

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2018-00103

APPEAL FROM YORK COUNTY
Grace Gilchrist Knie, Circuit Court Judge
Trial Court Case No. 2018-GS-46-2505

The State,..... Respondent

v.

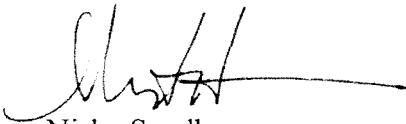
Warren Tremaine Duvant,..... Appellant

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SC Court of Appeals

RECORD ON APPEAL



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INDEX

Bill of Indictment, dated April 19, 2018	1
Arguments: Defendant's Pretrial Motions on Suppression	3
Testimony	
Detective David Vaughn	44
Lieutenant Mike Ligon	60
Investigator Stephen Ramsey	101
Lieutenant Heath Clevenger	120
Carolyn Johnson	152
John Jay Adams	184
Lieutenant Heath Clevenger	191
Bench Conference and Defense Motions	202
Lieutenant Heath Clevenger	211
Marybeth McCormick	220
Arguments: Motion for Directed Verdict and Renewed Fourth Amendment Objections	236
Defendant's Renewed Motions for Directed Verdict and Suppression.....	239
Closing Argument: State	241
Closing Argument: Defendant.....	259
Charge to the Jury.....	269
Jury Verdict	283
Sentencing	284
State's Exhibit 1 ¹	
Court's Exhibit 1	
Certificate of Counsel.....	289

¹ State's Exhibit 1 and Court's Exhibit 1 are not included in this Volume. Undersigned will move for these exhibits to be supplemented upon their release from the Clerk's Office.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

INDICTMENT

2018 OCT 21 PM 2:59

At a Court of General Sessions, convened on April 19, 2018, the Grand Jurors of York County present upon their oath:

TRAFFICKING COCAINE

The defendant, Warren Tremaine Duvant, did on or about August 23, 2017, in York County, South Carolina, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4), all in violation of 44-53-370(e), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


T. BLAINE PLEMING
ASSISTANT SOLICITOR

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2017A4610201708

ACTION OF GRAND JURY

TRUE BILL

McBarnett
Foreperson of Grand Jury

Date: 4-19-18

VERDICT

guilty

Donald McKenzies
Foreperson of Petit Jury

Date:

May 25 2018

DOCKET NO. 2018-GS-46-02505

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 19, TERM 2018

THE STATE

VS.

WARREN TREMAINE DUVANT

INDICTMENT FOR

TRAFFICKING COCAINE

SC Code: § 44-53-370(e)

CDR Code: 0147

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1 after this.

2 However, the State's position is that there was a
3 lawful entry into the home and so such an analysis under
4 the *Fourth Amendment* is unnecessary.

5 THE COURT: Okay. Thank you.

6 SOLICITOR HASTY: And, your Honor, I just wanted to
7 reiterate that the search warrant, as it was applied, was
8 applied before the protective sweep was begun, or as the
9 protective sweep was under way a search warrant was being
10 applied for. And so once everyone in the house was secured
11 and they were waiting for the search warrant, at that point
12 they began to ask questions of both Ms. Johnson and the
13 Defendant. But a search warrant had been applied for and
14 was ultimately granted and was on it's way to be executed
15 at the house while they were speaking to the Defendant.

16 THE COURT: All right. Thank you.

17 All right. Yes, sir.

18 MR. RUDNICK: Thank you, your Honor, may it please the
19 Court. Your Honor, I'll start in chronological order as
20 far as one, the motion, and two, the basis of my motion.

21 First is, it seems to be conceded that that initial
22 entry that went inside the house there is absolutely no
23 warrant for that entry. When the officers got there,
24 Detective Vaughn as stated, then the statement of facts
25 that have been adopted for and agreed upon by the State,

1 there was a knock and talk in reference to a sexual assault
2 that was alleged to have occurred by an Eric Johnson who
3 also lived at that residence. Now, Eric Johnson was not
4 home. Carolyn Johnson told the police officers that one,
5 she had smoked marijuana; Two, that she had more marijuana
6 inside the house.

7 The protective sweep, so first is the warrantless
8 entry which is presumptively illegal. Presumptively
9 invalid and anything that is found based off that
10 warrantless entry must be excluded unless there is exigent
11 circumstances that exist to excuse that warrantless entry.

12 The warrantless entry that was, or the exigent
13 circumstances that seems to be relied on by the State is
14 that there was a protective sweep. A protective sweep is
15 something that is done for when there is a compelling need
16 for an officer to enter inside a residence; that there is
17 not time to get a search warrant to be able to make that,
18 and the purpose of it is that somebody is fleeing, or,
19 there is a danger to other people there inside the
20 residence.

21 In other cases where there have been protective sweeps
22 and where the Court has found that it is allowed has been
23 in situations where an individual has quartered themselves
24 to the door and it looks like they have a weapon in it, and
25 low and behold in that particular case whose name I cannot

1 remember on the spot right now, had a weapon in his hand.

2 In this particular case Carolyn Johnson entered into a
3 discussion with the officer, told the officer that she had
4 drugs in the residence. And unknown to whether Carolyn
5 Johnson were the officer she had absolutely no threatening
6 made toward the officer, there was absolutely no
7 indication, no specific facts that are required for a
8 protective sweep under *State v. Abdullah* for there to be
9 specific facts that amount to and mean for a protective
10 sweep.

11 For that reason, your Honor, we would argue that that
12 warrantless entry, which is per se unreasonable under the
13 *Fourth Amendment* and under *Article 1, Section 10* of the
14 *South Carolina Constitution*, was illegal and the evidence
15 found pursuant to that must be excluded.

16 Now the basis, and kind of going in chronological
17 order again to give an idea of what is going on, the
18 sequence of events that this happens, we know at some point
19 Detective Vaughn knocks on that front door. We're not
20 exactly sure that time, there's no CAD Report or anything
21 else to say what time it is, but we know it has to be at
22 some point before 10:05 because at 10:05 a warrant, search
23 warrant affidavit and the warrant was printed out at the -
24 assuming at the York County Sheriff's Office. That warrant
25 at 10:05 was printed out with a search warrant affidavit

1 attached to it that was five paragraphs long, single
2 spaced. So to give him an idea of maybe ten or fifteen
3 minutes to be able to type it up with absolutely no
4 grammatical errors within that then we could say that it
5 could have been 9:45, 9:50, but we don't even get to that
6 point because at least we know that he is inside that house
7 at 10:05 a.m., without any warrant to be able to do so
8 because he didn't call to get the warrant until he was
9 inside the house.

10 After that at 10:12 a.m, detect - or, I'm sorry, Judge
11 Benfield signed the warrant. At 10 - sometime 10:12 and
12 10:55 when that warrant was actually executed, we're not
13 really sure where Detective Schifferle is, not saying he
14 was anything nefarious, but he wasn't at the house.

15 At 10:35 as stated in the facts Stephen Ramsey with
16 the York County Sheriff's Office mirandized both Warren
17 Duvant and Carolyn Johnson on the couch. So at some point
18 between 10:05 and 10:35 the DEU officers got on scene. And
19 at some point between 10:35 and 10:55 there was a search
20 that occurred within that residence.

21 The reason that we can say that is because on the log
22 for - the evidence log from the sheriff's department says
23 that the marijuana that's found on the porch is found and
24 logged and seized into evidence at 10:55 a.m. The cocaine
25 in the back bedroom that is at issue here is found and

1 logged at 10:57 a.m. So at some point, if we're to believe
2 the statement of the facts, or if we're to believe that
3 there was no searching going on between the time that the
4 Miranda happened and the execution of the search warrant
5 happened, then that conversation on the couch that resulted
6 in Warren telling the officer's, according to the statement
7 of facts in this particular report, where the drugs were,
8 then that had to have happened and shown him where it
9 happened, and for Detective Clevenger to also go to that
10 place in two minutes for that to have happened.

11 Now, the reason that that is significant is because
12 all this happens without a warrant outside of at or before
13 10:55 a.m. And while it may be it is not inevitable for
14 there to be a warrant because for it to be an inevitable
15 discovery there has to be some assumption at the time of
16 the illegal entry which was at 10:05 that would have
17 inevitable for that person to be able to go inside the
18 residence which has to be at least at 10:05 because he has
19 admitted that he called the search warrant in after he
20 entered into the residence.

21 So at 10:05 there must have been some reason for that
22 warrantless entry to be able go and there is not a search
23 warrant that has been executed. There is no search warrant
24 that has been applied for, or signed, at 10:05 which is
25 when the violation happened because our point in time is

1 10:05. It isn't at 10:55 when the search warrant gets
2 there because that's not when they were inside the
3 residence and when they actually searching the house. It's
4 when they actually break that threshold for a purpose that
5 does not fit under any exception under the warrant
6 requirement.

7 So for that reason, your Honor, we would argue that
8 that initial entry, the search which is when that search
9 starts is when that officer goes in without any
10 justification. And when that happens that is an illegal
11 entry and anything that falls from that would be excluded,
12 or we would argue must be excluded under the exclusionary
13 rule for the *Fourth Amendment* and under the *South Carolina*
14 *Constatation*.

15 Most importantly is there was no search warrant that
16 was relied on to make - to search this house. I mean one
17 got applied for certainly. One was executed, but when the
18 actual search has happened they didn't rely on it then;
19 they can't rely on it now, or shouldn't rely on it now,
20 because there is nothing to say that while it may be
21 sometimes magistrates might go along with a search warrant,
22 but there are times when they don't. And there is not -
23 and it is not understood in our law, while that it may be
24 in some counties or some places, an inevitability that a
25 magistrate is gonna sign off on a warrant that's not the

1 law because it's a neutral magistrate and a neutral person
2 that decides on when it is. And when that initial entry,
3 when that illegal entry happened, there was none.

4 And there is nothing that's stopping Detective Vaughn
5 from saying, okay, I know there's marijuana on the front
6 porch, and I smell marijuana from inside, so let me try and
7 go get a search warrant. There was no indication of
8 anybody running from the residence; no indication of
9 somebody running into the residence; no indication that
10 Carolyn Johnson was attempting to avert anybody when she
11 answered the door or any thing like that.

12 So for that reason, your Honor, I would argue that
13 everything should be suppressed. Now the basis of that is
14 the physical tangible evidence in *Wong Sun* which is from -
15 I think 1963 U.S. Supreme Court, which is a very
16 complicated and convoluted opinion because there was a lot
17 of different people that were involved. But in our - one
18 thing that has been able to come from that case that we
19 know is that the physical tangible evidence that is found
20 pursuant to a warrantless search that is not under any
21 exception of the warrant requirement must be excluded at
22 trial, because in the cases where there isn't anything
23 found they can't exclude anything. So the only way that
24 there can be any type of check on illegal entry inside of a
25 house is obviously when there's something that's found

1 inside the house.

2 Now, so for the basis of the physical evidence, that's
3 my basis for the exclusion on that particular case.

4 The statements, if the physical evidence is found to
5 be admissible, we would argue that the statements made to
6 Investigator or to Lieutenant Ligon must be excluded under
7 the *Fourth Amendment* as fruit of the poisoness tree.

8 Now *Wong Sun*, there are two statements in this case
9 and I attached it for both because it does probably require
10 rereading, two statements in *Wong Sun* that are at issue.
11 One is by Wong Sun himself, and two is by an individual
12 whose name is Toy. The statements are extremely
13 illustrative or illustrate differences between the two
14 because the statement by Wong Sun there is an illegal entry
15 that's conceded in the case. It was illegal for them to go
16 inside Wong Sun's place or business. They talk to him and
17 he says - But he doesn't say anything. He just gets
18 arrested, and then he gets arraigned, and then he's
19 released on his own recognizance.

20 Several days later he comes back to the police
21 statement and makes a voluntary statement that where he
22 confesses to police. That statement is not fruit of the
23 poisoness tree because it is too attenuated because he made
24 the voluntary choice of going back to the police station.
25 The second statement is Toy. Now Toy the officers

1 initially went inside Toy's residence illegally, it was
2 conceded in the case or found in the case by the Court, and
3 immediately upon going in they start questioning him,
4 similar to this case, and he makes an incriminating case -
5 statement. In that particular case I believe it was a
6 confession. And they found that to be so intertwined with
7 the illegal conduct that the illegal activity exploited
8 that conduct and it must be excluded, so those are two
9 different cases.

10 Now in South Carolina there is a case called *State v.*
11 *Funchess*. And at the front side this case seems to say
12 that it's the voluntariness test and that even if it is
13 fruit of the poisonous tree we still have to make this
14 initial determination.

15 But it is our position that what *Funchess* says is that
16 when - to give some background in that particular case -
17 the individual in that case was a suspect in a murder. The
18 statement that was made was made after an individual was
19 walking down the street, the sheriff sees him, stops, talks
20 to him and ask if he would like to come down to the police
21 station to talk to him. He says, yes. He gets into the
22 car with the police. He drove all the way to the police
23 station goes into the room and he has a conversation where
24 he ends up confessing to everything.

25 That is not what happened in this case. In that

1 particular case they said that that was allowed because
2 although the preceding issue in that case, while it
3 happened which was illegal, the fact that he got inside the
4 car and voluntarily went to the police station then that
5 statement was not fruit of the poisoness tree. That is not
6 the situation here. That statement by Mr. Funchess in that
7 case, and by Wong Sun in Wong Sun, are the same thing.
8 They are made voluntarily by police or to police.

9 In this case Warren is inside a back bedroom
10 presumably asleep. Early in the morning he's woken up and
11 then Detective Vaughn comes in and shortly after at least
12 five other detectives come to the scene because there's 3
13 DEU officers, Detective Vaughn, Wallace, Gurganus, so
14 there's six people inside of this place and he makes the
15 statements to police under those circumstances.

16 There is no voluntariness - voluntarily. He is not
17 going specifically to the police station to make this.
18 That case did not over rule *Jackson v Denno* or say that in
19 addition to the fruit of the poisoness tree we must have a
20 *Jackson v Denno* hearing every time that there is a
21 statement that's made under the *Fourth Amendment*. What
22 that case said was that essentially, as *Wong Su* said, if it
23 is too attenuated to the illegal activity then it's not
24 fruit of the poisoness tree. This is not attenuated.
25 This is in the mist of it.

1 So, for that reason, your Honor, we would argue that
2 that statement should also be excluded. Thank you.

3 THE COURT: Thank you. Okay.

4 SOLICITOR HASTY: Your Honor, just quickly. The State
5 agrees that there was not a warrant in this case, there was
6 not a need for a warrant in this case. The entry was for
7 the two warrants exceptions agreed to, or stated earlier by
8 me, that being the destruction of evidence as well as the
9 protective sweep.

10 Regarding inevitable discovery, the test is actually
11 whether or not at the time of the violation there was facts
12 to, or unrelated to the unlawful conduct and there still
13 exist facts to find what was requested to be suppressed.

14 Here we have an admission of drugs being in the
15 property that was the basis for the search warrant
16 application, and so, regardless of what was found, once
17 entry was made a warrant would have been executed on the
18 facts that existed at the time.

19 Statements made inside, its still a question of
20 voluntariness; the method of entry, the number of officers,
21 all still go to voluntariness which is what the court's
22 have stated is the test for statements, whether or not
23 there was a violation of the *Fourth Amendment*, may go to
24 the voluntariness of the statement but that still is a
25 question of voluntariness which we would address in a

1 *Jackson v. Denno* hearing.

2 THE COURT: Okay. All right. So, I will take this
3 matter under advisement with regard to the suppression
4 motion that has been argued and review the Memorandum and
5 the case law. I will let you know in the morning my ruling
6 on that. And now do you wish to proceed with the *Jackson*
7 *v. Denno* hearing?

8 SOLICITOR HASTY: Yes, your Honor.

9 MR. RUDNICK: Yes, your Honor. And --

10 THE COURT: Madam Court Reporter, are you okay to do
11 that?

12 MADAM COURT REPORTER: Yes, ma'am.

13 THE COURT: Okay.

14 MR. RUDNICK: Before I forget, if we could make the - I
15 guess since the Memorandum, since the facts were adopted a
16 Court's Exhibit, just tomorrow or whenever.

17 THE COURT: Sure.

18 MR. RUDNICK: Okay. Thank you, your Honor.

19 THE COURT: Okay. Just don't let me forget and I will
20 make a note as well.

21 MR. RUDNICK: Yes, your Honor.

22 THE COURT: And so with that in mind, do I need to
23 treat that document - Let me make sure that I haven't
24 written on it.

25 MR. RUDNICK: If I could make a clean copy or - and

1 let the State review it before we actually make it a
2 Court's Exhibit so they know that nothing has been altered?

3 If you want to do that?

4 SOLICITOR HASTY: That would be fine.

5 MR. RUDNICK: Okay.

6 THE COURT: Okay. Thank you. So I can use this as a
7 working copy?

8 MR. RUDNICK: Yes, your Honor.

9 THE COURT: Great.

10 MR. RUDNICK: Thank you.

11 SOLICITOR HASTY: Your Honor, we will have Detective
12 Vaughn here in the morning that actually made the entry if
13 some proffered testimony would assist your Honor in making
14 this decision. He will be here in the morning willing to,
15 or we can have him proffer some additional testimony if
16 that would help in resolving any question regarding what
17 existed at the time of entry.

18 THE COURT: Okay. But I thought that we had agreed
19 that we were going to offer the stipulation?

20 SOLICITOR HASTY: If it would help at all, your Honor,
21 otherwise. Okay.

22 THE COURT: Okay. I'll just take it and the Memoranda
23 as stipulated. Okay. All right. So now we are moving
24 forward with our *Jackson v. Denno* hearing; is that correct?

25 SOLICITOR HASTY: Yes, your Honor.

1 MR. RUDNICK: Yes, your Honor.

2 THE COURT: Okay. All right. Solicitor.

3 SOLICITOR HASTY: The State calls Investigator Ramsey.
4 He's currently sequestered out in the hallway at this
5 time.

6 THE COURT: Okay.

7 SOLICITOR HASTY: Your Honor, this is Investigator
8 Ramsey.

9 THE COURT: Oh. Yes, sir. Good afternoon. If you
10 would raise your right hand?

11 (WHEREUPON, STEPHEN RAMSEY,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 THE COURT: All right. Yes, sir. If you will take
14 this witness stand and state your full name for the record.

15 INVESTIGATOR RAMSEY: Stephen Craig Ramsey.

16 DIRECT EXAMINATION - PRETRIAL

17 INVESTIGATOR STEVEN RAMSEY BY SOLICITOR HASTY:

18 Q. Investigator Ramsey, where are you currently employed?

19 A. York County Sheriff's Office in the Multi-
20 Jurisdictional Drug Enforcement Unit.

21 Q. How did you become involved in this case that we're
22 here for today?

23 A. We were contacted by detectives with the York County
24 Sheriff's Department to assist in an investigation.

25 Q. And did you speak with Mr. Duvant, the Defendant, in

1 this case?

2 A. I do not believe that I spoke to him directly.

3 Q. Would you have been the one that advised him of his
4 constitutional rights?

5 A. Yes.

6 Q. And did you read or did you recite those rights to
7 Mr. Ramsey?

8 A. I read those rights to Mr. Duvant.

9 Q. Sorry. Mr. Duvant. I apologize. Now what did you
10 read from?

11 A. We have a form, *Miranda Form*, I read that form to him.

12 Q. I'm showing you what has been previously marked as
13 State's Exhibit No. 1.

14 I'm showing you a document that I have marked as
15 State's Exhibit No. 1

16 Could you identify what that is?

17 A. This is the *Acknowledgment of Rights Form* that the
18 Drug Enforcement Unit uses.

19 Q. And whose signatures are on that?

20 A. Mr. Warren Tremaine Duvant's, Carolyn Johnson's
21 signature is on it as well, and I've listed my name as the
22 officer who read the Rights.

23 Q. And is this the advisement that you would have read
24 to Mr. Duvant?

25 A. Yes, sir.

1 Q. Could you read what that Advisement is?

2 A. It says, "You have the right to remain silent anything
3 you say can be used against you in court. You have the
4 right to talk to a lawyer for advice before any questions
5 and to have your lawyer present during questioning. You
6 have the right to the advice and presence of a lawyer even
7 if you cannot afford to hire a one. We have no way of
8 appointing you a lawyer but one will be appointed by the
9 Court for you if you wish. If you wish you may answer
10 questions without the presence of a lawyer and you may stop
11 answering any time you desire."

12 Q. All right. And Mr. Duvant signed that form?

13 A. Yes, sir.

14 Q. All right. Where were you at at the time that you
15 advised Mr. Duvant and he signed this?

16 A. We were in the living room of 403 Belaire Circle in
17 Clover, South Carolina.

18 Q. Was anybody else present at that time?

19 A. Ms. Carolyn Johnson was present. There were several
20 detectives in the room as well. The one that I noted just
21 from memory seeing was Detective Gurganus.

22 Q. Would you describe the Defendant's physical appearance
23 at that time?

24 A. Mr. Duvant was sitting, I believe he had handcuffs on
25 in the front. The same was for Ms. Johnson as well. After

1 I read rights to - Anytime I read rights from this sheet I
2 ask the person that I read the rights to to verbally
3 acknowledge. I don't accept head shakes. I verbally ask
4 them do you understand your rights and they have to give me
5 a yes or no answer, and on that occasion Mr. Duvant said,
6 yes, he understood his rights.

7 Q. Did he appear impaired by any alcohol or drugs?

8 A. No, sir.

9 Q. Was his speech clear and coherent?

10 A. Yes, sir.

11 Q. Did he appear to have any mental handicaps, or
12 difficulties, in understanding what you were saying?

13 A. No, sir.

14 Q. Did he appear to understand the advisement that you
15 gave him?

16 A. Yes, sir.

17 Q. How old was the Defendant at the time?

18 A. The Defendant provided date of birth of 7/22/1991.

19 Q. That would have made him 25ish?

20 A. Yes, sir, I believe so, approximately.

21 Q. To your knowledge does the Defendant have prior
22 experience with law enforcement?

23 A. At the time that I read the *Advisement of the Rights* I
24 did not have any knowledge. Now since then obviously I
25 have knowledge from looking at his criminal history.

1 Q. So at the time did he have experience, prior
2 experience with law enforcement?

3 A. Yes.

4 Q. Okay. On August 23rd, after being advised of his
5 rights, did Mr. Duvant invoke his right to remain silent?

6 A. No, sir.

7 Q. Did he agree to answer questions?

8 A. Yes, sir.

9 Q. Did he ask for an attorney?

10 A. No, sir.

11 Q. Did you promise anything to the Defendant for his
12 statement?

13 A. No, sir.

14 Q. Did you threaten or coerce the Defendant in any way?

15 A. No, sir.

16 Q. And to the best of your knowledge was the Defendant's
17 statement given that day freely and voluntarily?

18 A. Yes, sir.

19 SOLICITOR HASTY: Thank you. I have no further
20 questions for this witness.

21 THE COURT: Okay. Thank you.

22 MR. RUDNICK: Thank you, your Honor. May it please
23 the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION - PRETRIAL

1 INVESTIGATOR STEVEN RAMSEY BY MR. RUDNICK:

2 Q. Good afternoon, Detective.

3 A. Good afternoon.

4 Q. So you were at 403 Belaire Circle on August 23rd of
5 last year?

6 A. Yes, sir.

7 Q. And you were in the living room of 403 Belaire Circle
8 when you read the advisements?

9 A. Yes, sir.

10 Q. Correct?

11 A. Yes, sir.

12 Q. And the *Advisement Form* that you read today that's
13 the same form obviously just a photo copy of it; ---

14 A. Yes, sir.

15 Q. --- right?

16 A. Yes, sir.

17 Q. Now, and you have it in your hand now, is that right?

18 A. Yes, sir.

19 Q. Okay. So under Case No. 217, right there, that's your
20 handwriting; right?

21 A. Yes, sir. This is my handwriting.

22 Q. Okay. And then next to it is the incident location
23 403 Belaire, ---

24 A. Yes, sir.

25 Q. --- that's your handwriting; right?

1 A. Yes, sir.

2 Q. Date and time, your handwriting?

3 A. Yes, sir.

4 Q. Then your signature ---

5 A. Yes, sir.

6 Q. --- Officer Ramsey, right? And then we have Warren

7 Duvant and Carolyn Johnson. That's your handwriting there,

8 right?

9 A. Yes, sir.

10 Q. Okay. The same with date of birth, right?

11 A. Yes, sir.

12 Q. Then Warren signed it, right?

13 A. Yes, sir.

14 Q. Carolyn signed it?

15 A. Yes, sir.

16 Q. And then the date or the address 403 Belaire Circle,

17 that's your handwriting there too, ---

18 A. Yes, sir.

19 Q. --- right? Okay. Now, when you read the *Advisement*

20 *Form*, that was in the living room of the residence, right?

21 A. Yes, sir.

22 Q. And that residence was a single-wide trailer, correct?

23 A. To my recollection, yes.

24 Q. Okay. And it had - if you remember or not - it had

25 three bedrooms, right?

1 A. Yes, sir.

2 Q. Probably a bathroom?

3 A. Yeah, it had some bathrooms in it.

4 Q. Yeah. And then a living room and a kitchen, right?

5 A. Yes, sir.

6 Q. So you were in the living room, and then it was

7 August, right?

8 A. Yes, sir.

9 Q. So it was hot, right?

10 A. Yes, sir.

11 Q. Do you remember whether or not that house had air

12 conditioning?

13 A. I don't recall.

14 Q. Okay. So when you were there there were other

15 detectives on scene, right?

16 A. Yes, sir.

17 Q. And it was at least Detective Vaughn, right?

18 A. Yes, sir.

19 Q. And then Detective Jimmy Ramsey?

20 A. Huh?

21 Q. I'm sorry, Jimmy Wallace. I said Ramsey but I meant

22 Detective Wallace.

23 A. You talking about Joey Wallace?

24 Q. Yeah, Joey. Sorry.

25 A. I don't recall.

1 Q. You don't remember? Okay. But it was Lieutenant
2 Ligon, right?

3 A. Yes, sir.

4 Q. Lieutenant Clevenger?

5 A. Yes, sir.

6 Q. And you said you remember Detective Gurganus?

7 A. Yes, sir.

8 Q. Okay. Was Detective or - I'm sorry, Deputy Griffin
9 there at that time or did he come later?

10 A. I don't recall.

11 Q. Okay. But at this point you're there talking with
12 Carolyn and Warren, and those other officers are also in
13 the living room?

14 A. Some of the officers were in the living room, some of
15 'em were outside.

16 Q. Okay.

17 A. Just attending to different things. Even myself I
18 walked out to get the *Advisement Rights Form* out of my
19 vehicle and then walked back in so I could read the rights,
20 so there were officers that may have been standing right
21 there in the vicinity with us and then they may have
22 stepped out.

23 Q. Okay.

24 A. For whatever reason they came back in so, you know,
25 people were in and out.

1 Q. Yeah. I gotcha. So, Warren was in handcuffs?

2 A. He was handcuffed in the front, yes.

3 Q. Yeah, handcuffed in the front. Carolyn I assume
4 wasn't?

5 A. Yes, sir.

6 Q. Okay. So, the *Advisement Form* is read at 10:35 a.m.,
7 is that right?

8 A. Yes, sir.

9 Q. And you didn't hear any of the statements that were
10 made by Warren?

11 A. Like I said I was in and out. Like I walked out to my
12 car to get this from and I walked back out to my car to get
13 some other things that I knew I was most likely going to
14 need.

15 Q. Right.

16 A. So, I was in and out. I wasn't present for any, I
17 guess, conversation where I could testify and say, yeah, I
18 was there this whole time. I heard them say this just
19 because I was in and out doing other things.

20 Q. Okay. And I'm just trying to figure out. So you
21 weren't there when Lieutenant Ligon and Warren had this
22 conversation?

23 A. I was not.

24 Q. Okay. You said that - At the time do you have any
25 idea where Warren was before police officers got there?

1 A. Based on what Detective Vaughn told me.

2 Q. Okay. So he was in a back bedroom of the trailer?

3 A. Yes, sir, he was in a back right bedroom.

4 Q. Okay. And this back right bedroom, is there a back
5 left bedroom next to it?

6 A. There is a back left bedroom. There's two bedrooms
7 on the left side of the mobile home and there is one
8 bedroom on the right side of the mobile home.

9 Q. Okay.

10 MR. RUDNICK: Your Honor, I have no further questions
11 for this witness.

12 THE COURT: Okay. Thank you.

13 Counsel?

14 SOLICITOR HASTY: No redirect.

15 THE COURT: All right. Any objection to this witness
16 being excused?

17 MR. RUDNICK: Not today no, your Honor.

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

19 (WITNESS LEAVES WITNESS STAND.)

20 SOLICITOR HASTY: The State calls Lieutenant Ligon.

21 (WHEREUPON, MIKE LIGON, BEING
22 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 THE COURT: Thank you, sir. Please answer the
24 questions of the Solicitor.

25 LIEUTENANT LIGON: Yes, ma'am.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION PRETRIAL

3 LIEUTENANT MIKE LIGON BY SOLICITOR HASTY:

4 Q. Lieutenant Ligon, how did you become involved in this
5 case?

6 A. We were contacted by Detective Vaughn and advised he
7 had a situation where there were possibly some narcotics
8 involved at 403 Belaire Circle in Clover.

9 Q. All right. And did you have an opportunity to speak
10 with the Defendant?

11 A. Yes, sir, I did.

12 Q. And when you spoke with him did he invoke his right
13 to remain silent?

14 A. No, sir, he did not.

15 Q. Did he agree to answer the questions that you had for
16 him?

17 A. Yes, sir, he did.

18 Q. Did he ask for an attorney at any time when you were
19 speaking with him?

20 A. No, sir, he did not.

21 Q. Did you promise him anything in regards to trying to
22 get a statement from him?

23 A. No, sir, I didn't.

24 Q. Did you threaten or coerce him in any way?

25 A. No, sir, I did not.

1 Q. Could you describe the scene, the layout of what's
2 going on when you were speaking with the Defendant?

3 A. Well, when we arrived there were detectives in the
4 yard. I think there was a marked patrol car in the yard.
5 Initially as we entered the residence Detective Vaughn and
6 Detective Gurganus were there in the residence with Ms.
7 Johnson, I believe, and Mr. Duvant.

8 Q. All right. Now when you spoke to him, to the best of
9 your knowledge, was the Defendant's statement given
10 voluntarily?

11 A. Yes, sir, it was.

12 Q. Did the Defendant give you a statement in response to
13 your questions?

14 A. Yes, sir, he did.

15 Q. What was that statement?

16 A. What had happened was Detective Ram - or Investigator
17 Ramsey had read him his rights. During this time period I
18 was actually coming in and out of the residence myself.
19 Investigator Clevenger, who is now a lieutenant was working
20 for me at the time, he was present. I spoke with Mr.
21 Duvant. I ask him if there were any drugs in the residence
22 at which time he told me that there were not. I then -
23 Detective Vaughn had advised me that the Search Warrant had
24 been signed and was in route to the residence. At that
25 point in time I advised him that there was a search warrant

1 in route for the residence and at that point in time he
2 voluntarily told me that there were drugs in - or actually
3 cocaine in the back room.

4 At that point in time I ask where was it at, meaning
5 tell me, and he got up actually from the chair he was
6 seated in and said he would show us where the cocaine was.
7 At that point in time he led myself, and also Lieutenant
8 Clevenger, back to the room. He actually went - I actually
9 had to stop him. He actually went to grab the tote that it
10 was in and lift the lid up on the tote and I advised him -
11 I ask him to step back and told him we would get it.

12 At that point in time he said - he pointed to the grey
13 tote. I lifted it up. There were clothes inside the tote.
14 I was like okay, where's it at? And he said, lift the
15 clothes up, it's up underneath the clothes. So that's
16 basically how that took place.

17 Q. And what was his demeanor, or behavior, during that
18 time?

19 A. He was very calm.

20 Q. And who all was involved in the questioning of the
21 Defendant?

22 A. It would have been myself and Lieutenant Clevenger at
23 that point in time.

24 Q. What were the other officers that were on scene
25 doing?

1 A. Again, there was quite a few things going on at that
2 point in time. There were officers - There were detectives
3 in the driveway -- There was a marked unit in the driveway
4 - and basically just more or less standing by at that point
5 in time until the search warrant got there to assist in the
6 search warrant.

7 Q. Were you aware of what the original call to the
8 residence was regarding?

9 A. Detective Vaughn when he called and said he had been
10 out there investigating a CSC case and at that point in
11 time actually upon approaching the door - Ms. Johnson come
12 to the door - smelling the odor of marijuana and securing
13 the residence at that time.

14 Q. Thank you.

15 SOLICITOR HASTY: I have no further questions so
16 please answer anything the Defense may have.

17 THE COURT: Yes, sir.

18 MR. RUDNICK: Thank you, your Honor, may it please the
19 Court.

20 CROSS-EXAMINATION - PRETRIAL

21 LIEUTENANT MIKE LIGON BY MR. RUDNICK:

22 Q. Afternoon.

23 A. How you doing, sir?

24 Q. Doing well. So, Lieutenant Ligon, you were at 403
25 Belaire Circle in Clover back in August ---

1 A. Yes, sir.

2 Q. --- last year, right?

3 A. Yes, sir, I was.

4 Q. Okay. And you were - Were you present when
5 Detective Ramsey read the *Miranda Warnings*?

6 A. Yes, sir, I was.

7 Q. Okay. So you were there, Detective Ramsey was there,
8 and then you said Detective Vaughn and Gurganus was
9 somewhere in the residence or ---

10 A. I believe ---

11 Q. --- maybe outside?

12 A. --- Detective Vaughn had still been standing by, as
13 well as Detective Gurganus, and then you would also have
14 Lieutenant Clevenger there.

15 Q. Right.

16 A. So there were approximately ---

17 Q. And that was my next question.

18 A. --- four or five us there in the residence at that
19 point in time.

20 Q. Okay. And this was in the living room of this
21 trailer, right?

22 A. Yes, sir, it was.

23 Q. Do you remember if the residence had air conditioning
24 or anything like that?

25 A. It did but I think it was pretty much doing all it

1 could do with it being a ---

2 Q. It was August.

3 A. --- very hot August day.

4 Q. Right?

5 A. Yes, sir.

6 Q. So, you mentioned that there was a marked patrol
7 car there with Detective Vaughn and Gurganus when you first
8 got to the residence; is that right?

9 A. When we were called there yes, sir.

10 Q. Okay.

11 A. Now, again, we were at the Moss Justice Center when
12 we received the call so it's gonna take me about a good
13 fifteen - fifteen minutes or so to actually get to that
14 residence.

15 Q. Right. And I definitely understand.

16 A. Yes, sir.

17 Q. But was it Vaughn's vehicle or was it somebody else's?
18 Do you know?

19 A. No. There was actually a marked deputy's car there.

20 Q. Okay. I gotcha.

21 A. Yeah. You had detective vehicles along with one
22 marked patrol car there.

23 Q. So the statement was made in the living room and
24 Warren was handcuffed to the front.

25 A. Yes, sir.

1 Q. Right? And Carolyn Johnson was as well, right?

2 A. Yes, sir, he was actually in a high-back chair seated
3 just as you walk in the door to the right and more back up
4 towards the wall. The actual - there was a - The way the
5 trailer's laid out in the living room you walk into the
6 living room there is a hallway to the left that goes to two
7 bedrooms and a - two bedrooms on that end. You have a
8 living room. and then there's a kitchen. but in the kitchen
9 there's kind of like an island type area. It's like a cut
10 wall.

11 Q. Right.

12 A. And it goes through so you can go around to the right
13 or the left in the kitchen area. One side had like the
14 stove and refrigerator and stuff of that nature on it. The
15 other side of that in the center was cabinets, cabinets to
16 the left, and then it opened up to where the table and all
17 was.

18 Q. Okay.

19 A. And --

20 Q. So he was sitting in a high-back chair and Carolyn
21 was ---

22 A. Kind a --

23 Q. --- sitting somewhere else?

24 A. Well it was kind of in that cut - where that little
25 small wall was the chair was kind of sitting there.

1 Q. Okay. So, he made the statement and you - the
2 statement that you gave Vaughn, direct examination, that
3 was the entirety of the statement that he gave you that
4 day?

5 A. Yes, sir, it was.

6 Q. Okay. So, the statements made you said he was calm
7 ---

8 A. Yes, sir, he was.

9 Q. --- at that time? And he was still handcuffed at that
10 time?

11 A. Yes, sir, he was.

12 Q. Okay. And you walked back there and Lieutenant
13 Clevenger walked back there. Or Investigator Clevenger at
14 the time now Lieutenant Clevenger?

15 A. Yes, sir.

16 Q. Okay. And the *Advisement of Rights Form* just briefly,
17 there's one part I wanted to ask you about. There's a
18 statement in there after it says that you can get an
19 attorney, you have one present, if you cannot hire one -
20 and I'll give it to you here - it just says we have no way
21 of appointing you a lawyer but one will be appointed to you
22 by the court if you wish.

23 A. If you wish.

24 Q. Okay. Now that obviously was on the same statement
25 that you read to Warren and Carolyn that day, right?

1 A. I did not read it.

2 Q. I'm sorry.

3 A. Detective Ramsey - Investigator Ramsey did yes, sir.

4 Q. Detective Ramsey read it. I apologize.

5 And did you at any time explain kind of that nuance
6 to the questioning part? Like did you explain the process
7 for him to get appointed an attorney if he wanted one there
8 at that time?

9 A. No, sir, I did not.

10 Q. Okay. So it just says that we - You can have an
11 attorney but we don't have any way for you to be able to
12 get an attorney unless a court appoints one, right?

13 A. Yes, sir.

14 Q. Okay.

15 MR. RUDNICK: Your Honor, I have no further questions
16 at this time or for this witness.

17 THE COURT: Okay. Thank you.

18 Counsel?

19 SOLICITOR HASTY: Nothing further from the State
20 on this witness.

21 THE COURT: Okay. Any objection to Lieutenant Ligon
22 being released?

23 MR. RUDNICK: No, your Honor.

24 THE COURT: Okay. Thank you, sir. Watch your step.

25 LIEUTENANT LIGON: Thank you, ma'am. Yes, ma'am.

1 THE COURT: Okay. Anything else?

2 SOLICITOR HASTY: There's no further witnesses from
3 the State. We have argument.

4 MR. RUDNICK: Yes, your Honor. And I'll just make a
5 motion as far as the statement. The basis of our motion to
6 suppress the statement under *Jackson v. Denno* is that under
7 the particular circumstances of this case Mr. Duvant was
8 woken up in a back bedroom, told to come into the front,
9 and I thought he was sitting on a couch but apparently he
10 was sitting in a high-back chair, and it must have been in
11 like a nook of a wall compared to what or based off what
12 Lieutenant Ligon testified to.

13 While he's there there are at least four from what I
14 can count, maybe five, police officers inside the living
15 room in a trailer that he was, as far as we know, asleep in
16 the back bedroom, woken up, and now he's being questioned
17 by four or five different people at the same time.
18 Apparently was AC going on but we don't really know.

19 He was handcuffed, he was mirandized but in the
20 *Miranda Form* it has this strange prevision where it talks
21 about you have the right to have an attorney, with advise
22 and presence of an attorney while you're being questioned
23 but they don't have any way for you to be able to get an
24 attorney so I don't - I'm not really certain what that
25 means, or really if that was clarified that day as an

1 attorney matter what it means. I don't know if a lay
2 person would either.

3 The reason we would argue for the suppression is based
4 off the fact that there are four or five people inside this
5 residence that Warren did not know, badges and guns,
6 questioning him about things that are inside the residence.
7 The statement that was made apparently was in it's entirety
8 based off of where drugs were found inside the residence.

9 While the officer says that Warren was calm it kind of
10 - There's a bunch of people inside this house that is
11 searching this house before a search warrant has gotten
12 there and we would just argue that based off of the
13 circumstances surrounding the way that the statements were
14 given, the fact that he was handcuffed, the fact that there
15 is a number of police officers there with guns and badges
16 and all those things that we would argue that was not
17 voluntarily made and should be suppressed based on *Jackson*
18 *v. Denno*.

19 THE COURT: Thank you.

20 SOLICITOR HASTY: Your Honor, in regards to the five
21 officers that were on the scene, I think that the officers
22 kind of cleared up what was going on there. We had
23 Investigator Vaughn and Gurganus, they were called to the
24 scene regarding a sexual assault. Whenever the person they
25 were looking for was not found it was testified that they

1 were outside still dealing with their investigation.

2 Ramsey, he testified that he was in and out of the
3 house preparing forms, getting things lined up while
4 Lieutenant Ligon said that he was in the house speaking
5 with the Defendant he did have Officer Clevenger with him.
6 He said that was somebody who worked under him, however
7 Ligon seemed to be the one doing all of the actual questions
8 and at no time was there any discussion of any menacing, or
9 any using the officers to stand around the Defendant to
10 coerce any type or alter the voluntariness of the
11 statement.

12 In fact all of the officers testified that he was
13 calm, clear headed, polite, and knowingly waived his rights
14 and had never at a point invoked both his right to remain
15 silent nor his request for an attorney.

16 In regards to the factual statement of the *Advisement*
17 *Form*, that's a factual statement. Officers are not ones
18 that can appoint somebody an attorney. That is something
19 that only the court can do; however, the Defendant has
20 experience with law enforcement officers. Officers
21 testified that he has prior convictions, prior convictions
22 for very similar offenses and so his knowledge of the
23 officer's ability to appoint somebody verse the screening
24 process for a court appointed attorney, if somebody can
25 afford an attorney is something the defendant would have

1 been aware of and therefore doesn't factor into creating
2 this to become an involuntary statement.

3 All of the evidence presented indicates this was a
4 voluntary statement given while the Defendant was sitting
5 in a chair, handcuffed, but handcuffed in front of him so
6 he was not constrained in any way to where it was harming
7 him. He was not being forced, nothing was promised, and he
8 was not threatened in any manner so as to extract his
9 statement, but instead was polite, volunteered information.
10 And whenever he was ask where the drugs was - were - even
11 volunteered to show them and got up himself to demonstrate
12 or to indicate where the drugs were found in the home.

13 THE COURT: All right. Thank you. Anything else
14 before we adjourn for the evening?

15 MR. RUDNICK: No, your Honor.

16 THE COURT: Okay. And, Mr. Duvant, sir, in that we
17 intend to commence the trial in the morning, and we have
18 chosen your jury, I have explained to counsel that I am
19 requesting that, or ordering, that you be held in custody,
20 sir, pending the outcome of the trial. All right.

21 Thank you. I'll see everyone at 9:30 in the morning.

22 SOLICITOR HASTY: Your Honor, the State did raise two
23 points as far as the lawfulness of the entry into the home.
24 We will send supporting case law if it would assist your
25 Honor regarding destruction of evidence as well as

1 protective sweeps.

2 THE COURT: Yes, sir. I have emailed - That's fine,
3 you can email it to me. And do you have any objection to
4 that?

5 MR. RUDNICK: I'm sorry, what was it?

6 SOLICITOR HASTY: Supporting case law for protective
7 sweeps and destruction of evidence. And I'll include you
8 on it.

9 MR. RUDNICK: Yeah. I have no objection.

10 THE COURT: Okay. And, so you'll do that this
11 evening?

12 SOLICITOR HASTY: Yes, your Honor.

13 THE COURT: Okay. And I have emailed counsel a
14 verdict form that I typed myself. And there is a reason
15 that I don't have Mrs. Nelson's job. I will tell you that
16 I am a very poor typist, so if you all will review that and
17 make sure that it meets with your approval.

18 And then at some point tomorrow we will also need to
19 look at charges and so you all need to keep that in mind.

20 All right.

21 MR. RUDNICK: Thank you, your Honor.

22 (COURT IN EVENING RECESS AT 06:00 P.M.)

23 (COURT BACK IN SESSION WEDNESDAY, MAY 23, 2018 AT
24 10:01 A.M.)

25 (DEFENDANT, WARREN DUVANT, REENTERS COURTROOM AT 10:02

1 A.M.)

2 THE COURT: Counsel, can you all approach for just a
3 moment?

4 (BENCH CONFERENCE HELD OFF THE RECORD AT 10:02 A.M.)

5 THE COURT: Okay. Madam Court Reporter, are we ready?

6 We are back on the record with regard to the matter of
7 the *State of South Carolina, County of York, versus Warren*
8 *Tremaine Duvant*, and yesterday evening we were here until
9 quite late hearing motions by the Defense. Specifically
10 there were ten motions that had been made in camera
11 regarding several issues and of those ten motions eight of
12 those were resolved by counsel and placed on the record.

13 We did hear arguments from counsel with regard to
14 Motion No. 9, Motion to Suppress and Exclude all Evidence
15 Seized on August 23rd, 2017, at 403 Belaire Circle in
16 Clover, South Carolina under the *Fourth Amendment of the*
17 *United State's Constitution* and *Article 1, Section 10 of*
18 *the South Carolina Constitution*.

19 Defense counsel handed up a Memorandum in support of
20 that motion with attached case law, and as stated
21 yesterday, that was provided to counsel and to the Court
22 yesterday, and I'm not at all being critical of counsel
23 about the date that that was presented, that is the nature
24 of criminal law.

25 And so, last evening I reviewed the Defendant's - I

1 mean the State's responsive law to that. That was emailed
2 to me, I reviewed that around 8 o'clock last evening and I
3 certainly do appreciate the efforts made by counsel. I
4 know you all have a lot of cases, and so, I do appreciate
5 that and I was able to review everything.

6 I, after consideration of all of the case law that was
7 submitted, I am going to deny the Defendant's suppression
8 motion with regard to the *Jackson v. Denno* issues and the
9 hearing that was held with regard to that.

10 We also conducted an in-camera hearing on yesterday
11 and based on standards set forth in *Jackson v. Denno*, and
12 after hearing the testimony and reviewing the evidence
13 presented, the case law that I have been provided, I find
14 that the Defendant did knowingly and intelligently waive
15 his *Miranda* rights when he gave the statement in question.

16 I considered the totality of the circumstances
17 including, but not limited to, the - any coercion, the
18 length of the interrogation, the defendant's education, et
19 cetera, and any threats of violence and what not, and I
20 find that the statement in question was voluntary for
21 admissibility purposes; therefore, the Defendant's motion
22 to suppress the statement is denied. I will in my charge
23 to the jury instruct them about the voluntariness of the
24 statement.

25 And I believe that there was another matter that we

1 partially addressed yesterday with regard to Motion No. 6
2 to exclude any and all statements made by the Defendant to
3 officers because these statements were hearsay and not with
4 any exception or exclusion. And Defense counsel as I
5 understand it wishes to also extend that to include any
6 statements made to non-law enforcement witnesses.

7 Is that correct, Counsel?

8 MR. RUDNICK: Yes, your Honor. All lay witnesses and
9 specifically in this case Jay Adams with the Bonds Company;
10 any statements that was made to Jay Adams that we would
11 argue are hearsay, they were not admissions.

12 Specifically with regard from where I think it will be
13 relevant is the bond paperwork that has 403 Belaire Circle
14 as the address that was typed on there. Any verbal
15 statements were made to Jay Adams about an address or
16 anything like that by the Defendant would not - would be
17 hearsay statements and it would be used for the truth of
18 the matter asserted.

19 They are not admissions. They are not admissions of
20 any type of guilt to anything. They are not statements
21 against interest because no reasonable person would believe
22 that giving an address could expose them to criminal or
23 civil liability. If the address was actually given kind of
24 played a guessing game as far as what Jay is going to tell
25 us --

1 who isn't called, listen and look deeper than the surface.

2 Analyze the case because keep seeing people at an art
3 museum they will step back and they'll really look at that
4 picture. They'll look at it from different angles.

5 Consider what it really shows, what does that picture
6 really say. Is that picture really complete? What are
7 holes, what are the things that are missing, does it really
8 say what they think it does? So ladies and gentlemen, all
9 I ask for you to do is to look deeper than the surface.

10 Thank you.

11 THE COURT: Thank you. Okay, Solicitor, are we ready
12 to proceed, sir?

13 SOLICITOR PLEMING: Yes, your Honor, the State calls
14 Detective David Vaughn.

15 (WHEREUPON, DAVID VAUGHN,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 THE COURT: Good morning, sir. Make yourself
18 comfortable and remember to speak loudly. I don't know tha
19 that your microphone is amplyfiing your voice either.

20 DETECTIVE VAUGHN: Yes, ma'am.

21 THE COURT: All right. Thank you.

22 Yes, sir.

23 SOLICITOR PLEMING: Thank you, your Honor.

24 DIRECT EXAMINATION

25 DETECTIVE DAVID VAUGHN BY SOLICITOR PLEMING:

1 Q. Good morning. Will you please introduce yourself to
2 the jury by stating your name and occupation?

3 A. My name's David Vaughn. I work for the York County
4 Sheriff's Office as a detective.

5 Q. And how long have you been with the York County
6 Sheriff's Office?

7 A. For 13 years.

8 Q. What positions have you held while with the York
9 County Sheriff's Office?

10 A. I began my career in the jail. I worked as a uniform
11 patrol officer. I worked in the Drug Enforcement Unit and
12 now I'm assigned to the Detective Division.

13 Q. Can you explain what the Drug Enforcement Unit does
14 from your time there?

15 A. What we do we conduct investigations on street level
16 drug dealers in the community.

17 Q. And what are the duties in your current position?

18 A. It's a wide range of things. I conduct investigations
19 on crimes that already occurred anywhere to homicide to
20 property crimes.

21 Q. Okay. And did one of those investigations take you
22 to 403 Belaire Circle in Clover on August the 23rd of last
23 year?

24 A. Yes.

25 Q. And is that address in York County?

1 A. Yes.

2 Q. And what type of day did you go out there?

3 A. It was early in the morning.

4 Q. What was the nature of that investigation?

5 A. It was a sexual assault investigation.

6 Q. And were any other officers with you?

7 A. Yes.

8 Q. Without going into more detail was - This Defendant
9 was not involved in that investigation was he?

10 A. No.

11 Q. And describe the residence at 403 Belaire as you
12 observed it when you arrived?

13 A. When I arrived at the residence it's right off the
14 road of Belaire Circle. It's a single wide trailer, it's
15 got black shutters on it, it's got a wooden front porch.

16 Q. How many bedrooms?

17 A. Three.

18 Q. When you approached the residence that morning what
19 did you observe?

20 A. What I believed to be a marijuana rolled cigar on the
21 front porch on the railing.

22 Q. And what did you do after you finished that?

23 A. I knocked on the door of the residence.

24 Q. And what happened then?

25 A. I met with Carolyn Johnson at the front door.

1 Q. And what did you observed once you opened the front
2 door?

3 A. As I was speaking with her I could smell the odor of
4 marijuana coming from inside the residence.

5 Q. And how would you describe the strength of that
6 marijuana?

7 A. Basically just somebody just recently smoked
8 marijuana.

9 Q. Okay. And from your experience is the smell of
10 marijuana that's been recently smoked different from the
11 smell of marijuana when it's not been burned?

12 A. Yes.

13 Q. Now what did you do when you smelled the marijuana?
14 What did you say to her?

15 A. I ask her had she been smoking marijuana first and
16 she said yes.

17 Q. And then what happened?

18 A. I ask her did she have any more marijuana inside the
19 residence and she advised me she did.

20 Q. And what did you decide to do once she admitted to
21 having more marijuana in the residence?

22 A. I decided to lock the house down and get a search
23 warrant.

24 Q. And what does that mean to lock the house down?

25 A. Basically I believe we had probable cause to obtain

1 a search warrant from a judge. At this time we'll secure
2 the residence that way nobody has a chance to destruct any
3 kind of evidence that's inside the residence.

4 Q. And how do you - Walk us through that process.

5 A. So basically what we'll do when we lock a house down
6 we'll go through the residence and what we call clear the
7 residence and make sure there's not any bodies inside the
8 residence, people inside the residence, and if there is
9 we'll ask 'em to step outside generally.

10 Q. And what did you find when you did that sweep of the
11 residence?

12 A. First off I went to the left of the residence. There
13 was nobody on that side of the residence. Then I went back
14 to the right hand side of the residence and I found Mr.
15 Duvant lying in a bed sleeping.

16 Q. Describe that room where you found him.

17 A. That particular room was kind of like what I call in
18 disarray, it's clothes everywhere. When you walk into the
19 room there's a bed and there's a basket beside him that had
20 clothes in it. It's kind of a messy room.

21 Q. Okay. And is that the same Mr. Duvant that is the
22 defendant in this case?

23 A. Yes.

24 Q. And do you see him in the courtroom today?

25 A. I do.

1 Q. Please identify him by pointing and describing him.

2 A. Mr. Duvant's the individual on my far left hand side
3 wearing a white shirt and a blue jacket.

4 Q. Thank you. After you found Mr. Duvant what did you
5 do?

6 A. I ask him to step outside.

7 Q. Outside the building?

8 A. Outside the residence.

9 Q. Okay. And what did you do then?

10 A. I called another detective and advised him what I had
11 that we needed to obtain a search warrant.

12 Q. Okay. Did you have any conversation with Mr. Duvant?

13 A. Not at that point, no.

14 Q. Okay. Did you advise him of his rights?

15 A. No.

16 Q. Who did you ask to apply for the search warrant?

17 A. Detective Shifferle.

18 Q. And did you relay to Detective Shifferle all the
19 information that you had about the house in regard to your
20 investigation and what you observed once you got there?

21 A. Yes.

22 Q. What did you do after you - while you waited for
23 Detective Shifferle?

24 A. Basically meet myself and Warren Duvant and Detect -
25 the other detective and Ms. Johnson that was present we

1 just waited outside. And also called the Drug Enforcement
2 Unit.

3 Q. Okay. How long did it take for Detective Shifferle
4 to return with the search warrant?

5 A. Approx - Maybe an hour.

6 Q. And during that time tell us what happened.

7 Q. Lieutenant Ligon, Investigator Ramsey and Investigator
8 Clevenger arrived at the residence to assist.

9 Q. And when - Do you know - Do you recall how long it
10 was before they arrived at the residence?

11 A. Maybe fifteen, twenty minutes.

12 Q. Once they arrived what did you observe?

13 A. They began to go on their protocol. They got a
14 Miranda Form. We brought everybody inside the residence
15 into the living room. Deputy Ramsey read some *Miranda*
16 *Rights* off a form.

17 Q. Okay. And did you see if Mr. Duvant understood his
18 rights?

19 A. Yes.

20 Q. Did he say that he understood his rights?

21 A. Yes. I even observed him sign the form that Deputy
22 Ramsey had.

23 Q. Okay. Now this conversation you said took place
24 where?

25 A. In the living room of the residence.

1 Q. And who else was present for that?

2 A. I believe it was myself, Lieutenant Ligon,
3 Investigator Ramsey, Investigator Clevenger and Detective
4 Wallace.

5 Q. And did you at any point see Mr. Duvant sign anything
6 acknowledging that he understood his rights?

7 A. Yes.

8 SOLICITOR PLEMING: The Court's indulgence for just a
9 moment.

10 THE COURT: Yes, sir, take your time.

11 BY SOLICITOR PLEMING:

12 Q. Did you happen to see the actual form that he signed?

13 A. I know what form it is. I've used that form several
14 times in my career.

15 Q. Okay.

16 A. I've seen the form, yes.

17 Q. All right. After Mr. Duvant said that he understood
18 his rights, did you observe or were you present for any of
19 the officers talking to him?

20 A. I was present when Lieutenant Ligon had a conversation
21 with him.

22 Q. And tell us about that conversation. What did
23 Lieutenant Ligon ask him?

24 A. Lieutenant Ligon was asking him was there any drugs
25 in the residence and if so where they're at.

1 Q. And how did he respond?

2 A. At first he didn't respond and Lieutenant Ligon ask
3 him again and then Mr. Duvant advised us he'd show us where
4 the drugs were located.

5 Q. Okay. How would you describe the Defendant's demeanor
6 that morning when all of this was going on?

7 A. He was surprised.

8 Q. And did he - Were you present when he showed them
9 where the cocaine was in that back room?

10 A. I was present.

11 Q. Describe what you observed once he - once you and the
12 other officers followed him into that room.

13 A. So when we entered into the bedroom like I said
14 earlier when we entered into the bedroom there's a basket
15 that had clothing in it and there's the bed. He peeled
16 back some of the clothing that was stacked on top of each
17 other and there's a bag what I believed to be cocaine at
18 that time.

19 Q. And is that the same room where you found the
20 Defendant sleeping when you first arrived?

21 A. Yes.

22 Q. And where was the cocaine in relation to the bed
23 where he was sleeping?

24 A. Right beside him. Right beside the - you know, you
25 had the basket and you had the bed.

1 Q. Okay.

2 SOLICITOR PLEMING: I have no further questions at
3 this time. Please answer anything that Mr. Rudnick might
4 have for you.

5 THE COURT: Mr. Rudnick.

6 MR. RUDNICK: Thank you, your Honor. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 DETECTIVE DAVID VAUGHN BY MR. RUDNICK?

11 Q. Good morning.

12 A. Good morning.

13 Q. Do, Detective Vaughn, you went out to 403 Belaire on
14 August 23rd last year?

15 A. Yes, sir.

16 Q. You went there to investigate, as you said on direct,
17 an alleged sexual assault?

18 A. Yes.

19 Q. Correct? And that was in reference to Eric Anthony
20 Johnson?

21 A. Yes.

22 Q. And as far as you know he lived at the residence?

23 A. Yes.

24 Q. When you went to the front door you knocked and
25 Carolyn answered, correct?

1 A. Yes.

2 Q. And as you said on direct, she at some point told you
3 that she had drugs inside the residence; is that right?

4 A. Yes.

5 Q. Now the - After that you went in and cleared the house
6 as you said, correct?

7 A. Yes.

8 Q. And you found Warren asleep in the back bedroom,
9 right?

10 A. Yes, sir.

11 Q. And just to - You went over this a little bit, just
12 gonna go over it again, it's a three bedroom house?

13 A. Yes.

14 Q. Or a trailer, right? You said one trailer.

15 A. Yeah.

16 Q. It's got kind of a kitchen area, right?

17 A. Yes.

18 Q. And a living room, correct?

19 A. Correct.

20 Q. Okay. And two bedrooms on the left, right?

21 A. Yes.

22 Q. And one bedroom is on the right. Okay. Now, you
23 at some point spoke to Carolyn again and she told you that
24 she had marijuana inside her room?

25 A. Yes.

1 Q. And that marijuana you went inside the room and you
2 found it, right?

3 A. No.

4 Q. One of the officers went in and found marijuana
5 inside the room?

6 A. After the search warrant arrived.

7 Q. Right. Right after the search warrant arrived,
8 went inside the room, found the marijuana?

9 A. Correct.

10 Q. And the marijuana was in like a plastic sandwich bag?

11 A. I don't recall what her's was in.

12 Q. Okay. Would it refresh your memory if you saw a
13 picture of it?

14 A. Yes.

15 Q. Okay.

16 MR. RUDNICK: Your Honor, may I approach the witness?

17 THE COURT: Yes, sir.

18 MR. RUDNICK: Thank you.

19 Q. Is that the same bag you found in the house?

20 A. It could be.

21 Q. Okay.

22 A. But I'm not the evidence of this particular case.

23 Q. Right. Right. I gotcha. So she shows you where or
24 showed one of the officers where the marijuana was. She
25 also said that she had cocaine in her purse, right?

1 A. No.

2 Q. Not to you?

3 A. Not at first.

4 Q. Okay. Well I'm not talking about at first. I'm
5 saying she told you --

6 SOLICITOR PLEMING: Objection, your Honor, hearsay.

7 MR. RUDNICK: What was that?

8 SOLICITOR PLEMING: Hearsay.

9 MR. RUDNICK: A statement --

10 SOLICITOR PLEMING: What Carolyn Johnson said.

11 THE COURT: Counsel.

12 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
13 THE JURY AT 11:22 A.M.)

14 THE COURT: Okay. Yes, sir, Mr. Rudnick.

15 MR. RUDNICK: Thank you, your Honor.

16 Q. So Carolyn told you that she had cocaine in her purse?

17 A. Not initially.

18 Q. Do not talk about initially.

19 A. Okay.

20 Q. She did tell you though?

21 A. Yes.

22 Q. And she went inside, or maybe not, she did but some
23 officer's went inside her room, right?

24 A. Correct.

25 Q. And found her purse, right?

1 A. Correct. Yes.

2 Q. Inside the purse was a bag of cocaine, correct?

3 A. Yes.

4 Q. And if you don't remember its fine, but it was in a
5 plastic sandwich bag?

6 A. I don't recall that.

7 Q. There was also money inside the purse, correct?

8 A. I believe so. I don't recall that part either.

9 Q. Okay.

10 A. Again I wasn't the evidence tech so I don't --

11 Q. Right. But you were on scene and you were
12 investigating the case, right?

13 A. Yes.

14 Q. Okay. And the money was taken from the purse, right?

15 A. I can't answer that.

16 Q. Okay. You weren't present when the money was taken?

17 A. I don't know if I was or not.

18 Q. So you can't remember. You remember the cocaine,
19 right?

20 A. Correct.

21 Q. Okay. But you don't remember what happened with the
22 money?

23 A. Right.

24 Q. Okay. Now Carolyn is about fifty, fifty-one; is that
25 right?

1 A. I believe so.

2 Q. Okay. And you initially came over looking for Eric,
3 right?

4 A. Yes.

5 Q. You talked to Carolyn, right?

6 A. Yes.

7 Q. She told you where the drugs were inside her bedroom,
8 right?

9 A. Yes.

10 Q. Okay. And then you went into the back bedroom found
11 where Warren was asleep, right?

12 A. Yes.

13 Q. Woke him up?

14 A. Yes.

15 Q. And then eventually he showed you and Investigator
16 or Lieutenant Ligon where the drugs were in that back
17 bedroom, right?

18 A. Correct.

19 Q. Okay. And you saw the cocaine in her purse, right?

20 A. Yes.

21 Q. And the marijuana that was inside the room, right?

22 A. Yes.

23 Q. Were you - You also collected, and maybe it wasn't
24 you but if you saw someone collect other kind of marijuana
25 cigarettes that were burnt that are scattered about the

1 house?

2 A. I remember an officer collecting that, I do.

3 Q. Okay. And they compiled it together, right?

4 A. I'm not sure about that.

5 Q. Okay.

6 MR. RUDNICK: No further questions, your Honor.

7 THE COURT: Thank you. Any redirect?

8 SOLICITOR PLEMING: Just one question.

9 REDIRECT EXAMINATION

10 DETECTIVE DAVID VAUGHN BY SOLICITOR PLEMING:

11 Q. One thing I think is pertinent, was Eric Johnson
12 home that day, that morning when you were out there?

13 A. No.

14 Q. You didn't have a chance to talk to him that day?

15 A. I did later on.

16 Q. Okay.

17 SOLICITOR PLEMING: No further questions.

18 THE COURT: Okay. Any objection to this witness being
19 excused?

20 SOLICITOR PLEMING: No, your Honor.

21 MR. RUDNICK: No, your Honor.

22 THE COURT: Okay. Thank yo so much for being here,
23 sir. You may be excused.

24 (WITNESS LEAVES WITNESS STAND.)

25 SOLICITOR PLEMING: Your Honor, at this time the State

1 calls Lieutenant Mike Ligon.

2 (WHEREUPON, MIKE LIGON, BEING
3 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE COURT: Good morning, sir. If you would please
5 take the witness stand and make yourself comfortable.

6 LIEUTENANT LIGON: Yes, ma'am.

7 THE COURT: And be reminded to speak very loud.

8 LIEUTENANT LIGON: Yes, ma'am.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 LIEUTENANT MIKE LIGON BY SOLICITOR PLEMING:

12 Q. Please introduce yourself by stating your name and
13 occupation for the jury.

14 A. Lieutenant James M. Ligon. I work with the York
15 County Sheriff's Office and I'm one of the supervisors for
16 the York County Multi-Jurisdictional Drug Enforcement Unit.

17 Q. Lieutenant Ligon, how long have you been in law
18 enforcement?

19 A. Twenty-two years.

20 Q. And explain for the jury in more detail what your
21 role is with the DEU and what the DEU does.

22 A. I've currently been assigned to the York County
23 Drug Enforcement Unit for seventeen years, past ten and a
24 half of that has been a Lieutenant where I supervise
25 offices in on-going drug investigations throughout the

1 county.

2 Q. And have you received any specialized training in
3 investigating narcotics cases?

4 A. Yes, I've had numerous cases - classes in regards to
5 handling employments, making drug buys, undercover
6 operations, execution of a high risk search warrants and
7 I've also attended the FBI National Academy.

8 Q. Thank you. Let's talk about the events of August the
9 23rd, 2017. Were you called out to a residence located at
10 403 Belaire Circle in Clover that day?

11 A. Yes, sir, I was.

12 Q. And who else was called out with you?

13 A. At that time we were at the office and I actually
14 took at the time Investigator Clevenger who's now a
15 lieutenant at the Sheriff's office over patrol division he
16 recently got promoted and also Investigator Ramsey who
17 currently still works for me.

18 Q. Thank you. And what was the nature of the call? Why
19 were y'all ask to come out?

20 A. We were advised to come out and assist Detective
21 Vaughn with what could possibly be turning into a drug
22 investigation at the residence.

23 Q. And what did you observe when you arrived at the
24 house?

25 A. Once we observed at the residence there was a marked

1 patrol unit outside and there was also detective units in
2 the driveway. Met with Detective Vaughn on the porch at
3 which time all of us walked inside the residence. Me and
4 Detective Vaughn then walked back outside and he advised
5 that he had smelt the odor of marijuana and they were also
6 already in the process of getting the search warrant for
7 the residence and would like for us to actually execute the
8 search warrant and search the residence for them.

9 Q. Okay. And how many other people were present in the
10 house when you arrived?

11 A. I know there was Detective Gr?? was there, Detective
12 Vaughn. There were some detectives that were actually out
13 in the yard, two or three out in the yard, and I know there
14 was at least one marked unit there.

15 Q. Okay. And where did you first encounter Mr. Duvant
16 and Ms. Johnson?

17 A. Once we brought them inside, I spoke with them there
18 in the residence. She was seated on the couch, and he was
19 seated in a high-back chair, in between the living and
20 kitchen area -- kitchen area, excuse me.

21 Q. Did you or another officer advise either of them of
22 their *Miranda* rights?

23 A. Investigator Ramsey did.

24 Q. Did he do that verbally, or in writing.

25 A. Both verbally and in writing.

1 Q. And at any time during the course of executing the
2 search warrant, did you see Ms. Johnson and/or Mr. Duvant
3 sign that written advisement?

4 A. Yes, sir, I did.

5 Q. After the defendant had been advised of his rights,
6 along with Ms. Johnson, did you speak with him?

7 A. Yes, sir, I did.

8 Q. And where were you when you spoke to him?

9 A. We were still in the living area -- living room area,
10 with -- Investigator Ramsey, I believe, was in and out of
11 the residence, but Detective Vaughn was there, and so was
12 Investigator Clevenger at that time, along with Ms.
13 Johnson.

14 Q. And did -- did he acknowledge whether or not he
15 understood those rights after they were delivered to him?

16 A. Yes, sir, he did. He also acknowledged in writing as
17 well, verbally and writing.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER 1, PRE-MARKED FOR
19 IDENTIFICATION.)

20 Q. I'm going to show what's been previously marked for
21 identification as State's Exhibit Number 1. I'm showing it
22 to Defense attorney. Hand it up to you and ask you to
23 please take a look at this, and tell us if you recognize
24 what it is.

25 A. Yes, sir, I do. This is advisement of the rights

1 form. It's the one we use with the Drug Enforcement Unit.

2 Q. Okay. And how do you know that's the one that you
3 used that day?

4 A. Well, it's clearly dated with that date, with the case
5 number that we wind up receiving after drugs are located
6 inside the residence. It has the address we were at that
7 day, and the date and time that it was actually read, and
8 it was signed.

9 Q. And did you actually see the defendant sign that form?

10 A. Yes, sir, I did on this one.

11 Q. Okay. And do you see that person in the courtroom
12 today?

13 A. Yes, sir, I do.

14 Q. And please, at this point, just point him out and
15 describe where he's sitting.

16 A. Mr. Duvant, far left.

17 Q. Thank you. Is that form today substantially in the
18 same appearance and condition that it was the day that you
19 provided it to Mr. Duvant?

20 A. Yes, it is. Well, I didn't provide it to him,
21 Investigator Ramsey did. But yes, sir, it is. It's a copy
22 of the original.

23 Q. Thank you.

24 SOLICITOR PLEMING: At this time, State would move
25 State's Exhibit 1 be admitted into evidence.

1 THE COURT: Counsel?

2 MR. RUDNICK: No objection, your Honor.

3 THE COURT: Okay. So State's 1 is in evidence,
4 without objection.

5 (WHEREUPON, STATE'S EXHIBIT NO. 1, IDENTIFIED AND
6 MARKED, RECEIVED INTO EVIDENCE.)

7 SOLICITOR PLEMING: All right.

8 Q. Lieutenant Ligon, if you will please just read State's
9 Exhibit Number 1 aloud, for the jury, at this time.

10 A. Top heading is Drug Enforcement Unit. Basically the
11 whole form, in its entirety, it states, to be utilized on
12 search warrants, residential consent searches, and any
13 other practical applications. Read constitutional rights
14 and waiver rights to the group; ask each person
15 individually if they understand their rights, and receive
16 an affirmative response; either have the person sign this
17 form, or put unable, if they are unable to sign due to
18 safety issues, or write in refuse to sign. Refuse to sign,
19 if refuse to give statement. If person to be questioned --
20 you have to apologize, ??my eyes, and some of this is kind
21 of with the copy. If the person is to be questioned, ask
22 them if they don't mind talking with you. The
23 constitutional rights: you have the right to remain
24 silent. Anything you say can be used against you in court.
25 You have the right to talk to a lawyer for advice before

1 answering any questions, and to have your lawyer present
2 during questioning. You have the right to have the advice
3 and presence of a lawyer, even if you cannot afford to hire
4 one. We have no way of appointing you a lawyer, but one
5 will be appointed by the Court for you, if you wish. If
6 you wish, you may answer any questions without the presence
7 of a lawyer. You may stop answering at any time you
8 desire.

9 Q. Okay.

10 A. Acknowledgment of Rights. I have read or had read to
11 me the statement of my rights, shown above. I understand
12 my rights and know what I am doing. I know that the person
13 or persons talking with me is a police officer or officers,
14 and I understand what he or she is talking about.

15 Q. In your experience in law enforcement, have you had
16 the opportunity to be around people who are intoxicated by
17 drugs or alcohol?

18 A. Yes, sir, I have.

19 Q. And did Mr. Duvant appear to you to be under the
20 influence of anything at that point?

21 A. No, sir, he did not at that time.

22 Q. Was his speech coherent?

23 A. Yes, sir, it was.

24 Q. And was he able to communicate clearly with you?

25 A. Yes, sir, he did.

1 Q. Did he ever refuse to answer any questions ??

2 A. No, sir, he didn't.

3 Q. Did he ever invoke any of those rights to have a
4 lawyer present?

5 A. No, sir, he didn't.

6 Q. All right. So after you advised him of his rights and
7 he agreed to talk to you, what did you ask him?

8 A. At that point in time, speaking with Mr. Vaughn, I
9 believe Detective Vaughn had actually received a call from
10 Investiga -- Detective ??, who was obtaining the search
11 warrant. At that point in time, Detective Vaughn had
12 advised me that the search warrant had been signed, and it
13 was en route. I actually knelt down, was kneeling down,
14 kind of in a crouched position, due to the fact that Mr.
15 Duvant was seated in a chair. And generally when I talk to
16 people, I like to face them eye-to-eye. I don't like
17 standing over, towering anybody, in that nature. So I
18 crouched down and began speaking with Mr. Duvant. I asked
19 Mr. Duvant at that time if there were any drugs in the
20 house that he knew of. He advised me that he did not. I
21 then advised Mr. Duvant that there was a search warrant on
22 the way, and that we were going to search the house. There
23 was a pause from Mr. Duvant, and then he advised me that
24 there were drugs in the house. In fact, there was some
25 cocaine in the back bedroom, and at that point in time I

1 asked him where in the back bedroom. And he stood up from
2 the chair and advised that he'd show myself and the other
3 officers that were present. At that point in time, we took
4 Mr. Duvant back to the bedroom. Mr. Duvant actually -- he
5 actually reached down to go into the tote, at which time I
6 asked him to step back, and just to tell me where they
7 were. So I then opened the tote. Mr. Duvant advised they
8 were under the clothes. I didn't -- actually, when I
9 opened the tote and I didn't see any drugs in plain view,
10 there in the tote, and I advised him, you know, where are
11 they, they're not right here. He advised me to then lift
12 some of the clothes, and it was up underneath the clothes.
13 When I lifted the clothes, I did, in fact, find a plastic
14 baggie containing cocaine.

15 Q. Okay. Did you --

16 SOLICITOR PLEMING: Beg the Court's indulgence for
17 just a moment.

18 THE COURT: Take your time.

19 BY SOLICITOR PLEMING:

20 Q. And why did you ask him not to go into the tote, and
21 do it yourself?

22 A. Well, in some cases in the past, officers had issues
23 with -- with -- with these types of events, where people
24 have actually, at some point in time, got uneasy, and
25 decided maybe if I grab them, or I try to eat them or

1 something. We've had to wrestle people in the past who
2 have -- who have actually taken possession of drugs, and
3 tried to eat them, destroy them, things of that nature.
4 And I just didn't want to put myself or other officers in
5 that kind of situation. Not saying that he would have. I
6 -- based off his demeanor that day, I don't feel like he
7 would have. But just for the safety of other officers, I
8 didn't feel that it would be a good idea for him to
9 actually go inside the tote, and get the drugs and hand
10 them to us.

11 Q. And once he had pointed out where the drugs were, and
12 told you that they were underneath the clothes, and for you
13 to go in and get them, did he say anything else about the
14 drugs?

15 A. No, sir, he didn't.

16 Q. Did he say anything about how they got there, or who
17 they belonged to?

18 MR. RUDNICK: Asked and answered, your Honor.

19 THE COURT: Counsel.

20 WHO: ??

21 THE COURT: Has it been asked and answered? What's
22 your position?

23 SOLICITOR PLEMING: Well, this is -- I had to ask if
24 he said anything else, but I didn't ask him any specific
25 questions about if he said anything, so. I just want to

1 make it clear whether he did or did not say anything else
2 about the drugs, by specifically asking him how they got
3 there, and --

4 THE COURT: I'll allow it.

5 BY SOLICITOR PLEMING:

6 Q. Did he say anything about how the drugs got there?

7 A. No, sir, he did not.

8 Q. Did he say anything about how he knew they were there?

9 A. No, sir, he did not.

10 Q. Once you had located the cocaine in that box, what did
11 you do?

12 A. At that point in time, Mr. Duvant was escorted back to
13 the -- back to the living room area. And then, at that
14 point in time, Investigators Ramsey and Investigators
15 Clevenger, who is now Lieutenant Clevenger, began to search
16 of that room.

17 Q. And did you ask Carolyn Johnson -- did you or anybody
18 else ask these same sort of questions to Carolyn Johnson?

19 A. Once that was completed, yes, Carolyn Johnson was
20 talked to about the drugs in her room, and asked to point
21 them out, and -- and so on and so forth, of that nature.
22 The same -- the same that was conducted with Mr. Duvant was
23 the same -- the same conversation was basically had with
24 Ms. Johnson.

25 Q. And did she cooperate with you?

1 A. Yes, sir, she did.

2 Q. Who among the officers, then, collected the drugs
3 taken into evidence?

4 A. Lieutenant Clevenger actually was our evidence tech,
5 and took everything -- took pictures of everything in place
6 as it was, and then collected the evidence, once it was --
7 once the pictures were taken, where it was in place, and
8 where it was found.

9 Q. Thank you. And do you -- describe that room where
10 these drugs were found.

11 A. There was -- there was male clothing all over the
12 place. The tote that the drugs were in contained male
13 clothing. There was male tennis shoes. There was clothes
14 scattered about the room. In fact, the bed -- the bed
15 sheets weren't completely on the bed itself. It was rather
16 -- kind of nasty.

17 Q. Did you check the size of any of those clothes?

18 A. No, sir, I didn't. I mean, they -- they -- they
19 appeared to be male clothing. It was just male clothing.

20 Q. Okay. Did you -- were you able to make any
21 determination as to whose room that was, who used that
22 bedroom?

23 A. I mean, Detective Vaughn advised that he had gotten
24 Mr. Duvant out of that bedroom initially, when -- when he
25 cleared the residence to secure it for the search warrant.

1 Again, with the male clothing, the shoes, and the male
2 shoes, and things of that nature in the room, at that point
3 in time, I had assumed that it was Mr. Duvant's room.

4 Q. Did you find anything else in that room that connected
5 to Mr. Duvant?

6 A. Mr. Duvant's ID was actually laid on the night sand,
7 beside where the tote and things were in that room, so --
8 which only led me to believe that it was his room.

9 Q. And did you talk to him about the clothing and the ID
10 that you found in the room?

11 A. I did. Once we got him back in the living room and
12 all, and we're discussing the situation, I did make the
13 comment to Mr. Duvant that, you know, you -- I asked him,
14 you know, you have clothes in the room; you know, your ID's
15 in the room; you know, is there anything else that you need
16 to tell us about that room; is there anything else in the
17 room that we need to know about, and at which time he --

18 MR. RUDNICK: Objection, your Honor. Calls for
19 hearsay.

20 THE COURT: Counsel?

21 SOLICITOR PLEMING: Your Honor, --

22 MR. RUDNICK: May we approach?

23 THE COURT: Yes, please.

24 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
25 JURY, AT 12:18 P.M.)

1 THE COURT: All right. I will sustain that objection.
2 Counsel, please move to your next question.

3 SOLICITOR PLEMING: Thank you, your Honor.

4 Q. Lieutenant Ligon, when did Detective ??arrive with the
5 search warrant?

6 A. It was shortly after Mr. Duvant had showed us where
7 the cocaine was in the back bedroom.

8 Q. Okay. And did anyone present that warrant to him?

9 A. Investigator Ramsey did read the search warrant.

10 Q. And after that was done, did you -- what happened
11 after the warrant was brought to the house?

12 A. After the warrant was brought to the house, and it was
13 read to Ms. Johnson and Mr. Duvant, I had actually gone
14 outside the residence to -- to check the outer perimeter of
15 the residence, and look outside the residence.

16 Q. Did you participate in searching any other part of the
17 house?

18 A. Once I came back in, they were just finishing up with
19 Ms. Johnson's bedroom when I had come back inside the
20 residence.

21 Q. And what else did you or other officers find in the
22 house, that you observed?

23 A. There was -- I think there was a small bag of
24 marijuana that was actually found in -- in the back
25 bedroom, where the cocaine was located. And there was also

1 -- there was also drugs found in -- in Ms. Johnson's
2 bedroom; along with, in the kitchen area, there was Pyrex
3 containers where it appeared that people had been cooking
4 crack, manufacturing crack, crack cocaine. And then there
5 was some heat-seal bags and things of that nature,
6 packaging material, what we consider packaging material for
7 drugs.

8 Q. Okay. And what about those things you saw that
9 indicated to you that someone had been cooking crack?

10 A. Well, I mean, through my training and experience
11 through the years, you could -- there was actually crack
12 residue and the cocaine residue in the Pyrex bowls, based
13 on the process they use to make the crack.

14 Q. And once everything in the house was completed, who --
15 who arrested the defendant and Ms. Johnson; who transported
16 them to the jail?

17 A. They were transported by the patrol division. They
18 were actually transported in a marked patrol unit.

19 Q. Okay. All right. Let's shift gears for just a
20 moment, and talk about your work in narcotics. In the
21 course of your work as a narcotics investigator, do you
22 routinely perform undercover drug deals, the use of
23 confidential informants?

24 A. Yes, sir, I have, over the past seventeen years.

25 Q. And very, very briefly, can you just explain how those

1 sort of investigations operate?

2 A. Basically what we'll do is, if we get somebody for --
3 for any type of narcotics violation, we'll bring them in,
4 and ultimately they have the right to be willing to
5 cooperate with law enforcement. At that point in time, if
6 they choose to do so, then they go through the process of
7 us signing them up as a confidential informant. There's
8 three pieces of paperwork that they fill out. We run a
9 criminal history on that person. At that point in time, if
10 there's someone that they know that they can purchase drugs
11 from, we will then wire that person up. We search them,
12 search their vehicle; place an electronic listening device
13 on them, along with some type of video recording device
14 that we have. And then we'll send them out and make a drug
15 purchase from, you know, whoever it is they can purchase
16 drugs from. We then collect that evidence and make a case
17 against the person, and turn that into evidence as well,
18 and then make a case against the person that they have
19 actually purchased the drugs from, using whatever --
20 whatever audio and video evidence we have, along with the
21 actual evidence that we have recovered.

22 Q. And roughly how many of these undercover drug buys
23 would you supervise in a given year? I know it's a tough
24 estimate, but ??

25 A. Anywhere from, I'd say, seventy to a hundred. Maybe

1 more in some cases, less in some cases. It just depends on
2 what's going on.

3 Q. Sure. And is that throughout your seventeen years
4 with DEU?

5 A. Well, I would say well over a thousand cases I've been
6 involved in like that.

7 Q. Okay.

8 A. Over the past seventeen years.

9 Q. And in the course of performing these investigations
10 and using confidential informants, do you have the
11 opportunity to speak with drug users?

12 A. Yes, sir, I do.

13 Q. And have you had occasion to talk to them about the
14 cost of drugs and that sort of things?

15 A. Yes, sir, I have.

16 Q. And is that also how you're familiar with packaging
17 materials and other evidence that you observed in the
18 house?

19 A. Yes, sir, it is. But going to questioning, not only
20 do we question the drug users that we arrest, but also the
21 people that we charge with distribution, and the people
22 that we actually arrest for selling drugs as well. We have
23 an opportunity to, as well, talk with them, and even
24 potentially use them as confidential informants, depending
25 on whether or not they want to cooperate.

1 Q. And through all these interactions with drug users and
2 sellers, are you familiar with how much cocaine is a in a
3 typical dose unit?

4 A. A typical dose unit of cocaine, which would be
5 approximately one gram, can -- depending on the quality,
6 again, now, we're talking about quality -- it can go
7 anywhere from eighty to a hundred dollars.

8 Q. Okay. And that's just one gram, or that's how much --

9 A. No, one gram.

10 Q. Okay. And are you familiar with the relative costs of
11 purchasing cocaine on the street?

12 A. Yes, sir, I am.

13 Q. And is that how much money you know to give a C.I.
14 when they go make a purchase?

15 A. Yes, sir. And generally, that's negotiated through
16 phone calls between the confidential informant and
17 whoever's selling the drugs at that point in time.

18 Q. And how much would one gram of cocaine typically go
19 for on the street?

20 A. Around a hundred dollars. And just so you know, as
21 far as for one gram, one gram is equivalent to probably
22 what you would get --

23 MR. RUDNICK: Objection.

24 THE COURT: I will sustain that.

25 BY SOLICITOR PLEMING:

1 Q. How many dose units would you get in one gram?

2 A. Dose units? I mean, it depends. If you broke it up
3 into tenths of a gram, then you'd get ten dose units out
4 of. But technically, generally, when you buy a gram like
5 that, generally split up -- split it up into about a half
6 gram. People use about a half gram at a time, give or
7 take, and that's generally how it's -- how it's --

8 Q. Okay.

9 SOLICITOR PLEMING: All right. I have no further
10 questions at this time. Thank you.

11 THE COURT: Thank you, Mr. Fleming.

12 THE COURT: Mr. Rudnick?

13 MR. RUDNICK: Thank you, your Honor. May it please
14 the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 LIEUTENANT MIKE LIGON BY MR. RUDNICK:

18 Q. Morning.

19 A. Morning.

20 Q. Lieutenant Ligon, you've been in law enforcement for
21 twenty-two years.

22 A. Yes, sir.

23 Q. And seventeen of those years were with the -- are with
24 the Drug Enforcement Unit, correct?

25 A. Yes, sir. I'm still there.

1 Q. You're still in -- you're still in the unit.

2 A. Yes, sir.

3 Q. And through that, you obviously graduated from the
4 Criminal Justice Academy, right?

5 A. Yes, sir.

6 Q. And went through a bunch of different seminars, right,
7 and continuing education?

8 A. Yes, sir.

9 Q. Okay. And you testified on direct that some of that
10 was with regard to undercover drug buys, right?

11 A. Yes, sir.

12 Q. And you were just explaining that in pretty good
13 detail here. You mentioned that you've been in a number of
14 those investigations, right?

15 A. Yes, sir.

16 Q. When you get a confidential informant, you will --
17 when they actually go out for the buy, they'll sometimes be
18 attached with audio recording, right?

19 A. And video, yes, sir.

20 Q. And video recording, correct?

21 A. Yes, sir.

22 Q. And the video recording is typically something that
23 kind of -- it has to be discreet, right? Something that
24 can't be obvious that the person is wearing camera.

25 A. Yes, sir.

1 Q. Right. So it's got to be pretty small, right?

2 A. Yes, sir.

3 Q. Most of the time. So on August 23rd, when you spoke
4 Warren in the back bedroom, there's no written statement of
5 what was actually said by them, like by Warren, right?

6 A. No, sir, there is not.

7 Q. And there is no audio recording of that statement,
8 right?

9 A. No, sir.

10 Q. And there's no video recording of that statement?

11 A. No, sir.

12 Q. Okay. And you, at the time, weren't wearing a body
13 cam that day, right?

14 A. No, sir.

15 Q. Okay. And there were -- obviously, correct me if I'm
16 wrong -- four to five detectives or investigators on scene,
17 right, at that time?

18 A. Yes, sir.

19 Q. And not one of those detectives were wearing a body
20 cam, either, right?

21 A. Not to my knowledge, no, sir.

22 Q. Okay. And you said when you got on scene, there was a
23 marked patrol car, right?

24 A. Yes, sir.

25 Q. And -- but you came in, in an unmarked car, right?

1 A. Yes, sir, I did.

2 Q. Okay. And unmarked cars are different from marked
3 cars, because marked cars have kind of the police on the
4 side, right?

5 A. Yes, sir, they do.

6 Q. An unmarked looks like any other car on the road,
7 right?

8 A. Most, yes, sir.

9 Q. Most of the time, right? And marked cars also have
10 the blue lights on top, right?

11 A. Yes, sir.

12 Q. And before you were in DEU, or just being in law
13 enforcement, you kind of know the insides of marked patrol
14 cars, right? Like the technology that's inside?

15 A. Yes, sir.

16 Q. Okay. So in an unmarked car, there is not, like,
17 usually, not a dash cam, or a video, that kind of shows
18 what's going on in front of a car when it's ??, right?

19 A. In cars today, yes, sir.

20 Q. Right.

21 A. The cars that I -- I mean, the cars I started in, no,
22 sir, we didn't have in-car video.

23 Q. Right. Okay. Okay.

24 A. But yes, today's cars do have in-car.

25 Q. So the one that you had that day actually had a video

1 camera on it, like a dash-cam?

2 A. If it's equipped like all the others in the fleet,
3 then yes, it did.

4 Q. Okay. Okay. So in addition to the marked cars, then,
5 that have the video cameras on them, the unmarked cars also
6 have, like, dash-cam on top of them, right?

7 A. No, sir, we don't.

8 Q. So -- oh, I'm talking about marked cars on this one.
9 Like, marked cars have video camera on them?

10 A. Marked? Yes, sir.

11 Q. Like, patrol.

12 A. You stated unmarked. You had --

13 Q. I apologize.

14 A. Yes, sir.

15 Q. But the marked cars that you see every day on the
16 road, those have dash-cam videos on them, right?

17 A. Yes, sir.

18 Q. Okay. And patrol officers also typically have what's
19 called a body mic on them, right?

20 A. The officers now have the body mic and the body cam,
21 actually.

22 Q. Right. Yeah, they have both. So the -- both of them,
23 I guess, body mic, can be turned on remotely, kind of just,
24 like, a button that can be turned on, like, on the mic,
25 right?

1 A. Yes, sir.

2 Q. And then, when that happens it records everything
3 that's going on; or I guess, so far, for the length for --
4 if they don't get too far away from the car, it'll record
5 everything that that person says and hears, right? On the
6 body mic??

7 A. Actually, body mics, yes, that is correct. But with
8 the impli -- with implementing the new body cams, the
9 officers don't have to do that because it's all ??

10 Q. Right. It's kind of become obsolete?

11 A. Yes, sir.

12 Q. Right. So on that day, there wasn't any body cam on
13 anybody, either? Or I'm sorry, body mic, on anyone, right?

14 A. No body mic, no body cam.

15 Q. And no dash-cam going on, or anything like that,
16 right?

17 A. No, sir. Not to my knowledge.

18 Q. Okay. So the -- there was a car there, a Honda,
19 right? Not related to the police officers' cars, but there
20 was a Honda in the parking, I guess, next to the trailer,
21 right?

22 A. Yes, sir.

23 Q. Okay. And that car you attributed to Warren, right?
24 Or somebody -- one of the investigators.

25 A. Mr. Duvant had actually, I believe, told one of the

1 investigators that he had driven that car there, but it did
2 not belong to him.

3 Q. Okay. But you looked inside the car and searched that
4 car as well, right?

5 A. Yes, sir.

6 Q. Okay. And you found no packaging materials inside
7 that car?

8 A. No, sir.

9 Q. No drugs inside that car?

10 A. No, sir.

11 Q. No scales inside the car?

12 A. No, sir.

13 Q. No bags inside the car?

14 A. No, sir, not -- none to my knowledge. I didn't search
15 the car, but ---

16 Q. Okay. But to your knowledge.

17 A. --- I do believe that, to my knowledge. ??

18 Q. And to your knowledge, there was no money inside the
19 car, either, right?

20 A. To my knowledge, no, sir.

21 Q. Okay. Now, you mentioned -- or you talked about, kind
22 of, your conversation with Warren. You have described
23 Warren's demeanor when you were talking to him as calm. Is
24 that right?

25 A. Yes, sir.

1 Q. Okay. And you said that in the back bedroom, Warren
2 picked up clothes? Is that right? Or tried to pick up
3 clothes?

4 A. No, sir, he did not.

5 Q. Okay. So it was Detective Vaughn who picked up the
6 clothes?

7 A. No, sir.

8 Q. Inside the tote?

9 A. No, sir.

10 Q. Okay. So was it you?

11 A. Yes, sir.

12 Q. Okay. So you also searched Warrens's person before he
13 was arrested, right? Like, pockets, shirts?

14 A. I didn't search him, no, sir.

15 Q. Okay. Somebody did, right?

16 A. Yes, sir. I'm sure he was before he was transported.

17 Q. Okay.

18 A. That's generally protocol.

19 Q. Right. And to your knowledge, there was no drugs
20 found on his person?

21 A. Not to my knowledge, no, sir.

22 Q. And to your knowledge, there was no scales found on
23 his person?

24 A. Not to my knowledge.

25 Q. And to your knowledge, there was no plastic baggies

1 found on his person?

2 A. No, sir, there were not.

3 Q. And to your knowledge, there was no money found on his
4 person, right?

5 A. Correct.

6 Q. Okay. So you also mentioned that you found a phone
7 next to the bed that was in the back bedroom, right?

8 A. I did not say that, no, sir.

9 Q. So you didn't find the I-Phone in the back bedroom?

10 A. I didn't recover an I-Phone in the back bedroom. I
11 know one was recovered from the back bedroom.

12 Q. Okay.

13 A. I do believe it --

14 Q. So to your knowledge, somebody recovered an I-Phone in
15 the back bedroom, right?

16 A. Yes, sir.

17 Q. And an ID from the back bedroom, right?

18 A. Yes, sir.

19 Q. And that ID was Warren's ID, right?

20 A. Yes, sir, it was.

21 Q. And do you -- did you have a chance to look at
22 Warren's ID?

23 A. Yes, sir, I did.

24 Q. Okay. And on Warren's ID, it had listed as his
25 address 113 Queensgate, Clover, correct?

1 A. Yes, sir, it did.

2 Q. Okay. Now, you mentioned that you went into the back
3 bedroom, and you were there when the drugs were found,
4 right?

5 A. Yes, sir, I was.

6 Q. So the tote box that they were found, and it was kind
7 of like three feet, and give it measurements, that's
8 ??three feet by about three feet, gray tote box?

9 A. Yeah. I mean, give or take. ??

10 Q. It's kind of something you typically see, like,
11 Christmas decorations ---

12 A. Yes, sir.

13 Q. --- or things that people just store stuff in.

14 A. Yes.

15 Q. Okay. And inside that, there were clothes, right?

16 A. Yes, sir. Male clothing.

17 Q. And then, inside that, or under the clothes, there was
18 a bag of cocaine in, like, a plastic sandwich bag, right?

19 A. Yes, sir.

20 Q. Now, with the tote box, that wasn't taken into
21 evidence; you all didn't take that with you, right?

22 A. No, sir.

23 Q. Okay. And the clothes that were inside the tote box,
24 you didn't take that with you all, either?

25 A. No, sir, we didn't.

1 Q. Okay. Now, in the Sheriff's Department, there's a
2 part of the department called the Forensic Services Unit.
3 Is that correct?

4 A. Yes, sir, it is.

5 Q. Okay. And that unit will investigate a case and look
6 for things like fingerprints, right?

7 A. Yes, sir.

8 Q. Like, palm prints, right?

9 A. Yes, sir.

10 Q. And latent prints, which are just fingerprints that
11 you can't see with you naked eye when they're put down,
12 right?

13 A. Yes, sir.

14 Q. Okay. And they'll also sometimes come in and take
15 items to be tested fro DNA, right?

16 A. Yes, sir, they would.

17 Q. Like touch DNA, right?

18 A. Yes, sir.

19 Q. Because sometimes when we touch something, we leave
20 DNA behind.

21 A. Yes, sir.

22 Q. Okay. In this case the Forensic Services Unit was not
23 called on the scene, right?

24 A. No, sir, they weren't.

25 Q. Okay. So the tote box wasn't dusted for fingerprints

1 or anything like that?

2 A. No, sir, it was not.

3 Q. Okay. So it wasn't checked for latent prints, either?

4 A. No, sir.

5 Q. Or palm prints.

6 A. No, sir.

7 Q. And no DNA testing or anything like that?

8 A. No, sir, it was not.

9 Q. Okay. So you also mentioned that there were drugs
10 that were found in Carolyn Johnson's bedroom, right?

11 A. Yes, sir, there was.

12 Q. Okay. And inside her bedroom, there was that bag of
13 marijuana that was found next to the night stand, right?

14 A. Yes, sir.

15 Q. And then,, there was also a bag of cocaine that was
16 found inside her purse, correct?

17 A. Yes. That's how it's stated on the evidence sheet.
18 Yes, sir.

19 Q. Okay.

20 A. I did not physically --

21 Q. You didn't take it, but ---

22 A. Yes, sir.

23 Q. --- you know it was taken. Okay.

24 A. Yes, sir, I do.

25 Q. And there was also three hundred and twenty dollars

1 that were taken from the -- from her purse as well, right?
2 In U.S. currency?

3 A. Yes, sir.

4 Q. Okay. And that was the admitted into evidence as
5 well?

6 A. That was actually turned into the Bank of York.

7 Q. Okay. So --

8 A. It was a seizure ??that money was seized.

9 Q. Okay. So it was seized, taken, and then deposited
10 with the Bank of York?

11 A. Yes, sir.

12 Q. As part of the investigation?

13 A. Yes, sir.

14 Q. Okay. There were also some, I guess, for lack of a
15 better word, there were burnt ends of marijuana cigarettes,
16 like, scattered around, like, the room and the living area.
17 Is that right?

18 A. Yes, sir. I do believe so.

19 Q. And was it you or somebody else who collected all of
20 those together?

21 A. That would've been Detective -- or Lieutenant
22 Clevenger.

23 Q. Clevenger. Okay.

24 A. Yes, sir.

25 Q. But you do know that those were collected and taken

1 into evidence as well, right?

2 A. To my knowledge, yes, sir.

3 Q. Okay. So in the kitchen, you mentioned on direct that
4 you also were -- you or one of your investigators, because
5 you were the supervisor of this investigation, right?

6 A. Yes, sir.

7 Q. Found a Pyrex container inside the kitchen cabinet,
8 right?

9 A. Yes, sir.

10 Q. Okay. And a Pyrex container, that's kind of like
11 something that you usually use to usually, like, bake
12 goods, right? Like, we know that's what you usually would
13 typically see it.

14 A. Yes, sir.

15 Q. Okay.

16 A. Brownies, things of that nature.

17 Q. Exactly.

18 A. Yes, sir.

19 Q. But in this particular case, there was like, tin foil
20 and things around the lip of it, right?

21 A. (No response.)

22 Q. And in -- from your experience, looked like it had
23 been used to manufacture crack cocaine, right?

24 A. Yes, sir.

25 Q. All right. Okay. Now, a Pyrex container, that's,

1 like, a glass-like thing. So I mean, if you touch it,
2 sometimes you'll see, like, your fingerprints on it, right?

3 A. Yes, sir.

4 Q. Okay. And like I said before, the Forensic Unit --
5 Forensic Services Unit wasn't called out, right?

6 A. No, sir, they were not.

7 Q. So that Pyrex container was not fingerprinted?

8 A. No, sir, it wasn't.

9 Q. It was not looked for palm prints, right?

10 A. Correct.

11 Q. Latent prints?

12 A. No, sir.

13 Q. Or touch DNA?

14 A. No touch DNA.

15 Q. And that was actually seized and taken into evidence,
16 right?

17 A. Yes, sir, it was.

18 Q. So -- and to your knowledge, since then, eight months
19 later, none of that's been done, either?

20 A. No, sir, it hasn't.

21 Q. Okay. You also found, one of your co-workers found,
22 or one of your subordinates found a scale that was inside a
23 -- I guess a little cup that was inside the kitchen cabinet
24 as well?

25 A. If it's on the evidence sheet that that's where it was

1 found, then that's where it was found.

2 Q. Okay. So I got you. Now, there was also a scale next
3 to the sink, right? Like, a glass scale?

4 A. Again, if it's on -- again, I was in and out of the
5 residence.

6 Q. Right.

7 A. Those officers were continuing to search. I was in, I
8 was out.

9 Q. Okay.

10 A. So some of those things, if it's listed on the
11 evidence that way, then there's no doubt that that's where
12 it was found.

13 Q. Okay. And -- but you were the supervising officer on
14 this case, right?

15 A. Yes, sir.

16 Q. And so, you kind of have an idea of, like, what is
17 seized and what isn't, right?

18 A. Yes, sir.

19 Q. Okay. And to the best of your knowledge, there was
20 some type of scales that were found and seized inside the
21 kitchen.

22 A. The kitchen.

23 Q. Okay. Now, of those, none of them were tested for
24 fingerprints?

25 A. No, sir.

1 Q. Latent prints?

2 A. No, sir.

3 Q. Palm prints?

4 A. No, sir.

5 Q. Or DNA touch?

6 A. No, sir.

7 Q. And they were, most of them, I guess, I'm not sure if
8 all of them were, but most of them were seized into
9 evidence, right?

10 A. Yes, sir, they were.

11 Q. And to your knowledge, there hasn't been anything done
12 like that since then?

13 A. No, sir.

14 Q. Okay. Now, the -- they also found a -- what I guess
15 is a money counter on the living room floor. Is that
16 correct?

17 A. Yes, sir.

18 Q. Okay. And that was also seized and taken into
19 evidence, right?

20 A. Yes, sir, it was.

21 Q. Okay. Now, that also was not fingerprinted, right?

22 A. No, sir.

23 Q. No latent prints?

24 A. No, sir.

25 Q. No palm prints?

1 A. No, sir.

2 Q. Okay. And no DNA, right?

3 A. No, sir.

4 Q. Okay. Now, there was -- you mentioned there also was,
5 like, a vacuum sealer, like a heat sealer, on, like, the
6 floor of the kitchen, right?

7 A. Yes, sir.

8 Q. Okay. That wasn't taken into evidence, right?

9 A. No, sir.

10 Q. Okay. So that was left behind?

11 A. Yes, sir.

12 Q. All right. The plastic bag -- or there was plastic
13 sandwich bags found on the kitchen counter, right?

14 A. Yes, sir. I believe so.

15 Q. Okay. And those weren't taken into evidence, either?

16 A. No, sir.

17 Q. And the -- there was, like, a bag of rubber bands next
18 to that, correct?

19 A. Yes, sir.

20 Q. And those weren't taken, either?

21 A. No, sir.

22 Q. Okay. There was also a, kind of, jug of glutamine,
23 right, that was inside the kitchen?

24 A. Yes, cutting agent.

25 Q. Right. And ---

1 A. Used for cocaine.

2 Q. --- yeah, and -- but glutamine, just for generally
3 speaking, usually used for, like, working out, things like
4 that, to make, like, sports drinks, correct?

5 A. It's actually -- it can be used as a cut for cocaine.
6 But yes, it can be used for that purpose as well.

7 Q. Okay. That was my next question. But based on from
8 what you saw in the house, you thought it was probably used
9 for a cutting agent, right?

10 A. Based on my training and experience in narcotics from
11 the past seventeen years, yes, sir.

12 Q. Okay. Now, that also was not fingerprinted, right?

13 A. No, sir, it wasn't.

14 Q. There was no latent prints?

15 A. No, sir.

16 Q. And palm prints?

17 A. No, sir.

18 Q. Or DNA touch?

19 A. No, sir.

20 Q. Okay. Now, let's go, kind of, back to the house
21 itself. Or actually, before I go there, there was also an
22 I-Phone that was found inside the kitchen cabinet, right?

23 A. If that's what it states on the evidence ---

24 Q. On that sheet, right?

25 A. --- yes, it was.

1 Q. So there's one from Warren, there's one from Carolyn
2 and there was also a third one that was found in the
3 kitchen cabinet, right?

4 A. Yes, sir.

5 Q. Okay. Now, inside the house, you didn't find any
6 pictures of, like, Warren and his family, right?

7 A. Not to my knowledge.

8 Q. Okay. And you didn't find, you know, like, a
9 toothbrush, right?

10 A. I didn't search the bathroom. I didn't --

11 Q. So you didn't look in the bathroom?

12 A. I didn't ask him if he had a toothbrush there.

13 Q. Okay. But you didn't find one, either, right?

14 A. On him? No.

15 Q. Okay. Or anywhere in the house?

16 A. Were there toothbrushes in the bathroom? Yes, sir.

17 Q. Okay. But do you know whether or not they had any
18 toothbrushes -- well, past that, what about toothpaste?

19 A. There was toothpaste at the house.

20 Q. Okay. You didn't know whether or not -- whose
21 toothpaste that was, right?

22 A. Didn't ask.

23 Q. Didn't ask. Same with combs, right?

24 A. Combs?

25 Q. ??comb, hair comb, things like that?

- 1 A. Didn't ask.
- 2 Q. Okay. You did find a phone, though, right?
- 3 A. Yes, sir. I didn't find a phone.
- 4 Q. Somebody found a phone, right?
- 5 A. Yes, sir.
- 6 Q. Okay. But no phone charger?
- 7 A. Don't know.
- 8 Q. Okay. I --
- 9 A. Didn't ask.
- 10 Q. That sounds good. Now, you also didn't find any mail
- 11 in the house, right?
- 12 A. I didn't find mail. No, sir.
- 13 Q. That -- that's what I was asking. You didn't find any
- 14 mail?
- 15 A. No, sir. Now, typically, and this is just for
- 16 clarity's sake, people receive mail to their house that's
- 17 addressed to them, right?
- 18 A. Generally, yes, sir.
- 19 Q. Right. So we get mail from loved ones, employers, and
- 20 things of that nature, right?
- 21 A. Yes, sir.
- 22 Q. You didn't find any of that here in this house that
- 23 had Warren's name on it, correct?
- 24 A. I did not.
- 25 Q. You did not. Okay.

1 A. No, sir.

2 Q. And we already talked about the fact that it had 113
3 Queensgate on the -- on Warren's license, right?

4 A. Yes, sir, it did.

5 Q. Okay. Or 113. I think I said 115 just a second ago.
6 The -- you never executed a search warrant at 113
7 Queensgate, correct?

8 A. Have I ever executed a search warrant at 113?

9 Q. At that day, you never executed a search warrant?

10 A. No, sir.

11 Q. Okay. Now, you didn't go that day to knock on the
12 front door, to look inside, right?

13 A. At Queensgate?

14 Q. Yes.

15 A. No, sir. I did not.

16 Q. Okay. You didn't drive by to go see Queensgate?

17 A. No, sir, I didn't.

18 Q. Okay. And you didn't try to go by that day to see
19 Queensgate?

20 A. No, sir, I didn't.

21 Q. Okay.

22 MR. RUDNICK: Your Honor, I have no further questions.

23 THE COURT: Thank you. Mr. Fleming, re-direct?

24 SOLICITOR PLEMING: Just one moment, your Honor.

25 THE COURT: Take your time.

REDIRECT EXAMINATION

LIEUTENANT MIKE LIGON BY SOLICITOR PLEMING:

Q. Lieutenant Ligon, you said you -- there was a car outside that you associated with Mr. Duvant?

A. It was advised that Mr. Duvant -- the car did not belong to him, but that was a vehicle that he had driven there to the residence.

Q. Okay. And I don't know about toothpaste and things of that nature. Were -- is that something you usually look for during a drug investigation?

A. No, sir. Not unless I believe there's some type of drugs inside of it.

Q. All right.

SOLICITOR PLEMING: No further questions.

THE COURT: Okay. All right. Any objection to Lieutenant Ligon being released? Or he may stay, if that is his wish. Any objection?

SOLICITOR PLEMING: No. No, your Honor,

MR. RUDNICK: No, your Honor.

THE COURT: Okay. Thank you, sir. You may step down.

LIEUTENANT LIGON: Thank you, ma'am.

THE COURT: Okay. Counsel, can you all approach for just a moment?

(BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF JURY AT 12:18 PM.)

1 SOLICITOR PLEMING: Thank you, your Honor.

2 DIRECT EXAMINATION

3 INVESTIGATOR STEPHEN RAMSEY BY SOLICITOR PLEMING:

4 Q. Please state your name and occupation for the jury.

5 A. Stephen Craig Ramsey, deputy with the York County
6 Sheriff's Office.

7 Q. And where are you from -- what's your rank with the
8 Sheriff's Office?

9 A. I'm an investigator with the York County Multi-
10 Jurisdictional Drug Enforcement unit.

11 Q. And how long have you been in that position?

12 A. Since February of 2016.

13 Q. And prior to that, were you working in law
14 enforcement?

15 A. Yes, sir. I was a deputy with the York County
16 Sheriff's Office.

17 Q. And how long have you been a deputy?

18 A. Since March of 2009.

19 Q. What are your present duties with the DEU?

20 A. To investigate dealer-level offenses within the
21 county; also, to answer any complaints from citizens in
22 regards to drug activity.

23 Q. And were you involved in an incident at 403 Belaire
24 Circle, in Clover, on August the 23rd of last year?

25 A. Yes, sir.

1 Q. And what was the nature of the call that you received?

2 A. Detectives with the York County Sheriff's office had
3 went out there to do an investigation, and the
4 investigation then turned into a drug investigation, and
5 they requested our assistance.

6 Q. When -- who responded to that scene with you?

7 A. I responded by myself, but Lieutenant Ligon and health
8 Clevenger responded as well.

9 Q. Okay. Do you recall who arrived first?

10 A. I do not recall.

11 Q. Describe the scene as you observed it when you arrived
12 at the house.

13 A. There were several detectives standing outside in the
14 yard. I walked up, walked inside, and there were a few
15 detectives standing with Mr. Duvant in the living room, and
16 Ms. Carolyn Johnson in the living room.

17 Q. Okay. And what did you do once you got there?

18 A. I went to my vehicle, retrieved a *Miranda* form, and
19 went back inside the residence, and read *Miranda* to Mr.
20 Duvant and Ms. Johnson.

21 Q. Okay. And did you know yet at this point whether any
22 other officers had obtained a search warrant?

23 A. I knew that Detective Schifferly had applied for a
24 search warrant.

25 Q. Okay. And when did you find out whether that warrant

1 had been granted?

2 A. It was shortly after. They came over the radio and
3 said the search warrant had been signed by the judge.

4 Q. Okay. When you spoke with Mr. Duvant, where were you
5 standing?

6 A. I was standing in the living room.

7 Q. Okay. And where was he?

8 A. Mr. Duvant was sitting in a chair.

9 Q. And do you see Mr. Duvant in this courtroom?

10 A. I do.

11 Q. Please identify him.

12 A. Mr. Duvant is sitting to the left of his Counsel.

13 Q. When you spoke with him, was he under arrest at the
14 time?

15 A. No, sir. He was just ??

16 Q. Was he in handcuffs?

17 A. Yes, sir. He was handcuffed in the front.

18 Q. And what's the purpose of handcuffing a person if
19 they're not under arrest?

20 A. It's for officer safety; and you know, you're in a
21 building that hasn't been cleared yet, and you don't want
22 people to maybe have access to a weapon. So it's just --
23 it's safe for the person and the officers if there's some
24 type of -- of control there, so nothing -- nothing happens.

25 Q. Okay. When you advised him of his *Miranda* rights, did

1 Mr. Duvant speak to you about those rights, or indicate to
2 you that he understood them?

3 A. Yes, sir. Any time I read *Miranda* rights to a person,
4 I make sure that they verbally acknowledge their *Miranda*
5 rights, and they have to acknowledge with a yes or no
6 answer. Mr. Duvant verbally acknowledged that, yes, he
7 understood his rights.

8 Q. And I'm going to show you what's already been admitted
9 into evidence as State's Exhibit Number 1. And is that the
10 form that you read from when you advised the defendant of
11 his rights?

12 A. Yes, sir.

13 Q. And did Mr. Duvant sign that form to acknowledge that
14 he understood his rights?

15 A. Yes, sir.

16 Q. And after he signed that form, what did you do?

17 A. After he signed this form, I filed it with the rest of
18 my paperwork.

19 Q. Okay.

20 A. That was there.

21 Q. And did -- were -- could you do that in the room, or
22 did you have to leave?

23 A. I could -- we fill it out, he signed it, and then we
24 just file it in with our other paperwork ??had there in the
25 room.

1 Q. Okay. Did you commence with asking questions after he
2 had acknowledged his *Miranda* rights?

3 A. I did not.

4 Q. Were you present when anyone else did?

5 A. I was present while other people were talking to Mr.
6 Duvant, but I was doing other things, like I say, before I
7 left and come back in.

8 Q. Okay. And why did you have to leave and come back?

9 A. Just -- I left to go back to my vehicle, because we
10 knew the search warrant had been signed, and knew we were
11 getting ready to search the residence. I went back to my
12 car to get some latex gloves.

13 Q. Okay. How would you describe the defendant's demeanor
14 during that time that you were with him in the living room
15 and advised him of his rights?

16 A. He seemed to be rational. He acknowledged that he
17 understood his rights.

18 Q. And were you present when he showed the officers to
19 the cocaine in the room?

20 A. I was not present initially. I had stepped out to my
21 vehicle, and when I came back inside, Mr. Duvant and
22 Lieutenant Ligon and Clevenger and Vaughn were at the --
23 the bedroom where Mr. Duvant was found. And that's where
24 they were at whenever I came back in.

25 Q. Okay. And did you go back there to see what was in

1 the room?

2 A. I did not.

3 Q. Okay. After you -- they went into that back room with
4 Mr. Duvant, did you, at any point, talk with Carolyn
5 Johnson?

6 A. I do not remember speaking with Ms. Johnson directly.

7 Q. Were you present when anyone else did?

8 A. I was present when other people were speaking with
9 her, just in general conversation.

10 Q. Okay. Do you recall her saying -- I mean, did you see
11 any -- did you happen to search the house, following the
12 moment when the found the drugs in that back bedroom?

13 A. I did assist in the search, and I did search in that
14 back bedroom.

15 Q. And what, if anything, did you observe?

16 A. I located -- there was a small amount of marijuana in
17 a little baggie that was on the floor, next to the bed; and
18 Mr. Duvant's identification, South Carolina identification
19 card, was in the room as well.

20 Q. Okay. Did you happen to search Ms. Johnson's room?

21 A. I did search Ms. Johnson's room as well.

22 Q. And what did you find in her room?

23 A. Ms. Johnson had a small amount of cocaine in her
24 purse, and some marijuana in her purse as well. There was
25 some other marijuana located in her room, but I was not the

1 one that -- that located that marijuana.

2 Q. Okay. And once all these items were located, who
3 collected them for evidence?

4 A. Heath Clevenger.

5 Q. And did you see Lieutenant Clevenger taking
6 photographs inside the house?

7 A. Yes, sir.

8 SOLICITOR PLEMING: All right. That concludes my
9 questions at this time.

10 THE COURT: Thank you. Please answer any questions
11 Mr. Rudnick has.

12 Yes, sir.

13 MR. RUDNICK: Thank you, your Honor. May it please
14 the Court?

15 CROSS-EXAMINATION

16 INVESTIGATOR STEPHEN RAMSEY BY MR. RUDNICK:

17 Q. Afternoon.

18 A. Afternoon.

19 Q. So, Investigator, you testified on direct that you
20 read *Miranda* rights to Carolyn and Warren Duvant, right?

21 A. Yes, sir.

22 Q. Or Carolyn Johnson and Warren Duvant, right?

23 A. Yes, sir.

24 Q. And that's actually the form that you have in your
25 hand right there, correct?

1 A. Yes, sir.

2 Q. Okay. So if you could, kind of just follow along in
3 the form, because I think that I've got a copy. And the
4 place where it says case number two -- or case number, you
5 wrote the case number there. That's your handwriting,
6 right?

7 A. Yes, sir.

8 Q. Okay. And then, where it says incident location, you
9 wrote the 403 Belaire Circle, right?

10 A. Yes.

11 Q. That's your handwriting? Okay. The date and the
12 time, which is that day, August 23rd at 10:35, you wrote
13 that as well?

14 A. Yes, sir.

15 Q. Okay. And you wrote your name, obviously, next to
16 where it says officer.

17 A. Yes, sir.

18 Q. Okay. Then, on the form, it has Warren Tremaine
19 Duvant and Carolyn Johnson, right, printed?

20 A. Yes, sir.

21 Q. Okay. And you printed that name as well?

22 A. Yes, sir.

23 Q. And you also printed Warren's date of birth and
24 Carolyn's date of birth, right?

25 A. Yes, sir.

- 1 Q. Okay. Next to that is Warren's signature, right?
- 2 A. Yes, sir.
- 3 Q. And Carolyn's signature, correct?
- 4 A. That's correct.
- 5 Q. And then, next to that, it has 403 Belaire Circle,
- 6 under -- next to Warren's name, and Carolyn's name. Is
- 7 that right?
- 8 A. That is correct.
- 9 Q. And that's your handwriting on that one?
- 10 A. That is my handwriting. Yes, sir.
- 11 Q. Okay. Now, you wrote the incident report in this
- 12 particular case, right?
- 13 A. I wrote the case summary, yes.
- 14 Q. Yeah, the case summary.
- 15 A. Yes, sir.
- 16 Q. And you also mention that you went to the -- the back
- 17 bedroom, and you found Warren's driver's license, right?
- 18 A. His -- yes, South Carolina identification. Yes, sir.
- 19 Q. And on it, it listed an address, correct?
- 20 A. Yes, sir.
- 21 Q. And it listed 113 Queensgate at the address, right?
- 22 A. It was a Queensgate address.
- 23 Q. Okay.
- 24 A. I'm not sure ??
- 25 Q. It would -- would it surprise you if it was 113

1 Queensgate?

2 A. ??

3 Q. Okay. Now, you had that with you, and you, in the
4 incident report -- one second.

5 MR. RUDNICK: Your Honor, may I approach the witness?

6 THE COURT: Yes, sir.

7 BY MR. RUDNICK:

8 Q. And do you recognize the -- that case report?

9 A. I do.

10 Q. Okay. And if I could, the address that you listed
11 next to the suspect, suspect being Warren Tremaine Duvant,
12 is 113 Queensgate on there. Is that correct?

13 A. That is correct.

14 Q. Okay. And then, below that is Carolyn Johnson, right?

15 A. Yes, sir.

16 Q. And that's 403 Belaire Circle, correct?

17 A. That's correct.

18 Q. And then, you have the incident, or the arrest
19 location, on the bottom, right?

20 A. That's correct.

21 Q. For both of them, and it says 403 Belaire, right?

22 A. That's correct.

23 Q. Okay. So on the actual -- in the case summary, you
24 put in similar to what was on the license, 113 Queensgate,
25 right?

1 A. In the case summary, or ??

2 Q. Well, the -- I guess this case report.

3 A. Yes. On the ??

4 Q. Now, you said -- or you testified that you also
5 assisted with the investigation at the residence, right?

6 A. That's correct.

7 Q. Okay. And that included the collecting -- not that
8 you actually collected it, but it was Clevenger, right?

9 A. That's correct.

10 Q. But you assisted, like, searching the residence,
11 right?

12 A. That's correct.

13 Q. Okay. And you mention that, at some point, you
14 actually went back to your vehicle to get latex gloves,
15 right?

16 A. Yes, that is correct, before the search.

17 Q. Okay. Now, you got the latex gloves from your car.
18 Those have a number of uses, right?

19 A. That is correct.

20 Q. Right. They are used, one, to make sure that no --
21 that your fingerprints don't get on a piece of evidence,
22 right?

23 A. That's correct.

24 Q. And also, for protection, in case there's dangerous
25 substances and things like that?

1 A. That is correct.

2 Q. Okay. So in this particular case, there is no
3 Forensic Services Unit or anything like that, that was
4 called out to the scene, right?

5 A. Not to my knowledge, no.

6 Q. Okay. So in -- as part of the search, you found the
7 Pyrex container and things like that, that were in the
8 kitchen cabinet?

9 A. Yes, sir, I did see ??

10 Q. Okay. And those were not fingerprinted, right?

11 A. No, sir, not that I ??

12 Q. Okay. And they weren't checked for palm prints,
13 right?

14 A. No, sir, not to my knowledge.

15 Q. Or latent prints?

16 A. No, sir.

17 Q. Okay. And no DNA touch or DNA testing was submitted,
18 right?

19 A. No, sir, not to my knowledge.

20 Q. Okay. And that evidence was also taken in -- or that
21 Pyrex container was taken into evidence, right?

22 A. I'm not sure. I'd have to look at the case summary.

23 Q. Okay.

24 A. I wasn't the evidence tech, sir.

25 Q. I understand.

1 A. ??everything that was seized from the -- the
2 residence.

3 Q. I got you. So as far as you know, the tote box, which
4 is, I guess, what we'll call it, that was found in the back
5 bedroom was gray, right?

6 A. Yes, sir.

7 Q. And again, I'll try to approximate it, it was, like,
8 three-by-three, you'd say?

9 A. A typical tote box.

10 Q. A typical tote box, right. Now, it also had clothes
11 inside the tote box, right?

12 A. Yes, sir.

13 Q. Okay. Now, that tote box was also not fingerprinted,
14 right?

15 A. No, sir, not to my knowledge.

16 Q. And didn't check for latent prints?

17 A. No, sir.

18 Q. Palm prints?

19 A. No, sir.

20 Q. Or DNA touch, right?

21 A. No, sir.

22 Q. You didn't do that??

23 A. No, sir.

24 Q. Okay. The clothes that were also inside the box were
25 not taken into evidence, either. Is that correct?

1 A. No, sir.

2 Q. Okay. So -- and I know you weren't the one taking
3 pictures, but you said you saw some pictures being taken,
4 right?

5 A. Yes, sir.

6 Q. And those pictures did not include, like, pictures of
7 the -- the individual pieces of clothing that were inside
8 the tote box, right?

9 A. No, sir, not to my knowledge.

10 Q. Okay. Now, the -- in addition to the search of the
11 house, you said -- or you mentioned that you had found
12 Warren's cell phone, right?

13 A. His cell phone was located in the residence.

14 Q. And his ID as well, correct?

15 A. Yes, sir.

16 Q. Now, you didn't find or seize any pictures of Warren
17 with his family or anything like that throughout the house?

18 A. No, sir, not -- not to my knowledge.

19 Q. Okay. No kind of personal items, like a toothbrush,
20 toothpaste, hair brush, things of that nature?

21 A. ??

22 Q. You didn't seize them?

23 A. No, I didn't seize them.

24 Q. Okay. And the -- in the case summary, there's no
25 mention of Eric Johnson's room. Is that right?

1 A. That is correct.

2 Q. And I can show it to you if you need??

3 A. Yes, that's correct, yes.

4 Q. Okay. But the -- Detective Vaughn, from your
5 understanding, if you know, was initially there looking for
6 Eric Anthony Johnson, right?

7 A. That is correct.

8 Q. And he also lives at that residence?

9 A. To my knowledge.

10 Q. To your knowledge. Right. And Carolyn Johnson also
11 lives at that residence, right?

12 A. Yes.

13 Q. Okay. The -- in addition to the Pyrex container that
14 was found inside the kitchen, they also -- or you and your
15 colleagues found a scale that was inside, kind of, a cup;
16 like, maybe, a ceramic cup, inside the kitchen cabinet,
17 right?

18 A. Yes.

19 Q. And a bigger, larger, kind of scale next to the sink,
20 right?

21 A. Yes.

22 Q. And then, two other scales are on, like, a kitchen
23 counter, next to it, in the same general area?

24 A. Yes.

25 Q. And a bag of plastic sandwich -- plastic sandwich

1 bags, a box of plastic sandwich bags, right?

2 A. That's correct.

3 Q. And a box of -- or a bag of rubber bands.

4 A. That is correct.

5 Q. Okay. Now, the cocaine that was found in Carolyn's
6 room was in a plastic sandwich bag. Is that right?

7 A. Yes, to my knowledge.

8 Q. And then, the marijuana that was found inside -- on
9 the floor was also in a plastic sandwich bag, correct?

10 A. Yes, I believe so.

11 Q. Okay. And the -- the cocaine that was found inside
12 the tote box in the back bedroom was also found in a
13 plastic sandwich bag?

14 A. I can't testify to that because I didn't see it.

15 Q. Okay. That's fine. So -- but suffice it to say, you
16 didn't -- you or any of your colleagues did not take the --
17 the box of plastic sandwich bags that were found on the
18 counter, right?

19 A. Not to my knowledge.

20 Q. Okay. The -- you assisted in the search of the house.
21 You also assisted in the search of Warren and his car. Is
22 that right?

23 A. I did not search Warren's car.

24 Q. Okay. But you assisted in the search of, like,
25 Warren's person and things like that?

1 A. I don't recall.

2 Q. Okay. That's fine. So when you came on scene, you
3 were there when Carolyn showed you all the drugs in her
4 room, right?

5 A. Yeah. I was on scene when she showed officers on
6 scene the drugs.

7 Q. Okay. And just to -- we kind of already went over it,
8 but the marijuana was next to the night stand in her room,
9 right?

10 A. Yes, sir. She had some marijuana in the night stand.

11 Q. Okay. And the cocaine was -- the -- her bag that was
12 in her room was in a -- was in her purse, right?

13 A. That is correct.

14 Q. In addition to what was inside the purse, there was
15 also three hundred and twenty dollars inside her purse,
16 right?

17 A. That is correct. It was three-twenty-something. I
18 don't remember the exact dollar amount.

19 Q. Okay. And you seized that money, right?

20 A. Yes, sir. We seized that money.

21 Q. Okay. And you actually seized the money. You also
22 entered it to a -- what's called a consent order of
23 forfeiture, right?

24 A. Yes, sir.

25 Q. And that is, just so we know, a consent order is when

1 someone agrees to give something away, right? And somebody
2 else agrees to take it, correct?

3 A. Yes.

4 Q. Okay. In this particular case, you found the three
5 hundred and twenty dollars, and you seized the money,
6 right?

7 A. Yes, sir.

8 Q. And you and Carolyn entered into that consent order of
9 forfeiture, right?

10 A. Yes, sir.

11 Q. All right.

12 MR. RUDNICK: Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 BY MR. RUDNICK:

15 Q. Do you recognize that as the consent order that you
16 filled out? And just take your time.

17 A. That is it.

18 Q. Okay. If I could ??real quick. So the consent order
19 is signed by you, right?

20 A. Yes.

21 Q. Signed by Carolyn, correct?

22 A. Yes.

23 Q. Signed by a judge, right?

24 A. Yes.

25 Q. And then, signed by somebody from the prosecutor's

1 office, correct?

2 A. Yes.

3 Q. And the reason it's signed and the money is given over
4 is because you have reason to believe the money came from
5 drug -- or are drug proceeds, right?

6 A. Yes.

7 Q. Okay. And in your affidavit ?? you affirm or testify
8 that you believe that the money that was found was from
9 drug

10 Q. Okay. And in your affidavit ?? you affirm or testify
11 that you believe that the money that was found was from
12 drug sales, correct?

13 A. Yes.

14 Q. Okay.

15 MR. RUDNICK: No further questions, your Honor.

16 THE COURT: Thank you. Any re-direct, Mr. Fleming?

17 SOLICITOR PLEMING: Briefly, your Honor.

18 INVESTIGATOR STEPHEN RAMSEY

19 RE-DIRECT EXAMINATION, BY SOLICITOR PLEMING:

20 Q. Investigator Ramsey, where was the ID and the phone,
21 specifically, in the room where you found it?

22 A. I don't recall where the phone was located. The ID
23 was on the night stand.

24 Q. Okay. And did you happen to notice any family photos
25 of anybody else from -- in that house?

INVESTIGATOR STEPHEN RAMSEY: DIRECT BY SOLICITOR PLEMING

-197-

DIRECT EXAMINATION

LIEUTENANT HEATH CLEVINGER BY SOLICITOR PLEMING:

Q. Please state your name and occupation.

A. Heath Clevenger. I'm a patrol lieutenant with the York County Sheriff's Office.

Q. And how long have you been in this position?

A. I've been a lieutenant since, I believe, September of last year.

Q. Okay. And prior to becoming a lieutenant on the patrol division, what was your duty?

A. I was an investigator with the York County Multi-Jurisdictional Drug Enforcement Unit.

Q. Okay. Are you from this area?

A. Yes.

Q. And when you were with the DEU, did you have any particular special assignments, or were you just an investigator, like everyone else in the unit?

A. I was an investigator, like everyone else in the unit.

Q. Were you involved in an incident at 403 Belaire Circle, in Clover, on the 23rd of August last year?

A. Yes, sir.

Q. And tell us how you came to respond to that address.

A. We got a phone call that some detectives, I believe, were involved in another investigation, and that they were trying to get a search -- they were applying for a search

1 warrant, and that drugs were on scene. And so, they
2 contacted the narcotics unit to respond out there and
3 assist them in the investigation.

4 Q. Okay. Describe the residence at 403 Belaire, as you
5 observed it.

6 A. It's a single-wide mobile home with a wooden porch on
7 the front. I believe it's a two-bedroom single-wide with
8 bedrooms on both ends. You walk in the front door, right
9 into the living room area, and then the kitchen was to the
10 right, and on past that was the bedroom. And to the left
11 of the -- as soon as you come in the front door, was also a
12 bedroom back in that direction.

13 Q. Tell us what you -- what you and the other officers
14 did when you arrived.

15 A. We responded to the scene, and there was a couple of
16 individuals there, and Lieutenant Ligon was having a
17 conversation with one of the gentlemen there. And we were
18 basically waiting for the search warrant to get signed by
19 the magistrate.

20 Q. Okay. Were you present in the room when Ms. Johnson
21 and Mr. Duvant received their advisement of their *Miranda*
22 rights?

23 A. I don't believe so the first time. I believe that
24 happened before I got there with the detectives the first
25 time, but I believe it was -- I'm not -- I'm not sure,

1 because I know we usually do it when we do the search
2 warrant. We also bring *Miranda*, and it gets signed again
3 then, but I don't particularly remember it in that instance
4 of that day.

5 Q. Okay. Were you present in the room when Lieutenant
6 Ligon was talking with the defendant?

7 A. I was.

8 Q. And tell us what you recall from that conversation.

9 A. He had one conversation where, basically, he denied
10 that there was anything in the house, anything illegal, any
11 drugs or anything like that. And then, later on,
12 Lieutenant Ligon asked him again, gave him the opportunity.
13 I believe he told him the search warrant -- had gotten
14 information that the search warrant was signed, and was on
15 the way up there, and Lieutenant Ligon asked him again.
16 And at that time, he stated that there were some drugs in
17 the bedroom that he had slept in, so.

18 Q. Did he say specifically what kind of drugs?

19 A. Like -- No, I don't remember the -- the term he used,
20 because that changes so much for slang. Somebody's word
21 for cocaine might be one thing, and somebody else's
22 another, and I don't remember which term he used.

23 Q. Okay. And after he asked him the second time -- Well
24 let me ask you this. How soon after the first time that he
25 asked him if there were any drugs in the house did he ask

1 him again?

2 A. I would approximate maybe twenty to thirty minutes,
3 maybe.

4 Q. Okay. And after he -- after Lieutenant Ligon told him
5 that y'all had a warrant to search the house ---

6 A. Uh-huh.

7 Q. --- and he asked him a second time if there were any
8 drugs in the house, what did the defendant say?

9 MR. RUDNICK: Asked and answered, your Honor.

10 THE COURT: Counsel?

11 SOLICITOR PLEMING: I haven't asked this witness that
12 question yet.

13 MR. RUDNICK: Okay.

14 THE COURT: I'll allow it.

15 BY SOLICITOR PLEMING:

16 A. He said that there were some drugs in the house.

17 Q. Okay. And what did you do after he told you that
18 there were drugs in the house?

19 A. He wanted to show us where they were located, and
20 Lieutenant Ligon, him and myself, walked back to the
21 bedroom, which, to go into the bedroom, and just to the
22 right of the bedroom was a tote. And he started to reach
23 down for the tote, and we stopped him and said, just tell
24 us where it's at. It was like he was trying to -- which is
25 common. Most people, when they do want to tell you about

1 something, they want to --

2 MR. RUDNICK: Objection, your Honor. That ---

3 BY MR. PELMING:

4 A. Okay.

5 MR. RUDNICK: --- calls for speculation --

6 A. He pointed out where it was at.

7 THE COURT: Sustained. Thank you, sir.

8 Go ahead.

9 BY SOLICITOR PLEMING:

10 Q. When he pointed out where the drugs were at, what did
11 you do?

12 A. Reached down and opened the tote, and then asked again
13 where it was at, because it wasn't in plain view when you
14 lifted the tote.

15 Q. Okay. And what did you -- what happened next?

16 A. We lifted up some clothes that were in the tote, and
17 it was laying underneath the clothes, in the tote, where
18 the -- where he had pointed at.

19 Q. What kind of clothes were these?

20 A. Various mens' clothes.

21 Q. And did you find anything else in that room of
22 significance?

23 A. His ID And I believe his cell phone was back there,
24 too.

25 Q. And after locating these items, did you collect them

1 for evidence?

2 A. I did.

3 Q. And after taking them into evidence, did you --

4 A. Well, let me -- let me clarify. I don't believe I
5 took his ID into evidence, but I did take some pictures of
6 it, so.

7 Q. Okay. What did -- what do you do once you collect
8 evidence like this from a scene?

9 A. Well, the contraband, we take and seize it on scene,
10 and then put it in plastic bags and denote the time and
11 location where it was found. And then we maintain control
12 of it while we're on scene, generally put it in one big bag
13 that we have for evidence. And then we bring all that back
14 and completely fill out that, along with accompanying
15 paperwork, for items to be tested with that office, and
16 then drop it in an evidence drop so it's secured until an
17 evidence custodian can come up and --

18 Q. And who has access to that evidence drop box?

19 A. As far as I know, only the people that work in the
20 evidence section of the sheriff's office.

21 Q. And how many people work in that department?

22 A. Two or three.

23 Q. Okay.

24 A. I'm not quite exactly sure.

25 Q. Did you weigh the evidence after you brought it back

1 to the sheriff's office?

2 A. Yes.

3 Q. And how much did the bag they found in that back
4 bedroom, how much did it weigh?

5 A. Approximately fifteen grams.

6 Q. Did you also collect evidence from Carolyn Johnson's
7 room?

8 A. We did.

9 Q. And tell us what you collected from her room.

10 A. We collected some marijuana and some other cocaine.

11 Q. Once you packaged each of those items in a bag to
12 deliver to the drop box, describe how you seal those bags
13 in order to determine that no one can tamper with them.

14 A. Okay. So the bags have a sticky seal at the top. So
15 we take and place the drugs down inside that bag that is to
16 be sealed. We pull the plastic cover off of the sticky and
17 seal it up. And then, I put my initials and the date on
18 that, so that I know that I was the one that sealed it, and
19 the date in which it was sealed. So as long as that seal
20 is maintained, then nobody's been in the bag.

21 Q. Okay. And if you look at that, at one of these bags
22 once it is sealed, can you determine whether anyone has
23 opened the bag to get to those items after it had been
24 sealed?

25 A. The -- the sticky portion at the top, you can't -- you

1 can't unseal that. It is quite sticky. So the only way to
2 get into it is to either destroy the bag by pulling it
3 open, or take something and cut it open; because if you
4 make a grammatical mistake and it's already sealed up, then
5 you just have to cut that bag, and get a new bag and start
6 over which one would be easier.

7 Q. Okay. And each of the items that you collected from
8 the house on Belaire Circle, did you place all those items
9 into just one bag; or were they separated into individual
10 bags per item?

11 A. Each bag was -- you collect one piece of evidence and
12 -- generally, and put it in a bag by itself. And in this
13 case, like, the dope that I collected, was all placed in
14 the bag of -- the cocaine that I got out of the tote was
15 placed in a single bag, and then the -- like, some of the
16 marijuana that come out of Ms. Johnson's room, it was all
17 together. So a bunch of marijuana roaches were all
18 together, they weren't -- I wouldn't take each one and put
19 something individual. Since all that was together, it was
20 placed in a bag all to itself.

21 Q. Okay. All right. I'm going to jump to something else
22 for a minute, and then we're going to come back to the
23 evidence bag in a minute. After you collected all the
24 evidence at the house, did anyone take pictures?

25 A. I did.

1 Q. Okay. And at this time, I'm showing Defense Counsel
2 what's been marked previously as State's Exhibits No. 5
3 through 27.

4 (WHEREUPON, DEFENSE COUNSEL VIEWS STATE'S EXHIBITS 5
5 THROUGH 27 PREVIOUSLY MARKED FOR IDENTIFICATION.)

6 BY SOLICITOR PLEMING:

7 Q. I'm now handing State's Exhibits No. 5 through 27 to
8 you.

9 Please take just a moment to look at each one of those
10 photographs.

11 A. Yes, sir.

12 Q. And do you recognize those photographs?

13 A. I do.

14 Q. And how are you able to recognize them?

15 A. They were the photos that I took that day on the
16 scene.

17 Q. And are these all fair and accurate representations of
18 what you observed inside 403 Belaire Circle, on August the
19 23rd of last year?

20 A. Except for this one picture right here, which is on
21 the front porch rail, just outside the front door.

22 Q. Okay. Thank you for clarifying that.

23 SOLICITOR PLEMING: Your Honor, at this time, State
24 moves to admit State's Exhibits No. 5 through 25.

25 I think I actually handed 26 and 27 up there, too.

1 Just hold onto that for a moment.

2 A. Okay.

3 THE COURT: Counsel, just one moment. Did you say 15
4 through 27 and then you went back and said 25 or was it 5
5 through?

6 SOLICITOR PLEMING: Five through 27 with the last two
7 we'll deal with separately.

8 THE COURT: Okay. So 5 through 25.

9 SOLICITOR PLEMING: Five through 25 will be admitted
10 into evidence.

11 THE COURT: Okay. Have been offered to be admitted
12 into evidence; is that correct, Counsel?

13 SOLICITOR PLEMING: Yes, your Honor.

14 THE COURT: Okay. Mr. Rudnick, is there any
15 objection?

16 MR. RUDNICK: No, your Honor.

17 THE COURT: Okay. So, State's Exhibits 5 through 25
18 which I understand are photographs ---

19 A. Yes, ma'am.

20 THE COURT: --- will be admitted into evidence at this
21 time. We'll hand them to our court reporter.

22 SOLICITOR PLEMING: Thank you, your Honor.

23 THE COURT: Just one moment, okay.

24 (WHEREUPON, STATE'S EXHIBIT NUMBERS 5 THROUGH 25,
25 PREVIOUSLY IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

1 BY SOLICITOR PLEMING:

2 Q. All right. Lieutenant Clevenger, now, turning your
3 attention to those last two photographs that are marked as
4 State's Exhibits 26 and 27, can you tell the jury what's
5 depicted in those two photographs?

6 A. This is evidence collected from the residence, on the
7 scale, in the DEU office.

8 Q. Okay. And which pieces of evidence are depicted in
9 each of those two photographs?

10 A. The -- 26 is the cocaine that we got out of the
11 bedroom that the defendant indicated was located in the
12 tote. And the other cocaine is what came out of Ms.
13 Johnson's pocketbook.

14 Q. Thank you. And are these fair and accurate depictions
15 of the drugs that you collected from 403 Belaire as they
16 appeared when you measured them on the scale that day?

17 A. Yes, sir.

18 Q. All right.

19 SOLICITOR PLEMING: All right. At this time the State
20 moves to admit State's Exhibits 26 and 27.

21 THE COURT: Okay. Mr. Rudnick.

22 MR. RUDNICK: No objection, your Honor.

23 THE COURT: Okay. And you have reviewed those as
24 well?

25 MR. RUDNICK: Yes, your Honor.

1 THE COURT: All right. So State's Exhibits 26 and 27,
2 two photographs, will be admitted into evidence without
3 objection. Thank you.

4 Mr. Pleming, if you'll give me just another moment.

5 SOLICITOR PLEMING: Yes, ma'am.

6 (WHEREUPON, STATE'S EXHIBIT NO. 26 AND 27, IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 THE COURT: Okay, sir, if you'd be so kind as to hand
9 those to my court reporter.

10 And members of our jury, just so you understand, when
11 you go back to begin your deliberatoinis you will be given
12 the items that have been marked and into evidence.

13 I didn't want you to be worried about that.

14 All right. Thank you.

15 SOLICITOR PLEMING: Your Honor, at this time we'd
16 request to publish those pictures 5 through 27.

17 THE COURT: You get to see them a little earlier.

18 Okay. Any objection, Mr. Rudnick?

19 MR. RUDNICK: No, your Honor.

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

21 Yes, sir.

22 SOLICITOR PLEMING: Madam Clerk, can you dim the
23 lights please.

24 Q. And Lieutenant Clevenger, I'm going to hand you this
25 laser pointer, and you can use that to point out anything

1 that's relevant.

2 Describe the scene in State's Exhibit No. 5.

3 A. That is the remainder of a marijuana cigarette, or a
4 roach, that was on the front porch.

5 Q. Okay. State's Exhibit No. 6.

6 A. Same thing, from a ashtray inside.

7 Q. What's depicted here in State's Exhibit No. 7?

8 A. That's the gray tote as we opened the top of it, where
9 the -- the cocaine was located down underneath that
10 clothing.

11 Q. Okay. And can you tell what types of clothing you see
12 here?

13 A. Looks like some tee shirts and shorts, maybe.

14 Q. Okay.

15 A. I can't tell exactly from this picture.

16 Q. All right. Let's take a look at State's Exhibit No. 8
17 now.

18 A. That's the tote closed, as it was when we walked in
19 there.

20 Q. Okay. And which side of the tote was the -- was the
21 bed?

22 A. In the right side, roughly in that area.

23 Q. And let's go to State's Exhibit No. 9 now.

24 What's depicted here?

25 A. That's with some of the clothing pulled back, where

1 you could see the -- that is the cocaine right there.

2 Q. State's Exhibit No. 10.

3 A. This would be cell phones, and I believe that's his ID
4 right there, turned face down.

5 Q. And where was that bookshelf located inside the room?

6 A. Right beside the bed.

7 Q. Let's look at State's Exhibit No. 11.

8 A. That's a ID A South Carolina driver's license.

9 Q. Okay. And the address on that ID is what?

10 A. One -- Queensgate Road in Clover. I can't read the
11 numbers on it from here.

12 Q. Okay. Can you tell -- and if you need to step down -
13 Can I ask --

14 A. I might be able to look at. Looks like 113
15 Queensgate.

16 Q. Can you tell, looking at State's Exhibit No. 11, what
17 was the date that that ID card, or driver's license, was
18 issued?

19 A. Issued on 10-17-2013.

20 Q. Okay. Let's take a look at State's Exhibit 12.
21 What's depicted in this photo?

22 A. It's the top of the refrigerator. And that is scales,
23 rubber bands, and plastic baggies.

24 Q. And State's Exhibit No. 13.

25 A. Let me look at this picture here. This was a counter

1 top in the -- in the kitchen, like a island in the kitchen.

2 Q. Okay. Do you -- Is there anything significant about
3 this photo?

4 A. The powder located on the -- on this section right
5 here. And then, it was kind of all over the place, so I
6 just took a general overview picture of it.

7 Q. Okay. Thank you. All right. State's Exhibit No. 14.

8 A. That's, I believe, a .9-millimeter round that was
9 recovered there. That might have been further down in the
10 picture, I just couldn't tell from it being so far out.

11 Q. Okay. No. 15.

12 A. That is a white powdery substance, generally used for
13 athletic stuff. You know, weightlifting and all.

14 Q. In your experience in narcotics, how's this typically
15 used?

16 A. It is used as addition to cocaine, or a cut. So they
17 may buy a certain amount of cocaine, and then add another
18 amount and mix it up with the more pure cocaine to cut it
19 down, and to make it weigh more, so they get a bigger
20 return on their investment.

21 Q. All right. No. 16.

22 A. That is, I believe, a Pyrex dish that appeared to have
23 cocaine residue inside of it.

24 Q. Okay. No. 17.

25 A. That's a scale that was in the kitchen area.

1 Q. Okay.

2 A. That plastic piece is actually a top. It covers the
3 scale, and you can take the top off and turn it upside
4 down, and it holds whatever you want to weigh on it.

5 Q. Gotcha. Okay. Let's take a look at No. 18.

6 A. That was rather larger plastic bags. Heat -- heat-
7 sealed shrink, where it sucks all the air out, and helps
8 compress down, and it had marijuana pieces in it where it
9 previously had marijuana in it.

10 Q. Thank you. And what's the white object at the bottom
11 of the picture?

12 A. That is the machine that takes -- if you take the
13 plastic prior to, you generally stick either the food or
14 whatever it is you're heat-sealing in there, marijuana,
15 stick it in there, and then it sucks all the air out of it,
16 and it heat-seals it so it won't leak out, so that it can
17 be stored.

18 Q. No. 19.

19 A. That, I think that was some more baggies, bagging
20 material, that was down behind a piece of furniture, and I
21 kind of stuck the camera back there and took a picture of
22 it.

23 Q. In what room was this taken from?

24 A. I believe that was in the living area.

25 Q. Okay. Let's take a look at No. 20.

1 A. That is Ms. Johnson's pocketbook, with the cocaine in
2 it.

3 Q. Can you point out the cocaine, please?

4 A. Right there.

5 (WITNESS INDICATED ON EXHIBIT NO. 20)

6 Q. Okay. No. 21.

7 A. That's a closer view, with a flashlight stuck down in
8 there, so you can kind of see.

9 Q. No. 22. I believe this is 23.

10 A. That's another marijuana cigarette, right there on the
11 -- I believe the night stand, beside the bed.

12 Q. Okay. No. 24.

13 A. That is a -- like, a ash cup, was what it was being
14 used for, and it was full of partially-smoked marijuana
15 cigarettes.

16 Q. Okay. And lastly, No. 25.

17 A. That was the area that -- another shot of that island.
18 And right here was a bunch of white residue that appeared
19 to be cutting agent.

20 Q. Okay. And we'll go ahead and look at 26 and 27, too.

21 A. That is the cocaine that the defendant pointed out in
22 the room, on the scale, weighing approximately fifteen
23 point one grams, in the plastic, in our office.

24 Q. This here, at your office?

25 A. Yeah, downstairs in the -- the narcotics office.

1 Q. Okay. And No. 27.

2 A. That's cocaine in a plastic bag out of Ms. Johnson's
3 bag.

4 Q. Thank you. Once you located all of these items, --
5 After you collected each of these items from inside
6 the house, what did you do?

7 A. Secured them back to the office, and then commenced to
8 sit down and start filling out all the paperwork that goes
9 along with that.

10 Q. Okay. And who made the decision as to charge and what
11 to charge Ms. Johnson and Mr. Duvant?

12 A. I don't recall exactly the conversation that was had,
13 but generally we make weights -- we weigh out the
14 contraband because it affects the charge. And then, we
15 decide to make the appropriate charge, given the weight and
16 responsibility; who was responsible for that area of the
17 house, or claimed responsibility of having possession of
18 items.

19 Q. Okay.

20 SOLICITOR PLEMING: At this time we beg the Court's
21 indulgence. I would like to mark this bag that you brought
22 in with you as State's Exhibit No. 29.

23 THE COURT: You said 29, Counsel?

24 SOLICITOR PLEMING: Yes, ma'am.

25 THE COURT: Thank you.

1 (WHEREUPON, STATE'S EXHIBIT No. 29, IDENTIFIED AND
2 MARKED.)

3 BY SOLICITOR PLEMING:

4 Q. Lieutenant Clevenger, describe the bag that you're
5 holding in your hand, which we have just marked as State's
6 Exhibit No. 29.

7 A. This is a larger plastic bag that contains the bags
8 and the -- some of the evidence that was seized at that
9 residence.

10 Q. Thank you.

11 SOLICITOR PLEMING: Beg the Court's indulgence for
12 just one moment.

13 (PAUSE.)

14 BY SOLICITOR PLEMING:

15 Q. Do you recognize -- well, take a minute to look into
16 that bag, and tell us if you recognize the items contained
17 inside that plastic bag.

18 A. Do you mind if I --

19 Q. Yeah, at this time, go ahead and open that bag. And
20 just real quick, before we go any further, is there --
21 having looked at that bag and examined it before coming to
22 court, is there -- are there any markings or evidence on
23 that bag that someone has tried to open it, prior to the
24 State?

25 A. No. It was obviously heat-sealed. It was pressure

1 with the air inside there, air-tight. I couldn't.

2 Q. Okay. Okay. Now, if you will, take a look at the
3 items inside, and when you're ready, let us know if you are
4 familiar with each of the items that is packed inside that
5 bag.

6 A. This is the bag that had the cocaine in it from Mr.
7 Duvant's room. It has been cut open on the bottom, but it
8 has my initials and date on the top.

9 Q. Okay.

10 A. As I described already.

11 Q. And let me ask you this. So, when you turn bags of
12 evidence into SLED for testing, do you -- are you aware of
13 what happens with the bags then?

14 A. I know they open the bags and take the drugs out and
15 test it, but exactly what process they go through for
16 bagging and whatnot, I am unfamiliar with the exact
17 processes there.

18 Q. And did you -- each of the bags that you're holding
19 that came out of that larger bag ---

20 A. Uh-huh.

21 Q. --- marked as State's 29, are you familiar with each
22 one of those bags that you're -- that are contained inside?

23 A. Let me double-check. Yes. It's all -- all have my
24 signature for dropping them in evidence, and all have my
25 initial and date on the seal.

1 Q. Okay. And is -- Can you look at those bags, other
2 than the -- the seal being undone, are there -- do you see
3 any markings on that bag, or what would appear to be any
4 attempt to poke holes, or tear open the bag?

5 A. No, sir. They don't appear to be tampered with.

6 Q. All right. And having looked at each of these bags,
7 did you turn each one of these bags into the evidence
8 locker ---

9 A. The evidence drop.

10 Q. -- on -- of this case?

11 A. Yes, sir.

12 Q. And how -- and you may have already explained this,
13 but just so it's clear, how do you mark those bags to
14 assist in the identification of each one?

15 A. It's on the front of the bag. I have my name, from
16 and to the evidence drop, and then the date and the time in
17 which it was dropped. And then, on the back, on the seal
18 -- because obviously at the bottom of the bag is closed.
19 And then, we place the drugs inside and tear the protective
20 plastic off, and seal this, and then write my initial and
21 the date on that seal, so that -- that's a indication that
22 I'm the one that went through there and sealed it up, and
23 responsible for the evidence, and placed it into the
24 evidence drop.

25 Q. Do you see inside State's Exhibit No. 29, the larger

1 clear bag, do you see the -- the bag that you collected
2 from the back bedroom of 403 Belaire? That was found in
3 the tote?

4 A. Yes.

5 Q. Okay.

6 A. And this -- this plastic bag has DEU written on it, to
7 indicate that that's our Ziplock-style bag. And then, the
8 other plastic bag would be the defendant's used bag.

9 Q. And -- and did each of those bags, but for being
10 opened at the seal, appear the same today as they were when
11 you deposited them into evidence?

12 A. Yes, sir.

13 Q. All right.

14 SOLICITOR PLEMING: At this time I would like to mark
15 for identification the - that smaller bag that you say came
16 from the tote in the back bedroom of the house. And I
17 would like to mark it as State's Exhibit No. 30.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER 30, IDENTIFIED AND
19 MARKED.)

20 BY SOLICITOR PLEMING:

21 Q. And one final question. When you were in the house,
22 and while the defendant showed you to the cocaine in that
23 back bedroom, did he at any point say how he knew that the
24 drugs were in that container?

25 MR. RUDNICK: Objection, your Honor. We --

1 SOLICITOR PLEMING: I don't know what the objection
2 is.

3 THE COURT: Okay. Counsel, let's approach about this.
4 okay.

5 (BENCH CONFERENCE HELD OFF THE RECORD, OUT OF HEARING
6 OF THE JURY, AT 03:00 PM.)

7 THE COURT: Okay. We're back on the record.

8 Okay, so, Mr. Fleming, sir, you're going to rephrase.

9 SOLICITOR PLEMING: Okay. Yes, ma'am.

10 Q. Did you or Lieutenant Ligon, or any other officers at
11 that time, ask the defendant anything else about the
12 cocaine?

13 A. I didn't. I don't recall -- I can't recall anything
14 past what we've already discussed.

15 Q. Okay. So to your recollection, and without getting
16 into any comments or statements that were or not made, was
17 there any more discussion between you and the defendant, or
18 between Lieutenant Ligon and the defendant, with regard to
19 that cocaine that was located in that room?

20 A. Not that I can recall.

21 Q. Thank you.

22 SOLICITOR PLEMING: I have no further questions, your
23 Honor.

24 THE COURT: Counsel.

25 MR. RUDNICK: Thank you, your Honor. May it please

1 the Court?

2 CROSS-EXAMINATION

3 CROSS-EXAMINATION, BY MR. RUDNICK:

4 Q. All right. Lieutenant.

5 A. Yes, sir.

6 Q. Good afternoon. So you collected the evidence from
7 403 Belaire, correct?

8 A. Correct.

9 Q. Okay. And that included everything that was inside
10 the kitchen, right?

11 A. From the -- yeah, from the whole house, as it related
12 to the drug case.

13 Q. Right. So the whole house, everything?

14 A. Right.

15 Q. Okay. So you collected the stuff that was in
16 Carolyn's room, right?

17 A. Yes. Well, as it relates to this case, because there
18 was another investigation going on that there may be some
19 evidence --

20 Q. Right. And we're not -- yeah. We're not talking
21 about --

22 A. Okay. I just wanted to be clear on that.

23 Q. That's okay. I understand. We're not talk -- and
24 that -- that relates to Eric Johnson ---

25 A. Yeah.

1 Q. --- the other person.

2 A. Completely different case.

3 Q. Okay. So you took pictures of the glutamine, right?

4 A. Yes, sir.

5 Q. And that's the stuff that you said was used as a -- a

6 ---

7 A. It can be.

8 Q. --- cutting agent. Okay. Or it could be used. But
9 you didn't seize the packet of glutamine, or the jug of
10 glutamine?

11 A. No, sir.

12 Q. Okay. And you also took a picture of the plastic
13 sandwich bags that were on top of the fridge that we saw,
14 right?

15 A. Uh-huh.

16 Q. But you didn't take those into evidence either?

17 A. No.

18 Q. Okay. And the rubber bands, it was kind of a pack of
19 rubber bands right next to the sandwich bags, you didn't
20 take those into evidence either?

21 A. No, sir.

22 Q. Okay. And the heat sealer that was found on the
23 floor, that was in the kitchen, right?

24 A. Yes, sir.

25 Q. And that's what you believe was actually used to seal

1 drugs, marijuana specifically?

2 A. It could be used for that. I just know there was
3 packaging material that had had marijuana in it previously.

4 Q. Right.

5 A. Now, whether they used it for honest purposes or to
6 break that up into something else.

7 Q. Very good. But, like, close to it were, like, those
8 vacuum-sealed bags.

9 A. Yes.

10 Q. Okay. But you didn't take the heat-seal -- heat
11 sealer with you either?

12 A. No, sir.

13 Q. Okay. The tote box, which we saw pictures of, the --
14 in the room, you didn't take that with you, either?

15 A. No, sir.

16 Q. Okay. And you didn't take the clothes that were
17 inside the tote box, right?

18 A. No, sir.

19 Q. And you didn't take pictures of, like, the individual
20 -- sometimes you can take pictures of individual pieces of
21 clothing that you would find in the tote box, right? You
22 didn't take any pictures of individual pieces of clothing,
23 right?

24 A. No, sir. I've never done that.

25 Q. Just what we did -- what we saw there was all?

1 A. Yes, sir.

2 Q. Okay. And so, you didn't check the sizes of the
3 clothing in there, right?

4 A. Not particularly. No, sir.

5 Q. And you didn't, I guess, inventory what types of
6 clothing were actually, like, in the tote box, right?

7 A. No, sir.

8 Q. So it's not -- whether it's a combination of men's
9 clothing, right; or females' clothing, correct?

10 A. Are you asking a question, or making a statement?

11 Q. Asking a question.

12 A. I -- it appeared to be men's clothing. Yes. That's
13 all I can tell you.

14 Q. Okay. But you didn't inventory it to see if there was
15 other types --

16 A. No, I didn't break it down to see if each piece was
17 sized.

18 Q. Okay. And there was also -- I'll step back. There
19 was -- A cell phone was found in the room, right?

20 A. Yes, sir.

21 Q. And that was Warren's, and you took that into
22 evidence, correct?

23 A. I believe so.

24 Q. Okay.

25 A. I'd have to double-check the sheet, but I believe we

1 took those two, yes, sir.

2 Q. And then, also, the cell phone of Carolyn's, you took
3 that and seized that into evidence, right?

4 A. I believe so.

5 Q. Okay. But there was also a third I-Phone, cell phone,
6 that you found in the house, right?

7 A. There were multiple phones in the house. Yes, sir.

8 Q. Right. And -- but particularly, this I-Phone cell
9 phone, if you don't remember -- would it refresh your
10 memory if you looked at your evidence log?

11 A. Yes.

12 Q. Okay.

13 MR. RUDNICK: Judge, may I approach?

14 THE COURT: Yes, sir.

15 MR. RUDNICK: Thank you.

16

17 Q. And is that your evidence log there?

18 A. Yes.

19 Q. And just look at it, and whenever you're ready.

20 A. The one from the kitchen cabinet, was that the one
21 you're referring to?

22 Q. It is.

23 A. Yes.

24 Q. Okay. Thank you. So there was a third I-Phone that
25 you found in the kitchen cabinet, correct?

1 A. Uh-huh. Yes, sir.

2 Q. That was kind of the same area as the Pyrex container
3 that you found in the kitchen cabinet, right?

4 A. Roughly. Yes, sir.

5 Q. Okay. And that Pyrex container is the one that had
6 what you believed to be crack residue on it, right?

7 A. Correct.

8 Q. Okay. And you didn't call any forensic services, or
9 anybody out on the scene, to fingerprint ---

10 A. No, sir.

11 Q. --- or get any type of DNA or anything? Okay. So you
12 took pictures of the licenses, which we saw Warren's
13 license up there, right?

14 And -- is that right?

15 A. Yes, sir.

16 Q. Okay. And the license, the address on that is 113
17 Queensgate, correct?

18 A. Correct.

19 Q. Okay. And you yourself, that day, did not go to 113
20 Queensgate, right?

21 A. No.

22 Q. And you didn't, on that day, get, like, a search
23 warrant or anything to go to 113 Queensgate?

24 A. No.

25 Q. Okay. And didn't drive by to go by 113 Queensgate?

- 1 A. No.
- 2 Q. Okay. So you also assisted in the search of Warren's,
- 3 like, person, right?
- 4 A. I believe so.
- 5 Q. Okay. And on his person, like, he has pockets and
- 6 things like that. You didn't find any marijuana, right?
- 7 A. No, sir.
- 8 Q. Or any cocaine?
- 9 A. No, sir.
- 10 Q. Or any plastic sandwich bags?
- 11 A. No, sir.
- 12 Q. Or scales?
- 13 A. No, sir.
- 14 Q. Or money?
- 15 A. No, sir.
- 16 Q. Okay. And you also assisted in the search of Warren's
- 17 car. Is that right?
- 18 A. Yes.
- 19 Q. Okay.
- 20 A. Well, I don't think it was his car. I think it was
- 21 the car that he was driving.
- 22 Q. Right. The car that he was driving, yeah.
- 23 A. Correct.
- 24 Q. And you assisted in the search of that?
- 25 A. Yes.

1 Q. Okay. Inside that car, you didn't find any drugs,
2 right?

3 A. No.

4 Q. And no plastic sandwich bags and things like that.

5 A. I don't recall ---

6 Q. Okay.

7 A. --- sandwich --

8 Q. And no money?

9 A. No, no money.

10 Q. No scales, right?

11 A. I don't believe so.

12 Q. Okay. And you were the one who actually ended up
13 seizing, going back to Carolyn, the three hundred and
14 twenty dollars from her purse, right, and putting that into
15 evidence?

16 A. What?

17 Q. The three hundred and twenty dollars?

18 A. Yes. It got -- it goes to the bank, not in evidence,
19 but yes it got seized.

20 Q. Right. Yeah. Seized, and then taken to the bank?

21 A. Yes.

22 Q. Okay. All right. So Eric Johnson, you saw Eric
23 Johnson later that day?

24 A. I don't recall.

25 Q. Okay.

1 A. To be honest with you.

2 Q. Did you or anybody in your unit see Eric Johnson later
3 that day?

4 A. I couldn't tell you off the top of my head.

5 Q. Okay. So Eric Johnson, from what you understand, is
6 the purpose that they -- I'm sorry, they being Detective
7 Vaughn, came to the residence, right?

8 A. I know he had an investigation involved in another
9 crime.

10 Q. Uh-huh.

11 A. And -- but the particulars of who was involved in that
12 name-wise, I don't exactly know.

13 Q. Okay. You know -- you are aware, I guess, that Eric
14 Johnson lives at that address as well?

15 A. I would take your word for that.

16 Q. Okay.

17 MR. RUDNICK: Your Honor, I have no further questions
18 at this time.

19 THE COURT: Thank you. Any re-direct, Mr. Fleming?

20 SOLICITOR PLEMING: No re-direct, your Honor.

21 THE COURT: Okay. Thank you. Is there any objection
22 to Lieutenant Clevenger being released?

23 SOLICITOR PLEMING: Well I would like for him to wait,
24 appear for our next break because I - a matter that I do
25 want to discuss with your Honor too when we have another

INVESTIGATOR STEPHEN RAMSEY: DIRECT BY SOLICITOR PLEMING

-233-

1 calls Carolyn Johnson.

2 MADAM CLERK: I need you to raise your right hand and
3 place your left on the Bible.

4 THE COURT: Okay. Mamam, good afternoon. If you
5 would just make yourself comfortable and I'm going to need
6 for you to speak very loudly because the microphones that
7 you see around the courtroom are not used to amplify.

8 MS. JOHNSON: Okay.

9 THE COURT: Thank you, ma'am. Please answer Solicitor
10 Fleming's questions.

11 Yes, sir.

12 SOLICITOR PLEMING: Thank you, your Honor.

13 (WHEREUPON, CAROLYN JOHNSON,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION

16 Carolyn JOHNSON BY SOLICITOR PLEMING:

17 Q. Good afternoon, Ms. Johnson. Will you please
18 introduce yourself to the jury by stating your full name?

19 A. Hi. My name is Carolyn Jeanette Johnson.

20 Q. Thank you, Ms. Johnson. Where are you from?

21 A. Lake Wylie, South Carolina.

22 Q. Okay. And where do you currently live?

23 A. 403 Belaire Circle.

24 Q. Okay. And is that where you were living on August
25 23rd of 2017?

1 A. Periodically, yes.

2 Q. Okay. And who owns the house at that location, 403
3 Belaire.

4 A. My mother and father, who are deceased.

5 Q. And when you were living there on August 23rd, was
6 there anybody else living at that residence, also?

7 A. Yes.

8 Q. Who else was living there?

9 A. My brother and Tremaine.

10 Q. Okay. Do you know Tremaine's full name?

11 A. Tremaine Duvant, I think.

12 Q. Okay. Are you related to Tremaine?

13 A. No, sir.

14 Q. How do you know him?

15 A. A friend of the family.

16 Q. And you said he was living there with you on August
17 23rd. How long had he been staying at 403 Belaire as of
18 August the 23rd, 2017?

19 A. Maybe three or four months.

20 Q. And how is it that he came to start living there?

21 A. He was going through some hardships, and he didn't
22 have a place to stay, and so, we just let him stay there
23 until he got back on his feet.

24 Q. Thank you. And without giving me the reason, do you
25 know why he didn't have anywhere else to stay?

1 A. No, sir.

2 Q. When he was living there --

3 SOLICITOR PLEMING: Beg the Court's indulgence.

4 (PAUSE.)

5 BY SOLICITOR PLEMING:

6 Q. And did Tremaine stay there every night?

7 A. I'm not sure. I was not always there.

8 Q. Okay. Do you see Tremaine in this courtroom today,
9 the man that lived at 403 Belaire with you in August of
10 2017?

11 A. Yes.

12 Q. Will you please point him out for the jury and
13 describe what he's wearing?

14 A. A black suit with a white shirt.

15 SOLICITOR PLEMING: For the record, the witness has
16 identified the defendant.

17 (WITNESS IDENTIFIES DEFENDANT TREMAINE DUVANT.)

18 BY SOLICITOR PLEMING:

19 Q. How many bedrooms are in that house at 403 Belaire?

20 A. Three.

21 Q. And was it just the three of you all living there?

22 A. Yeah, well, different people periodically, because we
23 have a large family.

24 Q. Okay. Did each of you all have your own separate
25 bedroom?

1 A. Yes, sir.

2 Q. And describe where your bedroom was located in the
3 house.

4 A. When you come in the mobile home and go to your left,
5 my bedroom was down -- all the way down to the left.

6 Q. And where was Eric Johnson's bedroom?

7 A. His was this first one to the right, going down the
8 hall to the left.

9 Q. And what's your relation to Mr. Johnson?

10 A. My brother.

11 Q. Okay. And where was Tremaine's bedroom located in the
12 home?

13 A. Down the hall to the right. When you come in the
14 trailer, you go to the right.

15 Q. Okay. Did you get along with Tremaine while he was
16 living there?

17 A. Yes.

18 Q. And did you know him to keep clothes at the house?

19 A. Yes.

20 Q. Did you know of anyone else, other than Tremaine, who
21 used his bedroom, or sleep in his bedroom?

22 A. No.

23 Q. Let's talk about what happened there on August the
24 23rd of last year. Do you recall a police detective coming
25 to your house early that morning, around 10:00 o'clock?

1 A. Yes, sir.

2 Q. Was it just one officer, or were there more than one?

3 A. It was two.

4 Q. How long had you been at the house when those officers
5 arrived?

6 A. Around ten, fifteen minutes.

7 Q. And where were you coming from?

8 A. My relatives' house down the street.

9 Q. And is that where you stayed the night before?

10 A. Yes.

11 Q. And if you stayed somewhere else the night before,
12 what was your reason for going back to 403 Belaire that
13 morning?

14 A. I had a funeral to attend that morning. I was going
15 to get some church clothes.

16 Q. Okay. And you say that you had been there for only
17 about ten or fifteen minutes when the detective arrived.

18 What did you do during that ten to fifteen minutes?

19 A. I smoked, and I was about to let my dog out.

20 Q. Okay. And what did you smoke?

21 A. Marijuana.

22 Q. Okay. Prior to coming over to the house that morning,
23 when was the last time that you had been there?

24 A. Probably five days, six days.

25 Q. Okay. And was your brother there that morning?

1 A. No, sir.

2 Q. And when you got back home, did you know if anyone
3 else was in the house?

4 A. No. I hadn't had a chance to walk through the house.
5 I had just got in, and went to the left to my room.

6 Q. Did you see anyone else in the house?

7 A. No.

8 Q. So after you had finished smoking, tell us what you
9 remember.

10 A. I was about to let the dog out, which was right beside
11 the door. I heard a knock on the door, and I said, who is
12 it. They said police. And I thought they was joking. And
13 so, then, I come to the door, and there was the police.

14 Q. Okay. And when you answered the door, what happened?

15 A. They were looking for my brother, who had, they say,
16 have had sexually assaulted a female.

17 Q. When they asked for your brother, what happened next?

18 A. When they told me -- asked me about my brother?

19 Q. Yeah. After they had asked you about your brother,
20 what -- what did they ask you?

21 A. Had I been smoking marijuana.

22 Q. And how did you respond?

23 A. Yes.

24 Q. And after you admitted that you were smoking
25 marijuana, what did you do; or what did they ask you?

1 A. Was there any more marijuana in the house.

2 Q. And how did you answer that question?

3 A. I told them yes.

4 Q. And after you had admitted to there being more
5 marijuana in the house, what happened?

6 A. After I admitted. We just had to sit down. They
7 ended up getting more cops and warrants.

8 Q. Okay. All right. So let's back up a little bit. So
9 after you admitted to there being marijuana, did you see or
10 -- did the officers come inside your house at that point?

11 A. Well, we stood outside for a few minutes, and then
12 that's when they went in, and they said they was going to
13 look, because I didn't know if someone was in the house or
14 not, and that's when they went and looked.

15 Q. Okay.

16 A. And I was still outside at the time.

17 Q. Okay. And when did you next see the officer after he
18 went in your house and you remained outside?

19 A. He came back out with Tremaine.

20 Q. Okay. And now, you all came back outside. Did you,
21 at any point, go back inside?

22 A. Yes, because it was hot outside, and we eventually
23 went and sat in the house while we waited on the warrants.

24 Q. Okay. Did they tell you that they were getting
25 warrants?

1 A. Yes.

2 Q. Once you went back into the living room, what did you
3 do?

4 A. I --

5 Q. And anybody else that was present?

6 A. Just officers just searching the house.

7 Q. Okay. Do you recall -- I remember you said a moment
8 ago that some more officers came over to the house. Do you
9 recall what those officers asked you, or what they said to
10 you once they arrived?

11 A. No, I do not.

12 Q. Do you recall anyone advising you of your
13 constitutional rights?

14 A. Yes.

15 Q. And do you -- and who else was present when that
16 happened?

17 A. When -- another police officer.

18 Q. Okay. Was Tremaine in the room at that time?

19 A. Yes.

20 Q. Did they advise -- did you see them advise Tremaine of
21 his rights as well?

22 A. Yes.

23 Q. After you and Tremaine had both been advised of your
24 rights, did Tremaine agree to answer any questions?

25 A. I didn't really pay any other attention. I was -- I

1 don't know if they asked him questions. I mean, I'm sure
2 they did, but I was not interpreting what they were saying.

3 Q. Okay. Did you sign anything after they had advised
4 you of your rights?

5 A. Yes.

6 Q. And did you see Tremaine sign anything?

7 A. I'm not sure.

8 Q. Okay. Did you hear them ask Tremaine anything after
9 that point?

10 A. Did he have any drugs.

11 Q. And how do he respond.

12 A. At first, he said no. And then, they said they was
13 going to have a search warrant, and that's when he led them
14 to where the drugs were.

15 Q. Do you remember what he said when he -- before he led
16 them to the drugs?

17 A. No.

18 Q. Where did they go when he led them to the drugs? Did
19 you see where they went?

20 A. To the bed -- to the bedroom to the right.

21 Q. Okay. And whose bedroom was that?

22 A. Tremaine's.

23 Q. Did you go with them, or did you stay in the living
24 room?

25 A. I stayed in the living room.

1 Q. And how long were they back in his room before they
2 returned to the living room?

3 A. I'm not really sure. It was a matter of minutes.

4 Q. Okay. Did you know that there was any drugs in
5 Tremaine's room?

6 A. No, sir.

7 Q. Did you -- did you know about a plastic container in
8 that room?

9 A. No.

10 Q. Do you know where -- you said a moment ago that
11 Tremaine had clothes in the house. Do you know where he
12 kept his clothes?

13 A. I would assume in that room.

14 SOLICITOR PLEMING: Beg the Court's indulgence for
15 just a moment.

16 THE COURT: Yes, sir.

17 BY SOLICITOR PLEMING:

18 Q. All right. After Tremaine and the other officers had
19 returned from his bedroom, did they ask you any other
20 questions?

21 A. No. I had nothing to say.

22 Q. Did you have cocaine yourself as well?

23 A. Yes.

24 Q. And did they find that cocaine?

25 A. Yes.

1 Q. Did they have to look for it, or did you show it to
2 them?

3 A. I showed them where the marijuana and -- well, it was
4 in my pocketbook, but I had some other that I showed them
5 where it was at.

6 Q. All right. Were you using cocaine at that time?

7 A. No.

8 Q. And why did you have cocaine in your possession?

9 A. A friend of mine had gotten -- her son had got killed
10 in a motorcycle accident, and his funeral was that day; and
11 she was wantin it.

12 Q. All right. Describe where your cocaine was that they
13 found.

14 A. In my purse.

15 Q. Okay. And what kind of purse was that?

16 A. A black purse.

17 Q. Okay.

18 SOLICITOR PLEMING: Beg the Court's indulgence for
19 just one moment.

20 (PAUSE.)

21 BY SOLICITOR PLEMING:

22 Q. I am showing you what's been previously introduced
23 into evidence as State's Exhibit No. 20.

24 Do you recognize what's depicted in this photograph?

25 A. Yes.

1 Q. And what is this?

2 A. My purse with cocaine.

3 Q. Thank you. I'm gonna also show you what's already
4 been marked as State's Exhibit No. 12.

5 Do you recognize any of the items in that photograph?

6 A. No.

7 Q. Okay. So, do you know where this photograph was
8 taken?

9 A. It's in my kitchen.

10 Q. Okay.

11 A. In our kitchen.

12 Q. Okay. But you said these aren't your items?

13 A. No.

14 Q. All right, Ms. Johnson, did you know of any digital
15 scales being in the house?

16 A. No, sir.

17 Q. After you had -- after they had collected the drugs
18 that were in your room, and had come back from Tremaine and
19 everything, and they had searched the whole house, what
20 happened to you and Tremaine?

21 A. We went to jail.

22 Q. Say again?

23 A. We went to jail.

24 Q. Okay. And what were you charged with?

25 A. Possession of marijuana and possession of cocaine.

1 Q. Okay. And were you charged with trafficking?

2 A. No, sir.

3 Q. And has your case gone to trial yet, or are your
4 charges still pending?

5 A. My charges are still pending.

6 Q. And prior to this day, did you -- was there another
7 prosecutor that was handling your case before -- before I
8 got your case?

9 A. Yes, sir.

10 Q. And were there any plea offers made to you by that
11 prosecutor?

12 A. Yes, sir.

13 Q. Okay. And what was that plea offer?

14 A. Seven years.

15 Q. Okay. And can you tell the jury what happened once I
16 received the case? Have I offered you any offers?

17 A. Oh. No, sir. No.

18 Q. And so, right now, do you have any plea offer
19 available to you?

20 A. No, sir.

21 Q. Has anyone currently promised you anything in exchange
22 for your testimony today?

23 A. No, sir.

24 Q. And is everything that you've said today the truth?

25 A. Yes, sir.

1 Q. And why have you chosen to come here and testify
2 today?

3 A. Because it's the truth.

4 Q. Okay.

5 SOLICITOR PLEMING: I have no further questions, and
6 please answer any questions Mr. Rudnick might have for you.

7 And thank you, Ms. Johnson.

8 A. You're welcome.

9 THE COURT: Yes, ma'am, if you'll stay put; and let's
10 see if Mr. Rudnick has any questions for you.

11 MR. RUDNICK: Yes, your Honor. Briefly I beg the
12 Court's indulgence.

13 THE COURT: Yes, sir. Take your time.

14 MR. RUDNICK: Thank you.

15 DIRECT EXAMINATION

16 Carolyn JOHNSON BY MR. RUDNICK:

17 Q. All right. Afternoon.

18 A. Hi.

19 Q. So you currently live at 403 Belaire Circle in Clover,
20 right?

21 A. Yes, sir.

22 Q. And that's the same address that got searched back on
23 August 23rd, right?

24 A. Yes.

25 Q. And that property's actually been in your family for

1 awhile, right? It was your mom's and dad's, correct?

2 A. Yes, sir.

3 Q. And then, they passed away?

4 A. Yes, sir.

5 Q. And now, you actually have an ownership interest in
6 the house, right?

7 A. Yes.

8 Q. You pay taxes on it and stuff like that?

9 A. No. Everything is still in my parents' name.

10 Q. But you got to pay the property taxes, right?

11 A. They were exempt because they was of age.

12 Q. Okay. So you've never paid property taxes on your
13 house?

14 A. No.

15 Q. Okay. So at the time your brother, Eric Anthony
16 Johnson, was living at 403 Belaire Circle, correct?

17 A. Yes, sir.

18 Q. And you testified on direct that you were kind of
19 living there. Is that right?

20 A. Right.

21 Q. Okay. But you had a dog there, right?

22 A. It wasn't my dog.

23 Q. It wasn't your dog?

24 A. No.

25 Q. Okay. So -- but you went and let the dog out when you

1 got there?

2 A. Yes.

3 Q. Okay. But you didn't really live there.

4 A. I -- my clothes and everything is there.

5 Q. Okay. So all your stuff is there.

6 A. Uh-huh. But I'm --

7 Q. But you don't live there.

8 A. I mean, I live there, but I -- I'm here and there.

9 I'm single and, you know.

10 Q. Right. You're going to different places. I
11 understand.

12 A. Yes.

13 Q. Now, you mentioned also on direct there were people
14 moving in and out of the residence, right?

15 A. Uh-huh.

16 Q. It was -- is that right?

17 A. Yes, sir.

18 Q. Okay. And that's family members, friends?

19 A. Family members, friends.

20 Q. Okay. And that would include, you know, people like
21 your son, or other people like that coming in and out,
22 right?

23 A. Yes.

24 Q. And you have a bedroom there, and then Eric Johnson,
25 your brother, has a bedroom there, right?

1 A. Uh-huh.

2 Q. Okay. And so, Detective Vaughn came to your house at
3 -- kind of early in the morning on August 23rd, right?

4 A. Uh-huh.

5 Q. Is that right?

6 A. Yes.

7 THE COURT: Ma'am, and please don't think I'm being
8 rude or bossy. I just need for you to answer yes or no, if
9 that's your intent, so our court reporter can make a clean
10 record.

11 A. Okay.

12 THE COURT: Thank you, ma'am.

13 Yes, sir.

14 SOLICITOR PLEMING: Thank you, your Honor.

15 Q. So you had just come back to your house, right?

16 A. Yes.

17 Q. Because you were going to be there for, like, ten or
18 fifteen minutes, right?

19 A. Yes.

20 Q. And you smoked marijuana, correct?

21 A. Right.

22 Q. And then, it happened to be between that fifteen --
23 ten to fifteen minutes Detective Vaughn happens to come to
24 the house, right?

25 A. Uh-huh.

1 Q. Is that right?

2 A. Right.

3 Q. Okay. And that's while you were there?

4 A. Yes.

5 Q. So it was just kind of a coincidence?

6 A. Right.

7 Q. All right. So you tell Detective Vaughn, or any other
8 detectives, that you had marijuana in your room. Is that
9 correct?

10 A. Right.

11 Q. You said that you had marijuana in a plastic sandwich
12 bag next to the night stand, correct?

13 A. Right.

14 Q. Okay. And that was, like -- that was actually kind of
15 on the floor, next to the night stand, right? It wasn't,
16 like, actually on the night stand?

17 A. It was on the night stand.

18 Q. Oh, okay. So the picture that's in evidence, that's
19 not -- it's on the night stand?

20 A. Yes.

21 Q. Okay. So they found the bag of marijuana, and they
22 also started kind of collecting different roaches and
23 things like that, and roaches being marijuana ci -- burnt
24 ends of marijuana cigarettes, correct?

25 A. Right.

1 Q. And they collected it all together.

2 A. Yes.

3 Q. And they ended up charging you with possessing all of
4 the marijuana, right? The marijuana that they collected,
5 and the marijuana the found in your room.

6 A. Yes, sir.

7 Q. Okay. And they also charged you with the cocaine that
8 they found in your purse. Is that correct?

9 A. Yes, sir.

10 Q. And that was about a gram of cocaine, correct?

11 A. Yes, sir.

12 Q. Okay. Now, I'm going to try to write this, and if you
13 can't see -- and I'm going to try to move this so it might
14 be easier to see -- that you were originally charged, or
15 you were charged with possession with intent to distribute
16 marijuana. Is that correct?

17 A. I really didn't read the charges. I know I'm charged
18 with possession of marijuana and cocaine.

19 Q. So you have an attorney, right?

20 A. Yes.

21 Q. And you've talked to your attorney about your case.

22 A. Yes.

23 Q. And you're not sure what you're charged with.

24 A. I know it's possession of marijuana and cocaine within
25 a school district.

1 Q. Okay. So it's possession with intent to distribute
2 marijuana, right?

3 A. Right.

4 Q. Okay. And I'm just going to say possession with
5 intent to distribute, and I'm going to write PWID. That
6 just means possession with intent to distribute. Is that
7 okay?

8 A. Yes, sir.

9 Q. Okay. So it's possession with intent to distribute
10 marijuana. And I'm not going to write the whole word.
11 That carries up to five years in prison. Is that right?

12 A. Yes, sir.

13 Q. Okay. And five years. Now, possession with intent to
14 distribute marijuana within one-half mile of a school
15 carries up to ten years, right?

16 A. Correct.

17 Q. Okay. And not only that, possession with intent to
18 distribute marijuana within one-half mile of a school is
19 also a strike, right?

20 A. Yes.

21 Q. And strike means that, in South Carolina, you have
22 three strikes, right?

23 A. Right.

24 Q. And getting one of those strikes is one of those
25 strikes against your record, right?

1 A. Correct.

2 Q. Okay. Now, possession, you were also charged with
3 possession with intent to distribute cocaine. Is that
4 correct?

5 A. Correct.

6 Q. Okay. That carries up to fifteen years in prison,
7 right?

8 A. Correct.

9 Q. And lastly, you were charged with possession with
10 intent to distribute cocaine within one-half mile of a
11 school. Is that right?

12 A. Correct.

13 Q. Okay. And that carries up to ten years in prison as
14 well, correct?

15 A. Correct.

16 Q. And that also is a strike, right?

17 A. Correct.

18 Q. Okay. Now, you had a meeting with your attorney,
19 right?

20 A. Yes, sir.

21 Q. And your attorney is actually still -- is actually
22 sitting in the courtroom today, correct?

23 A. Yes, sir.

24 Q. Okay. You had a meeting with your attorney, and with
25 the prosecutor in this case, right?

1 A. Yes.

2 Q. And the prosecutor in this case is the same prosecutor
3 in your case, right?

4 A. Yes.

5 Q. Okay. Now, we've heard on direct examination that you
6 have no deal right now, right?

7 A. Correct.

8 Q. But you were offered seven years in prison, right?

9 A. Yes.

10 Q. Okay. Now, you're fifty-one years old. Is that
11 right?

12 A. Yes, sir.

13 Q. So, you're fifty-one years old, and altogether, the
14 charges that you're looking at, carry up to forty years in
15 jail. Is that right?

16 A. Yes, sir.

17 Q. Okay. Now, if you got that sentence, you would have
18 to spend a pretty decent amount of that time in jail if you
19 were convicted and got a forty-year sentence, right?

20 A. Correct.

21 Q. Okay. And it's completely normal, obviously, you
22 don't want to go to jail, right?

23 A. Correct.

24 Q. They tell you when to go to sleep, right?

25 A. Correct.

1 Q. They tell you when to wake up, right?

2 A. Correct.

3 Q. They tell you when you can eat, right?

4 A. Correct.

5 Q. You're away from family.

6 A. Yes.

7 Q. Okay. So its safe to say that you have a hope to get
8 something better than forty years, right? And you hope to
9 not have to go to jail, correct?

10 A. Correct.

11 Q. In fact, you know that they had a seven-year offer on
12 the table. But now, that's off the table, right?

13 A. Right.

14 Q. So instead of being exposed to seven years --

15 A. Excuse me?

16 Q. I'm sorry. Instead of looking at seven years in jail,
17 now you're looking at forty years, right?

18 A. Yes.

19 Q. Okay. So the day that this happened, on August 23,
20 2017, you never wrote any statement to police, right?

21 Didn't write one out?

22 A. No.

23 Q. Okay. And they didn't write one for you, like, typed
24 up, and you didn't sign one, right?

25 A. No.

1 Q. You never gave, like, an audio interview or anything
2 like that, any recorded interview?

3 A. No.

4 Q. And you never gave a video interview, either, right?

5 A. No, I did not.

6 Q. Okay. So, in fact, you didn't give any type of
7 statement until you spoke with the prosecutor about your
8 testimony today, right?

9 A. Excuse me? Could you rephrase?

10 Q. The first time -- I'm sorry. I'll rephrase it. The
11 first time that you gave a statement, or to law enforcement
12 or the State, I should say, was when you spoke with the
13 prosecutor, right, in your case?

14 A. Yes.

15 Q. And that was about the testimony that you would give
16 today, right?

17 A. Yes.

18 Q. And at a meeting you had your attorney, right?

19 A. Yes.

20 Q. Okay. And you sat down with the prosecutor, right?

21 A. Yes.

22 Q. Same prosecutor that's prosecuting your case.

23 A. Yes.

24 Q. And you talked about what was -- what your testimony
25 would be today, right?

1 A. Yes.

2 Q. And back in August of last year, when you never gave a
3 statement, you never said that you saw Warren with any
4 drugs, right?

5 A. Correct.

6 Q. You never gave a statement that he lived at your
7 house, right?

8 A. Correct.

9 Q. You never gave a statement that, sometimes stayed at
10 your house, right?

11 A. Right.

12 Q. And you never gave a statement that his clothes were
13 in one of your bedrooms, right?

14 A. Correct.

15 Q. And you never gave a statement that a tote box or
16 anything inside your house was his, right?

17 A. Right.

18 Q. You never gave a statement that any of the scales and
19 things that were inside your house were his, correct?

20 A. Correct.

21 Q. Or the Pyrex container that they found in your kitchen
22 cabinet was his, right?

23 A. Right.

24 Q. And the scale next to the sink, right?

25 A. Right.

1 Q. The heat-sealer vacuum thing that was on the floor,
2 right?

3 A. Right.

4 Q. Or the money counter that was on your living room
5 floor, right?

6 A. Right.

7 Q. So you gave no statement at any time in August, right?

8 A. Correct.

9 Q. September of last year, right?

10 A. Right.

11 Q. October of last year?

12 A. Correct.

13 Q. December of last year?

14 A. Correct.

15 Q. January this year, right?

16 A. Correct.

17 Q. February of this year?

18 A. Correct.

19 Q. March of this year?

20 A. I'm not sure.

21 Q. But you didn't give a statement in March?

22 A. No, I did not.

23 Q. Okay. And then, maybe in April is when you spoke with
24 the State, correct?

25 A. Yes.

1 Q. Okay. So that statement, or I guess the conversation
2 that you had with the State, this meeting that you had with
3 your attorney, and the prosecutor in your case, and in this
4 case, right?

5 A. Yes.

6 Q. And that was the meeting you came out with some type
7 of hope that you wouldn't have to go to jail, right?

8 A. Correct.

9 Q. Okay. And what you decided in that meeting was that
10 you testify today, right?

11 A. Correct.

12 Q. And give a statement that you didn't give back then,
13 right?

14 A. Right.

15 Q. Okay. And just briefly, the law enforcement officer,
16 he took money from your purse, right?

17 A. Correct.

18 Q. Three hundred and twenty dollars?

19 A. Yes.

20 Q. And you actually entered into an agreement with the
21 Investigator Ramsey, right?

22 A. Yes.

23 Q. And you entered into what's called a consent order for
24 forfeiture, right?

25 A. Yes.

1 Q. And you signed that agreement, right?

2 A. Yes.

3 Q. And the basis for that seizure was that the police
4 believed that money came from drug sales, right?

5 A. Correct.

6 Q. Okay. And you signed it over, right?

7 A. Yes.

8 Q. And you gave up the money, correct?

9 A. Yes.

10 Q. Okay.

11 MR. RUDNICK: I have no further questions at this
12 time, your Honor.

13 THE COURT: Thank you. All right.

14 SOLICITOR PLEMING, any re-direct?

15 SOLICITOR PLEMING: Yes, your Honor.

16 REDIRECT EXAMINATION

17 CAROLYN JOHNSON BY SOLICITOR PLEMING:

18 Q. Ms. Johnson, let's start with the most recent things
19 that Mr. Rudnick asked you about, work backwards. That
20 forfeiture consent that you signed, when did you sign that?

21 A. Excuse me?

22 Q. When did you sign that consent forfeiture?

23 A. What consent forfeiture?

24 Q. The three hundred dollars ---

25 A. Oh. Okay. The day that --

1 Q. --- When did you agree to let them keep it?

2 A. Oh, when I had got out of jail, was it? Yes, when I
3 bonded out, and I had to sign it over.

4 Q. Okay. And that was how long ago?

5 A. September -- I mean, the day after -- I got out the
6 day after I was arrested.

7 Q. Okay. And when -- how long ago did you decide that
8 you would be willing to testify as a witness in this case?

9 A. I'm not sure. I just made up my mind that it was the
10 right thing to do.

11 Q. And but that was -- was that months ago?

12 A. Yes.

13 Q. Okay. But you didn't give a statement when you
14 decided that you would agree to testify truthfully, did
15 you?

16 A. No.

17 Q. Okay. And that day, at the house at 403 Belaire, you
18 did talk to the police there, correct?

19 A. Yes.

20 Q. And you did show them to where your drugs were, right?

21 A. Yes.

22 Q. Okay. So would you consider that giving a statement
23 to the police?

24 A. Yeah, I guess it would be.

25 Q. Did you ever sign any written statements since that

1 time?

2 A. No.

3 Q. Did I ask you to sign any written statements?

4 A. No.

5 Q. I just -- What did I do when we met with your lawyer a
6 few weeks ago?

7 A. Prepared me for this.

8 Q. Did I just -- did I ask you questions?

9 A. Yes.

10 MR. RUDNICK: Your Honor, could we approach briefly
11 with this line?

12 THE COURT: Counselor.

13 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
14 THE JURY, AT 04:27 P.M.)

15 THE COURT: Please continue, Mr. Fleming.

16 SOLICITOR PLEMING: Thank you, your Honor.

17 Q. Let me ask you about -- And during the direct
18 examination, Mr. Rudnick asked you about the time that you
19 were facing with each of the charges that you received that
20 day. And do those charges, based on what your attorney --
21 how she's advised you regarding the charges, are you
22 guaranteed to receive that much time if you're convicted of
23 those charges?

24 A. No.

25 Q. And do you know if there's any mandatory minimum time

1 that you would receive if you pled guilty or were convicted
2 on any of those charges?

3 A. No.

4 Q. Did you know of anyone else that was staying there at
5 the house on Belaire Circle in late August of 2017, other
6 than you, Eric Johnson, and the Defendant?

7 A. No.

8 SOLICITOR PLEMING: Your Honor, that concludes my
9 questions for this witness.

10 MR. RUDNICK: Your Honor, can I have a brief re-cross?
11 Really brief.

12 THE COURT: It's highly unusual.

13 Counsel, what is your position about a re-cross?

14 SOLICITOR PLEMING: I would prefer that he not be able
15 to.

16 THE COURT: Okay.

17 MR. RUDNICK: It really is one question, if your Honor
18 would allow it.

19 THE COURT: I will allow it, but I will allow Counsel
20 to follow up, if it is anything that he feels he needs to,
21 out of fairness to both of you.

22 SOLICITOR PLEMING: Thank you, your Honor.

23 MR. RUDNICK: Thank you, your Honor.

24 THE COURT: Yes, sir.

25 RE-CROSS EXAMINATION

1 CAROLYN JOHNSON BY MR. RUDNICK:

2 Q. Ms. Johnson, you don't know what a judge will do at
3 sentencing, right?

4 A. No, I do not.

5 Q. Okay.

6 MR. RUDNICK: No further questions, your Honor.

7 THE COURT: Okay. Any followup on that, Mr. Pleming?

8 REDIRECT EXAMINATION

9 CAROLYN JOHNSON BY SOLICITOR PLEMING:

10 Q. As far as you know, you're facing as much time now as
11 you were when you were first charged. Is that correct?

12 A. Yes, sir.

13 Q. Thank you.

14 THE COURT: Okay. All right. Counsel, can y'all
15 approach just one second?

16 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
17 THE JURY, AT 4:31 PM.)

18 THE COURT: All right. Counsel, is there any
19 objection to Ms. Johnson being released?

20 SOLICITOR PLEMING: No, ma'am.

21 THE COURT: Counsel?

22 MR. RUDNICK: No, your Honor.

23 THE COURT: All right. Ms. Johnson, ma'am, you are
24 free to go or you're welcome to stay. Its your wish
25 whatever you wish.

INVESTIGATOR STEPHEN RAMSEY: DIRECT BY SOLICITOR PLEMING

-265-

1 MS. JOHNSON: Thank you.

2 THE COURT: Watch your step.

3 (WITNESS LEAVES WITNESS STAND.)

4 SOLICITOR PLEMING: Your Honor, at this time the State
5 calls Jay Adams.

6 THE COURT: Yes, sir, if you'll come forward please.

7 You can stop right there.

8 MADAM CLERK: Raise your right hand, place your left
9 on the Bible.

10 (WHEREUPON, JAY ADAMS, BEING FIRST
11 CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 THE COURT: Okay, sir, if you'll please take the
13 witness stand. Make yourself comfortable, sir.

14 All right, Mr. Pleming.

15 SOLICITOR PLEMING: Thank you, your HOnor.

16 DIRECT EXAMINATION

17 JAY ADAMS BY SOLICITOR PLEMING:

18 Q. Good afternoon, sir. Will you please state your name
19 for the jury?

20 A. John Jay Adams.

21 Q. Mr. Adams, what do you do for a living?

22 A. Bail bondsman.

23 Q. And for those on the jury that may not be real
24 familiar with the criminal justice system, what does your
25 job entail?

1 A. I get 'em out and make sure they appear in court on
2 their court dates.

3 Q. Okay. And what happens if, potentially, if you're
4 unable to pre -- if one of your clients is unable to -- or
5 does -- fails to appear for court?

6 A. I either have to find -- locate 'em and find 'em, or
7 pay their bond, whatever that amount is. I have so many
8 days to locate 'em.

9 Q. Okay. And if you're unable to locate them, what can
10 happen?

11 A. Then the Court could order me to pay the bond.

12 Q. Okay. And do you know the defendant in this case,
13 Tremaine Duvant, or Warren Tremaine Duvant?

14 A. I know I got him out. I don't know him personally.

15 Q. Okay. But he is one of your ---

16 A. Right.

17 Q. --- defendants, one of your clients?

18 A. Yes.

19 THE COURT: And, sir, don't be offended, the acoustics
20 in this room are not very good and the microphones are not
21 amplifying. If you could speak very very loud.

22 A. Okay.

23 THE COURT: Okay. Thank you, sir.

24 Yes, sir. Sorry to interrupt.

25 BY SOLICITOR PLEMING:

1 Q. And so, in your line of work, is it important that you
2 be able to reach your clients, if necessary?

3 A. Yes.

4 Q. And so, do you have contact information for every one
5 of your clients?

6 A. Yes.

7 Q. And do you have con -- do you have -- receive contact
8 information for Mr. Duvant?

9 A. Yes.

10 Q. And what address do you have on file for him?

11 MR. RUDNICK: Objection, your Honor. May we approach?

12 THE COURT: Yes.

13 (SIDE BAR, OFF THE RECORD, OUT OF THE HEARING OF THE
14 JURY AT 4:35 PM.)

15 SOLICITOR PLEMING: At this time I'd like to mark a
16 form as State's Exhibit No. 31.

17 (WHEREUPON, STATE'S EXHIBIT NO. 31, MARKED FOR
18 IDENTIFICATION.)

19 BY SOLICITOR PLEMING:

20 Q. All right. Mr. Duvant -- excuse me, Mr. Adams, I've
21 just shown Defense Counsel what we just marked as State's
22 Exhibit No. 31. I'd like to show it to you now. And can
23 you tell me if you recognize that document?

24 A. Yes, sir.

25 Q. And what is it?

1 A. It's the back of the bond that I posted for Mr.
2 Duvant.

3 Q. Okay. And did you sign that document?

4 A. I did.

5 Q. And where did you receive that?

6 A. At the bond court.

7 Q. Okay. And did you --

8 SOLICITOR PLEMING: Beg the Court's indulgence for
9 just a moment.

10 (PAUSE.)

11 BY SOLICITOR PLEMING:

12 Q. All right, Mr. Adams. Explain for the jury, can you
13 summarize the information that you received from that
14 document?

15 A. On the back of the document it has his address, date
16 of -- not date of birth -- phone number, and Social
17 Security Number that I -- that the jail has that the judge,
18 bond court judge has that he puts on the form, that I have
19 to sign and post, and that's where I got his address and
20 phone number from.

21 Q. Okay. How many signatures are on that document?

22 A. Three.

23 Q. And whose are they?

24 A. Mine, Judge Malfrus, and the defendant, Warren Duvant.

25 Q. Okay. And where is the defendant's signature in

1 relation to his address on that form?

2 A. Right-hand side.

3 Q. Of?

4 A. Of the address. Right beside it.

5 Q. Okay. All right. And what do you rely upon for
6 contact information for your clients?

7 A. Address, phone number, Social Security Number.

8 Q. And if an address were change -- were to change, or a
9 phone number were to change, whose responsibility is it to
10 update you on those things?

11 A. The defendant.

12 Q. Okay. What address is listed for Mr. Duvant on this
13 bond form?

14 A. 403 Belaire -- Belaire Circle, Clover, South Carolina.

15 Q. Thank you.

16 SOLICITOR PLEMING: I have no further questions.

17 THE COURT: Okay. Thank you.

18 Mr. Adams, please answer Mr. Rudnick's questions if he
19 has any.

20 MR. RUDNICK: Thank you, your Honor, may it please the
21 Court.

22 CROSS-EXAMINATION

23 JAY ADAMS BY MR. RUDNICK:

24 Q. Afternoon.

25 A. Hey.

1 Q. So you have the bond paperwork in your hand. Is that
2 right?

3 A. Uh-huh.

4 Q. All right. So this bond paperwork has the address
5 right there, right? And on -- is that right?

6 A. Yes, sir.

7 Q. Okay. And on direct examination, you mentioned that
8 the address was what they have on at the jail, right?

9 A. Right.

10 Q. And it's just -- it's -- this particular address is
11 typed on there, correct?

12 A. Correct.

13 Q. And you didn't type it on there, right?

14 A. No, sir.

15 Q. And Warren didn't type it on there, right?

16 A. No, sir.

17 Q. It's just generated by the jail, whatever address it
18 is that they have, right?

19 A. Correct.

20 Q. Okay. And you mentioned on direct that you bond a lot
21 of people out, right?

22 A. Yes, sir.

23 Q. And you don't have any personal relationship to
24 Warren, right?

25 A. No, sir.

1 Q. You don't know him, right?

2 A. No, sir.

3 Q. Okay. And the -- After he signed that form, he was
4 able to be released because you signed his bond, right?

5 A. Correct.

6 Q. Okay. And the address that was typed on here, and
7 I'll go back to it, is kind of the same font that types in,
8 like, your bond information and stuff like that, right?

9 A. Correct.

10 Q. And it's, like, the same -- on the front, where it has
11 the actual bond amount, right?

12 A. Correct.

13 Q. Okay.

14 MR. RUDNICK: I have no further questions at this
15 time. Thank you.

16 THE COURT: Thank you, sir.

17 All right, Mr. Fleming, any redirect?

18 SOLICITOR PLEMING: No, ma'am, your Honor.

19 THE COURT: Okay. Does anybody object if Mr. Adams is
20 released?

21 SOLICITOR PLEMING: No objection from the State, your
22 Honor.

23 MR. RUDNICK: None from the Defense, your Honor.

24 THE COURT: Thank you, sir, you're free to go.

25 (WITNESS LEAVES WITNESS STAND.)

INVESTIGATOR STEPHEN RAMSEY: DIRECT BY SOLICITOR PLEMING

-285-

1 Q. Good morning, Lieutenant Clevenger.

2 A. Good morning.

3 Q. Yesterday, when you testified, we labeled one of the
4 bags that was contained in State's Exhibit No. 29. I would
5 like, at this time, for you to take hold of State's Exhibit
6 No. 29.

7 Actually, before we do that. I'm showing you State's
8 Exhibit No. 30, which was marked for identification
9 yesterday.

10 A. Uh-huh.

11 Q. Which you pulled from State's Exhibit No. 29. Let me
12 ask you this, for clarification. State's Exhibit No. 30,
13 does that contain the drugs that were found in Ms.
14 Johnson's purse, or in the room with the large plastic tote
15 container?

16 A. No.

17 Q. Which of those -- Where did you collect that
18 container?

19 A. If you'd give me a second.

20 I'm trying to figure out how to read the numbers for
21 the bags that look identical. They both had cocaine in
22 'em, and from looking at this on here, the set of numbers
23 that are on the bag, I can't -- I -- I'm trying to find the
24 numbers that identify which bag they came from. They look
25 -- they're both plastic baggies. So if you'd give me a

1 second.

2 Q. Okay.

3 (PAUSE AT 10:53 A.M.)

4 A. Okay. Sorry. It's indicated that, on the main bag
5 that I originally wrote on when I placed it into evidence,
6 that this bag is correlated with this bag. So this is, in
7 fact, the bag that had the cocaine in it from the bedroom.

8 Q. From which bedroom?

9 A. Mr. Duvant's bedroom.

10 Q. Okay. And so, you collected a quantity of cocaine
11 from how many bedrooms in that house?

12 A. Two bedrooms.

13 Q. Okay. And those two quantities of cocaine, one of
14 them was -- was one of them larger than the other?

15 A. Yes. Significantly.

16 Q. Okay. And from which bedroom did you collect the
17 larger quantity of cocaine?

18 A. The bedroom on the right, going into the front door,
19 where I found Mr. Duvant's ID, and where he took us to and
20 showed us the cocaine.

21 Q. Thank you. And how did -- When you deposited the
22 larger quantity of cocaine into an evidence bag, how did
23 you mark that evidence bag to distinguish it from the other
24 evidence bags?

25 A. Okay. So we have these Ziplock-style baggies that we

1 use in the drug unit. We generally take the suspect's
2 drugs, and if they are already in a bag, then we put them
3 inside our bag. This bag with the cocaine and the plastic
4 bag it was originally in, when we saw it and took pictures
5 of it, it's then placed in this bag and sealed. This bag
6 is just closed shut. There's no way to actually put a seal
7 on it without putting tape on it.

8 This bag is sealed at the top, with the initial and
9 the date that I sealed it up. Undoubtedly, when it went to
10 SLED, they break it down, and they put the cocaine in
11 another separate bag, and this bag was in the larger bag.
12 I'm sorry for the confusion. It took me just a minute to
13 figure out where the numbering system that correlates --
14 what bag come out of which bag, so.

15 Q. And so, are there numbers placed on the smaller -- the
16 smallest bag that the cocaine is in?

17 A. Yes.

18 Q. That match the numbers on the Best pack bag that it
19 was placed in?

20 A. Yes. If you notice right here, on this bag, there's
21 a number, and it correlates with the number that is
22 handwritten on this bag.

23 Q. Okay. Thank you. Thank you, Lieutenant Clevenger. I
24 have no further questions.

25 A. Yes, sir.

1 MR. RUDNICK: Thank you, your Honor. May it please
2 the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 LIEUTENANT HEATH CLEVINGER BY MR. RUDNICK:

6 Q. So, you spent a little bit of time there trying to
7 figure out which bag came from what. Is that right?

8 A. Yes, sir.

9 Q. And it -- because you were trying to figure out the
10 number system that you had on the bag, right?

11 A. That SLED used on the bag, correct.

12 Q. Right. And so, you have no independent memory of
13 being able to put in the bag and things like that, right?
14 Like, you just -- you're basing it off of what you wrote on
15 the bag at the time, correct?

16 A. Correct.

17 Q. Okay.

18 MR. RUDNICK: No further questions, your Honor.

19 THE COURT: Thank you.

20 SOLICITOR PLEMING: Your Honor, if I may, just one
21 question.

22 At this time, I would like to mark that bag that you
23 identified as the larger quantity, which you obtained from
24 the room in which the defendant's ID was found. And I'd
25 like to mark that as State's Exhibit NO. 31.

1 MR. RUDNICK: Your Honor, we would object, and renew
2 all previous objections with regard to that bag. And if we
3 need to put the basis again on the record, we can. But I
4 do renew -- I do object, and renew all previous objections.

5 THE COURT: Counsel. Members of the jury, I need for
6 you to go to the jury room, please.

7 (JURY EXITS COURTROOM AT 10:57 AM.)

8 THE COURT: Okay. Is there anything else that either
9 one of you would like to say right now, on the record, with
10 regard to the method that that evidence has been offered?

11 SOLICITOR PLEMING: Well, I will -- What I will ask to
12 do is mark it at this point, and we'll be, of course,
13 trying -- offering it into evidence at the next witness.

14 And just to clarify, I said 31. We already have 31
15 exhibits, it needs to be marked as State's Exhibit No. 32.

16 THE COURT: Counselor.

17 MR. RUDNICK: Thank you, your Honor. May I approach
18 the bag that was actually just marked because that was
19 unclear to me what, really, we were talking about.

20 THE COURT: Yes, sir.

21 MR. RUDNICK: Is that the one?

22 LIEUTENANT HEATH CLEVINGER: Which one?

23 MR. RUDNICK: The cocaine?

24 LIEUTENANT CLEVINGER: Which bag? We've got a ton of
25 bags.

1 MR. RUDNICK: Is that -- which one's going to be 32?

2 MADAM COURT REPORTER: He's got it.

3 MR. RUDNICK: So, that's 32?

4 LIEUTENANT CLEVENGER: Right. And it took me a second
5 to find the corresponding number.

6 MR. RUDNICK: Okay.

7 LIEUTENANT CLEVENGER: That's -- that was -- that was
8 the issue.

9 MR. RUDNICK: Okay. Judge, that does not look like,
10 and I don't think it is, the 14 grams of marijuana that's
11 at issue in this case; or it could be. I'm not certain if
12 that -- is that the one -- and maybe the Prosecution can
13 kind of tell me.

14 SOLICITOR PLEMING: Well --

15 MR. RUDNICK: Is that actually from the room?

16 SOLICITOR PLEMING: Is there -- in State's Exhibit No.
17 29, are there any other bags of cocaine?

18 LIEUTENANT CLEVENGER: There was the bag for cocaine
19 for Ms. Johnson. And there were bags for marijuana. And
20 here -- there is another small plastic bag that appears to
21 have had marijuana in it, and it matches to, number-wise --

22 SOLICITOR PLEMING: Would you like to look at State's
23 Exhibit N. 29?, Counsel?

24 LIEUTENANT CLEVENGER: To -- to other marijuana.

25 SOLICITOR PLEMING: If we -- if you could hand us

1 State's Exhibit NO. 29, the larger bag.

2 MR. RUDNICK: Well, that's obviously it.

3 SOLICITOR PLEMING: Well, that's -- yeah. Why is that
4 --

5 LIEUTENANT CLEVINGER: Do what?

6 SOLICITOR PLEMING: What is that? Hold on.

7 MR. RUDNICK: That's --

8 SOLICITOR PLEMING: Which bag did this -- where did
9 this come from?

10 LIEUTENANT CLEVINGER: That's SLED's bag.

11 SOLICITOR PLEMING: No. I know, but it all came from
12 SLED's bag.

13 LIEUTENANT CLEVINGER: No, no. What I'm saying, we
14 didn't put the cocaine in that plastic bag.

15 SOLICITOR PLEMING: I'm aware of that, SLED did. This
16 is SLED's bag.

17 LIEUTENANT CLEVINGER: Correct.

18 SOLICITOR PLEMING: But --

19 LIEUTENANT CLEVINGER: No, I'm talking about --
20 Can I hold that?

21 SOLICITOR PLEMING: Yes.

22 LIEUTENANT CLEVINGER: You're talking specifically
23 about this bag.

24 SOLICITOR PLEMING: Yes.

25 LIEUTENANT CLEVINGER: This is SLED's bag. This is

1 not our bag, because it is not marked DEU.

2 MR. RUDNICK: Judge, I guess, if I may?

3 THE COURT: Counsel.

4 LIEUTENANT CLEVINGER: And you were asking me about
5 that bag that I got out yesterday, so.

6 SOLICITOR PLEMING: Well, what I should've done, I
7 guess, is asked you if you can identify, in State's Exhibit
8 No. 29, the quanti -- the cocaine that you pulled from
9 that.

10 THE COURT: Let's -- okay. Why don't I talk to
11 Counsel for a moment in chambers. Okay.

12 (COURT IN RECESS AT 11:02/IN CHAMBERS CONFERENCE, OFF
13 THE RECORD, AT 11:02 AM.)

14 (COURT BACK IN SESSION AT 11:10 AM.)

15 THE COURT: Okay. I think we do need for the jury to
16 come back in at this time, if we could have the jury.

17 Oh, wait one second.

18 MR. RUDNICK: I think Heath and the Solicitor is
19 outside.

20 THE COURT: But I think don't we need to put that on
21 the record with the jury.

22 SOLICITOR PLEMING: Well I would just like to withdraw
23 my request to mark it which I don't think it has to be done
24 in front of the jury. Its not - You know, evidence can be
25 premarked and be marked at any time. I don't think that's

1 an issue that the jury needs to . . .

2 MR. RUDNICK: Your Honor, can I have two or thirty
3 seconds to just, my supervisor I guess to make sure?

4 THE COURT: Yes, sir.

5 (PAUSE.)

6 MR. RUDNICK: Your Honor, I have no problem with him
7 withdrawing the 32. Thank you.

8 THE COURT: Okay. But again, since that was done in
9 front of the jury, and he made a request to put it in ---

10 MR. RUDNICK: Right.

11 THE COURT: --- to mark it for ID, I will need to put
12 it on the record that he has withdrawn that request.

13 MR. RUDNICK: Yes.

14 THE COURT: So, if we could have the jury, please.

15 THE BAILIFF: Yes, ma'am.

16 (JURY REENTERS COURTROOM 11:14 AM.)

17 THE COURT: Okay. Thank you all. And everyone is
18 back with us. Is that correct, Mr. Foreman?

19 MR. FOREMAN: Yes, ma'am.

20 THE COURT: Okay. Thank you.

21 All right. Solicitor, Fleming, sir, is there a
22 statement that you would like to put on the record?

23 SOLICITOR PLEMING: I would just like to withdraw my
24 request to mark State's Exhibit No. 32. The item that has
25 been -- that I requested to mark as State's Exhibit 32, I

1 would like to withdraw that request.

2 THE COURT: Okay. All right. Any objection, Counsel?

3 MR. RUDNICK: No objection, your Honor.

4 THE COURT: All right. And with that, then, we will
5 -- unless there is an objection, we will excuse Lieutenant
6 Clevenger.

7 SOLICITOR PLEMING: Thank you, your Honor.

8 THE COURT: Thank you. Thank you, sir. Watch your
9 step.

10 LIEUTENANT CLEVINGER: Uh-huh.

11 (WITNESS LEAVES WITNESS STAND.)

12 THE COURT: Okay. Counselor, are you ready to proceed
13 with your next witness?

14 SOLICITOR PLEMING: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
17 THE JURY AT 11:15 A.M.)

18 SOLICITOR PLEMING: Your Honor, we're going to need a
19 fifteen-minute recess before the next witness is ready.

20 THE COURT: Okay. Thank you, sir.

21 Counsel.

22 MR. RUDNICK: No objection. We discussed in chambers.

23 THE COURT: All right. Thank you. All right.

24 Members of the jury, we will take our mid-morning break,
25 and I'll have you all come back in at 11:30.

1 Thank you so much.

2 (JURY EXITS COURTROOM AT 11:16 AM.)

3 THE COURT: Okay. We will be in recess until 11:30.

4 Thank you, Counsel.

5 (COURT IN RECESS AT 11:16 A.M.)

6 (JURY NOTE RECEIVED BY THE COURT AT 11:17 AM.)

7 (WHEREUPON, COURT'S EXHIBIT NO. 5, IDENTIFIED AND
8 MARKED, RECEIVED INTO EVIDENCE.)

9 (COURT BACK IN SESSION AT 11:45 AM.)

10 THE COURT: Okay. Counsel, are we ready for the jury?

11 SOLICITOR PLEMING: Thank you, your Honor.

12 MR. RUDNICK: Yes, ma'am.

13 THE COURT: All right. If you'll bring in the jury,
14 please.

15 (JURY REENTERS COURTROOM AT 11:48 AM.)

16 THE COURT: Okay. Mr. Foreman, are we ready?

17 MR. FOREMAN: Yes, ma'am.

18 THE COURT: All right. Thank you all for your
19 patience.

20 Counsel, are we ready to proceed?

21 SOLICITOR PLEMING: Yes, your Honor. At this time the
22 State calls Mary Beth McCormick.

23 MR. RUDNICK: Your Honor, may we approach briefly?

24 THE COURT: Yes, sir.

25 (BENCH CONFERENCE, OFF THE RECORD, OUT OF THE HEARING

1 MADAM COURT REPORTER: Yes, ma'am.

2 THE COURT: Okay.

3 (TESTIMONY OF INVESTIGATOR HEATH CLEVINGER REPLAYED AT
4 12:40 P.M. STATING AT THE INTRODUCTION INTO EVIDENCE
5 STATE'S EXHIBIT NO. 5 THROUGH 27, PAGE 204, LINE 12,
6 STOPPING AT CROSS-EXAMINATION BY MR. RUDNICK)

7 THE COURT: Wanda, stop just a moment.

8 Are y'all comfortable with going through his testimony
9 for today now?

10 MR. RUDNICK: That would be fine with that. I believe
11 that there even was a question for the evidence, that they
12 were withdrawing anyway. So it's not - I mean we can. I
13 listened to it but what he was talking about was withdrawn
14 so.

15 SOLICITOR PLEMING: I don't think today's testimony is
16 gonna be necessary. I'm just recalling what happened. I
17 don't think we need - it will help us any.

18 THE COURT: Okay. All right. Thank you then.

19 All right. Okay, Counsel, why don't we do this. Why
20 don't we retire to chambers for just a moment now that we
21 have had an opportunity to listen to that?

22 Everyone else can be at ease.

23 (COURT AT EASE AT 01:03 P.M.)

24 (COURT BACK IN SESSION AT 01:38 P.M.)

25 THE COURT: Y'all may be seated. Thank you so much.

1 Has anybody seen Mr. Pleming?

2 (SOLICITOR PLEMING ENTERS COURTROOM.)

3 (BENCH CONFERENCE OFF THE RECORD AT 01:43 P.M.)

4 THE COURT: Counsel, if you all could come up please?

5 (BENCH CONFERENCE OFF THE RECORD AT 01:48 P.M.)

6 THE COURT: Okay. Yes, sir, Mr. Pleming.

7 SOLICITOR PLEMING: Thank you, your Honor. The State
8 moves to recall Lieutenant Clevenger once again.

9 THE COURT: Counsel.

10 MR. RUDNICK: Your Honor. I'm sorry, your Honor.

11 Your Honor, we object. Specifically and I'm gonna to
12 recount a lot for the record.

13 THE COURT: Yes, sir.

14 MR. RUDNICK: Initially when Investigator Clevenger was
15 called to testify he failed to identify the drugs that were
16 alleged in this case period. He identified a big bag that
17 had a bunch of different things inside of it and he failed
18 to identify anything related to the 14 grams of cocaine
19 outside of what I believe would be argued that is a Best
20 bag but from the record and from what we have reheard on
21 the testimony its not clear which bag that Best bag he was
22 talking about.

23 In chambers we talked about the fact that he failed to
24 do that and had withdrawn the bag that he was recalled to
25 testify about which was an empty bag was withdrawn and at

1 that point after he was called to testify the second time
2 he now stated the same position as he did in that one and
3 since that conversation or since that point where he
4 testified it's my understanding that for the candor of Mr.
5 Pleming that he commented and spoke to Mr. Pleming about
6 his testimony and said that he misunderstood what was being
7 said and now he's being called to testify again after
8 having had that conversation where it was obviously
9 implicite that they have some type of understanding that
10 they said the wrong thing on the stand because he testified
11 on the stand that it would - that was the bag that was
12 referred to they sent to SLED and then that was withdrawn.

13 Now, I'm obviously just postulating but I'm not sure
14 what it is that he's going to be testifying to. It could
15 be the same thing they did today or something more, but at
16 this point this is the third time that a gap in this chain
17 that is gapping has been tried to be filled because
18 Investigator Clevenger couldn't testify the correct way
19 twice. He was given two different changes. And it is a
20 violation of due process. I mean there are a number of
21 things that are at issue in this particular hearing and for
22 him to be able to testify again after he screwed up two
23 times. I mean how many times does he - How many chances
24 does he get?

25 And I'm sorry. I don't mean to --

1 THE COURT: Yes, sir.

2 MR. RUDNICK: But that is the basis of my objection.

3 THE COURT: All right. Thank you.

4 All right, anything else, Mr. Fleming?

5 SOLICITOR PLEMING: Well I would just like to just
6 state that while - I agree, Lieutenant Clevenger did
7 approach me in the hallway and stated that he misunderstood
8 what I was asking him about and that he believed I was
9 asking him to identify the original empty bag that the 15
10 grams of cocaine had come out of. I - I don't recall
11 exactly how the words I used but essentially did not let
12 the conversation go much further than that. Lieutenant
13 Ligon walked up to him and began talking to him and I
14 exited to go to my office. I just wanted to put that on the
15 record that I did not engage him or have a long discussion
16 about the testimony or any discussion about the testimony
17 in the case.

18 THE COURT: All right. This is a very tough question
19 for me. To say that I am frustrated is an understatement.
20 But I am going to allow him to testify. I want you to get
21 him here as quickly as you can and I don't want you to talk
22 with him about this. Do you understand?

23 SOLICITOR PLEMING: Yes, ma'am.

24 THE COURT: And, Counsel, you will be given an
25 opportunity to cross-examine him.

1 MR. RUDNICK: Yes, your Honor.

2 THE COURT: Okay. Including about his - any
3 discussions that he had with counsel.

4 MR. RUDNICK: Yes, your Honor.

5 THE COURT: Do you understand?

6 MR. RUDNICK: Yes, your Honor. Thank you, your Honor.

7 THE COURT: We have a jury and so we need to move as
8 quickly as possible.

9 SOLICITOR PLEMING: Yes, ma'am.

10 THE COURT: Okay.

11 (PAUSE AT 02:00 P.M.)

12 THE COURT: Thank you. Please be seated.

13 SOLICITOR PLEMING: He says he's on his way.

14 THE COURT: Thank you.

15 Thank you.

16 (JURY NOTE RECEIVED UP BY THE COURT AT 02:02 P.M.)

17 THE COURT: Counsel, please approach.

18 (BENCH CONFERENCE HELD OFF THE RECORD AT 02:04 P.M.)

19 (COURT LEFT THE BENCH AT 02:11 P.M.)

20 (COURT BACK IN SESSION AT 02:13 P.M.)

21 THE COURT: Be seated. Thank you.

22 Madam Clerk, we need to have this marked as Court
23 Exhibit No. 5.

24 (WHEREUPON, COURT'S EXHIBIT NO. 6, MARKED AND RECEIVED
25 INTO EVIDENCE.)

1 (JUROR ENTERS COURTROOM.)

2 THE COURT: Come on in, ma'am. Good afternoon.

3 You can stand right there for me, all right.

4 A. Okay.

5 THE COURT: You are - Make sure everybody's here and
6 we're on the record. Ma'am, you are Juror No. 57, is that
7 correct?

8 JUROR NO. 56: Yes, ma'am. Uh-huh.

9 THE COURT: And your name is Kathy, is it Curtin?

10 JUROR NO. 56: Curtin, uh-huh.

11 THE COURT: Good afternoon, ma'am. I have read your
12 note. I have shared it with counsel. I understand you
13 have a pressing matter and that you need to leave town, is
14 that correct?

15 JUROR NO. 56: I was supposed to leave today,
16 postponed it thinking this would be done today.

17 THE COURT: Yes, ma'am.

18 JUROR NO. 56: I need to leave tomorrow for sure.

19 THE COURT: All right. And so, with that in mind,
20 ma'am, well you know what? Can our bailiff bring - Where
21 are your items in the jury room?

22 JUROR NO. 56: In the jury room.

23 THE COURT: Okay. I'll tell you what. Is there a -
24 is there a way that the bailiff can retrieve those things?

25 JUROR NO. 56: Yeah, they only where I was sitting.

1 It's just my pocketbook and a book.

2 THE BAILIFF: Just a pocketbook?

3 JUROR NO. 56: And a book.

4 THE BAILIFF: And a book?

5 JUROR NO. 56: Uh-huh.

6 THE COURT: Okay.

7 JUROR NO. 56: Thank you.

8 THE COURT: I'll just have you stay with me for just
9 one moment, all right.

10 Madam Clerk.

11 JUROR NO. 56: Thank you so much.

12 THE COURT: Okay. Ma'am, thank you for your service.
13 I hope that everything's all right with your family.

14 JUROR NO. 56: Thank you.

15 THE COURT: And you are released.

16 (JUROR NO. 56 RELEASED.)

17 THE COURT: And I will also confirm on the record that
18 Counsel was in agreement with that.

19 SOLICITOR PLEMING: Yes, ma'am.

20 MR. RUDNICK: That's correct, your Honor.

21 THE COURT: All right. Bailiff, I need this person.

22 (JUROR ENTERS COURTROOM.)

23 THE COURT: Good afternoon, ma'am.

24 A. Okay.

25 THE COURT: Ma'am, you're juror number is 121?

1 A. Yes.

2 THE COURT: All right. Ma'am, you have now joined ur
3 jury. And so you will be involved in deliberations at the
4 conclusion. If you will just follow the bailiff back into
5 the jury room. And, Mr. Bailiff, Counsel, are were ready?

6 SOLICITOR PLEMING: Yes, your Honor.

7 MR. RUDNICK: Yes, your Honor.

8 THE COURT: Okay. If you will have the jury come back
9 in.

10 (JUROR EXITS COURTROOM WITH BAILIFF.)

11 THE BAILIFF: Judge, you ready for 'em?

12 THE COURT: Yes, I am.

13 THE BAILIFF: Bring 'em in.

14 (PETIT JURY REENTERS COURTROOM AT 02:18 P.M.)

15 THE COURT: All right, Mr. Foreman, are we ready to
16 proceed, sir?

17 MR. FOREMAN: Yes, your Honor.

18 THE COURT: Okay. Thank you. All right.

19 Solicitor.

20 SOLICITOR PLEMING: Thank you, your Honor. At this
21 time the State calls Lieutenant Clevenger once again.

22 MR. RUDNICK: Your Honor, for the record I do object
23 and renew all previous motions made.

24 THE COURT: Yes, sir. Thank you, sir.

25 MR. RUDNICK: . . . ruling . . . denied.

1 MADAM COURT REPORTER: I'm sorry, Mr. Rudnick, I can't
2 hear you.

3 (WITNESS APPROACHING THE WITNESS STAND.)

4 THE COURT: Yes, sir, if you'll go back and stand
5 behind counsel table for just one moment.

6 Mr. Rudnick, I have heard your arguments, sir, and
7 your motions and they are denied. I am going to allow this
8 testimony to occur.

9 MR. RUDNICK: Yes, your Honor. Thank you.

10 THE COURT: Subject to your cross-examination.

11 MR. RUDNICK: Thank you, your Honor.

12 THE COURT: Yes, sir. Please come forward.

13 Sir, you're still under oath. If you would please
14 take the stand and make yourself comfortable.

15 SOLICITOR PLEMING: Your Honor, before we begin my
16 line of questioning I would like to mark two exhibits that
17 are contained inside State's Exhibit No. 29 as previously
18 marked.

19 THE COURT: All right. State's Exhibit No. 29 for
20 identification purposes only, correct? That was marked for
21 ID only?

22 SOLICITOR PLEMING: Correct. Yes.

23 THE COURT: Okay. I'm not saying okay to that.

24 But, yes, sir, Mr. Rudnick?

25 MR. RUDNICK: I understand he's doing it for

1 identification purposed only but for clarity of the record
2 I am going to object just to everything about this entire
3 direct examination, your Honor.

4 THE COURT: Yes, sir, I understand.

5 And so, sir, you are going to premark?

6 SOLICITOR PLEMING: Yes, a couple of the items which
7 are inside previously marked State's Exhibit No. 29 so that
8 we can - to assist us in clarifying what we're referring to
9 in this line of questioning.

10 THE COURT: Okay. Understanding that you are still
11 going to have to lay a foundation for that with this
12 witness.

13 SOLICITOR PLEMING: Yes, ma'am.

14 THE COURT: All right.

15 (WITNESS TAKES THE WITNESS STAND.)

16 DIRECT EXAMINATION

17 LIEUTENANT HEATH CLEVINGER BY SOLICITOR PLEMING:

18 Q. Lieutenant Clevenger, good afternoon.

19 I'm going to begin by asking you to pick up what's
20 been marked for identification as State's Exhibit 29. And
21 if you will find inside that exhibit what has been
22 previously marked for identification as State's Exhibit
23 Number 32.

24 (WITNESS COMPLIES.)

25 Q. Do you recognize what's contained in State's Exhibit

1 No. 32?

2 A. It's cocaine.

3 Q. Okay. And do you -- do you know where -- can you tell
4 us where you first obtained that cocaine, or do you
5 recognize the specific cocaine that is in that bag?

6 A. Yes. It's the cocaine that came from the residence at
7 - on Reedville Road that day. Mr. Duvant's bedroom.

8 Q. Okay. I would like to at this time for you to look
9 inside State's Exhibit No. 29, and find, if you can -- if
10 you -- if it's there, the Best pack in which you placed
11 State's Exhibit No. 32, after you seized it from the
12 bedroom at 403 Belaire Circle.

13 A. This bag right here.

14 Q. Okay.

15 SOLICITOR PLEMING: At this time, your Honor, I'd like
16 to mark the bag that the witness is holding at State's
17 Exhibit No. 33. Now --

18 THE COURT: And you're marking that for
19 identification?

20 SOLICITOR PLEMING: Just for identification at this
21 time.

22 MR. RUDNICK: Yeah, and I renew my objections.

23 THE COURT: Thank you, sir. Okay.

24 BY SOLICITOR PLEMING:

25 Q. Now, Lieutenant Clevenger --

1 MADAM COURT REPORTER: Just a minute, Solicitor.

2 They're marked for ID only?

3 THE COURT: And his objections, of course, are
4 overruled.

5 MR. RUDNICK: Thank you, your Honor.

6 WHEREUPON: STATE'S EXHIBIT NO. 33, PREMARKED FOR
7 IDENTIFICATION.)

8 THE COURT: Yes, sir.

9 BY SOLICITOR PLEMING:

10 Q. Lieutenant Clevenger, I know that you've already
11 looked at everything that's in State's Exhibit No. 29.
12 When you look into that bag, did -- was the original bag
13 that the cocaine --

14 MR. RUDNICK: Objection to leading, your Honor.

15 THE COURT: I'm sorry.

16 MR. RUDNICK: Leading, your Honor.

17 THE COURT: Okay. Let's rephrase the question.

18 BY SOLICITOR PLEMING:

19 Q. Do you see in that bag the bag that the cocaine was
20 originally placed in?

21 A. Yes.

22 Q. Okay.

23 SOLICITOR PLEMING: At this time I would like to mark
24 that bag, for identification, as State's Exhibit No. 34.

25 MR. RUDNICK: And we would renew our objections to

1 this line --

2 THE COURT: Thank you. Overruled.

3 BY SOLICITOR PLEMING:

4 Q. Can you explain for the jury, just so that we're
5 clear, what -- what that bag is that was just marked as
6 State's 34?

7 A. It's a sandwich baggie that contained cocaine.

8 Q. And how do you know that that's what's contained in
9 that bag?

10 A. It's just indicated with the same number from the
11 original bag that it correlates with that bag; and I have
12 DEU written on it, that's what we do with the bags that we
13 use.

14 Q. And where did you first find that sandwich bag? And
15 describe what was in it.

16 A. We first found it in the bedroom, in the gray tote,
17 containing cocaine.

18 Q. Okay. And what number, corresponding number, did you
19 mark on the Best bag that you placed that cocaine into
20 before you submitted it into evidence?

21 A. I'm sorry?

22 Q. How did you mark it before you put it into evidence?

23 A. I placed it -- the -- Originally, when I placed it,
24 the cocaine was in the plastic baggie. I placed the
25 cocaine in the baggie, in this bag, marked it DEU, placed

1 it in this bag, and sealed it up with the initials and the
2 date.

3 Q. And which bag is that, that you placed it into, as
4 it's now identified with the State's Exhibits marker?

5 A. State's Exhibit 34, for the small Ziplock, and State's
6 Exhibit 33, for the large drug bag.

7 Q. Thank you.

8 SOLICITOR PLEMING: Beg the Court's indulgence for
9 just a moment.

10 (PAUSE.)

11 BY SOLICITOR PLEMING:

12 Q. All right. When you were last called to the stand to
13 testify, you referred to a bag. Can you explain for the
14 jury why you referred to that bag, and what you thought I
15 was asking you?

16 A. In the initial line of questioning, I thought you were
17 talking about the baggie that contained the cocaine, the
18 original baggie that had contained the cocaine that was in
19 the tote. So when you asked me about the baggie that
20 contained the cocaine, I literally thought you were talking
21 about the baggie that I seized in the evidence, not one of
22 the baggies that we actually use.

23 Q. Thank you.

24 SOLICITOR PLEMING: Beg the Court's indulgence.

25 (PAUSE.)

1 BY SOLICITOR PLEMING:

2 Q. And just for clarification, the bag that you referred
3 to this morning was then empty when you were referring to
4 it this morning.

5 A. Correct.

6 Q. Okay. And -- and again, for clarification, State's
7 Exhibit No. 32, as it's currently marked, explain what that
8 -- what that is, and how you know that's what it is.

9 A. This is the cocaine that was originally seized, that
10 was placed in the evidence bag, that was taken out of the
11 bag that I had placed it in once it was at SLED, and then
12 all replaced bag in a bigger bag when it was sent back to
13 us, after it was tested. And it corresponds with this bag
14 by the number indicated on the front of this baggie that
15 they used, and the number that they wrote on the front of
16 the bag here.

17 Q. And that number, did they assign the bag that number?

18 A. Yes. We do not number or assign bag numbers that way.

19 Q. Thank you.

20 SOLICITOR PLEMING: I have nothing further at this
21 time. Please answer any questions Mr. Rudnick might have.

22 THE COURT: Mr. Rudnick?

23 MR. RUDNICK: Thank you, your Honor, may it please the
24 Court?

25 CROSS-EXAMINATION

1 LIEUTENANT HEATH CLEVINGER BY MR. RUDNICK:

2 Q. Lieutenant Clevenger, you testified once today,
3 correct?

4 A. Yes, sir.

5 Q. And you testified yesterday as well, right?

6 A. Yes, sir.

7 Q. And yesterday you tried to find the baggie of cocaine,
8 right?

9 A. No. I understood that he was looking for the baggie
10 itself that the cocaine was originally --

11 Q. I'm not talking about today, I'm talking about
12 yesterday, you never actually --

13 A. That -- that's on -- both yesterday and then later
14 today, or earlier today, excuse me, I thought the way the
15 question was asked and the way I understood it was that he
16 was actually looking for the baggie that contained --

17 Q. Right. And I understand that you had confusion,
18 right?

19 A. Right.

20 Q. Okay. But yesterday, you never picked out the bag
21 that you picked out today, right?

22 A. Correct.

23 Q. And today, this morning, you testified -- and you also
24 didn't pick out the bag that you picked out a second ago,
25 correct? The bag with the cocaine that you just

1 identified, right? You picked up the empty baggie, right?

2 A. That's what he --

3 Q. This morning.

4 A. That was --

5 Q. That's what you understood the question to be, right?

6 A. Yes.

7 Q. And now, after that, you were excused to testify,
8 right?

9 A. Yes.

10 Q. And you went away, out of this courtroom.

11 A. Yes, sir.

12 Q. Did any time you talk to Lieutenant Ligon?

13 A. Yes.

14 Q. So you spoke with Lieutenant Ligon since you left this
15 courtroom, in between the second time you testified, and
16 then testified -- the testimony that you gave today, right?

17 A. Between this morning and coming back just now, yes.

18 Q. You did. And in addition to that, you actually saw
19 Rr. Fleming in the hallway, right?

20 A. I did.

21 Q. And you told Mr. Fleming that you thought he was
22 talking about a different bag, right?

23 A. Initially.

24 Q. The empty bag.

25 A. Correct. The --

1 Q. Right.

2 A. The confusion that went on earlier, yes.

3 Q. Right. So sometime between this morning, after you
4 spoke with Lieutenant Ligon, and after you spoke with the
5 prosecutor in this case, now you can find the right bag,
6 correct?

7 A. It's the same baggie.

8 Q. I'm talking about the bag of cocaine, right?

9 A. Okay.

10 Q. That's the first time that you pointed it out was just
11 now, on direct examination, right?

12 A. I believe so.

13 Q. And there was a confusion between you and Mr. Fleming
14 about what it was, correct?

15 A. Correct. The exact question of what he was ---

16 Q. Right.

17 A. --- trying to get what I --

18 Q. And sometime in between you testified this morning and
19 what you said today, the confusion was clear, right?

20 A. Correct.

21 Q. And the two people you spoke to in between the
22 testimony earlier and the testimony today was Lieutenant
23 Ligon and Mr. Fleming, right?

24 A. I did speak to both of them, yes.

25 Q. Okay.

1 MR. RUDNICK: No further questions, your Honor.

2 THE COURT: Thank you. Anything on re-direct?

3 SOLICITOR PLEMING: One moment, your Honor.

4 (PAUSE.)

5 SOLICITOR PLEMING: No further questions, your Honor.

6 THE COURT: All right. Sir, you may be excused.

7 Next witness.

8 (WITNESS LEAVES WITNESS STAND.)

9 SOLICITOR PLEMING: Your Honor, the State calls
10 Marybeth McCormick at this time.

11 MR. RUDNICK: And your Honor, just for purposes of the
12 record, for my prior motion, I do object to this witness as
13 well, and I renew my previous motions once more.

14 THE COURT: Thank you, sir. Overruled.

15 (WHEREUPON, MARYBETH
16 MCCORMICK, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
17 FOLLOWS:)

18 THE COURT: Good afternoon, ma'am. If you would make
19 yourself comfortable, and speak very loudly. Thank you.

20 DIRECT EXAMINATION

21 MARYBETH MCCORMICK BY SOLICITOR PLEMING:

22 Q. Good afternoon, ma'am. Will you please introduce
23 yourself to the jury by stating your name and occupation?

24 A. I am Marybeth McCormick, and I am a forensic chemist
25 at SLED.

1 Q. And how long have you worked as a forensic chemist at
2 SLED?

3 A. For ten years and two months.

4 Q. Okay. What are your duties as a forensic chemist at
5 SLED?

6 A. I test evidence for the presence of controlled
7 substances.

8 Q. And who do you test that evidence for?

9 A. For agencies around the state.

10 Q. Law enforcement agencies?

11 A. Yes.

12 Q. Will you tell us about where you received your
13 education?

14 A. I received a bachelor of science degree in chemistry,
15 and a master of teaching in secondary science, both from
16 the University of South Carolina.

17 Q. And how did you receive your training to chemically
18 test, chemically analyze, items for these law enforcement
19 agencies?

20 A. I was trained at SLED in the drug analysis department.

21 Q. And can you -- is there any way for you to give us an
22 estimate about how many of these tests you perform in a
23 given week or year?

24 A. Well, in the past ten years I've worked over seventy-
25 eight hundred cases. Within a week, I usually do twenty to

1 thirty cases a week.

2 Q. Thank you. And so, does that make up the bulk of your
3 job?

4 A. Yes.

5 Q. Have you ever been qualified or declared an expert in
6 this subject matter for court?

7 A. Yes.

8 Q. And how many times?

9 A. Thirty-two.

10 Q. And have you testified in court each of those thirty-
11 two times?

12 A. Yes.

13 SOLICITOR PLEMING: Your Honor, at this time we would
14 move to have Ms. McCormick declared as an expert in the
15 field of chemical analysis and identification of controlled
16 substances.

17 THE COURT: Mr. Rudnick.

18 MR. RUDNICK: Your Honor, just for the sake of clarity
19 on the record, I do object to the witness, generally. I
20 understand her qualifications and all of that.

21 THE COURT: Do you object to her being qualified as an
22 expert in the field, as stated by the solicitor?

23 MR. RUDNICK: No, your Honor.

24 THE COURT: Thank you, sir. You may proceed, Counsel.

25 SOLICITOR PLEMING: Thank you, your Honor.

1 Q. Just to your right is -- This thing in the floor next
2 to your chair is an exhibit that's been marked as State's
3 Exhibit No. 29. Can you pick it up and tell me if you
4 recognize it?

5 A. Yes.

6 Q. And what is that?

7 A. This is a heat-sealed pouch containing evidence.

8 Q. Okay. And how are you able to identify that?

9 A. There is a bar code with a lab number that is
10 associated with the case that I completed, and I also see
11 my initials in several places.

12 Q. Thank you. Explain how you marked it and what the
13 process is at SLED for marking items like this.

14 A. Well, each case is given a computer-generated lab
15 number, so that's what this bar code is. And they call it
16 the lab number or the case number. And from there, the
17 outer packaging from what was submitted is Item 1, and then
18 based on what is in the packaging is sub-itemed from there,
19 and labeled. The evidence is labeled.

20 Q. Is there -- and do you -- can you recognize -- or do
21 you recognize the items that are contained inside of that
22 bag?

23 A. Well, I recognize them because I -- my initials are on
24 them. Yes.

25 Q. If you will, at this time I want to draw your

1 attention to --

2 SOLICITOR PLEMING: Beg the Court's indulgence for
3 just one moment.

4 (PAUSE.)

5 BY SOLICITOR PLEMING:

6 Q. Can you determine whether State's Exhibit NO. 29, as
7 well as the items which are set on that bar to your right,
8 are all of these items -- whether you have -- whether you
9 recognize all of those items?

10 A. Well, they all have the same lab number and my
11 initials, so yes.

12 Q. And when did you last see those items?

13 A. May I refer to my notes?

14 Q. Yes, certainly.

15 A. On December 15, 2017, I returned the evidence to our
16 login department.

17 Q. And what had you done with those items prior to
18 returning them to the login?

19 A. I analyzed the items for the presence of controlled
20 substances.

21 Q. Okay. Describe the packaging of each of those items,
22 or each of the substances that you tested, rather, as you
23 received them, and how they are packaged now.

24 A. Okay. All of the evidence was in a plastic pouch that
25 was sealed, from York County. Within that pouch there was

1 -- there were four evidence bags, each of them labeled with
2 a specific number, from York County. Evidence Bag NO. 2
3 contained a Ziplock bag containing plastic bag, containing
4 compressed powder substance. So that would be this item
5 right here.

6 Q. Okay. And that item right there, does it have a pre-
7 marked identification number, a State's Exhibit No.
8 marking, on it?

9 A. Well, there's several. The outer -- the evidence bag
10 has an Exhibit 33.

11 Q. Okay. That's the evidence bag?

12 A. Yes, sir.

13 Q. Okay. Let me hand up to you right now -- let me draw
14 your attention to previously-marked Exhibit No.'s 32,
15 State's Exhibit No. 32.

16 A. Okay.

17 Q. Can you identify that bag?

18 A. Yes. This is a Ziplock bag that I repackaged the
19 evidence in, and I know that I re-packed it because I have
20 a little R in the corner, and that tells me that I re-
21 packed the bag. And I also have the word re-pack circled
22 on my worksheet.

23 Q. Are you able to determine which bag that the substance
24 in the Ziplock was in when you received it at SLED?

25 A. Yes. It would've been in a plastic bag, and I just

1 placed that plastic bag in the original Ziplock. If
2 evidence is packaged in a -- like, a sandwich-type bag, I
3 will always re-pack it, just to be neat, so it won't spill
4 out in the bag.

5 Q. And that bag that's containing the original sandwich
6 bag, does that have a court identification number, State's
7 Exhibit?

8 A. 34.

9 Q. Thank you. And can you tell us -- can you identify
10 the original -- the Best pack that's it was in when you
11 received it?

12 A. This evidence bag that is Exhibit 33.

13 Q. Okay. And when you received State's Exhibit No. 33,
14 which contained -- make sure -- I think that was State's
15 Exhibit No. 32.

16 SOLICITOR PLEMING: Beg the Court's indulgence just to
17 make sure. Yes.

18 Q. When you received State's Exhibit No. 32, inside of
19 State's Exhibit No. 33, please tell the jury what you did
20 with it.

21 A. I documented the packaging and the substance on my
22 worksheet, and then I took a weight of the substance. I
23 performed a chemical test, and then I performed con --
24 excuse me -- con -- performed a confirmatory test.

25 Q. Okay. And can you just summarize what goes into the

1 chemical test, how that's performed, and how you were able
2 to identify the substance, based on that test?

3 A. Uh-huh. A chemical test is a preliminary test. In
4 this case it was a spot test, and it -- the results that I
5 got were indicative of cocaine. And then, I went on to the
6 confirmatory test, which is gas chromatography mass
7 spectrometry, and I was able to confirm the presence of the
8 controlled substance.

9 Q. Thank you. When you first received State's Exhibit
10 No. 33, can you tell if anyone -- was it sealed when you
11 received it?

12 A. The only documentation I have of -- all I'm concerned
13 with is that the outer packaging is sealed when it gets to
14 me. So I did document on my worksheet that, yes, the outer
15 pouch was sealed.

16 Q. And is that -- is that State's Exhibit No. 33?

17 A. That would be in here. The outer package.

18 Q. Okay. The outer. Okay.

19 A. From what was submitted to SLED.

20 Q. Okay. Can you tell -- when you received not just that
21 particular pack, but all of the evidence bags that you
22 received before testing, had any of them -- were the -- was
23 there any evidence that any of them had been tampered with,
24 or punctured or open?

25 A. No.

1 Q. And once you have completed the testing on all of the
2 items for a particular case, explain how you repackage it.

3 A. I place all of the evidence into a heat-sealable
4 plastic bag, similar to this, and it is heat-sealed, and it
5 is stored in our evidence vault, until I return it to our
6 login department.

7 Q. Thank you. Did you have an occasion to review the
8 chain of custody form that documents each person that came
9 into contact with the evidence?

10 A. Yes.

11 Q. And did you recognize each of the names on that form?

12 A. Well, I recognize the ladies from our login
13 department, yes.

14 Q. Yes, ma'am. Explain the process of retrieving items
15 from intake storage and logging it back in.

16 A. I will just send a list down of case numbers, my
17 assignments for that week, and they will retrieve them from
18 their evidence locker, which they only have access to. And
19 then I'll scan -- similar to the bar code on the evidence,
20 every analyst has a bar code specific to them, so that
21 would be scanned into my custody. And that's how the
22 electronic chain of custody is formed, through those bar
23 codes. And then I will take it upstairs and store it in
24 our evidence vault until I'm ready to begin work on the
25 case.

1 Q. And so, does everyone at SLED that has access have
2 their own individualized bar code scanner?

3 A. Yes.

4 Q. And turning your attention back to State's Exhibit No.
5 29, other than it's being opened at the top, do you see any
6 evidence that it's been tampered with?

7 A. No.

8 Q. And were you the -- did anyone else open the bag when
9 it arrived at SLED; or the -- did anyone else open any of
10 these bags that are contained in State's Exhibit No. 29?

11 A. No.

12 Q. All right. And does the white powdery substance
13 appear today to be in substantially the same condition as
14 it was when you tested it?

15 A. Yes, it is still contained in the bag that I
16 repackaged it in. Yes.

17 Q. Okay.

18 SOLICITOR PLEMING: And at this time, your Honor, the
19 State moves to introduce State's Exhibit No. 30, for
20 admission as evidence.

21 THE COURT: Counsel?

22 MR. RUDNICK: Your Honor, we do object, renew all
23 pretrial motions, and the *Fourth Amendment* and the South
24 Carolina state *Constitution*, and all previous objections??

25 THE COURT: Thank you, sir.

1 BY SOLICITOR PLEMING:

2 Q. On what date did you perform the tests on --

3 MR. RUDNICK: What - Let her rule.

4 THE COURT: Okay. If I might. So this is State's
5 Exhibit No. 30? Is that correct? Just so I'm clear, Mr.
6 Fleming? Being offered into evidence.

7 SOLICITOR PLEMING: 32. I mis-spoke, your Honor. I
8 apologize.

9 THE COURT: Okay. And I wrote down 30. All right.
10 So it's 32. Okay. Mr. Rudnick, I will overrule your
11 objection, sir, and will allow State's Exhibit No. 32 to be
12 introduced into evidence.

13 (WHEREUPON, STATE'S EXHIBIT NO. 32, IDENTIFIED AND
14 MARKED, RECEIVED INTO EVIDENCE.)

15 MR. RUDNICK: Yes, your Honor. And just for clarity
16 of the record, since he said 30, my objection was based on
17 the introduction of 32 into the record, under the *Fourth*
18 *Amendment* and the *South Carolina Constitution*, and all
19 previous motions. Just for clarity.

20 THE COURT: Yes, sir. Thank you. Thank you for
21 clearing that up. And so, where is that exhibit? All
22 right.

23 MADAM COURT REPORTER: Want to see it, Judge?

24 THE COURT: No, ma'am. No -- not -- I just wanted to
25 make sure that you have it.

1 MADAM COURT REPORTER: Yes, ma'am.

2 THE COURT: Okay. All right. Thank you.

3 SOLICITOR PLEMING: Thank you, your Honor.

4 Q. Now, having analyzed the substance contained in
5 State's Exhibit No. 32, did you form an opinion on what
6 that substance is?

7 A. Yes.

8 Q. And what is the - that?

9 A. That it is cocaine.

10 Q. Did you measure the cocaine in that bag?

11 A. I took a weight of the substance.

12 Q. And what was the weight of --

13 A. 14.35 grams.

14 Q. Thank you. And just to be clear, did you test any
15 other substances in part of this case?

16 A. Yes.

17 Q. And that total weight, was that just the substance
18 contained in State's Exhibit 32?

19 A. Yes.

20 Q. Okay. All right. Do you know if the scales that you
21 used to measure the substance, are they certified; and how
22 often are they certified?

23 A. Yes. They are certified weekly, in-house, and once a
24 year by an outside vendor.

25 Q. And following the test, did you document your findings

1 in a report?

2 A. Yes.

3 SOLICITOR PLEMING: At this time, I'm showing Defense
4 Counsel what's been previously marked as State's Exhibit
5 No. 28.

6 Q. I'm handing it up to you. Please take a moment to
7 examine it. Do you recognize that document?

8 A. Yes.

9 Q. And please tell the jury what it is.

10 A. This is a report documenting my findings for this
11 particular case.

12 Q. Okay. And -- and is that a true and accurate copy of
13 the report you did?

14 A. Yes.

15 Q. Thank you.

16 SOLICITOR PLEMING: At this time, your Honor, State
17 moves to introduce State's Exhibit No. 28 into evidence.

18 THE COURT: Counsel?

19 MR. RUDNICK: Your Honor, we renew all previous
20 objections with regard to this evidence, under the *Fourth*
21 *Amendment*, and the South Carolina, and the previous
22 objections.

23 THE COURT: Thank you, sir.

24 MR. RUDNICK: Thank you.

25 THE COURT: And again, this is No. 28. Is that

1 correct?

2 SOLICITOR PLEMING: Yes, your Honor.

3 THE COURT: Okay. So State's Exhibit No. 28 is
4 admitted into evidence. If you would hand that to her, the
5 court reporter. Thank you, ma'am.

6 (WHEREUPON, STATE'S EXHIBIT No. 28, IDENTIFIED AND
7 MARKED, RECEIVED INTO EVIDENCE.)

8 SOLICITOR PLEMING: Your Honor, I have no further
9 questions for this witness.

10 THE COURT: Yes, sir. Mr. Rudnick?

11 MR. RUDNICK: Thank you, your Honor. May it please
12 the Court?

13 CROSS-EXAMINATION

14 MARYBETH MCCORMICK BY MR. RUDNICK:

15 Q. Good afternoon.

16 A. Hi.

17 Q. So you work for SLED, right?

18 A. Yes.

19 Q. And you test substances from all over the state,
20 right?

21 A. Yes.

22 Q. And you get 'em -- when you get 'em, like in this
23 case, they usually come packaged up, right?

24 A. Yes.

25 Q. And in this particular case, it came from York County,

1 right?

2 A. Yes.

3 Q. And that's as much as it said, it just said York
4 County on the bag. Is that right? Or Drug Enforcement
5 Unit, but York County.

6 A. I don't recall exactly what it ---

7 Q. Okay.

8 A. --- said.

9 Q. Well, the point is, you don't know whether it came
10 from Rock Hill, right? Just by looking at it right now.
11 I'm not saying what was packaging, but looking at that
12 cocaine by what it -- with your eyes, you can't tell it
13 came from Rock Hill, Fort Mill, Clover, or anything? Or is
14 it dis -- any distinguishing characteristics about it from
15 one specific place to another, right?

16 A. Right.

17 Q. And you've -- maybe you have been to Clover, but
18 you've never been to 403 Belaire Circle in Clover, right?

19 A. No.

20 Q. Okay. And you have no personal knowledge about the
21 facts of this case, or anything surrounding it, right?

22 A. I don't.

23 Q. Just tested the substance and sent it back, right?

24 A. Yes.

25 MR. RUDNICK: No further questions, your Honor.

1 THE COURT: Any re-direct?

2 SOLICITOR PLEMING: No re-direct, your Honor.

3 THE COURT: Any objection to -- is it Doctor
4 McCormick, or Ms. McCormick?

5 MARYBETH MCCORMICK: Ms.

6 THE COURT: No objection to Ms. McCormick being
7 excused?

8 SOLICITOR PLEMING: No, your Honor.

9 MR. RUDNICK: No, your Honor.

10 THE COURT: Okay. Thank you. You may be excused,
11 ma'am.

12 SOLICITOR PLEMING: Thank you, Ms. McCormick.

13 (WITNESS LEAVES THE WITNESS STAND.)

14 THE COURT: Next witness.

15 SOLICITOR PLEMING: Your Honor, at this time the State
16 rests.

17 THE COURT: Thank you. Okay.

18 MR. RUDNICK: Your Honor, I believe we have a matter
19 of law to discuss before - outside the presence of the
20 jury.

21 THE COURT: Okay. I have been advised that there is a
22 matter of law that we need to take up outside your
23 presence, and so, I will direct your to return to your jury
24 room. Thank you so much.

25 (JURY EXITS COURTROOM AT 02:59 PM.)

Arguments: Defendant's Motion for Directed Verdict and
Renewed Fourth Amendment Objections

-334-

1 THE COURT: Thank you. Yes, sir. Mr. Rudnick?

2 MR. RUDNICK: Yes, your Honor. We would just
3 respectfully request a directed -- this is a motion for a
4 directed verdict. The basis of that motion is that there
5 has been only circumstantial evidence that places the drugs
6 that are in question in this case in the vicinity of Mr.
7 Duvant. There's no direct evidence if anybody seen any
8 drugs on him or, you know, even in his hands at any point
9 in time, in any point in the testimony, not a single
10 officer or anybody of that nature.

11 And we also, as part of the motion for a directed
12 verdict, renew all previous objections from the pretrial
13 and throughout the trial, including the *Fourth Amendment*
14 argument or objection and the -- the South Carolina state
15 *Constitution*, any introduction of the evidence and the
16 chain of custody objection that we had earlier as well,
17 your Honor.

18 THE COURT: Thank you. Yes, sir, Mr. Fleming.

19 SOLICITOR PLEMING: Thank you, your Honor. Your
20 Honor, there is ample evidence that a reasonable juror
21 could find the defendant is guilty in this case. When the
22 officers were at his house and they asked if there were any
23 drugs in the house, he admitted that there were drugs in
24 the room where they had found him sleeping, they were
25 within arm's reach of where he was sleeping in that bed.

1 He admitted to having knowledge of those drugs,
2 obviously, and based on the evidence that, at some point
3 that morning, it can be inferred that he was the only
4 person in that house, with the drugs that had access to
5 them, and from that a reasonable inference can be made that
6 he exercised dominion and control over those drugs, drugs
7 were more than ten grams, supporting the charge of
8 trafficking. And based on these reasons, your Honor, we
9 ask you to find there is sufficient evidence for the State
10 to go forward at this time. And to deny the motion for
11 directed verdict.

12 THE COURT: Anything else, Mr. Rudnick?

13 MR. RUDNICK: No, your Honor.

14 THE COURT: All right. Okay. Counsel, at this time I
15 am going to deny your motion, and we will proceed with the
16 Defendant's case.

17 MR. RUDNICK: Thank you, your Honor.

18 THE COURT: And so, with that, I will need to have the
19 jury come back in.

20 MR. RUDNICK: Yes, your Honor.

21 THE COURT: Okay.

22 MR. RUDNICK: Your Honor, when would you be asking Mr.
23 Duvant whether he would like to testify?

24 THE COURT: Well.

25 MR. RUDNICK: Not in front of the jury.

1 THE COURT: The -- Wanda, tell them ---

2 MADAM COURT REPORTER: I'll tell them, Judge.

3 THE COURT: --- to hold off for just a minute. Okay.

4 (BENCH CONFERENCE, OFF THE RECORD.)

5 THE COURT: Okay. Mr. Rudnick, sir, I'm -- Now, we
6 are at the point in the case, in the trial, where you and
7 your client need to make some decisions about the defense
8 of the case. And sir, first of all, Mr. Duvant, I'm going
9 to direct a question to your lawyer. All right?
10 Mr. Rudnick, sir, are aware of any witnesses, other than
11 the possibility of calling the defendant in this case?

12 MR. RUDNICK: No, your Honor.

13 THE COURT: Okay. And so, with that, now, sir, Mr.
14 Duvant, I need to direct some questions to you, and I would
15 ask if you would raise your right hand, please, sir.

16 Okay, Madam Clerk.

17 (WHEREUPON, WARREN TREMAINE
18 DUVANT, BEING DULY SWORN, TESTIFIED AS FOLLOWS:)

19 THE COURT: Okay. Thank you, sir. I'm going to ask
20 you to speak up for me. All right?

21 First, let me ask the solicitor, Mr. Fleming, sir, do
22 you have any convictions that you intend to use for
23 impeachment in this case?

24 SOLICITOR PLEMING: Your Honor, we do. I beg the
25 Court's indulgence. Mr. Duvant has two convictions for

1 Again, please don't discuss this, anything concerning
2 the case with anyone, and please don't do any independent
3 research on your own. Don't discuss it among yourselves,
4 and have a nice evening. Thank you so much.

5 (JURY EXITS COURTROOM ON EVENING RECESS AT 03:36 PM.)

6 THE COURT: All right. Counsel.

7 MR. RUDNICK: Thank you, your Honor. At this time,
8 Defense does renew our motion for a directed verdict, and
9 all previous motions that we objected to before the trial,
10 the *Fourth Amendment*, the *South Carolina Constitution*,
11 chain, sequestration, everything that we have objected to
12 at this point. And we'd renew the motion for a directed
13 verdict. Thank you.

14 THE COURT: Yes, sir. Mr. Fleming?

15 SOLICITOR PLEMING: Your Honor, I would just ask that
16 you deny the motion for directed verdict, just for the same
17 reasons I stated previously.

18 THE COURT: Okay. I need you to re-state those
19 reasons for me, please, sir.

20 SOLICITOR PLEMING: Yes, ma'am. Well, there's ample
21 evidence the jury could find this defendant guilty based on
22 his own admission of the drugs being in the room where they
23 found him sleeping, and the drugs were located within an
24 arm's reach of where he was on that bed. There's -- That
25 alone establishes all of the elements of the offense of

1 trafficking cocaine in this case, where he certainly had
2 knowledge of the presence of the drugs. In fact, he was
3 alone in the house prior to Ms. Johnson's arrival that
4 morning, and indicated that he had exercised dominion and
5 control also supported by the -- where the drugs were
6 located in the house, and the testimony of Carolyn Johnson
7 that he had been living there for three to four months.
8 And there's no question that the drugs did weigh over ten
9 grams, which supports the charge of trafficking cocaine.

10 THE COURT: Thank you, sir. Anything else, Mr.
11 Rudnick?

12 MR. RUDNICK: No, your Honor.

13 THE COURT: All right. Thank you. I will deny your
14 motion, sir, respectfully. And I will see you all tomorrow
15 morning at 9:30, at which time we will have closing and
16 charge.

17 MR. RUDNICK: Thank you, your Honor.

18 SOLICITOR PLEMING: Thank you, your Honor.

19 (DEFENDANT EXITS COURTROOM.)

20 (COURT IN EVENING RECESS IN THE MATTER OF STATE V.
21 WARREN TREMAINE DUVANT AT 03:39 PM.)

22 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
23 WARRANT TREMAINE DUVANT FRIDAY, MAY 25, 2018, AT 09:44 AM.)

24 THE COURT: Okay. Anything else before we bring them
25 in?

1 their evidence, it is now time for them to make their
2 closing arguments.

3 The arguments of the attorneys are not evidence in
4 this case. Their statements and arguments are meant to
5 help you understand the evidence and apply the law to the
6 evidence. You should disregard any remark, statement, or
7 argument which is not supported by the evidence presented
8 during the trial, or the law that I will explain to you
9 after the arguments.

10 And so, first, let me hear from Mr. Rudnick. Sir.

11 MR. RUDNICK: Thank you, your Honor. We'll waive the
12 opening, and we will close in our entirety after the
13 State's closing argument.

14 THE COURT: Okay. Good morning, Mr. Fleming.

15 SOLICITOR PLEMING: Good morning, your Honor.

16 THE COURT: Sir, are you ready to proceed?

17 SOLICITOR PLEMING: I am, your Honor.

18 THE COURT: Happy to hear from you, sir.

19 CLOSING ARGUMENT BY SOLICITOR PLEMING:

20 SOLICITOR PLEMING: Thank you, your Honor. May it
21 please the Court?

22 Good morning, ladies and gentlemen. At the beginning
23 of this trial I told you that this trial was about taking
24 ownership, accepting responsibility for one's actions. And
25 I told you that, on August the 23rd of last year, the

1 defendant, Tremaine Duvant, did that. He did that when he
2 admitted to the cocaine that was in his room, in that
3 plastic tote container, within arm's reach from where he
4 was sleeping in that bed.

5 Now, that admission and the facts and the
6 circumstances surrounding it establish all the facts that
7 you need to know that this defendant, Mr. Duvant, is guilty
8 of trafficking cocaine. Mr. Rudnick, in his opening
9 statement, he acknowledged that the defendant did know
10 about the cocaine in that room, but that he never said it
11 was his cocaine, that we don't know how it got there, and
12 that the defendant only stayed there for one night, and was
13 not living there.

14 Now, you can accept all of that, everything that he
15 said, and his client is still guilty of trafficking cocaine
16 under the laws of this state. I submit to you that under
17 the trafficking statute in this state, for him to be guilty
18 of cocaine, the cocaine does not have to belong to him; he
19 didn't have to be the one that put it there; and that
20 didn't have to be his house. There are three elements to
21 the offense of trafficking cocaine, three facts that we
22 have to prove for you to find him guilty. First, that he
23 knowingly; second, was in possession; and third, of more
24 than ten grams of cocaine.

25 Now, her Honor will instruct you, in your jury

1 charges, on the definition of possession, and there are two
2 types of possession. There's actual possession and
3 constructive possession. Let me explain the difference.
4 Active possession is where the substance, or the thing, is
5 actually in the person's custody, it's physically with
6 them. I'm holding this pen, I'm in actual possession of
7 this pen. When it's in my pocket, still in actual
8 possession of this pen. If I sat it down here and step
9 away, I'm no longer in actual possession of that pen, but I
10 still have constructive possession of it because I still
11 exercise dominion and control over the pen.

12 I could reach out and pick it up, and do anything that
13 I want to with it. There's nobody close that claims
14 ownership of the pen that's going to stop me, I have
15 dominion and control over this pen. I am in constructive
16 possession of this pen.

17 You'll also receive an instruction that actual
18 knowledge is strong evidence of the defendant's intent to
19 exercise dominion and control. And when the substance is
20 found on the property that is under the defendant's
21 control, you may infer that the defendant had knowledge and
22 possession of the drugs.

23 Now, we're able to prove that he knew that cocaine was
24 in his room because he's the one that told the police about
25 it, and showed them to where it was. He was in

1 constructive possession of that cocaine because he was the
2 only person in that house that morning before Carolyn
3 Johnson arrived, and he was the only person in that room
4 that had access to that cocaine. He was the only person
5 with dominion and control over that cocaine as it sat
6 underneath those clothes, right next to his bed.

7 He had the ability to do anything that he wanted to
8 with it. He could have sold it, he could have consumed it,
9 he could have destroyed it by flushing it down the toilet,
10 if he had simply wanted to, and that's constructive
11 possession.

12 The cocaine, of course, did weigh more than ten grams.
13 You heard from the -- it was weighed twice. Once by the
14 police with the bag here at York -- York County Sheriff's
15 Office; and then again at SLED, and the weight after SLED
16 weighed it without the bag, was fourteen -- I believe 14.6
17 grams. Certainly over ten grams, no question about that.
18 Possession does not mean ownership. He did not have to be
19 the owner of those drugs in order to possess them. Just
20 like he did not have to be the owner of that Honda that he
21 had outside in order to drive it.

22 Now, there is one more element that is an element of
23 every crime, and that is intent. He must have intended to
24 knowingly possess the cocaine. And I would argue that it's
25 difficult to conceive a realistic situation in which a

1 person could knowingly possess something without intending
2 to possess it. I suppose someone could hold a gun to
3 someone's head, and under duress, make them hold onto some
4 drugs against their will. But those aren't the facts here.
5 For this defendant did not intend to possess the cocaine in
6 this case, he didn't have to. The reality is that he made
7 a choice to knowingly be in constructive possession of more
8 than ten grams of cocaine, and he is responsible for that
9 choice.

10 He is guilty of trafficking cocaine because of that
11 choice. It doesn't matter whether he had been there for
12 one night or three to four months, as Ms. Johnson said that
13 he had lived there. It doesn't matter whether -- the
14 reality is, he chose to be there, within arm's reach of
15 that cocaine. He could've left the house and driven
16 somewhere else if he'd have wanted to. He could've pushed
17 that box that the cocaine was in out of the room so he
18 wasn't in the same room with it. He could've done any
19 number of things to avoid being in constructive possession
20 of that cocaine, but he chose to remain in possession of
21 that cocaine.

22 And it doesn't matter whether he was the one who
23 originally put it there or not. He knew that it was there,
24 and he chose to be there with it. It doesn't matter
25 whether he was the one that bought the drugs, or whether he

1 was the one who owns the drugs, because the statute doesn't
2 say knowingly owned, it says knowingly possessed. And
3 that's why we're all here today. We're here today
4 ultimately because of the choices that Tremaine Duvant made
5 on the 23rd of August. You see, he knew that that cocaine
6 was in the room where he was sleeping, and he made a choice
7 to remain there and not leave, and he had a choice to not
8 dispose of that cocaine, or to get it out of the room.
9 This defendant has already conceded everything that you
10 need to prove in order to find him guilty, that he
11 constructively possessed that cocaine.

12 Now, in his opening statement Mr. Rudnick admitted
13 that -- excuse me -- he attempted to draw a comparison
14 between this case and case that he heard about, I think it
15 was *ID Discovery*, or some show like that, in which a
16 witness to a murder shows officers to the murder weapon,
17 hidden somewhere in some bushes, and that they arrested
18 that witness; and that it was only through a subsequent
19 investigation that he was exonerated as a suspect.

20 Now, I understand the point that he was trying to
21 make, but the witness to the murder did not lead police
22 back to his bedroom to find a murder weapon underneath some
23 clothes, next to his bed, within arm's reach of where he
24 had been found sleeping. In that case, there was no
25 evidence that the witness was ever knowingly in

1 constructive possession of contraband. And I know that he
2 was trying to make the point that, if they had done some
3 more investigation, that perhaps something had been found
4 -- could have been found that would clear his client. But
5 that's just not the case.

6 There is absolutely no need to waste state resources
7 to call in a forensic team when the defendant has already
8 admitted to being in knowing possession of drugs. There's
9 no need to test or fingerprint that box when the suspect
10 shows you that he has cocaine in that box. For one, even
11 if he had handled that tote box with his hands, there's no
12 guarantee that his fingerprints would be preserved on
13 there. And even if they were, that would prove nothing
14 when he has already admitted to knowing that the cocaine
15 was there.

16 So let's focus for just a moment about what we do and
17 what we don't know in this case. We don't know where those
18 drugs originally came from, true. We don't know who put
19 those drugs in that plastic tote box that was under the
20 defendant's dominion and control. But we do know that he
21 knew they were there, and we know that those drugs were
22 within his dominion and control, and we know that he chose
23 to remain in that room with those drugs, and all that makes
24 him guilty, all by itself. We don't have to know what he
25 intended to do with those drugs, or whether he -- we don't

1 have to know whether he used those drugs, or was going to,
2 sell them, or what his intentions were with them. For him
3 to be guilty, he must merely have knowledge those drugs are
4 in his possession. And he did have knowledge that those
5 drugs were in his possession, and that has not even been
6 disputed.

7 Now, some of my questions for Lieutenant Clevenger
8 were not presented very clearly, and it resulted in some
9 confusion. He thought I asked him to identify the drugs
10 that he found in Carolyn Johnson's purse, when I was trying
11 to identify the drugs in Tremaine's room. Apparently, it's
12 about time for me to maybe get my eyeglass prescription
13 checked, because from where I was standing in the room, I
14 mistakenly believed that he was holding the drugs that were
15 collected from that tote container. I mistakenly believed
16 that because I thought the clump of the -- the white clump
17 of the -- the original packaging that was in that bag
18 appeared to be the cocaine. I should have walked up to the
19 witness stand to confirm that it was exactly what I was
20 asking him to show me, and I didn't do that, and that was
21 my mistake.

22 It was a frustrating process, there was a lot of
23 confusion, but at no time was anything ever mis-identified.
24 There was mis-communication, there was no mis-
25 identification. The Defense may try to use that fact, the

1 fact that I mis-communicated what I was asking for, to make
2 it appear that Lieutenant Clevenger couldn't accurately
3 identify the drugs, but that is not what happened. The
4 cocaine was correctly identified on August the 23rd, it was
5 correctly identified in court yesterday, and it was
6 correctly identified by the defendant when he admitted to
7 it on August the 23rd.

8 But you also have photographs of the evidence that
9 shows you where all of the cocaine in that house was found,
10 as it was found, after Tremaine Duvant showed the police
11 where it was. You have pictures of the cocaine in Ms.
12 Johnson's purse, you have pictures of the much larger
13 quantity of cocaine that was found in the tote box
14 underneath the clothes in Tremaine Duvant's bedroom.
15 Lieutenant Clevenger identified the fourteen-plus grams in
16 pictures that he took, and Ms. Johnson identified the
17 cocaine that she had in her purse, by those pictures as
18 well.

19 The cocaine is in evidence. It looks to be exactly
20 the same size as the cocaine in those pictures that was
21 found in Tremaine's bedroom. As Mary Beth McCormick, from
22 SLED, testified yesterday, after she tested the drugs, she
23 placed them in a new Ziplock bag that was not the original
24 bag they came in but that's their standard practice. And
25 she marked that bag, and there was correlating marking on

1 the bag that she got it from, so that she could trace that
2 -- which bag that cocaine originally came from when she
3 received it at SLED.

4 Lieutenant Clevenger obviously didn't use the same
5 markings that they did at SLED. And so, he was -- he
6 wouldn't have been able to see that bagging, and be able to
7 tell -- understand the markings that SLED put on it, but we
8 can still trace it through Ms. McCormick. And we know that
9 the bag that Lieutenant Clevenger originally packaged it
10 in, the Best pack and sent to SLED, and it's matched with
11 the cocaine that's admitted into evidence and identified
12 yesterday.

13 Now, it's our burden to prove this case to you beyond
14 all reasonable doubt. I'm going to talk just for a minute
15 about what that means. You'll be instructed on the
16 definition of proof beyond a reasonable doubt, and so, I
17 just want to go over that with you now. Proof beyond all
18 reasonable doubt does not mean proof beyond all doubt.
19 There are very few things in this world that we can know
20 with absolutely certainty, and the law does not require
21 that of us in criminal cases. It does not require proof
22 beyond all doubt.

23 To have a reasonable doubt, you must be able to
24 articulate a reason for it. One example that I like that
25 I've heard through a colleague here in my office is this.

1 If you were working in a building with no windows all day
2 long and you haven't been outside, and then at the end of
3 the day you step outside the building to go home, and
4 everything in your field of vision is wet. The pavement's
5 wet, the trees are wet, the grass is wet. There's water
6 all over the cars in the parking lot, water droplets on the
7 windshield. If you saw that, and then you call your wife
8 on the way home from work, or your husband, and your spouse
9 asked you, did it rain today, you wouldn't hesitate. You'd
10 say yeah, it did, apparently, because I walked outside and
11 everything was wet.

12 Is it possible that a fleet of fire trucks could have
13 driven into the parking lot and hosed down everything in
14 sight when you stepped out the door? It's possible that
15 could happen, but is it reasonable for you to conclude that
16 that's what happened? Of course not. There's no reason
17 for that. It's preposterous to make that conclusion from
18 seeing everything wet when you step outside.

19 Her Honor will also explain to you that proof beyond a
20 reasonable doubt is proof that leaves you firmly convinced.
21 And based on the defendant's admission on August 23rd, and
22 all the circumstances that you've learned about that house
23 and the people that were living there, and about this case,
24 should leave you with firmly convinced that the defendant's
25 guilty.

1 Another definition of reasonable doubt is that it's a
2 doubt that would cause a person to hesitate to act. Please
3 don't confuse deliberation with hesitation. You're
4 expected to deliberate to discuss the facts and the
5 evidence that you've heard in this courtroom. That's what
6 we want you to do. We want you to cover all the bases, and
7 we want you to make sure that everyone is comfortable with
8 their verdict. Okay? That doesn't mean that you're
9 hesitating to act, that means you're doing your job, to
10 adequately review all the evidence and consider all of the
11 evidence that's been presented.

12 There can be no reasonable doubt of the defendant's
13 guilt in this case. To have a reasonable doubt in this
14 case, or to believe that he is somehow not guilty, one
15 would have to believe that all four of the officers that
16 testified to you conspired together to make up this entire
17 story about how they found those drugs. That doesn't make
18 any sense. It's not reasonable. But on top of that, you
19 have to believe that Carolyn Johnson also lied when she
20 testified about how everything went down that night. We
21 have no reason to believe that these officers would put
22 their entire careers on the line and risk going to prison
23 for misconduct, or for committing perjury. For what
24 reason? Just to set up Tremaine Duvant, the guy that's
25 staying in his friend's trailer? They gain nothing by

1 that, and they stand to lose everything.

2 And for Ms. Johnson, nothing has been promised to her,
3 and she risked a lot by admitting on the record that she
4 possessed all that marijuana, and that she possessed that
5 cocaine. She's not getting any immunity. Her case is
6 still pending. Of course, she hopes that she will get some
7 benefit from testifying, that she will receive some credit
8 for what she did yesterday. Anyone in her position would.
9 But she knows that she's not guaranteed anything, and she
10 still chose to go through with it, and testify yesterday,
11 or two days ago, to tell you everything that happened that
12 morning. She knows that those statements can still be used
13 against her in court.

14 Now, Mr. Rudnick wants to argue that this wasn't
15 Tremaine's house, that he was just a guest for one night.
16 And as I said earlier, it doesn't matter whether he had
17 been staying there for one night or three months, he was
18 still in possession of that cocaine. But the evidence in
19 this case that he was not staying there, the only evidence
20 that he was not staying there for longer than one night is
21 that he had a different address on his driver's license.
22 Ms. Johnson had stayed -- had been living -- excuse me.
23 Ms. Johnson said that he'd been living there for several
24 months because he needed a place to stay. And he was alone
25 in that house when the officers found him asleep, and Ms.

1 Johnson had only been there for ten minutes. So at some
2 point that morning, he was in that house alone with those
3 drugs.

4 And as we pointed out during the trial, that driver's
5 license was issued to him in 2013. So the only thing that
6 it proves is that he had a different address five years
7 ago. And when I went to college, I didn't change the
8 address on my license in Columbia, that it had a Columbia
9 address, until after I'd graduated. But that doesn't mean
10 that for four years I was commuting two hours from Columbia
11 to Clemson every day.

12 You'll also be instructed that being merely present at
13 the scene of a crime, or where a crime is committed by
14 another, does not make one guilty, and that is true. A
15 person must be a knowing participant of a crime. But by
16 being alone in that bedroom with 14 grams of cocaine, with
17 full knowledge that they were there, that is not mere
18 presence. When someone -- if there's a merely present
19 person in a room of other people that had drugs on them,
20 and even if they placed that drugs out of the table, that
21 does make the merely present person in possession of those
22 drugs. The fact that there are others present who actually
23 would own the drugs would mean that the innocent party did
24 not -- that was present -- did not have dominion and
25 control. Those other people did. Even if they put the

1 drugs out on the table, that everyone knows that they're
2 there, I would argue that no, that's still just mere
3 presence. However, in this case the defendant was the only
4 person that exercised dominion and control over those
5 drugs.

6 So let's say for a moment that the cocaine didn't
7 belong to him, that he didn't own it. Let's say that those
8 drugs belong to Carolyn and/or Eric Johnson alone, and that
9 this defendant merely knew that they were in his room, or
10 that he was holding the drugs for the Johnson's. He's
11 still guilty of possessing those drugs, for the reasons
12 that I've just gone over. He was in that room, he had
13 dominion and control over them, and there's nobody else
14 present to intervene or strip him of that.

15 You'll also be instructed that you are to use your
16 common sense during the deliberation process. You do not
17 check your common sense at the door when you go into that
18 deliberation room. So I ask you, apply your common sense
19 to these facts. We've established that he didn't have to
20 actually be living there permanently to be guilty, and that
21 he could not -- and that he could have been holding the
22 drugs for another person and still be guilty. But I submit
23 to you that, if you apply your common sense to the facts of
24 this case and the evidence, then you know that's not the
25 situation here. The evidence in this case shows that this

1 was a crack house, that the people who occupied that house
2 were making crack there. The residue in the kitchen, the
3 Pyrex dish, the drug packaging materials that were found in
4 the living room, the digital scales, the money counter, the
5 heat sealer, the cutting agent; all the marijuana, the
6 cocaine that was in that house, it should be absolutely
7 apparent to anyone exercising common sense that this was a
8 house for processing and selling drugs. There were no
9 innocent parties in that house.

10 Carolyn Johnson had a gram of cocaine in her purse and
11 a bunch of marijuana, and she's still facing those charges.
12 Tremaine Duvant had over 14 grams of cocaine hidden amongst
13 his clothes in his bedroom, and Eric Johnson is lucky that
14 he wasn't there that morning. All of the evidence makes it
15 obvious that this defendant was involved in some level in
16 the trafficking of cocaine, for the purpose of making
17 crack.

18 These are absolutely reasonable inferences to draw
19 from the evidence in this case. This was one of the common
20 -- one of his common residences at the time as well. I'm
21 not saying that he stayed there exclusively, but I am
22 saying that what Carolyn Johnson told you about him being
23 there, staying there because he needed a place to stay for
24 the last three to four months before this happened, she was
25 not making that up. He knew what was in that tote because

1 he was actively involved in the drug activity at that
2 house. And just as Ms. Johnson testified, there were three
3 rooms in that house, and there were three people who
4 routinely stayed there.

5 Now, what else does your common sense tell you. Based
6 on what Lieutenant Ligon told you regarding the street
7 level value of cocaine, this was up to fourteen hundred
8 dollars' worth of cocaine, not a small amount of money for
9 someone like Eric or Carolyn Johnson. Eric Johnson or
10 anyone else who may have possessed it would not have left
11 it alone with someone they did not trust, or someone with
12 whom he was not working with in the drug trade. Eric
13 Johnson living in that trailer would not have accidentally
14 left fourteen hundred dollars, in cash or drugs or bananas,
15 or anything --

16 MR. RUDNICK: Objection, your Honor. Talk about what
17 Eric Johnson -- he wasn't a witness in this particular
18 case.

19 SOLICITOR PLEMING: And it's a reasonable inference to
20 draw that no person would have left that much money
21 accidentally.

22 THE COURT: Counsel, why don't -- I will sustain the
23 objection. Why don't you limit it then to that?

24 SOLICITOR PLEMING: Yes, ma'am.

25 THE COURT: Thank you.

1 SOLICITOR PLEMING: Thank you, your Honor.

2 Ladies and gentlemen, I ask that you not let Mr.
3 Rudnick, during his arguments, confuse you. Don't let him
4 make you think this is more complicated than it really is.
5 And do not allow him to distract you with what was not
6 necessarily the cleanest presentation.

7 The judge will instruct you that two or more people
8 may have joint possession of a drug. Even if Eric Johnson
9 or Carolyn Johnson were the ones who put the cocaine in
10 that tote box, this defendant still possessed it on the
11 morning of August the 23rd. All that Tremaine Duvant said
12 was that there was cocaine in the bedroom, and then he
13 showed the officers to where it was. So if it didn't
14 belong to him, then who? When drugs are found in someone's
15 possession, and that person admits that he knows the drugs
16 are there, then based on that information standing alone,
17 it is not reasonable to conclude that those drugs did not
18 belong to him.

19 Those drugs may have jointly belonged to someone else
20 also, but they most certainly belonged to Tremaine. The
21 only facts that we know in this case point to that
22 conclusion. There's nothing, nothing in the record that
23 suggests otherwise. Either the cocaine was exclusively
24 possessed by this defendant, or it was jointly possessed by
25 this defendant and Eric and/or Carolyn Johnson. All the

1 ~~CLOSING ARGUMENT BY SOLICITOR PLEMING~~
Have said to the jury by the State?
BY MR. RUDNICK

-363-

2 SOLICITOR PLEMING: Nothing from the State, your
3 evidence in this case points to the fact that the defendant
4 Honor.

5 either possessed this cocaine solely or exclusively, or

6 MR. RUDNICK: Nothing from the Defense, your Honor.
7 exclusively. Excuse me. Solely and exclusively, or that

8 THE COURT: Okay. Thank you very much.
9 he possessed this cocaine jointly with one or both of the

10 Counsel, are you now ready to begin with your
11 Johnson's. Either way, this defendant is guilty of

12 statements?
13 trafficking cocaine, and I ask that that be your verdict.

14 SOLICITOR PLEMING: We are, your Honor.
15 Thank you.

16 MR. RUDNICK: Yes, your Honor.

17 THE COURT: Thank you, Mr. Pleming.

18 THE COURT: All right. And so we will now hear from
19 Mr. Rudnick, sir, are you ready?

20 our - the Solicitor prosecuting this case Mr. Pleming.
21 MR. RUDNICK: Yes, your Honor. May it please the

22 SOLICITOR PLEMING: Thank you, your Honor, may it
23 Court?

24 please the court.
25 THE COURT: Yes, sir.

26 THE COURT: Yes, sir.
27 CLOSING ARGUMENT BY MR. RUDNICK:

28 OPENING STATEMENT BY SOLICITOR PLEMING:

29 ~~MR. RUDNICK: You all may remember back in grade~~

30 SOLICITOR PLEMING: Good morning, ladies and
31 school when a teacher kind of calls on you, and you don't

32 gentlemen. This case is about taking ownership; about
33 really know the answer, you're kind of looking and like,

34 accepting responsibility for one's choices. And its
35 well, circling around, anyway, I knew this was gonna

36 important the Defendant Tremaine Duvant did on August the
37 happen, I have no idea. That happened three times in this

38 23rd of 2017. He took responsibility. He admitted that he
39 trial, with one of the main investigators in this case.

40 had cocaine in his bedroom at a house where he had been
41 Lieutenant Clevenger didn't get up there to testify once,

42 staying at 403 Belaire Circle in Clover, South Carolina.
43 twice. It took him three times to figure out what bag he

44 This is after officers had obtained a search warrant
45 was being asked about. This is the person who sees all of

46 to search that house and they ask him if he had any drugs
47 the evidence in this case. This is the person who looked

48 in the house. He even got up and showed them to where the
49 in the house. I asked Lieutenant Ligon, did you seize the

50 cocaine? No. Did Lieutenant -- or Investigator Ramsey?

1 No, I didn't. Detective Vaughn, no. But I think it was
2 Clevenger. Clevenger can't even tell you what bag the
3 cocaine's in. He had three chances to get up there and
4 talk to you about what it is.

5 Do you believe that he actually investigated this
6 case? That he has any independent knowledge of anything
7 that happened at that house nine months ago, if he can't
8 look -- He fumbled with that bag for about a minute, the
9 second time he was up there, when he didn't even -- he
10 thought he knew what he was looking for, and he couldn't
11 find it. What does that tell you?

12 So, ladies and gentlemen, I want you to think back to
13 a couple days ago, when I was talking to you about that
14 story that Mr. Fleming mentioned about Mike at the party,
15 when he was wrongly accused of killing that man. Now, is
16 Mike supposed to take responsibility for that crime because
17 he showed the police officers where the gun was? Is he
18 supposed to take responsibility because he answered the
19 questions the officers asked?

20 The law doesn't provide for somebody to take
21 responsibility for something that's not theirs. Mr.
22 Fleming had a very interesting example with regard to his
23 pen when he put it on the table right there, and he walked
24 away and said, now I'm in constructive possession of my
25 pen. Well, guess what. It's also his pen. That's why

1 he's in constructive possession of it. Dominion and
2 control doesn't mean you're in the area or you're merely
3 present. It means you have dominion and control, it's
4 yours.

5 And think about the painting that the State has
6 painted in this case. I asked you, kind of think about
7 each piece of evidence that the State presents as a brush
8 stroke, and when you step back from the painting, see
9 whether or not it's clear to you at all.

10 Ladies and gentlemen, that painting is full of holes.
11 Like those officers that first got on the scene in that
12 episode that I saw on *ID Discovery*, they thought they had a
13 pretty clear painting. The State's opening statement, they
14 talked about admission -- that Warren admitted to
15 possessing something. Now, they're saying, well, he
16 admitted that he was kind of in the room, and you know, he
17 admitted where it was. Ladies and gentlemen, he told the
18 police officers where it was because they asked him where
19 it was. That doesn't make it his. That doesn't make it in
20 his dominion and control.

21 And let's go back and think about what those holes
22 are. First, Eric Johnson. The only other person that we
23 know has an ownership interest in that house. Her, or his
24 sister, Carolyn Johnson, got up there and testified, and
25 said, well, parents died; that they own the house when the

1 parents died. So it was actually her house, and her
2 brother's because he lives with her, that somehow she
3 doesn't pay property taxes on it. And Eric Johnson was a
4 suspect in a sexual assault. That's the whole reason the
5 the police officers got there. They weren't looking for
6 Warren. They had no idea Warren was even there that day,
7 because he doesn't live there. They were looking for Eric
8 Johnson because they know he lived there.

9 The only other person that lived at that house, they
10 didn't call and testify. What was it that Eric had to
11 hide? We'll never know.

12 Now, let's talk about Carolyn, the next hole.
13 Carolyn's put herself in a really tough position. Somehow,
14 according to her story, she never lived at 403 Belaire
15 Circle, even though she owns it, and all of her clothes are
16 there, and all of her drugs are there, and her dog is
17 there. And it just so happens that when she came home on
18 August 23rd, that she was only there for about ten to
19 fifteen minutes, and in that time she smoked some
20 marijuana; and lo and behold, Detective Vaughn happens to
21 knock on her door, looking for her brother. That's quite a
22 coincidence, and it doesn't make any sense.

23 Now when she talked to Carolyn -- or when Carolyn
24 talked to the officers, she admitted that she had drugs
25 inside of the house, because the officer saw drugs on the

1 porch and smelled drugs coming from inside. She said that
2 she smoked marijuana. And so, he goes and he looks inside
3 of the room, and he finds a bag of marijuana in a plastic
4 sandwich bag, on her night stand. Then, she says, oh,
5 well, wait, I have some cocaine in my purse, and it's in a
6 plastic sandwich bag as well. And by the way, I have three
7 hundred and twenty dollars inside my purse that come from
8 selling drugs, which she admitted to on the stand, and that
9 the officers seize, because it came from selling drugs.

10 She's fifty-one years old, looking at forty years in
11 prison. She does twenty years of that, half of that, she's
12 seventy-one when she comes out. There's no home, there's
13 no family, or at least older family; she's away from her
14 kids. On the day this happened, she never made any type of
15 statement, never said Warren lived there. Never said she
16 ever saw him with any drugs. She didn't know he was there
17 that day.

18 Ladies and gentlemen, the car was out front of the
19 trailer. To say that you don't know that anyone is home
20 when there's a car out in front of the trailer, and then to
21 say that that person has lived there three to four months,
22 and you don't know the car they drive? Has there ever been
23 anybody who's lived with you for three to four months and
24 you don't even know the car that they drive? Talk about
25 common sense, that doesn't make any sense.

1 Now, I think also what she said, people came in and
2 out of this house. She lived there with her brother and
3 herself, and the two brothers. They'd been in and out of
4 this house, and she was like, well, nobody's staying in the
5 other bedroom, that was always Warren's. Well, where are
6 all these people staying? They're staying in the other
7 bedroom.

8 Ladies and gentlemen, there's absolutely no evidence
9 that Warren stayed there for more than a night. There's no
10 sheets on the bed, said Lieutenant Ligon. It's a mess.
11 They found his phone and his license, no charger. I don't
12 know about you, but my phone doesn't last three to four
13 months without a charge. Heck, usually if you go somewhere
14 to stay for the night you bring a charger, if you plan on
15 it. Now, Carolyn, like I said, she put herself in a bind.
16 She's pretty old. Not really, but she would be if she got
17 out of jail in twenty years. And she had to do something.
18 She had a seven year offer, that was off the table. Now,
19 she's looking at forty again. She didn't say anything in
20 August, September, October, November, December, January,
21 February, March, until April. What happened in April?
22 That offer came off the table. So, she made up a story.
23 She tried to distance herself from the house as much as she
24 could, and she was hoping for something better, to not go
25 to jail, which is what she said on the stand.

1 Now, let's talk about the house. Inside of that house
2 is a Pyrex container, crack residue on it; and a third I-
3 Phone next to that Pyrex container. Four scales scattered
4 across the living room. Well, the kitchen. Two in the
5 fridge, one in a cup, one next to the sink. The heat
6 sealer on the floor, the money counter on the living room
7 floor. Where is it? We got pictures. They recovered half
8 of it, but they hadn't showed you any of it.

9 And let's talk about that third I-Phone. Who's phone
10 is that? They seized it. No fingerprints on it. You
11 know, I like to fish. I take pictures of fishing. I like
12 basketball, so if I go to a basketball game, sometimes I
13 take a picture playing basketball, and sometimes I text
14 with my phone and call and things like that. If there is a
15 phone next to a Pyrex container with crack residue on it,
16 wouldn't you want to know what's on the phone? Wouldn't
17 you want to know whose phone it is? When I use my phone, I
18 use my thumb a lot, and that possibly could leave behind a
19 fingerprint. Could it be the person whose phone is next to
20 the drug materials is also the drugs that are inside that
21 room? Couldn't it be one of the myriad people who came in
22 and out of that house left their drugs when they were
23 staying in that room? Couldn't they have tried to get some
24 type of fingerprints, DNA, anything off of anything in that
25 house; do some type of investigation. But we saw yesterday

1 how much thought they had put into it.

2 Now, I talked about phones. They took Warren's phone.
3 Hadn't seen any text messages, no calls, nothing that has
4 anything to do with any drugs at all, nothing. Wouldn't it
5 be reasonable to expect that somebody who is -- has that
6 much drugs is going to be texting or talking about selling
7 drugs and things like that? Mr. Fleming talked about the
8 fact that those drugs were worth fourteen hundred dollars.
9 Warren had no money at all on him that day. He had no
10 drugs in his pockets, no bags, no scales. He gave them his
11 phone. He showed them where the drugs were. What more can
12 you do? He had nothing in his car, no drugs, no drug
13 residue, no scales, no bags, no money, nothing.

14 So, I also talked to you about our justice system is
15 not based off of allegations, assumptions, and
16 proximations. And we heard that word, assume, several
17 times in this trial. Lieutenant Ligon said that he assumes
18 that room is Warren's. Carolyn said she assumed there's
19 clothes in the room. We don't even know whose clothes are
20 in the box. Wouldn't we want to know what the size of
21 those clothes are; small, medium, large. Or it was all
22 men's, or some men's and some female's, if it was some
23 kids' and some others. We don't know who Eric had coming
24 in and out of that house. If Carolyn wasn't there, which
25 is hard to believe, but if she wasn't there, we don't know

1 who Eric has coming in and out, staying inside that house.

2 Now, those items that they took, they left a lot
3 behind. They left a vacuum sealer behind, they left the
4 glutamine behind that they use to cut drugs. They left
5 behind the plastic sandwich bags. They left behind the
6 rubber bands that they use. They left behind that in a
7 house that they said they thought was used to sell drugs
8 out of, items that they said they thought were used to make
9 and sell drugs. What does that say about their
10 investigation? What does that say about the attention to
11 detail? Because at the end of the day, the devil's in the
12 details.

13 The law does not provide for somebody to take
14 responsibility for being merely present in a room where
15 drugs are. It doesn't. The judge will explain to you the
16 law. Wouldn't it be interesting if we could've had a
17 recording of anything that happened? Now, we did get some
18 description from Lieutenant Ligon because he talked to
19 Warren, and he said Warren was calm when he spoke to him.
20 Calm. Does that sound like somebody who's showing a police
21 officer to their drugs? No. Think like a little kid or a
22 teenager, or somebody like that who gets in trouble, and
23 they don't want to be there, and they're sure not calm.
24 And the fact that we don't have any recordings, it's not
25 because they didn't have the money, because everybody has

1 body cams. It's not because they didn't have a marked
2 patrol car, because they had one there, and it would've had
3 in-car and body mics. They just didn't want -- they just
4 didn't record it, because they didn't want to. Didn't feel
5 like they needed to, didn't feel like you needed to hear
6 it. Wouldn't it have been nice?

7 Now, the next hole is that Warren doesn't live there.
8 And the only evidence and the only address that he has any
9 control over that they had was 113 Queensgate. They never
10 went by there, never knocked on the door, never asked to
11 execute a search warrant, never even checked anything about
12 it; even though, and it probably was weird at the time,
13 when I was asking about all those, like, personal items and
14 things like that, that might have been hound in the house,
15 it's because that's what makes a home a home. Pictures of
16 family, your toothbrush, your hairbrush, comb, a phone
17 charger, none of that was there. I mean, at the end of the
18 day they've got a guy who tells them where the drugs are if
19 they ask, calmly shows it to them, and then like Mike in
20 the story, is caught up in all of it because they don't
21 check anything.

22 So, ladies and gentlemen, just think back to what I
23 was asking you about in the painting that was painted.
24 Think about what it is that you actually got. Is that
25 really a clear painting? Are you firmly convinced what

1 that painting shows, that those drugs were Warren's? Or
2 could they have been Carolyn 's or Eric's, or anybody else
3 that came into that house?

4 Now, Mr. Pleming says, well, either/or, it doesn't
5 really matter. It does. Control and dominion, the right
6 to control and dominion, that's all. I certainly did not
7 have the right to walk up and take his pen when he laid it
8 there, even though I was about four feet away. I knew it
9 was there, but that doesn't mean I was in constructive
10 possession of it.

11 Now, think back to Mike. He told police everything
12 that he knew, and because police did no investigation, he
13 got caught up. But there was an investigator behind them
14 who were able to get him cleared. I told you at the
15 beginning of this case, Warren did not have that benefit,
16 and if yesterday was any indication, it points to that's
17 being true.

18 Ladies and gentlemen, the State's painting has kind of
19 changed since the opening of the case. I don't know if you
20 were waiting to hear somebody say that Warren admitted to
21 ownership of the drugs, because that never happened. So
22 now, the painting that they're trying to paint is kind of
23 changed to this other constructive possession-type case.
24 They even know that their version of the facts doesn't make
25 any sense. So, just think about the law after the judge

1 instructs it to you. Think back and think, really fair
2 what happened? Is it -- am I firmly convinced that those
3 drugs were Warren's, or could they have been somebody else
4 -- somebody else who came in that house who was even there
5 for more than a night.

6 If you would hesitate to make a decision on whose
7 drugs those were, you must find him not guilty. If you're
8 not firmly convinced that those drugs are his, you must
9 find him not guilty. If you even think there is -- could
10 be Carolyn's, could be Eric's, could be somebody that came
11 through that house, you must find him not guilty.

12 Also, think about there's no text messages, no money
13 for drugs of that size. It would've been nice to have
14 known what was on that third I-Phone. Look deeper than the
15 surface, is what I asked you to do at the beginning of this
16 case. And I ask you again, just think deeper than the
17 surface, look at what's missing. And after you think about
18 it, I respectfully request you find Warren not guilty,
19 because those aren't his drugs. Thank you.

20 CHARGE TO THE JURY:

21 THE COURT: Thank you, Mr. Rudnick. Okay.

22 Mr. Foreman, and members of the jury, now is the time
23 that I give you the instruction on the law in this case.
24 And I want to make sure that you can hear me all right.
25 Again, my microphone up here is not amplifying my voice.

1 Okay. And I believe that the length of this is about
2 fifteen to twenty minutes, okay, if that gives you some
3 idea of how long it will take. All right?

4 Mr. Foreman, and members of the jury, the State of
5 South Carolina charges the defendant Warren Tremaine Duvant
6 with trafficking in cocaine. You will, of course, bear in
7 mind that the defendant has pled not guilty, and by that
8 plea the defendant denies the charge alleged in the
9 indictment.

10 The defendant comes into this court clothed with a
11 presumption of innocence, and this presumption of innocence
12 continues throughout the case, and entitles the defendant
13 to a verdict of not guilty, unless and until, it is
14 dispelled by evidence satisfying you, the jury, beyond a
15 reasonable doubt that the defendant is guilty of the
16 offense charged, and the State has proved each and every
17 element of the alleged crime beyond a reasonable doubt.

18 The same *Constitution* and law which makes you, the
19 jury, the finders of the facts and the evidence as I have
20 discussed with you, makes me, as the judge, the sole and
21 only instructor of the law. You must accept as correct the
22 law which I instruct and apply to it, the evidence, as you
23 find it, and reach a verdict. If I should make an error in
24 the law as I instruct it to you, there's another time and
25 place where that error can be considered and, if necessary,

1 corrected. But for the purpose of the case today, you must
2 accept the law as I instruct it, and in that regard I tell
3 you that neither you nor I, for that matter, should be
4 concerned about what we believe or think the law ought to
5 be, but only concern yourselves with what I instruct you
6 the law is, in fact, to be.

7 In a criminal prosecution, the State has the burden of
8 proof. The Defense has no burden, as the defendant is
9 presumed to be innocent. In this state, according to our
10 *Constitution*, the Prosecution must prove their case to the
11 standard of proof beyond a reasonable doubt before a
12 finding of guilt can occur. If the State fails to meet
13 this high burden, the defendant is entitled to a verdict of
14 not guilty.

15 Under the *Constitution* and laws of South Carolina, you
16 are the sole finders of the facts in this case. I am not
17 allowed to suggest in any way what I may think about the
18 guilt or innocence of the defendant. You also are the
19 judges of the credibility and the believability of the
20 witnesses who have testified in this case. In passing upon
21 their credibility, you may take into consideration many
22 things, such as what was the manner and appearance of the
23 witness who testified; was he or she straightforward, or
24 was he or she hesitant in answering; how did the witness
25 come to know the facts that he or she testified to; or what

1 was his or her ability to know these facts; is there some
2 reason a witness would want to give testimony which would
3 help or hurt one side or the other. In other words, was
4 the witness biased or prejudiced? And was the testimony of
5 a witness strengthened or weakened by other testimony or
6 evidence.

7 You, the jury, may believe as much or as little of
8 each witness testimony as you think proper. You may
9 believe the testimony of a single witness against that of
10 many witnesses, or just the opposite. You may believe part
11 of a witness' testimony and disbelieve the rest. The fact
12 that testimony is not controverted does not mean that you
13 must accept it as true and undisputed. You still must gage
14 the credibility of the witness to determine the
15 believability of the facts offered through the testimony.

16 As the sole fact finders, you should have listened
17 closely to the evidence presented. Weighing the evidence
18 is entirely a mental process. You must weight the evidence
19 using your good judgment and common sense. Weighing the
20 evidence is entirely a mental process, regardless of from
21 where it came.

22 There are two types of evidence which are generally
23 presented during a trial. There is direct evidence and
24 circumstantial evidence. Direct evidence is the testimony
25 of a person who asserts, or claims, to have actual

1 knowledge of a fact, such as an eyewitness.

2 Circumstantial evidence is proof of a chain of facts
3 and circumstances indicating the existence of a fact. The
4 law makes absolutely no distinction between the weight, or
5 value, to be given to either direct or circumstantial
6 evidence. Nor is a greater degree of certainty required of
7 circumstantial evidence than of direct evidence.

8 You should weigh all of the evidence in the case.
9 However, to the extent the State relies upon circumstantial
10 evidence, all of the circumstances must be consistent with
11 each other and, when taken together, point conclusively to
12 the guilt of the accused beyond a reasonable doubt. If
13 these circumstances merely portray the defendant's behavior
14 as suspicious, the proof has failed. After weighing all
15 the evidence, if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 What is a reasonable doubt. It is simply this. A
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to act. Reasonable doubt may
21 arise from evidence which is in the case, or, from the lack
22 or absence of evidence in the case. Proof beyond a
23 reasonable doubt is proof that leaves you firmly convinced
24 of the defendant's guilt. It is a doubt to which one can
25 assign a reason, if the assignment can be done reasonably,

1 firmly, and convincingly.

2 I further charge you that a defendant is entitled to
3 every reasonable doubt that may arise in the case. What
4 that means is simply this. If any of you have had a doubt
5 about anything during this trial, you would be required to
6 resolve that doubt in favor of the defendant. The very
7 fact, however, that the jury engages in a full and free
8 discussion of the issue of guilt or non guilt in this case
9 does not automatically mean that reasonable doubt exists in
10 this case.

11 You, the jury, must make the determination of whether
12 or not reasonable doubt exists as to the guilt of the
13 defendant. If you find that the State has not met the
14 burden of proof beyond a reasonable doubt, the defendant is
15 entitled to a verdict of not guilty.

16 Criminal intent is a necessary element of each crime
17 that must be proved by the State beyond a reasonable doubt.
18 Criminal intent is always a matter that must be determined
19 by the jury from the circumstances surrounding the
20 situation. There is no way to prove intent to a
21 mathematical certainty. There is no way medical science
22 can dissect a person's brain and determine what he or she
23 had in mind, so the law states criminal intent may be
24 inferred from the circumstances shown to have existed, both
25 before and after the fact. This is how you, the jury,

1 makes a determination of whether or not the element
2 requiring an intent is present.

3 Criminal intent is a state of mind that operates
4 jointly with an act or omission in the commission of a
5 crime. Criminal intent is a mental state of conscious
6 wrongdoing, so it is up to you, the jury, to determine what
7 the defendant intended to do, based on the circumstances
8 shown to have existed. I tell you that the State must
9 prove criminal intent beyond a reasonable doubt, just as
10 the State must prove every element beyond a reasonable
11 doubt, as I have previously explained to you.

12 Now, in this case, the specific law governing the
13 offense is, the defendant is charged with trafficking in
14 cocaine. The State must prove beyond a reasonable doubt
15 that the defendant knowingly sold, manufactured,
16 cultivated, delivered, purchased, brought into this state,
17 provided financial assistance; or otherwise aided, abetted,
18 attempted, or conspired to sell, manufacture, cultivate,
19 deliver, purchase, or bring into this state, was knowingly
20 in active or constructive possession; knowingly attempted
21 to become in actual or constructive possession of cocaine.

22 The State must also prove beyond a reasonable doubt
23 that the amount of the cocaine, or any mixture containing
24 cocaine, was 10 grams or more, but less than 28 grams. To
25 prove possession, the State must prove beyond a reasonable

1 doubt that the defendant had both the power and the intent
2 to control the disposition or use of the cocaine.

3 Possession may be either actual or constructive.

4 Actual possession means that the cocaine was in the
5 actual physical custody of the defendant. Constructive
6 possession means that the defendant had dominion and
7 control, or the right to exercise dominion or control over
8 either the cocaine itself or the property on which the
9 cocaine was found. Mere presence at the scene where the
10 drugs were found is not enough to prove possession.

11 Actual knowledge of the presence of the cocaine is
12 strong evidence of the defendant's intent to control it's
13 disposition or use. The defendant's knowledge and
14 possession may be inferred when a substance is found on the
15 property under the defendant's control. However, this
16 inference is simply an evidentiary fact to be taken into
17 consideration by you, along with the other evidence in the
18 case, and to be given the weight you decide it should have.
19 Two or more persons may have joint possession of a drug.

20 Mere presence at the scene is not sufficient to prove
21 someone guilty of a crime. The defendant's presence where
22 a crime is being committed, or mere association with a
23 person who commits a crime, does not make a defendant an
24 accomplice, or, an aider or abettor of the person
25 committing the crime. The burden is on the State to prove

1 every element of the crime charged. If you find, after
2 reviewing all of the evidence, that the State has proved
3 that the defendant was only present at the scene of a
4 crime, and that they have not proved beyond a reasonable
5 doubt any other participation in the crime, then you must
6 find the defendant not guilty. The law is that proof of at
7 the scene of the crime is not sufficient to find someone
8 guilty. Suspicious circumstances alone are not a
9 justification for finding -- for a finding of guilt against
10 any defendant.

11 Now, in this case the defendant did not testify. I
12 instruct you, and I emphasize, that the fact that the
13 defendant did not testify is not a factor to be considered
14 by you in any way in your deliberation and in your
15 consideration on the question of the guilt or the innocence
16 of the defendant. It must not be considered by you in any
17 manner whatsoever. A defendant has the constitutional
18 right to remain silent, and the assertion of this right
19 must not be considered by your in your deliberations. I
20 repeat, under oath, you are to draw no conclusion
21 whatsoever from the fact that the defendant in this case
22 did not testify. The fact that this defendant did not
23 testify should not even be discussed in the jury room. The
24 burden of proof, as I have stated to you, is on the State.
25 The defendant is not required to prove his innocence. The

1 burden of proof remains on the State to prove guilt beyond
2 a reasonable doubt.

3 A statement alleged to have been made by the defendant
4 has been admitted into evidence in this case. While the
5 Court has determined that the statement is admissible, I
6 instruct you that you may make the ultimate decision of
7 whether or not the defendant made the statement. If the
8 defendant did make the statement, you must determine
9 whether the statement was made by the defendant voluntarily
10 and of his own free will. This means that the statement
11 was not caused by pressure, force, fear, threats, coercion,
12 or intimidation; or by hope or a promise of leniency, or a
13 reward of any kind.

14 In determining whether the statement was voluntary,
15 you should consider both the characteristics of the
16 defendant and the details of the questioning. Some of the
17 factors that you must consider are the age of the
18 defendant; the defendant's education or lack of education;
19 the defendant's mental ability or capacity; the defendant's
20 I.Q. or intelligence; the defendant's background and
21 environment; the place and the length of the detention; the
22 nature of the questioning; and the advice, or lack thereof,
23 to the defendant of his own constitutional rights,
24 including but not limited to the right to remain silent;
25 that any statement could be used against him in a court of

1 law; the right to have a lawyer present; that if he could
2 not afford a lawyer, a lawyer could be appointed to
3 represent him without any cost; and that he could stop
4 making a statement at any time.

5 You must carefully consider all of these surrounding
6 circumstances before you give any weight to the alleged
7 statement. The State has the burden of proving beyond a
8 reasonable doubt that the alleged statement was voluntary.
9 If you determine it was, you may give the statement any
10 further consideration that you deem proper. You must
11 decide what weight, if any, should be given to the alleged
12 statement. If you determine the alleged statement was not
13 the free and voluntary statement of the defendant, you
14 should not consider it. Okay.

15 Now, in conclusion, Mr. Foreman, and members of the
16 jury, as you retire to begin deliberations, I wish to
17 express the hope that each of you will be mindful of the
18 importance of your responsibility. You are not called upon
19 to serve as jurors very often. You and I are acting for
20 the community, and that is why we must see to it that the
21 trial is fair. It is my responsibility as the judge in
22 this case to see that every person tried here receives fair
23 and impartial justice. I am not trying to tell you how to
24 decide this case. As I have already told you that, under
25 the laws of the State of South Carolina, you, the jury, are

1 the sole judge of all the questions of fact. It would be
2 highly improper for me to influence you in the performance
3 of that duty.

4 Additionally, I am not trying to tell you what your
5 verdict should be, but as the presiding officer of this
6 court, I am vitally convinced whatever verdict you find
7 will be the result of your going into that jury room and
8 confining your consideration to the evidence and the law
9 that you have heard in this courtroom, weighing it fairly
10 and impartially, and I am convinced and have every
11 confidence that you will.

12 One more thing to add. There are two possible
13 verdicts which you may find in this case. This is the
14 verdict form, and your choices are shown on here and in the
15 order -- and I'm not trying to say anything by saying the
16 order. Okay? But they're on here, and the order is not
17 guilty or guilty. Okay? It is simply that one has to be
18 first, and one has to be second. Your verdict must be
19 unanimous. You all have to agree on your verdict.

20 And Mr. Foreman, when the jury agrees on the verdict,
21 you will write the verdict on the verdict form and sign
22 your name, as the foreperson, and you will put the date,
23 which is the 25th, today. And you will knock on the door
24 and let the bailiff know that you have reached a verdict.
25 At that time we will receive you back into the courtroom.

1 Now, I will ask that you return to the jury room, but
2 do not begin your deliberations yet, until you are told to
3 do so, either by our clerk or by our bailiff. There are
4 some matters which I must discuss with the lawyers before
5 you begin your deliberations. And so, now, if you all will
6 retire to the jury room, I need to ask the lawyers some
7 questions. And if we are cleared, then the exhibits and
8 your verdict form will be brought to you, either by our
9 bailiff or by our clerk, and you will then be instructed to
10 commence deliberations.

11 MR. FOREMAN: Yes, your Honor.

12 THE COURT: Thank you all.

13 (JURY EXITS COURTROOM TO DELIBERATE AT 10:58 AM.)

14 THE COURT: Okay. Counsel, are there any amendments
15 or exceptions or objections to the charge?

16 SOLICITOR PLEMING: None from the State, your Honor.

17 MR. RUDNICK: And none from the Defense, your Honor.

18 THE COURT: Okay. Gentlemen, at this time I would ask
19 you to come up and let's inventory these exhibits, and make
20 sure that --

21 SOLICITOR PLEMING: Oh, I'm sorry, pardon me, Judge.
22 I did not see. I'm sorry.

23 THE COURT: Okay. All right. So.

24 THE BAILIFF: Do you want -

25 THE COURT: We're not -- we're not quite ready. Okay?

1 THE COURT: All right. If you can hand that verdict
2 form to the Clerk. All right. And I tell you what, Mr.
3 Foreman, I'm going to hand this back to you with a writing
4 pen. It must have been just a pencil back there for you,
5 and we'll just make sure that we write over it in pen.

6 (JURY FOREMAN COMPLIES.)

7 (VERDICT RECEIVED UP BY THE COURT.)

8 THE COURT: Okay. Thank you. All right. Madam
9 Clerk, if you will please publish the verdict.

10 MADAM CLERK: In Indictment No. 2018-GS-46-02505, the
11 *State of South Carolina versus Warren Tremaine Duvant*, we,
12 the jury, unanimously find Warren Tremaine Duvant guilty,
13 signed by the foreperson, dated today's date.

14 THE COURT: Thank you. All right.

15 MADAM CLERK: Ladies and gentlemen of the jury, if
16 that be your verdict, so say you all by raising your right
17 hand.

18 Let the record show all jurors affirm this verdict.

19 (ALL JURORS RESPONDED IN THE AFFIRMATIVE.)

20 THE COURT: Okay. Thank you. Does the defendant wish
21 to have the jury polled?

22 MR. RUDNICK: Yes, your Honor.

23 THE COURT: Okay. Madam Clerk.

24 MADAM CLERK: If you would all please stand. And
25 after each one, you can have a seat. Juror No. 149, is

1 THE COURT: So we are now back on the record with
2 regard to the matter of *State versus Warren Tremaine*
3 *Duvant*, and Indictment 2018-GS-46-2505.

4 First of all, Mr. Rudnick had made a motion before we
5 adjourned for our fifteen minute recess, for a new trial,
6 and wanted me to rule on that, at that time, before
7 imposing the sentence. And so, Mr. Rudnick, sir, with all
8 due respect, I believe that you can renew that motion after
9 I impose the sentence, sir.

10 MR. RUDNICK: Yes, your Honor.

11 THE COURT: Or you have ten days to make your motion
12 in writing to me, and of course Counsel would have an
13 opportunity to respond, and then, we can take it from
14 there.

15 MR. RUDNICK: Yes, your Honor.

16 THE COURT: All right. And so, other than that, are
17 there any matters that we need to address at this time,
18 Counsel?

19 SOLICITOR PLEMING: Nothing from the State, your
20 Honor.

21 MR. RUDNICK: Nothing from the Defense.

22 THE COURT: All right. And so, now, Mr. Fleming, is
23 there anything further from the State?

24 SOLICITOR PLEMING: In regard to sentencing?

25 THE COURT: Yes, sir.

1 SOLICITOR PLEMING: Your Honor, I would just provide
2 the defendant's prior criminal history. He has two
3 distribution of cocaine convictions and two proximity
4 convictions from 2015. In 2014 he has a conviction for
5 receiving stolen goods, and for obtaining property by false
6 pretense. Your Honor, the sentencing range is twenty-five
7 to thirty years, and I would respectfully leave that to --
8 in your Honor's discretion what his sentence should be.

9 THE COURT: Thank you, sir. Okay. Mr. Rudnick, does
10 your client agree with the convictions as stated by the
11 Solicitor?

12 MR. RUDNICK: The prior convictions, yes, your Honor.

13 THE COURT: Okay. And is there anything that you, or
14 he, would like to tell me prior to me imposing my sentence,
15 sir?

16 MR. RUDNICK: Yes, your Honor. Warren is twenty-six
17 years old. He has two children, and he has one on the way.
18 He has come to absolutely everything that I've ever been
19 with him. He's been a model client. And we just
20 respectfully request the minimum.

21 THE COURT: Thank you, sir. Okay. And Mr. Duvant, is
22 there anything that you would like to tell me, sir?

23 MR. DUVANT: I wish I would've got a better trial.

24 THE COURT: Anything other than that?

25 MR. DUVANT: No.

1 THE COURT: Okay. With regard to the matter of the
2 *State of South Carolina, County of York, versus Warren*
3 *Tremaine Duvant*, and Indictment Number 2018-GS-46-2505, and
4 the offense of trafficking cocaine, 10 grams or more, and
5 this being a third or subsequent offense, it would be the
6 order of the Court that the defendant be committed to the
7 State Department of Corrections for twenty-five years.

8 Good luck to you, sir.

9 Oh, and wait a minute. There is a probation
10 violation. Is that correct?

11 (DEFENDANT TURNS TOWARD THE COURTROOM GALLEY.)

12 MR. DUVANT: I love y'all.

13 THE COURT: Sir, excuse me. Excuse me just one
14 moment. You also have - Counsel, are you aware that there
15 was a probation violation?

16 SOLICITOR PLEMING: Yes, ma'am.

17 THE COURT: All right. And I need to hear from the
18 probation representative. Yes, sir. Sir, if you would
19 please stand. Yes, ma'am.

20 AGENT PARKS: Your Honor, Warren Duvant is a four-
21 year-old citation, C46170160, for Indictments 16-GS-46-
22 02210 through 2211, 2212, and 2209. He had two counts of
23 manufacture and distribution of cocaine base first, and two
24 counts of PWID of a controlled substance near a school. He
25 was sentenced by Judge Hall on September 22nd -- on

SENTENCING:

-401-

1 September 22nd, 2016, and received a sentence of five years
2 suspended to two years probation.

3 He has no prior violations on this case. His current
4 violation is subject failed to follow the advice and
5 instruction of his agent for failing to refrain from
6 violating federal, state, or local law by being arrested on
7 8/23/2017, by York County Sheriff's Department, for PWID
8 cocaine third offense and distribution of a controlled
9 substance near a school, as evidence of arrest Warrant
10 2017A460 -- 10201708; and 2017A4610201709, failing to pay
11 supervision fee, being in arrears \$510.00, with a balance
12 of eleven -- \$1,160.00.

13 Failing to pay surcharges, being one hundred in
14 arrears on Indictment ending 2210 and 2211. So his actions
15 constitute violations of 6 -- conditions 6, 7, 9, and 10 of
16 probationary sentence. And we just ask to terminate the
17 case, and convert fines to civil judgment with no
18 administrative monitoring.

19 THE COURT: Okay. Counselor, do you want to be heard
20 on that?

21 MR. RUDNICK: We have no objection to the termination,
22 your Honor.

23 THE COURT: All right. So ordered.

24 AGENT PARKS: Thank you, your Honor.

25 SOLICITOR PLEMING: Thank you, your Honor.

1 MR. DUVANT: Let me hug my wife, man. Just let me hug
2 her. Can I kiss her? Can she hug me? Nothing?

3 THE COURT: Sir, you need to follow the instructions
4 of the officer.

5 (DEFENDANT ESCORTED FROM COURTROOM.)

6 MR. RUDNICK: Your Honor, at this time I would renew
7 my motion for a new trial, and all previous objections and
8 pretrial motions made throughout the trial.

9 THE COURT: Yes, sir. Thank you, sir. Counselor.

10 SOLICITOR PLEMING: Your Honor, I just, again, ask you
11 to deny the motion.

12 THE COURT: Okay. And will there be any followup by
13 written -- or if you -- let me just tell you. If you want
14 to follow up by written motions, that's fine. You can do
15 that --

16 MR. RUDNICK: Oral is fine.

17 THE COURT: --- until the next ten days. Okay. And
18 so, I will reserve ruling until the ten days passes, if you
19 would like that opportunity.

20 MR. RUDNICK: You can rule on it now.

21 THE COURT: Okay. Anything else, Counsel?

22 SOLICITOR PLEMING: No, ma'am, your Honor.

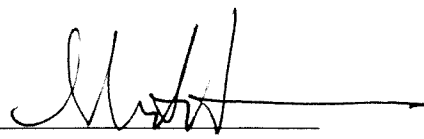
23 THE COURT: I deny your motions. Thank you, sir.

24 MR. RUDNICK: Thank you, your Honor.

25 THE COURT: Madam Clerk, is there anything, Madam

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 3, 2019

/s/ Nisha Sandhu 

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