant's case.

17 THE COURT: Okay. All right, Ms. Meadows.

18 MS. MEADOWS: The State would call Theo Williams.

19 THE COURT: All right, Mr. Williams. I had placed you
20 under oath.

21 THE WITNESS: You have, Your Honor.

22 THEO WILLIAMS,
23 the witness, after having been previously duly sworn, was
24 examined and testified to as follows:

25 DIRECT EXAMINATION

1 BY MS. MEADOWS:

2 Q Mr. Williams, how long have you been practicing law?

3 A Twenty-four years.

4 Q Okay. And how much of that time has been in criminal?

5 A Starting in '97. Probably 90 percent.

6 Q Okay. And now how did you become involved in Mr. Mims'
7 case?

8 A He contacted me. I came up. He met, went through his
9 file. He hired me.

10 Q Okay. And do you recall how long this was before his
11 trial?

12 A Several years. It was definitely an extended period of
13 time --

14 Q Okay.

15 A -- before he actually went to trial.

16 Q Okay. Because the indictment, I think, was from 2013;
17 right?

18 A Yes.

19 Q Okay. Could you just give the Court a brief explanation
20 of Mr. Mims' charge or charges -- or charge and how these
21 charges arose?

22 A I think what happened, he was going down the highway with
23 another gentleman I think who was about 20. Antley -- I know
24 the judge probably knows Antley is. Antley, major speed,
25 going, like, 90 in like a 70 or something like that. Pulled

1 him over. It looked like he probably -- at first, wasn't
2 going to go any further but (indiscernible) except he went
3 around and talked to Kendrick, and he noticed that there was a
4 blunt in the floorboard. And he asked him to stand outside.
5 I think he was asked questions like, "Where are you coming
6 from?", which is a typical kind of thing. And then Antley
7 pushed him a little bit to say (indiscernible) and I think
8 that's (indiscernible) and questioned him.

9 But what basically happened was Kendrick had on a pair of
10 loose-fitting pants, and his pants kept falling off. And
11 Kendrick reached down -- you can see this on video -- he
12 reached down to try to pull his pants up, and of course Antley
13 thought that he had some sort of weapon, some sort of thing in
14 there. When he was -- Kendrick is one of the most
15 mild-mannered individuals in the world, but I know he's a big
16 guy and all that, but I guess Antley freaked a little bit and
17 he pulled out his Taser and he tased him a couple of times.
18 Kendrick starts running down across the field, across the
19 barbed wire. Little did he know that Antley was a trooper who
20 runs like marathons or something. He had to (indiscernible),
21 but I think Antley -- Antley was a guy that runs all the time.
22 He didn't stand a snowball's chance.

23 So he runs and gets about 200 yards, and Kendrick kind
24 of -- kind of gives it up and falls down. Antley sees him
25 doing something on the ground, so he went ahead and cuffed him

1 and started pulling up (indiscernible) and stuff and finds a
2 plastic (indiscernible) which has a white substance in it,
3 (indiscernible) it open and so forth.

4 That's kind of brief scenario of what I --

5 **Q** Okay. And what did Mr. Mims tell you about what
6 happened?

7 **A** Well, now, I'm not sure what you're asking when you ask
8 that question. He essentially asked her all of those things,
9 if that's what happened. He was confirmed that -- how he
10 speeded a little bit. So he felt like Antley paced him too
11 quickly and that, in the video, it appears that he -- I don't
12 know that he's pulling away from him, you know, like he's
13 going to run or if that's (indiscernible), but at some point
14 in time in all that, he decides to take off. But, I mean,
15 essentially, it confirmed the facts on the case.

16 **Q** Okay. Do you know if Mr. Antley deployed his Taser after
17 Mr. Mims starting running or before when they were still kind
18 of stopped?

19 **A** I thought he pulled it out when he was grabbing ahold to
20 him and he was pulling off. I could go back and review it,
21 but I thought maybe -- if I remember right, I think Kendrick
22 was kind of pulling away from him a little bit, then he
23 (indiscernible), then he shot him. Then he shot him again
24 because he actually shot him twice. So it's my
25 (indiscernible) it could be (indiscernible), but I know he

1 definitely shot him.

2 **Q** Okay. And how many times did you meet with Mr. Mims
3 before his trial, which I understand was a few years after he
4 hired you?

5 **A** Several times. There was -- what happened was Kendrick
6 was, you know, arrested and (indiscernible). So for awhile he
7 was down in Florida, and there was nothing going on with his
8 case, and Gill, who was the prosecutor, kept trying to get him
9 up to try his case, and essentially, got released from Florida
10 and he got -- I want to say he got Alabama, maybe,
11 (indiscernible). He's got Alabama (indiscernible) any hold on
12 him. And then he came up to try his case. I mean, it's not
13 like he was running or doing anything like that. He
14 voluntarily came up and he made some roll call.

15 **Q** Okay.

16 **A** So...

17 **Q** Okay. So you met with him several times before trial.
18 Okay.

19 Okay. And did you discuss the potential sentence he was
20 facing with this charge?

21 **A** We did. There's a bill back in July of 2015, and I told
22 Kendrick that -- he was charged with in excess of 400 grams.
23 I want to say that it was like 900 grams or something like
24 that, which gave him 25 to 30. And he (indiscernible) that he
25 was (indiscernible) 10 to 28 grams, second offense, which

1 carries five to 30 years. And that five is important because
2 I think there may be -- I think five is the issue here with
3 Kendrick. It was a second offense that carries five to 30
4 years or we could plead to trafficking cocaine, 28 to 100
5 grams first offense, which carries seven to 25 years.

6 **Q** Okay. So the Solicitor discussed those plea offers with
7 you?

8 **A** Yeah, and there was a lot of differing going on. You
9 know, we kept trying to get him down, get him down, get him
10 down, get him down. And one thing that Kendrick didn't want
11 to do -- I heard Kendrick say he wanted a five-year plea, but
12 I don't know that the offer was ever five years, period.

13 **Q** Okay.

14 **A** And if I'm wrong, I'm wrong, Kendrick, but I thought it
15 was -- the offer was five to 25 years. And I thought the
16 problem was, it was on the top end. You know, Gill would not
17 permit. What he would do -- you know, if you'd give him,
18 like -- that's what I remember it being. Because there is no
19 five years. And one thing to remember, if I remember right, I
20 want to say that the five to the 30, the five might have been
21 suspendable back then.

22 **Q** Okay.

23 **A** But it was never just five.

24 **Q** Okay. So they never said, like, a negotiated five-year
25 sentence or anything like that?

1 **A** No.

2 **Q** Okay.

3 **A** That five, he probably would have taken it.

4 **Q** Okay. Okay. So did you have to formally, like, reject
5 the plea offer or did it just expire at some point?

6 **A** The deadline on the offer was September the 4th of 2015.

7 **Q** Okay.

8 **A** He made several roll call appearances, and I want to say
9 the last time that he appeared, which is what the discussion
10 is all about where Ben went across there -- I was actually
11 pulling a jury in the case of State versus Judy Baker. I
12 think they had -- might have had two terms of court going on.

13 **Q** Okay.

14 **A** But the sheet came back basically setting his court date
15 in February 2016. February the 8th or something like that of
16 2016. And we actually received a letter. I went and found
17 another letter that basically said -- you know, it basically
18 said he turned down the offer three times -- yeah, we got --
19 on Monday, December the 14th, we got an email from Gill which
20 said that -- rejected his third and final offer. All offers
21 are now revoked.

22 **Q** Okay.

23 **A** Between you and me, I probably tried to (indiscernible) a
24 little bit after that to see if I could get extra time. I
25 think Gill was (indiscernible).

1 Q Okay. So was that appearance he had with Mr. Stitely,
2 was that the third time that he, I guess, rejected it? Do you
3 know?

4 A I don't know that.

5 Q Okay.

6 A And I want to say that maybe Kendrick might have been
7 represented by the public defender for a short period of time
8 before I took over.

9 Q Okay.

10 A Only Kendrick can remember that.

11 Q Okay. And did you speak with Mr. Stitely after he went
12 to court with Mr. Mims that time?

13 A I -- I did.

14 Q Okay.

15 A I don't remember exactly what I said, but Kendrick is
16 right; he did call me after that appearance. I remember him
17 calling me from the car and I talked to him.

18 Q Right. So what did y'all talk about during that
19 conversation? What did you tell him?

20 A Kendrick says that he didn't want to plead to the charge.
21 I said, Well, I'll probably do better. I'll see if we can't
22 get something done better, but I don't know that we can do
23 that. I think, in essence, what happened was we had gone back
24 to where you're on a (indiscernible). Kendrick just wouldn't
25 change his mind.

1 Q Okay. So was this a case where he always wanted to plead
2 guilty or --

3 A No.

4 Q -- if you want to go to trial?

5 A No. He wanted the left -- he wanted, number one, not to
6 go to jail; number two, if he could be not guilty on that,
7 he'd plead not guilty on that. I don't know that he -- this
8 is not really a question I think of he always wanted to plead
9 guilty to five years. I mean, I don't think he ever wanted to
10 plead guilty to five years, if that's the best he could get.

11 Q Okay.

12 A But the five years wasn't there.

13 Q Okay. I gotcha.

14 So were you able to obtain the discovery from the State
15 at some point?

16 A Yes.

17 Q Okay. Did you go over it with him?

18 A I did.

19 Q Talk to him about it? Okay.

20 A The only time I didn't have (indiscernible) I want to say
21 is I think I mailed him a copy of the -- a copy of the -- in
22 January, I want to say -- Gill sent me over a copy of the
23 (indiscernible) -- the custody of the drugs.

24 Q Okay.

25 A I mailed that to him in January.

1 Q Okay.

2 A I was complaining to Gill about why he wouldn't change --
3 I think I was complaining to Gill about why he wouldn't give
4 us a better offer, and I said, "You haven't sent me
5 everything." And that's the same thing I got after that was
6 the little -- I don't know if you -- whoever was
7 (indiscernible) on the case prepared the -- there's a chain --

8 Q I have never tried a case, in fact.

9 A Well, there's a chain that's offered on many occasions
10 which shows what happened to the drugs after it's seized by
11 Antley and where it goes and stuff like that with the
12 property -- what Mr. Thomas was thinking about.

13 Q Okay. And, let's see. Were there any issues after
14 getting the discovery that you thought were particularly
15 problematic or potentially good for Mr. Mims?

16 A You know, this type of case, in all honesty, if we had
17 tried this case in today's society, we might have had a better
18 chance. It was -- it was a questionable thought in my mind
19 except for (indiscernible). But it's clear -- I guess if you
20 look at it objectively, it's clear that he did pull away from
21 him, and that, in itself, would be a reasonable suspicion that
22 he had something on him, perhaps a weapon.

23 Q Okay.

24 A But him getting out -- him getting away from him when
25 they found all the drugs out there in the field, he wasn't

1 going to (indiscernible) that charge based on that.

2 **Q** Okay.

3 **A** Because nobody else is around. The (indiscernible) is
4 still pretty slim.

5 **Q** Okay. So did you see any -- just in your opinion -- any
6 possibility of getting the drugs suppressed or moving to
7 suppress them?

8 **A** We would have had to have a lot more breaks
9 (indiscernible).

10 **Q** Okay.

11 **A** With everything that we had from -- from the prosecutor
12 to the judge to the items presented, we were not going to be
13 able to (indiscernible).

14 **Q** Okay. And do you recall -- I believe Mr. Mims and
15 Mr. Thomas discussed a co-defendant earlier. Do you know what
16 happened with the co-defendant's case?

17 **A** I don't. And when he said that, I could not -- it was
18 freaking me out because I don't know what happened to it.

19 **Q** Okay. I haven't really been able to find anything
20 either, so I was just wondering.

21 **A** Well, it makes you almost wonder if he was like -- like
22 an informant or something, but, seriously, I have absolutely
23 no idea what happened (indiscernible).

24 **Q** Okay.

25 **A** Sure would like to know but I don't know.

1 Q Okay. And did you do any type of an independent
2 investigation or did you just mainly look at the discovery the
3 State provided you?

4 A Independent --

5 Q I mean, was there anything else that you thought you
6 needed to investigate beyond what they gave you in discovery?

7 A No. It was pretty straightforward.

8 Q Okay. Let's see. So did you guys discuss any possible
9 defenses or what did you plan on really focusing on at trial,
10 I guess?

11 A Well, perhaps if we got the other co-defendant to being
12 concealed with drugs, we might have been in better shape, but
13 aside from that, that's about the only thing that could have
14 helped.

15 Q Okay. Now, there was one allegation that you were
16 ineffective regarding your handling of the chain of custody.
17 Did you see any potential issues with the chain of custody?

18 A No, but if somebody saw it, we (indiscernible). I can't
19 remember. It's about four years ago.

20 Q I know. I believe there was, at some point, but it was
21 really just in regard to the Solicitor leading the evidence
22 custodian or something like that.

23 A Well, I think I probably objected to it, knowing me,
24 but --

25 Q Okay.

1 **A** But I think it was probably Judge McMahon who
2 (indiscernible), so...

3 **Q** It was.

4 **A** Okay. I'm sure he overruled me or something like that.
5 It would have been only something like that, like a
6 (indiscernible).

7 MS. MEADOWS: Okay. Judge, I believe that's all the
8 questions I have for Mr. Williams.

9 THE COURT: Okay. Mr. Thomas?

10 MR. THOMAS: Your Honor, if it please the Court.

11 THE COURT: Absolutely.

12 MR. THOMAS: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MR. THOMAS:

15 **Q** Mr. Williams, good morning. Good to see you.

16 **A** Good morning.

17 **Q** In kind of going backwards, as I was looking at my notes,
18 one of the things that jumped out at me was what you mentioned
19 was the probable cause in this case. I was curious about that
20 because really there was probable cause, you know, just for
21 the stop because the co-defendant was going so fast. But was
22 there probable cause to take this thing any further than that?

23 **A** Well, you know, I thought about that too. I think -- I
24 think it was probably -- once he was -- you know, this is a
25 typical thing. I hate to call you Mr. Thomas because I know

1 you so well. I think it's a typical deal where the
2 (indiscernible) -- where they stop you and they go through
3 different -- they're playing and going through a scenario of
4 questions to see if you get nervous about where you're coming
5 from and that kind of thing. And once he got the driver
6 out -- he just went up -- I think he just genuinely just went
7 over to look at the passenger to make sure he didn't have a
8 gun or something like that.

9 They're trained, any time you have two people, you know,
10 and you're getting a funny feeling, you get them out and you
11 explain to them you're not a threat to them, you're just
12 (indiscernible) them. (Indiscernible). And Antley, Antley's
13 a good cop. I mean, he's -- he probably did (indiscernible).
14 He wouldn't have made that up, as much as I would like to
15 think so.

16 **Q** But I guess it appears from reading the transcript that
17 the concern was the gun, a weapon, in the initial stage.

18 **A** Well, that's what he testified to, and I could see that
19 because if you saw the size of that -- of those drugs and they
20 were wrapped up really, really, really tight, it's almost like
21 a small melon or something like that. And it was in --
22 supposedly it was in his pants leg. That was probably pretty
23 hard to keep in one place.

24 **Q** All right.

25 **A** And if your pants are falling off because you have got it

1 kind of -- got some weight in there, it probably looked
2 peculiar. It probably (indiscernible) a gun or a knife. I
3 don't know. I mean, I don't know how you (indiscernible).

4 **Q** And it also came to me that it would be extremely
5 difficult with something like to run, that was loosely in your
6 pants as well.

7 **A** He didn't stand a chance running with that in his pants.

8 **Q** All right. So in listening to your testimony regarding
9 potential defenses -- one being the co-defendant, who we don't
10 know whatever happened to him -- in your analysis of this
11 case, I mean, would that case -- because we all look at these
12 cases and try to weigh the difference between a trial and a
13 plea offer. Would this have been a case that you would have
14 made an analysis that it was best to plead to?

15 **A** No. I actually think that he might have been able to get
16 that five years that he was talking about now if he hadn't
17 been arrested as part. I think (indiscernible) plenty of
18 appeals between this. But I don't have anything to base it on
19 other than my knowledge of Gill. It's probably -- it probably
20 would have been a better deal to plead (indiscernible) but I
21 have never heard him tell me that he wanted a pre-trial or
22 plead guilty to. I mean, never heard him say he wanted to
23 plead guilty.

24 **Q** Would it have been a case in which you would have
25 cautioned him about pleading because of the amount of time

1 that this case could potentially carry if there was a
2 conviction?

3 **A** Sure. And I want to say I might have told the Attorney
4 General Office this -- this is not a plan on my law partner,
5 who I know as well, and he and I have probably different
6 personalities, but if anybody would have talked to
7 (indiscernible), the plea would have been him (indiscernible).
8 I mean, if there was a question -- (indiscernible) worked
9 pretty hard on that. You know? So...

10 **Q** So, in essence, I think you testified that there were at
11 least two different plea offers. One was 10 to 28 on a second
12 offense or 28 to 100 on a first.

13 **A** Correct.

14 **Q** All right.

15 **A** That was from July of 2015.

16 **Q** Okay. And you have heard the testimony of Mr. Mims. I
17 could understand how he could be confused about -- because we
18 all have clients that do that, that, of course, focus on the
19 five on the lower range.

20 **A** (Indiscernible).

21 **Q** But either one of these could have been a potentially
22 attractive with -- I know how well you do a plea -- to --
23 rather than taking a case like that to trial.

24 **A** I agree. In all honesty, I don't think Kendrick really
25 wanted -- and he never indicated to me that he wanted to

1 plead. I mean, I would never (indiscernible).

2 **Q** But it does make some sense that, if the case -- and it
3 appears that this was a pre-trial conference rather than -- I
4 mean, that's what it appears to me that this hearing was a
5 pre-trial conference, but it would make sense that if Kendrick
6 was thinking that he had a plea offer, that he would want to
7 accept it in some month other than December.

8 **A** Well, I mean, I guess you have to ask him that and ask
9 Mr. Stitely his opinion on that last deal because -- I mean, I
10 don't think -- I tried after that and there was never -- you
11 know, there was the letter that (indiscernible) to Kendrick,
12 you know, like the evidence sheet. I mean, he knew we were
13 going to trial when it came up in February of 2016.

14 **Q** Okay. But he did call you and did come into your office.
15 I mean, you heard his testimony. He did come into your office
16 at a later date and, at that point in time, you and -- did you
17 go and speak with the Solicitor and then come back and inform
18 him that it was going to be a trial?

19 **A** I want to say that he called me after the deal with
20 Stitely, and I went over and maybe once or twice tried to talk
21 with Gill, and Gill wouldn't (indiscernible). Because, you
22 know, we got the letter and I went back and talked to Gill,
23 and Gill was not backing off.

24 **Q** Okay. And I guess -- and if your experience has been
25 like mine, a lot of times, we get written plea offers that

1 have an expiration date, but we normally don't have
2 difficulties with accepting those pleas. I mean, they put a
3 date on there, but my experience is that it's been never like
4 this is a true drop-dead date.

5 **A** You're absolutely right. That's why -- that's why I
6 didn't just quit at least talking to him to see if we could
7 get a better deal, but Gill -- and I don't know why he was
8 that way except, you know -- I mean, I could take a guess why
9 he felt that way, because Gill's a nice guy and all that, but
10 he just would not change his mind.

11 **Q** Right, right. Moving to the chain of custody -- and I
12 think you did an excellent job arguing the issue that you
13 argued. I did see something strange, and I wanted to ask you
14 about it. I don't know if it has any significance to it. But
15 if you look at page 193 of the transcript --

16 **A** I don't have that.

17 **Q** Well, I'll ask you, then, if you can go from memory. Pat
18 Crooke's (ph) testifying. I actually know Pat. I hadn't seen
19 her in years, but I was surprised to see her name because I
20 knew she worked for SLED in their forensic department.

21 She testifies that -- and I think that was her job. She
22 basically would pick up the --

23 MS. MEADOWS: Tommy, is this 223? Are you looking at the
24 record on appeal?

25 MR. THOMAS: Yeah, I apologize. It's on 224 or 193.

1 MS. MEADOWS: Okay.

2 MR. THOMAS: And it may be 193 of the record.

3 THE COURT: Of the record of appeals?

4 MR. THOMAS: Let me look at -- one number -- they're
5 both -- there are two numbers on there.

6 MS. MEADOWS: I just have the trial transcript, not the
7 record on appeal and it says 223.

8 MR. THOMAS: I think it is transcript -- it says
9 transcript of record, and it is -- but it's got two numbers.
10 So it's -- what I have is 193. Or 224. I apologize.

11 MS. MEADOWS: Yeah, I see Ms. Crooke's on 224.

12 MR. THOMAS: Okay. All right. Okay.

13 BY MR. THOMAS:

14 Q Beginning in paragraph 17 -- and actually runs over to
15 the next page with lines 1 through 3, 17 through 25 on 224.
16 And, Theo, what's going on is that there's testimony here that
17 Ms. Crooke's job is to pick up basically the evidence and take
18 it to the actual tech who, in this case, was Lynn Black, and
19 she does the analysis on -- she does the initial test and then
20 she does the spectrum analysis test of the drugs.

21 What I noticed in here is that there's testimony by
22 Crookes and it says, "There are two separate parts of evidence
23 controlled. One is the initial area and that's where evidence
24 is actually logged in and assigned a unique bar code." And it
25 says, "That person, the person who logged this evidence in,

1 would have then placed it in a specific place in the evidence
2 room."

3 And then she says, on the next page, which is 225, "I
4 came into contact with it the same day, and I took custody of
5 the evidence." And evidently, then, what she did is she
6 transported it to Lynn Black.

7 Do you think there's a potential break because there
8 is -- there's no evidence in the record that indicates who
9 that person was that signed these drugs in. Evidently, it
10 doesn't get that there's another person, but there is no
11 evidence at all as to that person receiving this contraband or
12 these drugs and then placing it into an evidence room for
13 Ms. Crookes to pick up.

14 **A** You are (indiscernible). I want to say -- I don't know
15 if you were (indiscernible). I was saying something about
16 that I had mailed copies of the -- copies of the sheet to him
17 in January of 2016, which was the chain.

18 **Q** Yes, sir.

19 **A** Well, now I don't have my hands on it, but if you have
20 got a copy -- here we go.

21 **Q** Okay. Perfect.

22 **A** No. This is -- oh, okay. Nope, that wasn't it. Because
23 I have gotten a new (indiscernible) saying that he had to get
24 with me to certify a copy of the thing. All I can tell you,
25 Tommy, is that, you know, if I can prove what you were talking

1 about -- any number of things could have happened. I guess it
2 could have been that either she was (indiscernible) and she
3 took it straight to the person that did the analysis or, you
4 know, I don't know what -- when they changed -- where they
5 changed (indiscernible) keep up with the (indiscernible)
6 chain. I don't know if you -- I want to say they typed their
7 thing with computers. And you'll remember at one point in
8 time, they were handing you this computer -- this computer
9 paper and they were saying, Well, this shows exactly where it
10 went, from who to who to who, and you look at the computer
11 paper and then match it with the date and time and stuff like
12 that. It may have been some of that that you're thinking
13 about. I'll assure you, I probably would have caught if there
14 was somebody missing in that chain.

15 MS. MEADOWS: I believe you did move for a mistrial on
16 page 226 right after that.

17 THE WITNESS: Well, yes, I did catch it.

18 MS. MEADOWS: Because it says, "I make a motion for a
19 mistrial on the basis, the Solicitor is leading in different
20 forms. He's correcting a witness's testimony where Crookes
21 clearly would have indicated a gap in the chain of custody."

22 THE WITNESS: It's not like me not to (indiscernible).

23 BY MR. THOMAS:

24 Q And that's why I was curious about the other. I know you
25 try more cases than I do, but I did see that where there

1 appeared to be no evidence in regards to the -- someone who
2 was designated as a -- I guess they would be the person -- I
3 don't know what they would be called but they're the ones that
4 log in the evidence. And I would assume that would have come
5 from law enforcement.

6 **A** Well, you know, they have a SLED person down there who
7 receives it.

8 **Q** Right.

9 **A** And then they mark it and then they put it in -- I think
10 you just went through that scenario. Then it may or may not
11 be the same person who picked it up to take it from the
12 analysis. That person is just like a -- like a regular
13 person. The (indiscernible) on custody on all that stuff
14 really I think is probably -- and I (indiscernible).

15 **Q** Right. And I may have just misread your objection, but
16 it appeared to me that there was a problem in regards to dates
17 and that is clarified over on page 226.

18 **A** Well, if there's a problem with the dates, that's
19 actually kind of significant. I actually won a trafficking
20 case where the defendant didn't show up based on that.

21 **Q** Right. And I think what she does is that she misspeaks.
22 Yeah, over -- I apologize for the Court. It's over on page
23 230. And it looks like it's clear that the first time that
24 you actually had any contact with this -- this is beginning of
25 line 8 -- was actually on February 26 of 2013, she says

1 "that's correct." And then when you testified earlier about
2 the numbers, I think you originally said zero, two, two, four,
3 zero, and it was actually zero, two, four, four, zero. So
4 that was clarified.

5 I guess my question -- kind of a long question is, does
6 it make any difference that they don't have anybody there in
7 regard to the intake person who actually signs the drugs in?

8 **A** Not really. You know, not really. (Indiscernible) and
9 he was letting in it without having (indiscernible). So I'm
10 not so sure it does. Like I say, I have actually tried a case
11 where they went through that computer paper and it -- when you
12 and I first started practicing law, it was -- getting by with
13 objecting to that and it actually worked, but as life
14 proceeded, you know, a lot of stuff gets in and out
15 (indiscernible) couldn't get in, or at least at some point in.

16 **Q** It used to be a sheet with a bunch of signatures on it.

17 **A** It did.

18 **Q** I think the only thing that I have in closing would be
19 the fact that it certainly would have benefitted Mr. Mims to
20 have accepted one of those plea offers.

21 **A** The real thing I hate about this is he's actually --
22 between you and me, he's actually a real nice guy.

23 **Q** Right.

24 **A** But that's something for the legislature.

25 **Q** And 25 years is a very large sentence.

1 **A** Yep, it is.

2 MR. THOMAS: If it please the Court, I have no further
3 questions.

4 THE COURT: Okay. Ms. Meadows, do you have anything
5 further?

6 MS. MEADOWS: Not for Mr. Williams.

7 THE COURT: All right.

8 EXAMINATION BY THE COURT

9 BY THE COURT:

10 **Q** Mr. Williams?

11 **A** Yes, ma'am.

12 **Q** So I wanted to make sure that I have got this right
13 because I, too, have had this happen to me in practicing law.
14 The offer that they gave was 5 to 30, and you could argue
15 anywhere in between, the low number being the five, the max
16 being the 30, but there's certainly no guarantee -- because I
17 did go back and look at the drug weight, and it was nine
18 hundred and something grams. It was almost a kilo.

19 For five years on the second offense would be pretty
20 miraculous.

21 **A** I'm not saying he would have gotten the five. You know,
22 if we had gone ahead and argued the five to 30, I'm thinking
23 it might have been maybe 15 to 20. Maybe.

24 **Q** Just for that amount of dope and a second offense.

25 But I wanted to make sure because I think you told me

1 that that plea offer was made in July of '15. And I can't
2 remember if you told me there was a drop-dead date.

3 **A** September the 4th of 2015.

4 **Q** September 4th. Thank you.

5 And that was in '15; right?

6 **A** Correct. 2015. September 4th of 2015. And we kept
7 bickering beyond the drop-dead date.

8 **Q** Okay. And that was long before the December date. I
9 guess did they just give him one more shot, you're here, I
10 know nobody wants to go to jail at Christmastime. Either
11 (indiscernible) or we're out of here, you're going to trial.

12 **A** (No audible response.)

13 **Q** But you never told him it was a five-year deal and,
14 instead, he wanted to go to trial.

15 **A** He said he wanted -- he wanted to go to trial and accept
16 the plea of five to 30 years (indiscernible).

17 **Q** Okay. That's all I had.

18 MS. MEADOWS: Okay. The State would call Ben Stitely.

19 THE COURT: Mr. Stitely, let me place you under oath.

20 BEN STITELY,

21 the witness, after having been duly sworn, was examined and
22 testified to as follows:

23 THE COURT: Thank you.

24 DIRECT EXAMINATION

25 BY MS. MEADOWS:

1 **Q** All right. Just briefly, Mr. Stitely, I realize your
2 involvement in this case is limited, but how did you kind of
3 get involved in this case?

4 **A** I'm sure I was there for at least a handful of roll
5 calls.

6 **Q** Okay.

7 **A** It looks like we did eight or nine total, but on the
8 December date, (indiscernible) I was the one that went to
9 Lexington plea court that date. It was actually a blue light
10 week for Christmas with Judge Addy. They were trying to clear
11 out all the drug cases by Friday (indiscernible).

12 **Q** Okay. Before or at this hearing, did Mr. Mander (ph),
13 the Solicitor, make you aware of any plea offers that were on
14 the table?

15 **A** I had the file. We actually had -- it looked like
16 (indiscernible) the roll call sheet, there were two or three
17 (indiscernible) plea dates scheduled: The September date and
18 then this one. I would have had the sentencing sheet which
19 would have said five to 30. I would have said there's no
20 guarantee you're getting five. (Indiscernible) do it because
21 it was Christmas week with Judge Addy. Roll call that week
22 was removal.

23 **Q** Okay. And did you speak to the Solicitor before the
24 hearing or before court?

25 **A** Oh, yeah. I mean, Gill would have handed me the

1 sentencing sheet.

2 **Q** Okay. But did y'all have any conversation about
3 possibly, I don't know, a possible sentence or anything like
4 that, on the 5 to 30?

5 **A** It was a straight-up plea. I think the whole thing that
6 week was (indiscernible). It would have been five to 30. And
7 I think it may have been a (indiscernible). I'm sure I said
8 that but I also could have said it calmly.

9 **Q** Okay. And did you advise Mr. Mims about taking the plea
10 or what did you tell him?

11 **A** From my recollection, I would have said this is the deal,
12 (indiscernible). I probably would have (indiscernible). I
13 never trust that when a Solicitor says it's your last chance,
14 it's really your last chance, but I probably would have said
15 here's the deal, what we have. I do know he did not want to
16 go to jail for Christmas.

17 **Q** Okay. And did he ask you to move for a continuance to
18 allow him to discuss it further with Mr. Williams? I think
19 that's what you said he wanted.

20 **A** Probably didn't (indiscernible) because it wouldn't be
21 moving (indiscernible) plea on that. I know I was back and
22 forth and he testified about that a couple of times. Gill was
23 saying we'll not. You're going to sign this come-back date
24 for trial. So that day, I would have handed up a trial date.
25 I think we got another notice for a second trial date after

1 that (indiscernible).

2 MS. MEADOWS: Okay. Judge, I think that's all I have for
3 Mr. Stitely.

4 THE COURT: Okay. Mr. Thomas?

5 MR. THOMAS: Your Honor, if it please the Court, just one
6 or two questions.

7 THE COURT: Sure.

8 CROSS-EXAMINATION

9 BY MR. THOMAS:

10 **Q** Mr. Stitely, you practice with criminal cases as well,
11 don't you?

12 **A** Almost exclusively.

13 **Q** Almost exclusively.

14 And in looking at this case, did you have an
15 opportunity -- not in great detail, but did you have an
16 opportunity to at least evaluate the situation and form some
17 sort of opinion of your own in regards to this case?

18 **A** Yeah. And the way we typically do it is different
19 (indiscernible) and I work together on (indiscernible)
20 particularly when (indiscernible).

21 **Q** Right. And I think you said that the -- what you're
22 talking about, I guess, was that -- pleading to that first
23 offense. You said five to 30 and even suspendable on the
24 five, which would have been kind of to sweeten the deal.

25 In your opinion and based upon what you know about this

1 case, do you think a plea would have been a good idea?

2 **A** I would have pushed for it but technically,
3 (indiscernible) more of a plan of doing a plea when I think
4 you're in trouble. And the way (indiscernible).

5 **Q** Right, right.

6 **MR. THOMAS:** Thank you so much, Your Honor. Well, maybe
7 just one other.

8 **BY MR. THOMAS:**

9 **Q** When this was over and Mr. Mims left, is it your
10 understanding he was going to talk to Theo about this?

11 **A** I don't know that.

12 **Q** Okay. All right.

13 **MR. THOMAS:** Your Honor, I have no further questions.

14 **THE COURT:** Okay. Ms. Meadows, do you have anything
15 further?

16 **MS. MEADOWS:** Nothing further from the State.

17 **EXAMINATION ON BEHALF OF THE COURT**

18 **BY THE COURT:**

19 **Q** All right. Mr. Stitely, you said that this -- I have
20 just a few. You said there were two previous plea dates: One
21 in September, which makes sense; that's when the plea offer
22 expires. They usually kind of give you a last-call deal. And
23 then, evidently, again in December for the blue light special.
24 That's your understanding of the two plea dates that Mr. Mims
25 could have pled to the five-to-30 offer?

1 **A** In looking at the roll call sheet, Judge, you know how
2 they do them (indiscernible). You don't have to
3 (indiscernible) plea date a couple of times. We only had one
4 for the September term and one for December. The rest of them
5 all (indiscernible). But that's how they do it over there.
6 It's (indiscernible) one of the Thursdays and Fridays it's
7 possible to (indiscernible) over and over.

8 **Q** Right. I mean, usually when I get those, that means me
9 and my client are going to show and we have got to tell them
10 something.

11 **A** Yes, ma'am.

12 **Q** Okay. And then explain to me the five-to-30 suspendable
13 sentence. What are you talking about? Or is that just
14 something you were in hopes for?

15 **A** I think, with that, we had already (indiscernible) gone
16 back and forth and I think now they included that five on
17 there. Five to 30 as a quasi-suspendable and it's also
18 (indiscernible). I don't know if we had gone through all of
19 that, but I would have told him I did not believe that
20 (indiscernible) on the low side. But that was the reason I
21 thought it was the best shot at getting five, that it was that
22 (indiscernible) in Lexington for that --

23 **Q** You're talking about giving an example, 15 to 75.

24 **A** Yes, ma'am.

25 **Q** That's what you're talking about. Okay.

1 **A** And as I said, that was just a week that they were moving
2 a lot of drug cases, so I was optimistic for him, and I told
3 him it was probably his best shot particularly because of the
4 nature of that.

5 **Q** Right. Well, I know all too well about the blue light
6 special for December. The blue light special is fixing to
7 start at 1:30 today. So I know how that is, and it's -- you
8 take it or lose it kind of a deal is how they put it to you.

9 All right. I don't have anything further.

10 THE COURT: Anything else, Mr. Thomas?

11 MR. THOMAS: Your Honor, if it pleases the Court, I'd
12 like to recall Kendrick just for basically one or two
13 questions at the most.

14 THE COURT: Sure.

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: Again, I'm going to remind you, you're still
17 under oath. Okay?

18 THE WITNESS: Yes, ma'am. Yes, ma'am.

19 MR. THOMAS: Your Honor, if it pleases the Court.

20 THE COURT: Yes, sir.

21 RECALLED DIRECT EXAMINATION

22 BY MR. THOMAS:

23 **Q** Kendrick, you have heard the testimony of Mr. Williams
24 and Mr. Stitely, and you understand that there were plea
25 offers in this case?

1 **A** Yes, sir.

2 **Q** And was it your intention and did you -- and I understand
3 that maybe you have got some kind of -- your interpretation of
4 acceptance means that you actually appeared in front of the
5 Court and pled, but was it your intention to take one or the
6 other of these plea offers?

7 **A** Sir, I would have took the plea offer. I know I would
8 have took the plea offer that they gave -- they give me this
9 trial date (indiscernible).

10 **Q** And based on your testimony, you never intended to try
11 this case. You were going to plead.

12 **A** That's right. Not at all, sir. Not at all, sir.

13 **Q** And my last question is that your only concern was that
14 you didn't want to plead because you knew you were going to
15 jail at Christmas.

16 **A** That would be it, yes. I told him I just wanted to get
17 it continued to try to talk to Theo. He couldn't continue it
18 to the next date. I (indiscernible) back up, though.

19 MR. THOMAS: Your Honor, I have no further questions.

20 THE COURT: Mr. Williams -- I'm sorry, Ms. Meadows?

21 MS. MEADOWS: I don't have any questions.

22 THE COURT: Okay. Mr. Mims, are you telling me you would
23 have pled that day in December?

24 THE DEFENDANT: Yes. If I had known it was going to
25 (indiscernible) my plead. From my understanding, I didn't

1 know about the five to 30. All I knew was the five, ma'am. I
2 wasn't hearing nothing about no 30 years.

3 THE COURT: I understand that. Nobody wants to hear 30.
4 But I'm asking you, in December, when you went to roll call,
5 are you telling me you didn't want to plead that day because
6 you were -- you didn't want to go to jail?

7 THE DEFENDANT: No, I didn't want to plead then because
8 Theo wasn't in there with me. I wanted to talk -- I wanted to
9 go with Theo, ma'am. That's not why I didn't want it.

10 THE COURT: Okay.

11 THE DEFENDANT: To plead that day.

12 THE COURT: Okay. All right. Anything else from any
13 lawyers?

14 MR. THOMAS: No, ma'am.

15 THE COURT: Okay. This is what I'm going to do,
16 Ms. Meadows and Mr. Thomas: I'm going to take it under
17 advisement. I'm going to ask if y'all would send me a
18 proposed order from each one of you.

19 MR. THOMAS: Yes, ma'am.

20 MS. MEADOWS: Thank you.

21 THE COURT: Now, let me ask you, Mr. Thomas, it's
22 Christmastime and all that good stuff. I don't know who is on
23 vacation or what. Do you think that you can get it to me by
24 the -- if I give you until the second week of January?

25 MR. THOMAS: Yes, ma'am, that's exactly what I was going

1 to ask for, Your Honor. I have got two cases that are going
2 to come up for trial. It should be short trials that first
3 week, so that would be perfect for me.

4 THE COURT: Okay. Is that okay with you, Ms. Meadows? I
5 know we have got Christmas, we have got New Years, and who
6 else knows what 2021 is going to bring us.

7 MS. MEADOWS: Okay. Just one second. Let me pull up our
8 schedule real quick.

9 MR. NORTON: We have court on the 13th that first week of
10 January.

11 MS. MEADOWS: Oh, yeah, that's right. That's okay. I
12 can probably still do that.

13 MR. THOMAS: I'm fine, Your Honor. It doesn't -- I mean,
14 whatever pleases the Court. If Ms. Meadows needs some more
15 time --

16 THE COURT: Y'all just let me know. I'm going to work
17 with you.

18 MS. MEADOWS: Second week of January is fine.

19 THE COURT: You sure?

20 MS. MEADOWS: Yeah, can we just make it the end of the
21 week?

22 THE COURT: How about (indiscernible)?

23 MS. MEADOWS: Okay.

24 THE COURT: And if anybody needs any more time, how about
25 just shoot me an email. I'll be glad to give you some more

1 time. I don't want you sweating over it. Mr. Mims gets one
2 shot at this.

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: And we certainly will afford him all our
5 time. Okay?

6 MR. THOMAS: Yes, ma'am.

7 THE COURT: All right. Merry Christmas to everybody. I
8 think that ends me with you, Ms. Meadows.

9 MS. MEADOWS: Yes, ma'am.

10 THE DEFENDANT: (Indiscernible).

11 THE COURT: You too, Mr. Mims.

12 Mr. Williams, I think I have already seen you on my
13 docket for this afternoon.

14 MR. THOMAS: I'll see you in a minute.

15 And, Kendrick, you have a good Christmas.

16 THE DEFENDANT: Y'all too.

17 (At 1:11 p.m., the above hearing concluded.)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

CASE/NO.: Kendrick Mims vs. State of SC

2013-GS-32-01463

DATE OF PROCEEDING: December 15, 2020

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.



Bobbi J. Fisher, RPR

NCRA Registered Professional Reporter (RPR)

Prepared: April 12, 2021

and represented by Tommy Thomas, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant presented testimony on his own behalf at the hearing, as did his girlfriend, Misty Davis. The State presented testimony from Applicant's trial counsel, Robert T. Williams, Sr., Esquire (Counsel Williams), and Benjamin A. Stitely, Esquire (Counsel Stitely).

In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

After hearing the testimony at the PCR hearing and a full review of the record, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its May 2013 term, the Lexington County Grand Jury indicted Applicant for trafficking cocaine, 400 grams or more (2013-GS-32-01463). On February 10–11, 2016, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Robert T. Williams, Sr., Esquire (Counsel Williams), represented Applicant.² Assistant Solicitors Gill Bell and Casey Rankin of the Eleventh Circuit Solicitor's Office prosecuted the case.

² Benjamin Stitely, Esquire (Counsel Stitely), is Counsel Williams' law partner and represented Applicant at one of his pretrial hearings.

A. Summary of Evidence Adduced at Trial

Corporal Antley was stationed on Interstate 20 monitoring traffic for speeding violations. (Tr. 44–46; R. 21–23). Corporal Antley activated his radar at a Ford F-150 pickup he saw traveling faster than the rest of traffic and saw the vehicle travelling 93 miles per hour in a 60 mile per hour section of highway. (Tr. 51; R. 28). After the vehicle pulled over, Corporal Antley noticed lots of movement from the two occupants. (Tr. 53; R. 30). Applicant was a passenger in the vehicle. (Tr. 53; R. 33).

Applicant admitted consuming a beer, and Corporal Antley seized and poured out an open container of beer. (Tr. 56–57; R. 33–34). After performing a field sobriety test on the driver, Corporal Antley spoke with Applicant, asking him to exit the vehicle. (Tr. 62–63; R. 39–40). When he exited, it appeared Applicant was “holding his hands down around his pants” and “trying to hold something up in his pants.” (Tr. 65; R. 42). Corporal Antley performed a pat down of Applicant and found a hard object inside his pants that Corporal Antley believed could have been a weapon. (Tr. 69; R. 46). Corporal Antley asked what Applicant had in his pants and then tried to get Applicant to his knees while watching his hands. (Tr. 69–70; R. 46–47). Applicant refused to comply. (Tr. 70–71; R. 47–48). Instead of complying, Applicant broke free and began to run. (Tr. 72–73; R. 49–50).

Corporal Antley pursued Applicant, who was still trying to hold on to whatever it was in his pants. (Tr. 74; R. 51). Corporal Antley deployed his taser, but it was not effective in stopping Applicant. (Tr. 76–77; R. 53–54). As he attempted to pursue Applicant over a fence, Corporal Antley again deployed his taser, but again it failed to stop Applicant. (Tr. 78–79; R. 55–56).

Corporal Antley caught up to Applicant, who appeared tired from running. (Tr. 81; R. 58). Applicant put his hands toward his groin area, pulled up to remove something, and then is seen by

Corporal Antley placing a bag on the ground. (Tr. 83; R. 60). After placing the bag on the ground, he immediately covered it with some leaves. Applicant then walked toward Corporal Antley and ultimately surrendered. (Tr. 83; R. 60).

B. Verdict & Subsequent Proceedings

On February 11, 2018, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to twenty-five years' imprisonment and imposed a fine of \$200,000.

Applicant filed a timely notice of appeal. Appellate Defender Taylor Gilliam perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

“Did the trial judge err in qualifying a sheriff as an expert witness in cocaine and cocaine valuation when the testimony did not assist the jury in understanding the evidence or determining a fact in issue and when the testimony's probative value was substantially outweighed by the danger of unfair prejudice?”

Following briefing, the Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion on October 18, 2017. *State v. Mims*, Op. No. 2017-UP-389 (S.C. Ct. App. filed October 18, 2017). The case was remitted back to the circuit court on November 28, 2017. Applicant timely commenced this PCR action on September 11, 2018.

II. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Ineffective Assistance of Counsel

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his first amended application to include the follow allegations:

1. Applicant was offered a plea for five (5) years. He indicated to his Trial Attorney that he did not want to go to trial and that he wanted to take this offer. That Trial Counsel was ineffective in

his failure to convey the Applicant's acceptance of this plea to the prosecution. That the Applicant is informed and believes that at a later date this plea offer was withdrawn and that as a result, he was prejudiced by the actions of counsel.

2. That the Applicant appeared in Court for what he believed to be a roll call. That Defense Counsel was not present at this appearance. Ben Stitely, Esq. appeared in substitution for Theo Williams. That the Applicant was offered a five (5) year plea offer. He was informed and believe that his case would be continued in order that he could discuss this offer with Mr. Williams. He wanted to accept this offer.
3. That Trial Counsel was ineffective for his failure to discuss the case with the Applicant. Applicant never had the opportunity to properly prepare this case for trial with his attorney. Applicant was unable, nor did he have the opportunity to go over the discovery with Trial Counsel. He was never informed of what evidence the State had against him.
4. That the Applicant is informed and believes that there was a problem with the chain of custody in this case. That the Applicant believes that counsel was ineffective in his arguments regarding these deficiencies in the chain of custody.

At the outset of the evidentiary hearing, PCR counsel stated Applicant was proceeding only on the claims pled in the amended PCR application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

III. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either

deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption “by proving that his attorney’s representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy.” *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *cf. Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, will make every effort “to eliminate the distorting effects of hindsight,” and will “evaluate the conduct from counsel’s perspective at the time” in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. Accordingly, counsel’s performance will be considered to be deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply “deviated

from best practices or most common custom.” *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. In order for that burden to be met, counsel’s deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel’s unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Richter*, 562 U.S. at 112.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the

“benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the amended applications and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

As an initial matter, Applicant testified at the hearing that he was currently serving a twenty-five (25) year sentence for trafficking in cocaine. Applicant testified that he must serve eighty-five (85%) percent of his sentence, and his max-out date is 2041. Applicant also testified that he was not eligible for parole. Applicant testified that he is asking this Court for his conviction be set aside and for a new trial. Applicant affirmed that he understood the risk associated with his post-conviction relief action and that wished to proceed with his application.

A. Failure to Convey Acceptance of Plea Offer

Applicant first contends he was offered a plea deal for five years, which Applicant testified that he informed Counsel Williams he wished to accept. Applicant claims Counsel Williams was ineffective for failing to convey his acceptance to the prosecution on his behalf. Applicant further

contends Counsel Stitely, who went to court with him on the day the plea offer expired, was ineffective for failing to request a continuance. This Court disagrees, and finds credible and persuasive the testimony of Counsel Williams and Counsel Stitely, who presented well-recalled testimony of the events leading up to Applicant's trial.

At the PCR hearing, Applicant testified he met with Counsel Williams several times in the three years before trial, including during his roll call appearances. Applicant was out on bond for three years before trial. Applicant testified he understood the charge and that he could receive a mandatory minimum twenty-five to thirty year sentence. However, Applicant never thought he would face that much time because he never thought he would go to trial. Rather, Applicant testified there was a five-year plea offer, and he wanted to accept it. He testified he told Counsel several times that he did not want to go to trial and wanted to take the plea offer.

Applicant testified he appeared for a December roll call in 2015. Because Counsel Williams was involved in another trial that week, Counsel Stitely represented him. Applicant testified he told Counsel Stitely he wanted to accept the plea offer, but that he wanted a continuance so he could speak with Counsel Williams about it. Applicant further testified that he knew he would go to jail the day he plead guilty, and that he wanted a continuance because he did not want to be incarcerated during Christmas.

Applicant testified Counsel Stitely went into the solicitor's office to discuss the case, but that he is not sure what transpired during that meeting because he waited outside. Applicant was then given notice that his case would be called for trial in February of 2016. He testified he called Counsel Williams as soon as he got back into his car from the courthouse parking lot. Applicant testified he told Counsel Williams about the trial date at that time, and again told him he did not

wish to proceed to trial. Applicant testified that Counsel Williams told him he would not have to go to trial.

Regarding the alleged five-year plea offer, Applicant testified he never got the opportunity to accept it because he was never taken to court to enter the guilty plea. Applicant testified he told Counsel Williams several times that he wanted to accept the offer. Applicant claimed he did not find out until February that the five-year plea offer was withdrawn on the day he went to court with Counsel Williams. He again told Counsel Williams he did not want to go to trial. Applicant testified Counsel Williams told him the only plea offer available at that point was for twenty-five years. Applicant testified he wants to get the five-year offer back if possible. He stated that, had he had a chance to speak with Counsel Williams on the day he went to court with Counsel Stitely, he would not be sitting in prison with twenty-five years.

On cross-examination, Applicant testified Counsel Williams was the one who first told him about the five-year plea offer. He again stated he told Counsel Williams he wanted to accept it. When he went to court with Counsel Stitely in December, Applicant stated Counsel Stitely also told him the solicitor would give him the five-year plea deal. Applicant testified he never told Counsel Stitely he wanted to go to trial but that he wanted to speak with Counsel Williams first. Applicant claimed he asked Counsel Stitely to request a continuance, but that Counsel Stitely came out of the solicitor's office with the trial date and said this was the only court appearance they would give him. When asked whether he knew if, at that point, they would not continue the matter, Applicant testified he did not know anything about the law and that he was not aware the offer would be withdrawn.

The Court then told Applicant that, in general, a defendant who is offered a plea deal during roll call has to make a choice whether they want to plead or not that day. The offer is usually taken

off the table if it is not accepted at that time and a trial date is set. Applicant testified the offer was on the table the day he went to Court with Counsel Stitely; however, Counsel Stitely did not tell him the offer would be withdrawn if he did not accept it that day. Applicant testified that he would have accepted the offer had he known it was going to expire after that day.

Applicant's girlfriend, Misty Davis, also testified at the hearing. She stated she was not aware of a five-year plea offer based on what Applicant told her but that she knew he did not want to go to trial. She stated she attended Applicant's meetings with Counsel Williams and that she was in the car with Applicant when he called Counsel Williams about receiving the trial date. She testified Counsel Williams told Applicant he would not be going to trial.

As its first witness, the State called Counsel Williams, who testified Applicant hired him approximately three years before trial. Counsel Williams provided a summary of the facts of the case and what occurred during the stop. Counsel Williams further stated he met with Applicant on multiple occasions and extensively discussed the case with him. Counsel Williams also testified that at the time these charges were pending, the Applicant had pending charges in the states of Florida and Alabama.

Counsel Williams recalled engaging in extensive plea negotiations with Solicitor Bell in this case. In July 2015, the State made its offer, giving Applicant two options: (1) plead guilty to trafficking ten to twenty-eight grams, second offense, with a five to thirty year range; or (2) plead guilty to trafficking twenty-eight to one hundred grams, first offense, with a seven to twenty-five year range. Counsel Williams stated he would be able to ask the Court for any sentence within that range, but that Solicitor Bell would likely ask for a sentence on the higher end of the five to thirty-year range. Counsel informed Applicant that in his professional opinion, it was very unlikely

Applicant would received five years, and that the sentence likely would have been in the range of fifteen to twenty years.

Counsel Williams further stated that Applicant was arrested in Florida for cocaine while out on bond, and that Solicitor Bell was trying to have Applicant extradited for trial on those charges. Eventually Solicitor Bell was able to get Alabama, where Applicant also had pending charges, to waive any hold on they had on Applicant, who then returned to South Carolina. Counsel Williams testified that Applicant came back voluntarily, and further testified he believed Applicant would have had a better chance of getting a sentence on the lower end of the five to thirty year range had he not been arrested on cocaine charges in Florida and had pending charges in Alabama.

Counsel Williams further testified the State never offered a five-year negotiated sentence. Had such an offer been made, Counsel Williams stated there is a possibility Applicant would have accepted it; however Applicant never gave Counsel Williams any indication he would accept any plea offer. Rather, Counsel Williams testified Applicant conveyed to him his desire to “not to go to jail and to get a not guilty at trial.” Counsel Williams stated there was never a question of Applicant pleading guilty, and does not think Applicant would have accepted even a five-year plea offer at that time. Applicant believed the State would not be able to prove trafficking since the drugs were not found on Applicant’s person at the time of arrest.

Counsel Williams testified the deadline for the five-to-thirty year plea offer was September 4, 2015. When Applicant appeared at roll call with Counsel Stitely, Counsel Williams was drawing a jury in another case being tried that week. Applicant’s sheet came back setting the trial date for February of 2016. Counsel Williams received a letter stating that Applicant turned down the five to twenty-five year offer three times. He also received an email on Monday, December 14, that Applicant rejected the offer for a third and final time, and that the State was revoking all offers.

Counsel Williams testified he did not know whether Applicant's appearance with Counsel Stitely was the third rejection of the plea offer, but surmised that Applicant may have been represented by a public defender for a short time before Counsel Williams took over the Applicant's.

Counsel Williams recalled speaking to Counsel Stitely after the December 2015 court appearance, but that he could not remember the details of their discussions about this. However, he did recall Applicant calling him from the courthouse parking lot after the court appearance. Counsel Williams testified that during this phone call, Applicant specifically told Counsel Williams he did not want to accept the plea offer. Counsel Williams told Applicant at that time that he would try to get a better offer, but he did not think it would happen.

On cross-examination, Counsel Williams reiterated that Applicant never told him or otherwise indicated he wanted to plead guilty. Had Applicant done so, Counsel Williams testified he certainly would have assisted him in pleading guilty. Counsel Williams agreed with PCR counsel that defense counsel typically receives written plea offers with an expiration date but they usually do not have a hard deadline. Counsel Williams stated they went back to Solicitor Bell after the offer expired in December, but that Solicitor Bell simply would not change his mind.

The State next called Counsel Stitely, who remembered being present for "eight or nine" of Applicant's roll calls in place of Counsel Williams. The December roll call was during "blue light" week with Judge Addy, where the solicitor's office schedules as many drug pleas as possible. Counsel Stitely recalled two potential plea dates. He recalled speaking to Solicitor Bell, who gave him the sentencing sheet. The sole plea offer from the State was a "straight up" plea with a sentencing range of five to thirty years. Counsel Stitely did not specifically recall his conversation with Applicant, but said he would have told Applicant that if he accepted the offer, a five-year sentence would be unlikely. He did not recall specifically whether Applicant asked him for a

continuance at the roll call hearing in December. However, Counsel Stitely explained that the procedure in Lexington would not be to move for a continuance; rather, he would ask the solicitor for more time. Counsel Stitely specifically recalled telling Applicant that this was the only plea deal he would get.

PCR counsel briefly re-examined Applicant. Applicant again testified he did not want a trial but that he did not want to plead until after Christmas because he did not want to be in jail during Christmas. This Court then asked Applicant if he would have plead guilty that day in December 2015 when he went to roll call with Counsel Stitely. Applicant replied that he only heard about the five-year offer and did not hear anything about thirty years. The Court then asked Applicant if the reason he did not want to plead guilty that day was because it was close to Christmas. Applicant stated that no, that was not the reason but that he did not want to plead guilty until after he spoke to Counsel Williams.

1. Deficiency

As an initial matter, this Court finds Applicant failed to demonstrate he was ever offered a five-year negotiated plea agreement. This Court would note that there is nothing in the record, beyond Applicant's own testimony, indicating Solicitor Bell ever made such an offer. Counsel Williams and Counsel Stitely both presented credible and believable testimony that the only offers presented to Applicant were (1) trafficking ten to twenty-eight grams, second offense, with a five to thirty year range; or (2) trafficking twenty-eight to one hundred grams, first offense, with a seven to twenty-five year range. Considering the facts of the case; the sheer amount of cocaine Applicant was charged for, almost a kilogram (1,000 grams), together with Counsel Williams' testimony that Solicitor Bell simply would not agree to a more favorable sentence, supports the

Court's finding that Applicant failed to prove that an offer of a negotiated five-year sentence was ever made.

In the context of plea negotiations, an attorney's failure to communicate a formal plea offer to a criminal defendant falls below an objective standard of reasonableness under *Strickland*. *Missouri v. Frye*, 566 U.S. 134, 149 (2012); see *Strickland*, 466 U.S. at 688 (explaining that counsel has a duty "to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution."). Further, "allow[ing] an offer to expire without advising the defendant or allowing him to consider it" constitutes deficient performance. *Frye*, 566 U.S. at 145.

This Court finds neither Counsel Williams nor Counsel Stitely deficiently allowed Applicant's plea offer to expire without consulting him. Specifically, this Court finds Applicant failed to demonstrate that he did not understand or was never informed of any offer with a sentencing range of up to twenty-five or thirty years, particularly given Counsel Williams' testimony he received a letter and email from the solicitor's office that Applicant expressly turned down the five to twenty-five year offer three times. Applicant ultimately failed to demonstrate that the acts of either Counsel Williams or Counsel Stitely "were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 690.

2. Prejudice

This further Court finds Applicant has failed to show he was prejudiced because his testimony precludes a finding that he intended to plead guilty prior to the alleged error by counsel. To satisfy the *Strickland* prejudice prong where a plea offer has lapsed or been rejected because of counsel's deficient performance, an applicant must demonstrate a reasonable probability that:

(1) he “would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;” (2) “the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;” and (3) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.”

Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Frye*, 566 U.S. at 147); see *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (“In the context of plea negotiations, the prejudice element turns on whether counsel’s performance affected the defendant’s final decision to accept or reject a plea offer.”).

Beyond his own testimony, Applicant failed to present any evidence suggesting Applicant expressed any desire to plead guilty. Counsel Williams testified Applicant never told him he wanted to plead guilty because Applicant believed the State would not be able to prove the trafficking charges since the drugs were not actually found on Applicant’s person. Crucially, Applicant never testified or otherwise indicated he would have accepted the five to thirty or seven to twenty-five year plea offer. Rather, he repeatedly testified this offer did not exist, and that the offer was specifically for a negotiated five-year sentence. Even when asked by this Court whether he would have pleaded guilty that day in December 2015, Applicant responded that he only heard about a five-year offer and never heard anything about thirty years. Because Applicant refused to acknowledge the existence of the five-to-thirty year plea offer, this Court finds Applicant failed to show he would have accepted it.

As discussed above, this Court finds and concludes that Applicant has failed to present any evidence that a five-year negotiated plea offer existed. The remaining two showings required under *Collins* therefore do not apply. Accordingly, Applicant’s allegations pertaining to ineffective

assistance rendered by Counsel Williams and Counsel Stitely regarding the alleged five-year plea offer are **DENIED**.

B. Failure to Prepare Applicant for Trial

Applicant next contends Counsel Williams was ineffective for failure to prepare him for trial. Specifically, Applicant alleges Counsel Williams failed to review the discovery with Applicant or otherwise advise him of the State's evidence against him. At the hearing, however, Applicant testified he could not recall whether he and Counsel Williams reviewed the discovery. Applicant further testified he did not know what the State's evidence was against him, but later testified on cross-examination that he reviewed the dash cam video.

Counsel Williams testified he reviewed all the discovery with Applicant. The only piece of evidence he did not go over with Applicant the chain of custody sheet, which Counsel Williams received in January. Counsel Williams testified that nonetheless mailed a copy to Applicant. Counsel Williams further stated he did not do any independent investigation aside from the State's discovery. He testified that it was his belief that "this was a straightforward case" and did believe there was anything else he needed to look into.

Counsel Williams and Applicant both testified they met several times during the three-year period before trial. *See Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Based on the testimony and evidence presented, this Court finds Applicant failed to overcome the “strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Counsel Williams’ credible testimony indicates he met with Applicant prior to trial, reviewed the discovery with him, and discussed his case with him at length. Applicant failed to present “any evidence of how additional preparation or communication would have resulted in a different outcome.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); *see Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel’s lack of preparation prejudiced him); *Skeen v. State*, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial).

Accordingly, Applicant’s allegation pertaining to Counsel Williams’ failure to properly prepare Applicant for trial is **DENIED**.

C. Failure to Adequately Challenge the Chain of Custody

Finally, Applicant contends Counsel Williams was ineffective for failing to properly challenge the chain of custody. Counsel Williams testified that he did not believe there was any reasonable chance that he would be able to successfully argue the drugs should be suppressed. Counsel Williams stated that while he has previously successfully suppressed drugs in previous cases, those cases involved many more breaks in the chain of custody than were present in

Applicant's case. Counsel Williams testified he believed there were better grounds to contest the validity of the stop than the chain of custody.

On cross-examination, PCR counsel asked Counsel Williams about a potential break in the chain of custody between the time the drug evidence was logged in and when the evidence custodian first came into contact with it.³ (Tr. 224–25; R. 193–94). Apparently the forensic technician who first logged in the evidence and placed it in the evidence room did not testify, although her signature was on the custody sheet. (Tr. 224–25; R. 193–94). The evidence custodian testified the evidence had already been logged in and placed in the evidence room when she first came into contact with it, and that she delivered it directly to the forensic scientist. (Tr. 224–25; R. 193–94).

The record shows Counsel Williams objected to the solicitor's leading questions during his direct examination of the evidence custodian, however, he did not object to the actual chain of custody. (Tr. 225–26; R. 194–95). Counsel Williams further moved for a mistrial on this basis. (Tr. 226–27; R. 195–96). Specifically, Counsel Williams argued the solicitor was attempting to "correct[] the witness's testimony where it clearly would have indicated a gap in the chain of custody." (Tr. 226–27; R. 195–96). Judge McMahon denied the motion and the State resumed its direct examination. (Tr. 227; R. 196).

PCR counsel also asked Counsel Williams about a discrepancy with the date the evidence custodian first came into contact with the evidence and brought it upstairs to the forensic scientist. (Tr. 224–25; R. 193–94). The evidence custodian later clarified that she misread the date. (Tr. 225–28; R. 194–97). Counsel Williams testified he did not object because the issue was essentially cured, and he believed Judge McMahon would have admitted the evidence anyway. Counsel

³ Counsel Williams did not have a copy of the transcript; however, he had a copy of the file which included custody sheet, SLED report, etc.

Williams further stated he is very experienced with chain of custody issues, and is certain he would have caught any possible issues. Additionally, the record shows Counsel Williams extensively addressed issues with the chain of custody in his closing argument at trial. (Tr. 313–316; R. 271–274).

This Court finds Applicant has failed to present any evidence Counsel Williams was ineffective in handling the chain of custody. In *State v. Hatcher*, our Supreme Court analyzed cases in other jurisdictions where “[c]ourts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011). The Court ultimately held that “the State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable.” *Id.* at 95, 708 S.E.2d at 755.

Accordingly, Applicant’s allegation pertaining to Counsel Williams’ failure to adequately challenge the chain of custody is **DENIED**.

V. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VI. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant has not established any constitutional violations or


deprivations that would require this Court to grant his application for post-conviction relief. This Court finds that Counsel Williams nor Counsel Stitely was deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

IT IS SO ORDERED this 28th day of January, 2021.


DEBRA R. MCCASLIN
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Lexington, South Carolina

WITNESSES

S.C. Highway Patrol Headquarters

A. L. Antley

Law Enforcement Case #:

GB

ARREST WARRANT NUMBER

2013A3210200308

ACTION OF GRAND JURY

TRUE BILL

Pen Brasington
Foreperson of Grand Jury
Date: 5-6-13

VERDICT

458

Foreperson of Petit Jury
Date:

A TRUE COPY

[Signature]
Lex. Co. C.C.O.P., G.S. & F.C.

DOCKET NO. 2013-GS-32-01463

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE
vs.

Kendrick Lamont Mims

CDR #: 0281

Indictment for

Trafficking Cocaine, 400 or more grams

§ 44-53-0370(e)(2)(e)

DONALD V. MYERS, SOLICITOR

(25-30yr) and \$200,000

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
 Kendrick Lamont Mims)
 AKA:)
 Race: Black Sex: M Age: 34)
 DOB: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Pensacola, FL 32505)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3201463
 A/W#: 2013A3210200308
 Date of Offense: 2/18/2013
 S.C. Code § : 44-53-0370(e)(2)(e)
 CDR Code #: 0281

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Trafficking in cocaine, 400 g or more

CONVICTED OF or PLEADS

in violation of § 44-53-0370(c)(2)(e) of the S.C. Code of Laws, bearing CDR Code # 0281
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor 100021 Defendant [Signature] Attorney for Defendant [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 200,000.00; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____
 Recipient: _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$200,000
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$215,000
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	100
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SC/CJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$415,280

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
 Judge Code: 145
 Sentence Date: 11 Feb 16

Clerk of Court Deputy Clerk [Signature]
 Court Reporter [Signature]
 SCCA 217 (05/2011)
 Lex. Co. C.C.C.P., G.S. & F.C.