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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

Court of Appeals Appellate Case No. 2018-001909
Unpublished Opinion No. 2021-UP-277

The State,Respondent,

v.

Dana L. Morton,Petitioner.

APPENDIX VOLUME III OF III

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Anthony Lachica - Direct examination
By The Defendant

1 Q And how would you say it's cocaine?

2 A Because it field tested presumptive for cocaine, and
3 there's never a break in the chain of evidence.

4 Q Okay. So, you created your own chain of evidence?
5 You're the one who signed it?

6 A I started it, yes.

7 Q Yeah, you signed it.

8 Okay. And we understand that you and your friend --
9 let's say your, your, your informant guy, you go to bat for
10 each other basically?

11 A Sir, I don't understand what you're talking about when
12 you say go to bat for each other.

13 Q Okay. How much drugs did you take out of, out of the
14 substance?

15 How much of that substance did you take out?

16 A A minuscule amount.

17 Q Huh?

18 A As little as I possibly could.

19 Q And how much was that?

20 A As little as I possibly could.

21 Q You don't know?

22 You weighed it up?

23 SOLICITOR GHENT: Asked and answered.

24 THE COURT: All right. He asked him if he weighed it.
25 That's a different question.

Anthony Lachica - Direct examination
By The Defendant

1 Go ahead.

2 Q Did you weigh it up?

3 A I did.

4 Q How much did it weigh?

5 A With bag weight, I believe it was 118 grams if I'm not
6 mistaken.

7 Q And when you weighed it up, how many grams was it?

8 A I just explained that.

9 Q After you did -- took it with you, once you got it
10 there and checked it, how much did it weigh at that point?

11 A I'm sorry?

12 Q I said how much did it weigh after you put it in your
13 little machine?

14 A It would of weighed the same.

15 Q Okay. So -- okay. Tell me what would happen if you
16 didn't fill out the proper paperwork that goes along with
17 these type of buys and stuff.

18 what would happen to the drug dealer?

19 A It depends on which paperwork you're speaking of and---

20 Q The chain of custody.

21 A If I made a mistake on the chain of custody?

22 Q No, if you didn't fill it out.

23 what would happen to the drugs and your drug dealers?

24 A It probably wouldn't be admissible in court, and the
25 drug dealer would probably walk free on a technicality.

Anthony Lachica - Direct examination
By The Defendant

1 Q Okay. And, and if you realized or if someone realized
2 that the proper paperwork wasn't filled out, how would you
3 go by screening that out?

4 A It depends on what the mistake was.

5 Q The chain of custody.

6 A What part of the chain of custody?

7 Q The whole chain of custody.

8 A I can't answer that.

9 Q You can't?

10 A No, because I don't understand really what you're---

11 Q What I'm saying is, if you didn't fill out the proper
12 paperwork to go with one of those controlled buy and busts,
13 how would you straighten out your mess-up?

14 A I would buy from him again.

15 Q You would try to buy from him again?

16 A Yes.

17 Q Okay. So, you wouldn't go above and beyond and create
18 fake documents or be a part of no one that create fake
19 documents?

20 A Sir, I would never do that.

21 Q Okay. So, in these chain of custody papers, you got to
22 sign your name on them, don't you?

23 A Yes, sir.

24 Q And you got to date them?

25 A Yes.

1 Q And what about the, the, the, the, the notice of
2 republic part like someone who -- isn't that a important
3 part of it?

4 A That's already been explained that---

5 Q I'm asking you.

6 A ---we are not required to have it notarized. So---

7 Q So, you can---

8 A ---there's---

9 Q ---basically fill it out yourself and go off your word?

10 A Are you gonna let me answer the question?

11 You asked it.

12 So, we're not required to have it notarized on -- ever
13 since I've been a police officer.

14 Q So, you are a police officer?

15 A I believe I've testified to that already, yes, sir.

16 Q Are you a -- are you a, a chemist?

17 A No.

18 Q Are you a, are you a---

19 A I'm a detective, sir.

20 Q Are you a lab, lab ferlatis (phonetic) chemist, one of
21 the people who tests this?

22 A I'm a detective.

23 Q Oh, you're a detective.

24 So, you, you wouldn't have an expertise to check
25 certain drugs or something, would you?

Anthony Lachica - Direct examination
By The Defendant

1 A To have them --?

2 Q Analyzed.

3 A -- analyzed to be presented in court as proof positive
4 that they are cocaine, which yours was, then no, I'm not
5 qualified to do that.

6 Q Okay. I wish I could -- could you -- could he --?

7 SOLICITOR GHENT: May I see?

8 THE DEFENDANT: Could I give this to him so he can---

9 THE COURT: Well, he's entitled to look at it first.

10 (Pause.)

11 SOLICITOR GHENT: Your Honor, the original is already
12 in evidence.

13 THE COURT: Okay. Well, he can show it to him
14 though---

15 THE DEFENDANT: Thank you.

16 THE COURT: ---if he wants to. He's got a question
17 about it.

18 THE DEFENDANT: Thank you.

19 THE COURT: Why don't we get the exhibit and show it
20 to him?

21 THE DEFENDANT: Okay. There we go, Judge.

22 We can't show him both of them?

23 THE COURT: If they're the same thing, I don't really
24 know the purpose.

25 THE DEFENDANT: Yeah, I just want -- you know, you

Anthony Lachica - Direct examination
By The Defendant

1 seen it.

2 THE COURT: He saw it -- and you said it was the same
3 thing.

4 THE DEFENDANT: Yeah.

5 THE COURT: Give him the exhibit. That's the best
6 evidence. It's been put into evidence, and agreed to by
7 the parties.

8 THE DEFENDANT: From the -- no, from the State. It's
9 not---

10 THE COURT: well, the Court has accepted it as an
11 exhibit, Mr. Morton, and I'm gonna tell you---

12 THE DEFENDANT: Okay.

13 THE COURT: ---show him the exhibit.

14 (WHEREUPON, the Defendant complies.)

15 THE COURT: Thank you.

16 Q Okay. Could you read the control number at the top of
17 that?

18 A There is no control number.

19 Q There, there isn't?

20 A No, because this is for marijuana, and we don't require
21 control numbers, which is already been testified here.

22 Q That must be the wrong paper.

23 A This is your exhibit, sir.

24 Q Yeah, that must be the wrong one. Oh, yeah, that's
25 green plant material. We ain't talking about that.

1 okay. I don't even think that's it, but let's see.

2 No, that's a black digital scale. This one blocked.

3 This hadn't been submitted into evidence, Your Honor.

4 SOLICITOR MABBS: Your Honor, it's part of one of the
5 state's Exhibits that's I believe in the envelope that was
6 the chain of custody for the cocaine.

7 THE DEFENDANT: That you created, ma'am?

8 THE COURT: You're not suppose to talk to her.

9 THE DEFENDANT: Oh, I'm sorry.

10 THE COURT: All right. And we've been down that road
11 too many times.

12 THE DEFENDANT: Okay. I apologize, Your Honor.

13 SOLICITOR MABBS: And, Your Honor, I believe it was
14 entered without objection, but it is one of the -- in one
15 of those---

16 THE COURT: well, can we agree that we can let the
17 witness look at that document?

18 SOLICITOR MABBS: Of course.

19 THE COURT: Show it to him, Mr. Morton.

20 THE DEFENDANT: Thank you, sir.

21 THE COURT: Thank you.

22 Q Do you agree that that document right there has a
23 control number?

24 A Yes.

25 Q Okay. And that control number means what?

Anthony Lachica - Direct examination
By The Defendant

1 A It's the number that's assigned to the B.E.S.T. kit.

2 Q Okay. And the B.E.S.T. kit, how do you get a B.E.S.T.
3 kit?

4 where do you get that from?

5 A I keep them in my car.

6 Q You keep them in your car?

7 A Yes, sir.

8 Q You don't keep no drugs in your car?

9 A No, I don't keep drugs in my car.

10 Q All right. Okay. You're a good man then. All right.
11 okay.

12 THE COURT: Now, Mr. Morton, I'm not gonna let you
13 make comments about his answers either.

14 Do we need to take a break---

15 THE DEFENDANT: No, sir.

16 THE COURT: ---and go over this?

17 THE DEFENDANT: No, sir, we'll get to the bottom of it
18 right now.

19 So, by you having the B.E.S.T. kits, the B.E.S.T.
20 bags, and you fill out your own paperwork, is it possible
21 that you're able to correct any mistakes that may happen on
22 your watch?

23 A Once the B.E.S.T. bag is sealed, no.

24 Q So, you wouldn't be able to have a utensil, no scissors
25 or nothing to open the bag up, and get another B.E.S.T. bag

Anthony Lachica - Direct examination
By The Defendant

1 our your car and reseal it and rewrite it out?

2 A If I notice I made a mistake on a B.E.S.T. bag, yes, I
3 absolutely could do that. In fact, I have done that in the
4 past where I forgot to put in the, the analysis form.

5 THE DEFENDANT: No further questions, Your Honor.

6 THE COURT: You may cross-examine.

7 CROSS-EXAMINATION

8 BY SOLICITOR GHENT:

9 Q Officer Lachica, with respect to testing that was done
10 on the scene at the apartment of the informant---

11 THE DEFENDANT: Objection. It was a house. It wasn't
12 an apartment.

13 THE COURT: well, he's asking the questions, and
14 you'll get a chance to redirect, and you can ask about that
15 at that time.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You're not---

18 Q Have you---

19 THE COURT: You're not objecting based on any of the
20 rules of evidence. So, overruled.

21 Q At the house of the informant, at that time when you
22 tested it, were you testing for determining what, what the
23 powder was beyond a reasonable doubt?

24 THE DEFENDANT: Objection. He just stated that he
25 never tested nothing at the house. He just stated that.

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 THE COURT: well, he can answer the question and say
2 he didn't do that test.

3 THE DEFENDANT: Okay.

4 THE COURT: You can't---

5 A When I---

6 THE COURT: You can't dictate how he words his
7 questions.

8 Okay. so, I'll let him ask the questions. If he
9 didn't do any testing at the house, I would assume the, the
10 witness will say he didn't do a test at the house.

11 THE DEFENDANT: Okay.

12 THE COURT: I don't know. I'm just saying.

13 Go ahead and answer -- we'll try and get you to ask
14 those questions one more time.

15 SOLICITOR GHENT: Yes, Your Honor.

16 Were -- was the white powder initially tested after
17 the transaction?

18 A It was, at -- but that was at the narcotics office.

19 Q The narcotics office?

20 A That's correct.

21 Q Was that to determine probable cause?

22 A Yes, sir.

23 Q Not proof beyond a reasonable doubt?

24 A That's correct.

25 Q Proof beyond a reasonable doubt was what these other --

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 this other chemist was used to establish, correct?

2 A Yes, sir.

3 Q Now, with respect to this informant, I want to clarify,
4 is he a friend?

5 A No, sir.

6 Q Is he a former drug dealer?

7 A Yes, sir.

8 Q And, because of that, is he used to do business with
9 active drug dealers?

10 A Yes, sir.

11 Q And are those monitored as closely as you, narcotics
12 officers, possibly can?

13 A Yes, sir.

14 Q In this particular instance, did you and another
15 officer set up cameras at the drug dealer -- the informant's
16 house?

17 A Yes, we did.

18 Q Was he given \$5,200.00?

19 A Yes, he was.

20 Q Now, you have seen the video.

21 A Yes, sir.

22 Q The jury has seen the video.

23 A Yes, sir.

24 Q Is there sound on that video?

25 A Yes, sir.

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 Q After the transaction when -- and it was stopped by
2 this Defendant, that powder is given to the informant, and
3 the money that you provided -- and, again, how much was it?

4 A \$5,200.00.

5 THE DEFENDANT: objection.

6 THE COURT: Overruled.

7 Q Was provided to the Defendant.

8 Can you, yes or no, hear the sound of counting the
9 money on the video?

10 A I believe I can even see it partially.

11 Q At the end of the transaction -- are you familiar with
12 an expression that, again, going back to the '60s, I
13 remember when it originated, are you familiar with the
14 expression of a brother's hand, handshake?

15 A (No response.)

16 SOLICITOR GHENT: May I approach?

17 THE COURT: You may.

18 Q Like that.

19 Is that a brother's handshake?

20 A That's -- I shake a lot of the people's hands.

21 Q Is that---

22 A That's how I shake people's hands with that I'm really
23 close with.

24 Q Exactly.

25 Did you see that handshake between the informant and

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 the Defendant?

2 A I---

3 Q Did you notice that?

4 A I did, but I didn't notice it. It, it doesn't stand
5 out in my mind.

6 Q Would it surprise you if it was not a brother's
7 handshake---

8 THE DEFENDANT: Objection.

9 Q ---but a businessman's handshake?

10 A I don't recall. I'd have to see it again.

11 Q But the jury, in looking at it, can see, this was
12 strictly business between them.

13 Correct?

14 A Yes, sir.

15 Q They were not friends?

16 I mean watching the exchange between the two, you could
17 tell these are two men who do not like each other. That's
18 what he brought out. They are not friends.

19 Are there?

20 A I believe they were --.

21 Q I'm talking about now.

22 A No, sir, they're not friends now.

23 THE DEFENDANT: Objection, Your Honor.

24 THE COURT: Let's stick with the transaction that
25 occurred in this case.

1 Q The handshake sealed the deal, did it not?

2 THE COURT: I ruled in your favor. If you've got a
3 problem, stand up and tell me.

4 THE DEFENDANT: Yeah.

5 THE COURT: I just ruled in your favor on that.

6 THE DEFENDANT: Thank you. Thank you. Thank you,
7 Your Honor.

8 THE COURT: So, is there some problem with that
9 ruling?

10 You made---

11 THE DEFENDANT: I know---

12 THE COURT: ---a gesture after I did that.

13 THE DEFENDANT: Yeah, I know.

14 THE COURT: And if there is some problem, I'll hear
15 you out.

16 THE DEFENDANT: I didn't know, Your Honor. I didn't
17 know if you ruled in -- I don't know the words to it. If I
18 knew the words, then---

19 THE COURT: well, I asked him to stick to this
20 transaction.

21 THE DEFENDANT: okay. All right.

22 THE COURT: Not to ask that question.

23 THE DEFENDANT: okay. All right. Thank you. Thank
24 you.

25 THE COURT: If you have something you want to address

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 to the court, I've explained to you for you to stand.

2 THE DEFENDANT: Okay.

3 THE COURT: Not make gestures and sounds.

4 You understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Thank you.

7 SOLICITOR GHENT: May I proceed, Your Honor?

8 THE COURT: You may.

9 CONTINUED CROSS-EXAMINATION

10 BY SOLICITOR GHENT:

11 Q The expression flex was used.

12 Does that mean fake drugs?

13 A Yes, sir.

14 Q It does not mean that the C.I. swaps drugs.

15 Is that correct?

16 A Did you say it does not mean that?

17 Q Yeah.

18 A Yeah, that -- no, it does not mean that.

19 Q You have been in the courtroom through this entire
20 case?

21 A Yes, sir.

22 Q You have seen this paraded, put in front of the jury,
23 as if it counted for something.

24 I looked and ask you is -- has that been marked or
25 offered into evidence?

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 A No, sir, and---

2 Q Do you have any idea what it is?

3 A I wouldn't even want to touch it.

4 Q Who brought it?

5 A The Defendant.

6 THE DEFENDANT: Objection.

7 THE COURT: What's the objection?

8 THE DEFENDANT: I did not bring it. So, is he -- he's
9 making a false statement.

10 THE COURT: I'll let you question the witness as to
11 his knowledge as to who brought it once you get back up
12 again.

13 Q Did you bring it?

14 A I did not bring it.

15 Q Did any of the drug team bring it?

16 A No.

17 Q Any of the officers testifying?

18 A No.

19 Q Insofar as you know, the only person who is insisted on
20 parading this in front of the jury, would that be the
21 Defendant?

22 A Yes.

23 Q And nobody knows what that is?

24 A That's correct.

25 Q However, the cocaine has been through every testing

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 that law enforcement can provide, correct?

2 A That is correct.

3 Q And you have been in hundreds of trials, hundreds of
4 cases?

5 A Yes, sir.

6 Q And is this the way cocaine is determined to be
7 cocaine?

8 A Yes, sir, it is.

9 Q And you have listened to the testimony of agents from
10 your office, including a chemist, as to whether or not this,
11 number one, gave probable cause to believe it was cocaine,
12 and was later established as cocaine.

13 Correct?

14 A That's the only way I know it is cocaine.

15 Q The suggestion that you have been a part of a
16 conspiracy of lies and fabrication to get him, does that
17 offend you as an officer?

18 A It offends me very much.

19 Q This individual before this---

20 THE DEFENDANT: Objection, Your Honor.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: He's making statements about me when
23 he should be asking the, asking the witness --
24 cross-examining like you told him earlier.

25 THE COURT: well, you, you asked this witness what --

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 about his feelings and about how he would feel if somebody
2 had taken money from him. He's on cross-examination. He
3 asked whether or not the, the suggestions that somehow
4 there's been some fabrications offends him, and I'm gonna
5 let him ask that question. It's very similar to the
6 questions you asked about other things. So, yes, sir, I'm
7 not going to prevent him from asking those questions.

8 overruled.

9 Q In terms of doing your job, you take pride in it?

10 A Absolutely.

11 Q Does it offend you when your integrity is impugning
12 like this?

13 A Yes, sir, it does. Deeply.

14 Q Did you take an oath on that Bible to tell the truth,
15 the whole truth, and nothing but the truth?

16 A Yes, I did.

17 Q Is the motto not just you, but -- let me, let me
18 rephrase this. You were asked questions about with people,
19 and your response involved protecting them.

20 Do you recall that?

21 A Yes, sir.

22 Q Is the motto of you and virtually every law enforcement
23 agency not to serve and protect?

24 A Yes, sir, it is.

25 Q Do you consider that, as an officer of the Spartanburg

Anthony Lachica - Cross-examination
By Solicitor Ghent

1 County Sheriff's Office in the drug unit, to be, indeed,
2 acting in line with that motto?

3 A Absolutely.

4 Q When you served your country in Iraq, were you not also
5 protecting the people of this county, and the people of this
6 country?

7 A Yes, sir, I was.

8 Q Thank you.

9 No further questions.

10 THE COURT: You may redirect.

11 THE DEFENDANT: Thank you, sir.

12 REDIRECT EXAMINATION

13 BY THE DEFENDANT:

14 Q So, Officer Lachica, would you say or would you agree
15 that it is dangerous people throughout this world?

16 A Yes, sir.

17 Q You've been in Iraq?

18 A Very dangerous.

19 Q would you say it's dangerous people in Spartanburg
20 County?

21 A Yes, sir.

22 Q would you say it's liars in Iraq?

23 A Yes, sir.

24 Q would you say there's liars in Spartanburg County?

25 A Yes, sir.

Anthony Lachica - Redirect examination
By The Defendant

1 Q would you say police officers tend to fabricate the
2 truth at some point in their career to make them go a little
3 bit higher?

4 A I don't know of any.

5 Q You don't know of any?

6 A No, I don't.

7 Q Have you ever heard of any?

8 A Yes, sir, I have, on the news.

9 Q Okay. That's good enough for me. So --.

10 THE COURT: Now, again, I'm asking you not to comment
11 on his answers. You're -- I don't know you need to comment
12 on answers after somebody gives it, and you say that
13 answer's good enough for me is a comment on the answers.
14 So, please don't comment on the answers. You're having
15 trouble following my directions, and I really don't want to
16 call you out on it, but I'm going to enforce the rules,
17 Mr., Mr. Morton. So, please, let's try to follow them---

18 THE DEFENDANT: Yes, sir.

19 THE COURT: ---so we don't have to go through this.

20 THE DEFENDANT: I apologize, Your Honor.

21 THE COURT: Thank you.

22 Q Officer Lachica, do y'all have, since you don't have
23 cameras in your car, do you have cameras at your office?

24 A Yes, we do.

25 Q Okay. So, whenever you walk in your office---

Anthony Lachica - Redirect examination
By The Defendant

1 THE COURT: Now, is this something that -- new that
2 was brought out on cross?

3 SOLICITOR GHENT: Objection, Your Honor.

4 THE COURT: Cameras in his office, is that something
5 brought out on cross?

6 You know, we limit redirect to matters that were
7 brought out, new matters that were brought out on cross.

8 THE DEFENDANT: Oh, okay. So, that means---

9 THE COURT: So, you got to stick---

10 THE DEFENDANT: Okay.

11 THE COURT: ---to whatever new matters the State
12 brought out in cross-examining him.

13 THE DEFENDANT: Okay.

14 THE COURT: And I don't remember any questions about
15 cameras at their office in cross-examination.

16 THE DEFENDANT: Okay.

17 THE COURT: So, I don't think this is appropriate for
18 redirect.

19 THE DEFENDANT: Okay. So---

20 THE COURT: It's new matters that were brought out by
21 the State's cross-examination you get to go back into cause
22 you didn't go into in the beginning.

23 THE DEFENDANT: Okay.

24 THE COURT: It's new matters.

25 THE DEFENDANT: Okay.

Anthony Lachica - Redirect examination
By The Defendant

1 Okay. So, if you seen me as an individual at wal-Mart
2 shopping, would you be able to determine oh, this guy
3 here's a say drug dealer?

4 A No, sir.

5 Q Thank you.

6 would you be able to determine that I am a liar?

7 A No, sir.

8 Q would you be able to determine that I am a citizen?

9 A No, sir.

10 Q Okay. would you be able to, to -- could you --
11 could -- have you ever worked anywhere other than this job
12 at the Sheriff office?

13 A I was in the United States Military. I was a police
14 officer in North Charleston and the City of Columbia.

15 Q And with those jobs come supervisors and people that's
16 over you, right?

17 A That's correct.

18 Q And so you have to answer to these people, right?

19 A I do what they ask me to do.

20 Q But you have to come back, and give them a full report
21 of what you got going on?

22 A Not necessarily. It depends on the level of
23 micromanaging as individual supervision do. Like, right
24 now, I don't have to answer to anybody really.

25 Q Oh, you don't?

Anthony Lachica - Redirect examination
By The Defendant

1 A No.

2 Q So, you do everything yourself?

3 A Yes, they give me the cases and I work them.

4 Q Okay. So, would you say you -- how often do you come
5 in contact with liars?

6 A Probably every day that I'm working.

7 Q Do you consider yourself a liar?

8 A No, sir.

9 Q Do you tell lies?

10 A Yes, sir, I do.

11 Q Thank you.

12 At those jobs that we was talking about, other than
13 this job, how would you get ahead?

14 How would you get a promotion?

15 SOLICITOR GHENT: Objection, Your Honor.

16 THE COURT: Yes, sir.

17 SOLICITOR GHENT: It's irrelevant, other jobs. He's
18 here as an officer of the Spartanburg County Sheriff's
19 office. It's irrelevant.

20 THE COURT: Well, you know---

21 SOLICITOR GHENT: And I doubt he even knows.

22 THE COURT: The -- they---

23 SOLICITOR GHENT: They would have different rules.

24 THE COURT: He can talk -- he can testify with what's
25 in his own knowledge. He has been in military. He's been

Anthony Lachica - Redirect examination
By The Defendant

1 in police forces that how people in other jobs get
2 promotions. Unless you can establish some basis for
3 knowing how people in, let's say, the, the industry plants
4 get promotions --

5 THE DEFENDANT: Okay.

6 THE COURT: -- I'm not -- that question's so general.

7 THE DEFENDANT: Okay.

8 THE COURT: There's ways, in every industry, that
9 people get promotions, and it's all different ways.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So, you're gonna have to try to keep it on
12 the facts of this case. I've asked you to do that. You
13 ask a lot of really big general questions about lots of
14 things. So, I want you to get case specific---

15 THE DEFENDANT: Okay.

16 THE COURT: ---as much as you can.

17 THE DEFENDANT: Okay.

18 THE COURT: We're, we're trying to get through as best
19 we can.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So, help -- please help us.

22 THE DEFENDANT: Okay.

23 THE COURT: Thank you.

24 Q So, Officer Lacheeta (phonetic), at the Spartanburg
25 County Sheriff Office, how would you be promoted?

1 SOLICITOR GHENT: Objection, Your Honor. Outside of
2 the scope of cross, and calls for speculation.

3 THE COURT: It's probably outside the cross, but I am
4 going to let him answer, within his own knowledge, as to
5 how promotions might occur.

6 THE DEFENDANT: Thank you.

7 A Usually positions come available at my level. The next
8 step up would be a sergeant, and I've never put in for a
9 sergeant because I don't want the responsibility. I
10 probably make more money than most of our sergeants because
11 of the number of years that I've been in law enforcement,
12 and I don't want the responsibility that the little increase
13 of, of being promoted would give me.

14 Q How would you -- how would you be decorated for some of
15 your work?

16 what would they -- what would happen if you did
17 different work?

18 A Normally we don't.

19 Q Okay. So, on the video there, I was in that house?

20 A Yes, sir, you were.

21 Q Uh-huh. (Affirmative.)

22 I gave this guy a package?

23 A That package right there.

24 Q On your report, you stated that -- you stated that,
25 that I handed a package to the C.I.

Anthony Lachica - Redirect examination
By The Defendant

1 A Are you telling me this or are you asking me this?

2 Q I'm telling you this.

3 A Okay.

4 Q would you agree?

5 A I'd have to look at my statement.

6 Q okay.

7 A If that's what it says or I'll capitulate to that's
8 what I, I saw.

9 Q So, if, if a, if a suspect is in a house, and he's
10 breaking the law, and he's one suspect, he's not a large
11 guy, do you think it would be in, in, in, in, in, in fashion
12 to arrest that guy right there or allow that guy to leave
13 and put the public in danger?

14 A You ask a loaded question, Mr. Morton, and so here goes
15 the answer. It's quite simple. We wanted to protect the
16 informant, and -- from you knowing that it was him who set
17 you up. And so we allowed you to leave, but we monitored
18 you the entire time, and didn't conduct the traffic stop
19 until you were well away from the residence so as to not
20 burn our C.I.

21 Q Okay. So, the C.I. in question basically is more
22 important than the general public?

23 A That's not what I said, sir.

24 Q I'm asking you. It's in the scope of me doing this.

25 A You're asking me what?

Anthony Lachica - Redirect examination
By The Defendant

1 Q Do the C.I. -- do, do the C.I. -- do you value the C.I.
2 more than you would value the general public?

3 A Absolutely not.

4 Q Okay. How many cases involving this whole little
5 ordeal time type thing went down?

6 How many cases have you allowed the, the suspect to
7 leave?

8 SOLICITOR GHENT: Objection. Beyond the scope of
9 cross, Your Honor.

10 THE COURT: You've got to get into new matters brought
11 up by the state, and that's something you could of asked
12 him. He's been on the stand twice, and this is the third
13 time you've asked questions of him.

14 THE DEFENDANT: Okay.

15 THE COURT: And if there's something new the state
16 brought up in their cross, this is your opportunity to
17 address that. Not to replot old information.

18 THE DEFENDANT: okay. well, I was trying to stay on
19 this same grounds.

20 THE COURT: well, if -- I'm gonna find that that's
21 outside the scope---

22 THE DEFENDANT: okay.

23 THE COURT: ---of redirect.

24 Q Okay. So, so, you're able to -- you basically -- you,
25 you don't have a superior?

Anthony Lachica - Redirect examination
By The Defendant

1 A I have plenty of superiors.

2 Q I'm saying in like in your -- on your -- in saying that
3 you work by yourself, and you don't really have to answer to
4 people?

5 A Not on a daily basis.

6 Q Okay. So, that give you room to correct any mistake
7 that you may have made?

8 A If I make a mistake, it depends on what type of
9 mistake. I don't understand what you're saying.

10 what are you -- are you asking me -- what are you
11 asking me?

12 Excuse me.

13 Q would you correct a mistake that you made?

14 A If it didn't jeopardize anything, and if it was a
15 simple mistake, yes, I would.

16 Q okay. well, would you consider the \$5,200.00, you're
17 not prerecording it, as a mistake?

18 A No, sir, I would not.

19 Q It's not a mistake?

20 A No.

21 Q okay. could you tell us how long was you a part of --
22 how long was you in that residence on that camera?

23 A On the camera?

24 Q Yeah.

25 A How long was I in the residence that day?

Anthony Lachica - Redirect examination
By The Defendant

1 Q Yeah.

2 A A few hours.

3 Q Were you able to monitor both cameras at the same time?

4 A No. One of them is a self-contained recording device,
5 and I can't see or hear from it, but the other one I was
6 watching you live.

7 Q Uh-huh. (Affirmative.)

8 And do you think that that was cocaine that I gave that
9 guy?

10 A I know it was. It's right there.

11 Q You know it was?

12 A Yes, sir.

13 Q How would you know it?

14 A Because it's been tested by the chemist.

15 Q Okay. So, what you're saying, the same package that
16 was on that thing is the same package right there?

17 A Absolutely.

18 THE DEFENDANT: Could we turn that camera on one more
19 time?

20 THE COURT: This is, again, redirect, and you
21 didn't---

22 THE DEFENDANT: It's in the slow---

23 THE COURT: The jury has seen that, that video.

24 THE DEFENDANT: Because, Your Honor, may I speak?

25 THE COURT: You can speak.

Anthony Lachica - Redirect examination
By The Defendant

1 THE DEFENDANT: Because what I'm, what I'm -- all I'm
2 saying, Your Honor, is that this is no where near the same
3 package that what was on that camera, and---

4 THE COURT: You can argue that to the jury.

5 THE DEFENDANT: Okay. All right. well, that's great
6 enough for me.

7 THE COURT: In your argument later on---

8 THE DEFENDANT: Yes, sir, that's---

9 THE COURT: ---to the jury---

10 THE DEFENDANT: That's great enough for me. I'm, I'm
11 with it, Your Honor.

12 THE COURT: well, that, that's video's been shown to
13 them -- in fact, we even cranked it up for you yesterday,
14 and showed what you wanted to show.

15 THE DEFENDANT: Yeah, the different dates.

16 THE COURT: Okay.

17 THE DEFENDANT: Okay. I'm done with that. I'm done
18 with questioning.

19 THE COURT: Thank you.

20 THE DEFENDANT: Thank you.

21 THE COURT: Any recross?

22 SOLICITOR GHENT: No, sir.

23 THE COURT: You may step down, sir.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Thank you very much.

1 Ladies and gentlemen of the jury, we're gonna break
2 for lunch at this time. You know my instructions as you
3 leave the courthouse. Not to discuss the case with anyone.
4 Don't try to gather any information. Don't read or watch
5 any media reports. Let me know if somebody tries to
6 contact you about the case.

7 I'll ask you to be back in the jury room at let's say
8 2:15, and we should be able to start shortly thereafter.
9 Thank you very much.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Let's check. Has there been
13 any other of the officers able to attend this trial?

14 SOLICITOR MABBS: I don't have any new updates, Your
15 Honor.

16 THE COURT: Okay. What other witnesses do you intend
17 to call?

18 THE DEFENDANT: They here, Your Honor. I'm looking
19 for them.

20 THE COURT: Who?

21 THE DEFENDANT: I said if they are here. I'm waiting
22 on them.

23 THE COURT: Well, apparently, they're not here, and I
24 don't know that they're going to be here. I am going to
25 ask that we have the information that I requested

1 concerning those who have the medical issues---

2 SOLICITOR MABBS: And I---

3 THE COURT: ---ready to present---

4 SOLICITOR MABBS: Yes, sir, Your Honor.

5 THE COURT: ---this afternoon.

6 SOLICITOR MABBS: I'll contact Deputy Gist over the
7 lunch break.

8 THE COURT: Okay.

9 THE DEFENDANT: What about the other ones, Your Honor?

10 THE COURT: Well, I think we've accounted for
11 everybody on the list that you were given, haven't we?

12 SOLICITOR MABBS: As, as far as I know, Your Honor.

13 THE COURT: I asked you to give the list of names when
14 we started.

15 THE DEFENDANT: Uh-huh. (Affirmative.)

16 THE COURT: I think we've accounted for all of those.

17 THE DEFENDANT: Do you have that list, ma'am?

18 SOLICITOR MABBS: Your Honor, again, going through the
19 supplemental reports, which I believe is where his list is
20 from, the narrative was written by Investigator Lachica.
21 Deputy Gilbert was here this morning. Deputy Soucoup is
22 one of the ones that I will -- he's in surgery today I've
23 been informed, and I will make sure I have that paperwork
24 for Your Honor. Deputy Branson is the other one who had
25 eye surgery yesterday. I think we have paperwork for Your

1 Honor. Investigator Harbin was present, Your Honor.
2 Deputy Swad or Investigator Swad was also present. And
3 Deputy Price is the one that's no longer with the Sheriff's
4 Office.

5 THE DEFENDANT: So, who all could be here?

6 THE COURT: You've been here. You know who came.

7 THE DEFENDANT: Okay. What about the, the subpoenas?

8 THE COURT: The only subpoena I issued yesterday was
9 for the gentleman in Columbia. I reported on that to you
10 already. I put into the record the documentation on that.

11 THE DEFENDANT: What if I be -- if it may please the
12 Court, Your Honor, he is very important because it shows
13 clearly that they had a line of communication where that
14 docket these in, these in -- these, these, these
15 documents -- these forms. They, they, they went back and
16 figure out, off of me telling him, that it wasn't no chain
17 of custody. He was there suppose to help me.

18 He figured out what my defense was, and came straight
19 back to these people, and they was able to kind of come
20 together, and get this thing together where I'm gonna be
21 found guilty in the Court of law for some stuff that wasn't
22 even real.

23 Do you see it -- what I'm saying, Your Honor?

24 He's very -- he's a vital part. He's like having a
25 heart in a body.

1 THE COURT: well, again, I've made every -- I, I
2 learned that you wanted him subpoenaed at 3:30 yesterday
3 afternoon. I've taken every step that I know to get him
4 served. I've offered to let you have it so you can get him
5 served with a subpoena, and it's not happened. I don't
6 know what you want me to do.

7 I mean I, I, I sent the sheriff's deputies after him
8 in Columbia. They weren't able to serve him. They weren't
9 able to locate him.

10 THE DEFENDANT: May I speak?

11 THE COURT: Certainly.

12 THE DEFENDANT: Okay. what about my lawyer then,
13 Mr. Yarborough, because he had knowledge of the same
14 activities going on?

15 THE COURT: well, if, if you want to call him, and ask
16 him to come, we'll start back at 2:00, 2:15.

17 THE DEFENDANT: will you let the officer know I can
18 use the phone or something to try to get in contact with
19 him because this is serious, Your Honor?

20 THE COURT: well, Mr. Allen's been willing to make
21 calls for you. He'll be glad to make a call for you. If
22 you want to request that he be here, that's fine.

23 SOLICITOR MABBS: And, Your Honor, I know Mr.
24 Yarborough was in Federal trial yesterday. I don't know
25 how long that trial was suppose to last, but --.

1 MR. ALLEN: I think Mr. Yarborough told me they were
2 closing today at some time. I can -- I'll give him a call.

3 SOLICITOR GHENT: Your Honor, may I point --?

4 THE COURT: Yes, sir.
5 what?

6 SOLICITOR GHENT: He's the one fired him. He's the
7 one who created the problem. It's not an error, but it is
8 called invited. He's the one who brought it upon himself.

9 THE COURT: Well, again, my understanding of this case
10 is that it was on the docket a couple of times to be tried.

11 THE DEFENDANT: Uh-huh. (Affirmative.)

12 THE COURT: Is that right?

13 SOLICITOR MABBS: That is correct, Your Honor.

14 THE COURT: And, apparently, the discussions that Mr.
15 Morton is complaining about with his attorney took place
16 prior to those docket calls.

17 SOLICITOR MABBS: That is correct, Your Honor, and,
18 also, for the record, Your Honor, I know we've done this
19 several times, but apparently he's been accusing our office
20 several times about complained (sic) with discovery. As
21 the court knows, and as I believe I've stated before---

22 THE COURT: Well, what I'm trying to get to is that,
23 for those previous docket calls, Mr. Morton took no action
24 to fire his lawyer, hire a new lawyer. In fact, the action
25 he asked this court to do, as far as firing his lawyer,

1 occurred when the jury was on its way to the courtroom with
2 the trial, and I'm -- went into that at that time with both
3 he and his lawyer. Mr. Yarborough indicated that he was
4 preparing for trial. He appeared to be ready for trial and
5 he has a good reputation with this Court.

6 From what I could determine, and what my decision was
7 based on the factors that were before me, I found that the
8 firing of Mr. Yarborough was primarily designed to delay
9 the trial of the case. And, for that reason, he wanted to
10 fire him, he could. But I explained that I would not hire
11 another lawyer for him. I did not, even at his request,
12 but at my initiative, provided an attorney to advise him
13 during this case so that he would have technical advice
14 during the trial. So, that's where we are.

15 Now, Mr. Yarborough, if he's willing to come testify
16 at 2:30 we'll start back. You haven't rested. You can
17 call any witness you think is relevant who is present. You
18 can report on Mr. Yarborough and his presence. If he is
19 busy, and cannot be here until in the morning, I would take
20 that into consideration.

21 But we can't hold a jury forever waiting on witnesses.
22 That's not going to happen.

23 This case has been on the docket twice. It should
24 have been prepared for trial twice before now, and, if
25 you're not ready, then you're not ready.

1 SOLICITOR MABBS: And, Your Honor, for the record, the
2 last time, the week of June 11th, we were literally next up
3 for that afternoon. Mr. Barnette was in a trial that
4 morning that ended up having some juror misconduct issues
5 that delayed that for an extra day or two.

6 THE COURT: well, in talking to the docket clerk,
7 I've, I've learned that the case was up for trial twice
8 before to the point of trial. Should of been prepared for
9 trial. Again, should of had subpoenas out to all these
10 people already.

11 THE DEFENDANT: May I speak, Your Honor?

12 THE COURT: You can speak.

13 THE DEFENDANT: Okay. I been asking, four months ago,
14 five months ago, asking my attorney that I, I -- I even got
15 phone records saying that I do not want nobody from your
16 office to represent me period once I---

17 THE COURT: well, you should of filed a motion to fire
18 him immediately.

19 THE DEFENDANT: I don't know how to do that, Your
20 Honor.

21 THE COURT: well, you did it the other day.

22 THE DEFENDANT: How?

23 In court.

24 THE COURT: well, it was on the docket twice to come
25 up for trial.

1 THE DEFENDANT: And I asked him before---

2 THE COURT: I'm not gonna argue the point with you.

3 THE DEFENDANT: Okay.

4 THE COURT: I'm just saying, apparently, the
5 difficulty that you had with your lawyer occurred long
6 before Monday.

7 THE DEFENDANT: Yes, sir, it did.

8 THE COURT: And no action was taken by you until the
9 jury was on its way to this courtroom.

10 THE DEFENDANT: And the only way I could---

11 THE COURT: I've made my finding. I have ruled---

12 THE DEFENDANT: I am---

13 THE COURT: ---on that issue.

14 THE DEFENDANT: I didn't understand.

15 What was it, sir?

16 THE COURT: Talk to your lawyer.

17 All right. We're in recess until two o'clock.

18 SOLICITOR GHENT: Thank you, Your Honor.

19 THE BAILIFF: 2:15, Your Honor.

20 THE COURT: 2:15. I'm sorry. I misspoke.

21 (WHEREUPON, Court was in recess for the lunch hour.)

22 THE COURT: Is he ready to proceed?

23 Y'all were talking. I don't want to interrupt you.

24 MR. ALLEN: I appreciate that, Your Honor, and I think
25 I'm finished with him.

1 THE COURT: Okay.

2 MR. ALLEN: Yes, sir.

3 THE COURT: Well, when we broke earlier, I had heard
4 that he was wanting to speak with Mr. Yarborough's office.

5 MR. ALLEN: Yes, Your Honor. I did call him---

6 THE COURT: Tell me where we are.

7 MR. ALLEN: Yes, sir, Your Honor. I spoke to Mr.
8 Yarborough approximately an hour ago. Somewhere between
9 1:20 and 1:25.

10 THE COURT: Right.

11 MR. ALLEN: He is actually in Federal Court over here
12 in Spartanburg. He's waiting for a jury to return a
13 verdict. I don't know what kind of case.

14 I explained to him that, that Mr. Morton wanted him to
15 be over here to testify, and you asked me to inquire of his
16 availability. I anticipated that Mr. Yarborough could be
17 here as long as an hour or two and told him so.

18 THE COURT: Uh-huh. (Affirmative.)

19 MR. ALLEN: Mr. Yarborough spoke with Judge Coggins I
20 understand, and Judge Coggins -- and Mr. Yarborough called
21 me back. He said Judge Coggins would release him for five
22 or ten minutes, but not for that lengthy period of time.
23 Mr. Yarborough said that he was willing to walk over here
24 after his court case ends or after they return with a
25 verdict.

1 THE COURT: Uh-huh. (Affirmative.)

2 MR. ALLEN: He really didn't know ob -- well, no one
3 knows when that will be, and, again, I don't know what kind
4 of case or what the issues are. So, he did say that, as I
5 recall, the jury had some inquiry about something, and they
6 have ordered the jury lunch. So, I'm not quite sure what
7 all that would indicate in Federal Court.

8 THE COURT: All right.

9 MR. ALLEN: But that's where we are.

10 SOLICITOR MABBS: And, Your Honor, on, on -- as to the
11 two deputies, I do have Captain Gist here I've been in
12 contact with. He's been assisting in getting some records.
13 He did just receive an email from, I believe, it's
14 Lieutenant Dill who's above Deputy Brandon. He's the one
15 having eye surgery. There's a photograph of a doctor's
16 note for that, Your Honor. I don't know if Your Honor
17 would like to see the note.

18 THE COURT: Can you, can you get that printed for me?

19 SOLICITOR MABBS: I'm sure we can get that done. We
20 can get that sent over to me.

21 THE COURT: Good.

22 SOLICITOR MABBS: We can do that and---

23 THE COURT: Tonya, Tonya probably can do that for us.
24 Could you do that for us, Tonya?

25 THE CLERK: Yes, sir, Your Honor.

1 THE COURT: Okay.

2 SOLICITOR MABBS: And Captain Gist also informed me
3 that, I believe Charlena with the Clerk's Office, has been
4 in contact with Deputy Soucoup about getting a doctor's
5 note faxed over to the Clerk's office in regards to his
6 situation.

7 THE COURT: All right. Well, I'll leave the record
8 open for those documents to come in.

9 SOLICITOR MABBS: And, Your Honor, I have Captain Gist
10 here in case there's any other further inquiry of him, and
11 further documentation---

12 THE COURT: Well, if you want to put him on the stand,
13 and let him testify that he is verified the status of those
14 people, and that the documentation will be provided to the
15 Court, I'd appreciate that.

16 SOLICITOR MABBS: No problem, Your Honor. I see he
17 does have his gun on him, Your Honor. I don't know if
18 that's an issue with the Court, but I think---

19 THE COURT: Well, I'm going to trust him this time.

20 THE OFFICER: Okay.

21 THE COURT: Come on up.

22 THE CLERK: Do you solemnly swear or affirm the
23 testimony you're about to give be the truth, the whole
24 truth---

25 THE DEFENDANT: Objection, Your Honor.

1 THE CLERK: ---so help you God.

2 RAYMOND GIST, having been first
3 duly sworn, testified as follows:

4 THE COURT: Have a seat please, sir.

5 Yes, sir, what's the objection?

6 THE DEFENDANT: will he be able to testify in front of
7 the jury?

8 THE COURT: No. what he's here, what he's here for is
9 to tell what he's learned about this officer's status. I'm
10 trying to determine how I should handle this. so, this is
11 not for the jury. This is for me. He's being called as my
12 witness on this subject.

13 Do you understand what we're doing?

14 THE DEFENDANT: No, sir.

15 THE COURT: Talk to Mr. Allen.

16 THE DEFENDANT: I'm okay.

17 THE COURT: No.

18 THE DEFENDANT: I'm all right.

19 THE COURT: Talk to Mr. Allen.

20 THE DEFENDANT: okay.

21 THE COURT: I want you to understand.

22 THE DEFENDANT: I'm all right, Mr. Allen.

23 THE COURT: Mr. Morton, I'm not taking that answer.

24 Talk to Mr. Allen.

25 THE DEFENDANT: okay.

1 (Pause.)

2 THE COURT: All right. I believe -- Mr. Allen, I
3 believe Mr. -- is Mr. Morton willing to listen to your
4 discussion?

5 MR. ALLEN: A little bit.

6 THE COURT: Okay. Good. Then this is -- this
7 gentleman is being called for the Court to determine the
8 status of the witnesses.

9 SOLICITOR MABBS: Yes, Your Honor.

10 THE COURT: If you would, I'll let you question him
11 about it.

12 SOLICITOR MABBS: would you like me to question him,
13 Your Honor, or---

14 THE COURT: No, I'd like, I'd like for you to. You,
15 you know more about what he's done. So, maybe we can get
16 there quicker if you're asking him the questions. If I
17 need to ask any, I'll ask them when you're finished.

18 SOLICITOR MABBS: Yes, sir, Your Honor.

19 THE DEFENDANT: Objection, Your Honor.

20 THE COURT: Yes, sir.

21 THE DEFENDANT: will I be able to ask him questions as
22 well?

23 THE COURT: well, if you're willing to participate,
24 you just told me you didn't want to participate in this
25 process. So, if you're willing to participate, I'll

1 certainly let you.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: Thank you.

4 Yes, sir. Yes, ma'am.

5 DIRECT EXAMINATION

6 BY SOLICITOR MABBS:

7 Q Captain Gist, I don't know if we got your name for the
8 record.

9 A Yes, Raymond Gist.

10 Q And can you explain to us what your position at the
11 Sheriff's Office is?

12 A I'm a captain on special services division.

13 Q And, Captain Gist, did I contact you at some point this
14 week about getting a status on several deputies---

15 A That's correct.

16 Q ---in reference to this case?

17 A Yes, ma'am.

18 Q And did I send you a list of -- I believe the initial
19 list had probably five or six names on it?

20 A That's correct.

21 Q And were you able to instruct those deputies or those
22 superiors to get in contact with me about their
23 availability?

24 A Yes, ma'am, I actually forward the email to all the
25 officers that you request---

1 Q I don't---

2 A ---to respond -- to respond back to you as soon as
3 possible.

4 Q And I believe you informed me that I believe Deputy
5 Price is no longer with the sheriff's office?

6 A That's correct. He's retired from the sheriff's
7 office.

8 Q And, Captain Gist, as far as Deputy Soucoup is
9 concerned, can you tell us about his current status to
10 the---

11 A Deputy Soucoup is, is on -- first of all, he's on light
12 duty. He's averaging about two or three days of work a
13 week -- a work day for the week. He, he is not available
14 per his supervisor. He had a procedure yesterday.

15 THE DEFENDANT: Objection, Your Honor. She stated
16 earlier that -- the D. A. stated earlier that he would be
17 available for, for this trial, and that she had spoke to
18 his supervisor, and that he -- she, she assured you that he
19 would be here.

20 THE COURT: I did not hear a basis for me to rule on
21 anything, and you're just arguing with the information.
22 You'll have a chance to argue that later. Overruled.

23 You may proceed.

24 Q Captain Gist, did I ever ask you to get any kind of
25 documentation or further information from, excuse me,

1 Deputy, Deputy Soucoup --

2 A You did.

3 Q -- regards---

4 A Yes.

5 Q ---his availability, and what steps have you taken to
6 get that information?

7 A I spoke with his immediate supervisor today, who is
8 Lieutenant, I'm sorry, who is Corporal Tim Amsler. He spoke
9 with Master Deputy Soucoup. He had -- Soucoup had a
10 procedure yesterday. It's my understanding he is on
11 medicine. He is not available to come to court. We're
12 waiting on a doctor excuse that's in the process of being
13 faxed to the Clerk's Office from his doctor's office. I
14 personally have not spoke to Deputy Soucoup myself. So,
15 that's where we're at at this point.

16 Q And then what about in regards to Deputy Branson?

17 A Deputy Branson's out today. He called in sick. He had
18 a procedure also yesterday. Thought he was gonna be able to
19 make it to work today. Was not able to make it to work.
20 So, he took a sick day today. He's out sick, and I didn't
21 realize I had a excuse emailed on my phone. So, I provided
22 to the Court today.

23 Q And is that the email I referred to the judge about
24 earlier that's gonna be printed off and made available?

25 A Yes, ma'am.

Raymond Gist - Cross-examination
By The Defendant

1 THE COURT: All right. Thank you.

2 You wish to ask any questions of the deputy?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY THE DEFENDANT:

7 Q Could you state your name again for the record, sir?

8 A Raymond Gist.

9 Q Raymond Gist.

10 How long have you been an officer?

11 A Thirty-two years, Spartanburg County Sheriff's office.

12 Q Thirty-two years.

13 okay.

14 A That's correct.

15 Q okay. so, in reality, you say that you had excuse on
16 your phone?

17 A Yes.

18 Q That was sent from who?

19 A It was forwarded to my phone from my first lieutenant,
20 Richie Strawn, who he received it from Lieutenant Dill, and
21 Lieutenant Dill received it from Deputy Brady Branson, who,
22 I believe, that's who you wanted in court.

23 Q okay. so, ain't none of these people of actual
24 physically, physically a doctor or none of that?

25 A I'm sorry.

Raymond Gist - Cross-examination
By The Defendant

1 Q Are any of those people that you just named a physical
2 doctor?

3 A No, they're all law enforcement officers.

4 Q Okay. So, all of them law enforcement officers?

5 A That's correct.

6 Q And you're a law enforcement officer too, right?

7 A I -- yes.

8 Q Thank you.

9 No further questions.

10 THE COURT: All right. You may step down, Officer
11 Gist.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: I will ask you that, upon your receipt of
14 that documentation and the copy from your phone --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- that you turn that over to the Clerk's
17 office to be placed in this file.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 SOLICITOR MABBS: And may Captain Gist be excused,
21 Your Honor?

22 THE COURT: Beg your pardon?

23 SOLICITOR MABBS: May he be excused, Your Honor, to---

24 THE COURT: Yes, he can be excused.

25 Thank you very much.

1 I see that, that Mr. Yarborough has been able to come
2 to the courtroom.

3 Are you ready to proceed, Mr. Morton?

4 THE DEFENDANT: Yes.

5 THE COURT: Is The State ready to proceed?

6 SOLICITOR MABBS: Yes, Your Honor. Again, I would,
7 would raise the same issue that I believe Mr. Ghent raised
8 yesterday that I believe or calling -- if Mr. Morton would
9 like to call Mr. Yarborough, that's going to waive any
10 attorney/client privileges.

11 THE COURT: well, I've explained to him that it's the
12 court's understanding that this would adversely affect any
13 attorney/client privilege that he has. And, if he calls
14 him as a witness, he is, in effect, waiving those
15 privileges. We've done a little research on that. I think
16 that is the law in the case. And so you've been advised of
17 that.

18 Now, do you understand what it means, Mr. Morton, that
19 you will be waiving any attorney/client privilege you have
20 with Mr. Yarborough or his office if you call him as a
21 witness?

22 THE DEFENDANT: Yes, I fully understand.

23 THE COURT: All right. So that means that he would be
24 free to testify, and answer your questions, and also be
25 free to answer any questions the state may have in

1 response.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Do you need to talk to
5 Mr. Allen about what this means?

6 He'll be glad to, to discuss it with you.

7 THE DEFENDANT: Your Honor?

8 THE COURT: I think he did yesterday anyway or we went
9 over it yesterday. But -- so, I don't know that that's
10 necessary at this time, but, if you feel it's necessary,
11 I'll give you time to do that.

12 THE DEFENDANT: No, I'm okay.

13 THE COURT: All right. Anything else, ma'am?

14 SOLICITOR MABBS: And, Your Honor, my understanding
15 would be that I would also be able to question
16 Mr. Yarborough on any conversations that he and I had about
17 this case?

18 THE COURT: Well, you -- he doesn't have a privilege
19 with you. You can ask him about those things to the extent
20 the laws allows you to do that.

21 SOLICITOR MABBS: Yes, sir.

22 THE COURT: I know exactly what you're talking about.
23 So, I'm not gonna make a prior ruling until that happens.

24 All right. Let's bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The record will reflect the
3 jury has returned to the courtroom. I hope all of you had
4 a good lunch break.

5 If anybody had any difficulty in complying with my
6 instructions during that lunch break, please stand.

7 (No response.)

8 THE COURT: It appears everyone's been able to comply
9 thus far, and so we'll proceed.

10 The defense is in the process of calling its
11 witnesses.

12 Sir, you may call your next witness.

13 Mr. Morton.

14 THE DEFENDANT: Okay. I call William Yarborough.
15 Bill---

16 THE COURT: Come forward.

17 THE DEFENDANT: ---Yarborough.

18 THE COURT: Come forward, sir. Be sworn.

19 WILLIAM YARBOROUGH, having been first
20 duly sworn, testified as follows:

21 THE COURT: Have a seat, sir. And, once seated, state
22 your name please.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 State your name for me, sir.

William Yarborough - Direct examination
By The Defendant

1 THE WITNESS: William Yarborough.

2 THE COURT: Thank you.

3 All right. Mr. Morton, your witness.

4 THE DEFENDANT: Okay.

5 DIRECT EXAMINATION

6 BY THE DEFENDANT:

7 Q Mr. Yarborough, how you doing today?

8 A I'm good.

9 How are you?

10 Q I can't say I'm the same.

11 But, Mr. Yarborough, how long have you known me?

12 A I want to say since, since you got charged with this.

13 Q How long would that be, sir?

14 A I don't have my file. I think you have my file, and I
15 don't have the date of the charge, but I think you hired me
16 right after you were charged.

17 Q So, just say over a year?

18 would that be fine to say?

19 A I would of thought it's more than that, Mr. Morton.

20 Q Yeah, it's, it's more than that.

21 Okay. So, in that time of you knowing me, have you
22 ever took a conversation that me and you had, and told the
23 solicitor's office about my actual defense in, in this trial
24 here?

25 A No, except for normal negotiations back and forth. I

1 wouldn't have discussed any personal stuff about you.

2 Q Okay. So, in those negotiations that you had --

3 A Right.

4 Q -- have I ever submitted to any of the negotiations?

5 A You never agreed to anything that, that you were -- I

6 mean do you -- do you want me to talk about the

7 conversations that you and I have had?

8 Q No. No.

9 A Are you, are you waiving the privilege or --?

10 Q No.

11 I'm asking -- I'm asking you have I ever agreed to any

12 of those---

13 A No, you have not.

14 Q ---conversations?

15 A Right.

16 Q So, do I be present when you have most of your

17 conversations with these people?

18 A No, I mean there have been times that you've been at my

19 office, and I told you I'd walk in there and call her or I

20 think she's the only one that had the case, and---

21 Q Okay.

22 A And you said---

23 THE COURT: Let him finish his answer.

24 A You said you'd wait there, and I'd come back and tell

25 you what she said, and, you know, we had a -- I thought we

1 had a pretty good go back and forth between you and I.

2 Q Uh-huh. (Affirmative.) Uh-huh. (Affirmative.)

3 So -- and in that amount of time, how much did you
4 charge me to help me in this case?

5 A Mr. Morton, I, I think you have the, the file over
6 there. I know that you weren't able to finish paying your
7 bill, and, and I, on numerous times, said that was okay. I,
8 I wasn't gonna try to withdraw from the case cause I felt
9 like I already had gotten into it pretty far, and I, and I
10 liked you, and I, I wanted to try to help you.

11 Q Okay. From the time I paid you from the first, I asked
12 you -- I told you how did I obtain the money, right?

13 A How you obtained the money?

14 Q Yeah, to pay you.

15 A I think you said that you had worked several different
16 jobs down in Greenwood, and maybe your wife had helped you.

17 Q Yeah.

18 A And I want to think that, at some point, maybe your --
19 was it your mother or family member or something?

20 I don't remember that part, but, yes, it's family.

21 Q Okay.

22 A You --.

23 Q And so --.

24 A I, I guess, if your point is that you, you always
25 maintained that you weren't a drug dealer.

1 Is that what you were asking me---

2 Q Thank you.

3 A ---about?

4 Q But that's not what I'm asking you.

5 A Okay.

6 Q At some point I came in contact with someone who worked
7 at your office?

8 A You did briefly.

9 Q And what is his name, sir?

10 A His name is Jake Bolan. He was working for me last
11 summer as a law clerk. He's a law clerk that was just
12 working under my tutelage at my office.

13 Q And how did you introduce him to me, sir?

14 A I introduced you to him as, as my law clerk that was
15 gonna help us put together the file in this case.

16 Q And what does that consist of?

17 A What does that consist of?

18 Q Of me explaining what went on.

19 A Well, what -- I don't, I don't understand your
20 question.

21 Q You say was helping.

22 He was helping you get the defense ready for me?

23 A He wasn't helping me get the defense ready. He
24 wouldn't have that ability. What he was helping me do was
25 put the file together, Mr. Morton. You're aware of that.

William Yarborough - Direct examination
By The Defendant

1 The only time he, he would -- if you ever asked him anything
2 about strategy or anything like that, I directed him and
3 told you, on numerous occasions, that he was not to talk
4 about strategy. He was only there to help put together the
5 file.

6 Q Okay. So, once he understood my strategy---

7 A Once he understood your strategy, I took him off the
8 case, and told him that we weren't gonna do it that way.

9 Q And why would you take him off the case?

10 A Why did I take him off the case?

11 Because I felt like that a more experienced lawyer
12 needed to handle your case. He was not a lawyer. He was
13 putting together the file almost like a paralegal, and I
14 didn't feel like that you two were getting along very well.
15 So, I felt it was better for you not to talk to him.

16 Q Okay. And do you have any knowledge of why we wasn't
17 getting along?

18 A You know, Mr. Morton, I, I think that, if -- I -- if
19 you want to waive the privilege, I'll answer that question.
20 If you don't want to waive the privilege, I won't.

21 SOLICITOR GHENT: Your Honor, we've already settled.
22 It's been waived at the time he went under oath.

23 THE COURT: Do you want him to answer the question?

24 THE DEFENDANT: I want him to answer the question.

25 THE COURT: Okay.

1 A You didn't like the, the, the lab results, and you
2 didn't like the chain of custody that was given to me by the
3 solicitor's office.

4 Q So, you say the solicitor prepared the lab results in
5 the chain of custody?

6 A I didn't. I said they gave them to me. I didn't say
7 they prepared them. They were, they were -- I don't have
8 them in my hand, but I'm sure that they were done by the
9 South Carolina Law Enforcement Division or whoever did the
10 analysis of the, the, the cocaine in this case. And I'm
11 sure that the lab stuff came from the Spartanburg County,
12 and was sent either with SLED forms or done with, with
13 Spartanburg forms. But I'll be happy to look at them and
14 tell you.

15 Q So, have I ever lied to you in our, in our -- since I
16 knowed you?

17 A You know, Mr. Morton, I, I -- if I answered that
18 question honestly, I, I probably wouldn't be doing you any
19 good.

20 Q I asked you a question, sir.

21 A Yeah, I think you have.

22 THE DEFENDANT: Okay. Could I approach?

23 THE COURT: Yes, sir.

24 Q Have you ever seen this item?

25 A Now, is that the item you brought to my office?

William Yarborough - Direct examination
By The Defendant

1 Q Have you ever seen that item?

2 A I don't, I don't know what that item is. So, I'm not
3 sure.

4 Q Have I ever brought an item in that form to your
5 office?

6 A Yes.

7 Q Thank you.

8 Have you ever seen this item?

9 A I've seen a picture of that item.

10 Q Okay. So, I brought a item like this to you how long
11 ago, sir?

12 A At least within the last six months.

13 Q Okay. So, that means that, at some point, I had to let
14 you know what my strategy was.

15 would you agree?

16 A I, I don't know about that because I told you to get
17 that item out of my office---

18 Q Yes, sir.

19 A ---cause I wasn't sure what it was.

20 Q Yes, sir.

21 A I didn't -- I don't know what your strategy was. I
22 just told you I wasn't gonna have anything like that in my
23 office.

24 Q So---

25 A Isn't that what I told you?

1 Q If I conversate with you, you being my lawyer, and you
2 present an entrapment case to me, and I tell you that is not
3 how I want it. I want to tell the truth in this matter. I
4 know what I gave this guy, and here it is, Mr. Yarborough.

5 What was your, what was your response to that?

6 A I thought that was gonna be a difficult defense, but
7 you told me that, that -- and, and we looked at the tape,
8 and there was a period of time that the guy was off tape.
9 And I said, if you want to make that argument, I'll make it
10 for you.

11 Q Did you see an item that resembled that item?

12 A Mr. Morton, I don't know what that item is, but that --
13 if you say that's the item you brought to my office, I'll
14 take, I'll take your word for it.

15 Q At any point have you watched that video?

16 A Yeah, you and I've watched it together a bunch of
17 times.

18 Q I never watched that video with you, sir.

19 A That -- you never watched that video?

20 THE COURT: Mr. Morton.

21 Q This is my first time watching the video.

22 A We, we went over that video before, and we looked at
23 all the pictures on that video.

24 Q You showed me still shots, sir.

25 A Okay. If I, if I showed you still shots, I'll, I'll

1 agree with that. I thought that we looked at the video.
2 Maybe I'm -- if I'm mistaken about that, but I know you knew
3 of the existence of the video, and I showed you all the
4 still shots on it because those still shots were given to us
5 before we got on the trial docket.

6 Q Uh-huh. (Affirmative).

7 A And I, I said look, here are the still shots.

8 Q And in that timeframe me meeting your Jake guy, Jake
9 the snake guy---

10 SOLICITOR MABBS: Objection, Your Honor.

11 SOLICITOR GHENT: Objection.

12 THE COURT: Sustained.

13 Stricken from the record.

14 A Was that a question?

15 Q In that timeframe from me meeting this guy Jake, how
16 did Jake go by helping you prepare my defense?

17 A Mr. Morton, Jake did nothing for you except for put the
18 documents into a notebook, and show you what the evidence
19 was that the solicitors had against you. And I let you sit
20 in that office because I didn't want to release all the
21 files out and everything. And so I let you sit in the
22 office, and go over it, and I was -- I thought it'd be
23 convenient to have Jake sit in there. When you decided you
24 didn't like Jake, I got Jake out of the office, and he
25 didn't have anything to do with your case any more.

William Yarborough - Direct examination
By The Defendant

1 Q Do you have any thought or any reason why I wouldn't
2 like Jake?

3 A You, you said that, that -- again, Mr. Morton, we're
4 talking about your case. I mean I'll tell -- you didn't
5 like the fact that, that the cocaine came back positive, and
6 you didn't like the, the, the, the chain of custody that was
7 given to me from the solicitor's office. Jake didn't have
8 anything to do with that. I told you that.

9 Q Okay. Okay. So, Mr. Yarborough, how much money did I
10 pay you?

11 A I'm, I'm not sure, but it wasn't any where near the
12 amount of money I was supposed to get.

13 Q And so do that -- have that -- have a client ever owed
14 you money?

15 A Right, and I told you I was gonna represent you to the
16 best of my ability, and I was prepared to do that on Monday
17 when you fired me.

18 Q And what was your first offer --

19 A My---

20 Q -- at the best of your ability?

21 A My---

22 SOLICITOR MABBS: Objection, Your Honor.

23 THE COURT: Sustained.

24 I'm gonna ask the jury to step back to the jury room.

25 I have some matters I have to take, take up with the

William Yarborough - Direct examination
By The Defendant

1 attorneys and Mr. Morton. Go back to the jury room. Don't
2 discuss the case unless I ask you to do so.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right. Mr. Morton, you were asking
6 Mr. Yarborough about -- please stand.

7 (WHEREUPON, the Defendant complies.)

8 THE COURT: You were asking Mr. Yarborough about
9 negotiations that went on in the case, the specific nature
10 of them, what was offered. That's not proper to go in
11 front of a jury. So, I will not let you ask questions
12 about those matters in front of the jury.

13 It's all right to ask if offers were made. It's all
14 right to offer -- and say that you've rejected them, but
15 what was offered and not offered is not relevant as to your
16 guilt or innocence in this case. Whether or not you
17 actually made a sale or trafficked in cocaine or possessed
18 marijuana with the intent to distribute it---

19 (WHEREUPON, the Defendant raises his hand.)

20 THE COURT: Yes, sir, I'll hear from you --

21 THE DEFENDANT: Yes.

22 THE COURT: -- since you raised your hand.

23 THE DEFENDANT: At the beginning of Mr. Yarborough
24 questioning, you asked me did I want to waive my client
25 privilege rights, and I agreed to that. So, in actuality,

William Yarborough - Direct examination
By The Defendant

1 I feel that Mr. Yarborough should be able to answer any
2 question that asked of Mr. Yarborough as if any other
3 witness---

4 THE COURT: Well, I---

5 THE DEFENDANT: ---in here taking the stand.

6 THE COURT: I realize you feel that way, but the
7 length of time that you might be required to serve or the
8 punishment that you might be facing is not an issue for the
9 jury to consider. They're specific charges in the law to
10 that. It's something that is not for them to decide.

11 So, what you were offered or what you could of taken
12 or what you're facing in this case is not an issue for the
13 jury. They're here to decide your guilt or innocence of
14 the charges that's before this court. Whether you are
15 guilty or not guilty of the two indictments that we are
16 trying --

17 THE DEFENDANT: Uh-huh. (Affirmative.)

18 THE COURT: -- the length of time you could have taken
19 on a plea deal, the length of time you might serve, if
20 you're found guilty, is not anything for the jury to
21 decide.

22 THE DEFENDANT: Okay.

23 THE COURT: It's not an issue for them to hear about.

24 THE DEFENDANT: Okay.

25 THE COURT: So, I'm going to rule consistently that

William Yarborough - Direct examination
By The Defendant

1 that information should not be placed before the jury.

2 It's not for them to decide.

3 THE DEFENDANT: Of course. Yes, sir.

4 THE COURT: So, that's my ruling in this situation,
5 and I thought I would get the jury out of the courtroom so
6 I could explain to you that I will consistently rule that
7 way. In other words, in the future, if it comes up, I,
8 again, will exclude it.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, if you need to talk to Mr. Allen
11 about this ruling or if you want to discuss it with him,
12 this is your opportunity to do so.

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay.

15 SOLICITOR MABBS: And, Your Honor?

16 THE COURT: Yes, Ms. Mabbs.

17 SOLICITOR MABBS: Further rules of evidence, 410, goes
18 to the admissibility of pleas or plea discussions in
19 general.

20 THE COURT: Beg your pardon?

21 SOLICITOR MABBS: Rule 410 under the Rules of
22 Evidence, Your Honor---

23 THE COURT: Uh-huh. (Affirmative.)

24 SOLICITOR MABBS: ---goes to the inadmissibility of
25 plea or plea discussions in related---

William Yarborough - Direct examination
By The Defendant

1 THE COURT: Oh, I'm ruling those out.

2 SOLICITOR MABBS: Yes, sir.

3 THE COURT: I'm saying that the discussions that may
4 have, have gone on as far as offers or possible pleas or
5 that sort of thing is not admissible in evidence.

6 THE DEFENDANT: Uh-huh. (Affirmative.)

7 Okay.

8 THE COURT: You can't ask about that.

9 THE DEFENDANT: Okay.

10 THE COURT: All right. Bring the jury back in.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. I have sustained an objection
14 by the State, and you may proceed, Mr. Morton.

15 CONTINUED DIRECT EXAMINATION

16 BY THE DEFENDANT:

17 Q Mr. Yarborough, how long have you been a lawyer?

18 A About -- I've done criminal work for about 20 years.

19 Q And in them 20 years, you file a bunch of paperwork?
20 Do you?

21 A Yeah.

22 Q And when you do file that paperwork, you get a report.
23 Isn't that correct?

24 A Are you referring to a Brady request?

25 Q No, I'm asking you do you get a report on what went on

1 with your client.

2 A I'm assuming you're talking about a Rule 5 or a Brady
3 request, and if the answer -- if that's what you're talking
4 about, then the answer is yes.

5 Q Okay. And when you receive that, what do it look like?

6 A It usually has some Code 5 in State Court, and maybe
7 some statements. Different information that comes from the
8 police officer.

9 Q And it tells you everything that's a part of it, right,
10 that the State has to offer against you?

11 A Well, that's -- what happens, in criminal cases, and,
12 and based on the practice that I'm aware of, is that we
13 might get a chunk of it in the beginning, and then get
14 another chunk of it as time goes on because, you know, their
15 lab reports and that kind of stuff take a while to get.

16 Q But besides that, like all the initial reports, you do
17 get those?

18 A Yeah, we -- I mean I'm not saying we get them all, but
19 we try to get them, and then we try to go back, and find the
20 stuff we didn't get.

21 Q And how would you know what stuff is a part of that
22 stuff and what stuff is not?

23 A I guess based on my years of experience.

24 Q Yeah.

25 A And the fact that I've been a prosecutor.

1 Q Okay. If you put in today for just say a report, how
2 would you go about doing that?

3 A I'd file a Rule 5. In State Court, I'd file a Rule 5
4 Brady request.

5 Q Okay. And, once you file that request, how do that
6 come about?

7 A Let's see. Over here you send it to the clerk's office
8 and file it. And, then once it's filed with the clerk's
9 office, I think you send it to the solicitor's office, and
10 that's how it happens.

11 Q Oh. Oh, okay. So, the clerk send it to the
12 solicitor's office?

13 A I, I think, I think we come get them stamped and take
14 them to the solicitor's office. I --.

15 Q You think?

16 How long you say you been a lawyer?

17 A Well, you -- I, I do it on a, a periodic basis. I
18 have, I have a paralegal does it every time. So --.

19 Q Like Jake?

20 A But I'm -- no, not Jake. I have a paralegal that works
21 for me that comes over here and files it. So -- and it's
22 different between Spartanburg and Greenville. But I'm
23 pretty sure, based on how I do it in Spartanburg, and I do
24 it periodically coming over, I'll file it with the clerk's
25 office, and then I'll take a clocked copy, and I'll serve it

1 on the solicitor's office upstairs.

2 Q Once you file it with the clerk office, do it come back
3 with a date on it?

4 A Come back with a date on it?

5 Q Yeah.

6 Do it -- do the clerk give you papers on the date that
7 you file your filing on?

8 A Yeah.

9 Q Okay. So, that's a legitimate paper?

10 A A legitimate paper?

11 Q Yeah, an actual paper with the date on it.

12 A Well -- yeah.

13 Q Okay. And it also has a page number, don't it?

14 A No, it would not have a page number.

15 Q It would not have a page number?

16 A No.

17 Q Okay. You know that you're under oath, right?

18 A Right.

19 You're asking me if the stuff that I file at the
20 clerk's office at---

21 Q When you file it at the clerk's office, do it come back
22 with a -- do it tell you how many pages you get, and do it
23 come about a, a actual stamp of the date that you filed that
24 file with?

25 A It comes back with a date that's on it, and, when you

1 filed it, I don't think it comes back with a number of
2 pages.

3 Q You don't think, sir?

4 A I don't think, no.

5 Q What if -- well, I can't tell you. I would like to
6 move this in so I can show my, show him if it's possible.

7 THE COURT: Show it to her first.

8 SOLICITOR MABBS: I have no issue with him showing
9 that to the witness, Your Honor. I think we would have
10 different issues if he tries to move it into evidence, but
11 I've got no---

12 THE COURT: Beg your pardon?

13 SOLICITOR MABBS: I've got no issue with him showing
14 that to the witness, Your Honor. I would have issue with
15 him---

16 THE COURT: Okay.

17 SOLICITOR MABBS: ---moving it into evidence.

18 THE COURT: You can show---

19 Q Could you read---

20 THE COURT: Show it to her first.

21 Q ---everything that's on that paper that was filed with
22 the Clerk's office from the top to the bottom?

23 A Okay. This wasn't filed with the Clerk's office.

24 Q Could you read everything on the paper?

25 A This---

1 THE COURT: Well, that's not been put in evidence yet.
2 So, I'm not gonna let him read it in full to the jury.

3 THE DEFENDANT: Okay.

4 THE COURT: I mean we've been down this road before.
5 We don't publish things to the jury unless it's been put
6 into evidence, but he's testifying that that was not filed
7 in the Clerk's Office.

8 THE DEFENDANT: How -- he's not a part of the Clerk's
9 Office.

10 THE COURT: He's, he's -- that's his testimony.

11 THE DEFENDANT: Okay.

12 Would you say you ever had contact with a client that,
13 if a client gave you his own defense, his own defense,
14 would you, some kind of way with same -- with that
15 information, some kind of way, make it to the solicitor's
16 Office?

17 A If, if you're talking about an entrapment defense, you
18 need to put the Court on notice that you're doing an
19 entrapment case.

20 Q No, I asked you if your client shared with you
21 information that was vital to him winning a case against the
22 State, is it possible that that information could leave your
23 office, and wind up in the hands of the State?

24 A Um, you know, I would think that, that sometimes, in
25 negotiations with, with the solicitor's Office, I'd tell

1 them, you know, that, you know, I, I don't think the
2 confession's any good or, you know, that the guy was hurt or
3 whatever. I mean, yeah, I discussed that with the
4 solicitor's office. I have a good working relationship
5 with, with both the solicitor's office here and in
6 Greenville.

7 Q So---

8 A None of that would be -- that's, that's -- none of
9 that's admissible in trial, Mr. Morton.

10 Q So, if your client gave you information that could lead
11 to -- that could lead to him with a not guilty verdict, is
12 there any kind of way that that information could leave your
13 office, and find its way into the solicitor's office?

14 A No.

15 Q No.

16 I ask you again, sir, do you know that you're under
17 oath?

18 A Yeah.

19 Q Okay. At any point did you understand my defense for
20 this trial?

21 Did I tell you about it at any point?

22 A Mr. Morton, you, you've had --.

23 Q Did I tell you---

24 A You've, you've had, you've had two separate defenses,
25 yes.

1 Q Okay. Did I ever tell you my defense, my defense, what
2 really went on in that house?

3 Did I ever explain to you what really went on?

4 A You, you want me -- do -- yeah, you did.

5 Q Okay.

6 A Okay. You did.

7 Q All right. So, you just stated that the day that you
8 filed -- I'm going in exhibits if that's okay?

9 THE COURT: I, I -- if it's in evidence, I have no
10 problem with you taking---

11 THE DEFENDANT: Okay.

12 THE COURT: ---that out, and it can be published to
13 the jury.

14 Q Okay. So, you say the date that you filed for any of
15 this information here, it comes with a date.

16 Am I correct?

17 A I, I did not say that, no.

18 Q What did you say it came with?

19 A It, it, it comes in a package that says this is the
20 stuff from the solicitor's office.

21 Q So, the date that you filed---

22 A The date I filed -- that's a Brady filing.

23 Q Uh-huh. (Affirmative.)

24 A That, that's a stamped clocked copy of a motion to ask
25 for discovery.

William Yarborough - Direct examination
By The Defendant

1 Q Okay. And when you receive that discovery, do it have
2 that date that you filed on it?

3 A I, I guess sometimes it would, and sometimes it
4 wouldn't.

5 Q Okay. So, since this in -- these are in evidence,
6 could you read these?

7 THE COURT: If they're exhibits. You need to identify
8 what exhibits you're talking about.

9 THE DEFENDANT: Okay.

10 THE COURT: What number's on them?

11 THE DEFENDANT: Yeah.

12 Here go one here. The rest of them don't have it for
13 some apparent reason, but it's okay.

14 THE COURT: Well, no, that's not okay. If it's not in
15 evidence, it's not in evidence. She marks it. She's
16 marked every piece of evidence.

17 THE DEFENDANT: And she gave me the pieces.

18 THE COURT: I'm just saying, if it's not marked, it's
19 not in evidence.

20 Q Could you tell me what that say?

21 Page?

22 A Page 22.

23 Q Okay. Would you -- could you tell me what this say?

24 A April 17th, 2017.

25 Q Okay. And that's how normal papers come?

William Yarborough - Direct examination
By The Defendant

1 A You keep saying normal papers. I don't know about
2 normal papers, but, yeah, I, I think that's, that's right.

3 Q Okay. Thank you.

4 Now, could you tell me do this page have that on it?

5 A No, it doesn't.

6 Q And why wouldn't that page have that same information
7 on it?

8 A Cause I think this stuff came -- these -- well, I know
9 they did. They came in later because they came in with a
10 drug analysis, which was later. We didn't have the drug
11 report in your case in the beginning.

12 Q Mr. Yarborough, you say you been a lawyer for 20 -- how
13 many years?

14 A Let's see. Twenty plus.

15 Q Twenty plus years.

16 How many drug cases have you worked?

17 A Worked?

18 Q Yeah.

19 A Thousands.

20 Q Thousands.

21 So, you should be able to distinguish what's drugs and
22 what's not drugs?

23 A Yes.

24 Q Would you call those drugs?

25 A Mr. Morton, if that's the thing you brought in my

1 office, I don't know if those are drugs or not. I told you
2 to get them out of my office.

3 Q would you call those drugs?

4 A You know, no.

5 Q Okay. Those pictures that you showed me in your office
6 with that guy with the stuff in his hand, would you call
7 those drugs?

8 A But, you know, it's, it's different looking at a
9 picture, and then looking at---

10 Q So---

11 A ---what's in front of you.

12 Q Uh-huh. (Affirmative.)

13 So, which one do you call those drugs, the pictures?

14 A The pictures look to be drugs, yeah.

15 Q They look to be drugs.

16 I asked you would you call those drugs, sir.

17 A Yeah, I call them drugs then.

18 THE DEFENDANT: Okay. If I could, Your Honor, we can
19 give it to the clerk. She can chop it up however she want
20 to. This the picture that you told me I had to get right
21 and in order to use.

22 THE COURT: You need, you need to, first of all, see
23 if he recognize the photo, and if he can authenticate it
24 someway. So, show it to the witness.

25 SOLICITOR MABBS: And, again, Your Honor, I'd ask that

William Yarborough - Direct examination
By The Defendant

1 we caution Mr. Morton to stop flashing items that aren't in
2 evidence to the jury.

3 THE COURT: I've tried to do that throughout the
4 trial.

5 THE DEFENDANT: No, ma'am, he---

6 THE COURT: Let Mr. Yarborough look at it.

7 Q Do you recall that picture?

8 A I think I do, yeah.

9 Q Okay. Do you say that right there on there is a direct
10 image of that other package I just moved from in front of
11 you?

12 A It looks similar, yeah.

13 Q Okay. So, you say those are drugs, but the other
14 package is not?

15 A I, I said those look like drugs.

16 Q Okay. What the other package look like if both of them
17 look similar?

18 A Well, you know, in -- being in courtrooms and, and,
19 and, and handling evidence---

20 Q I'll let you look at it again, Mr. Yarborough.

21 SOLICITOR MABBS: May Mr. Yarborough finish his
22 answer?

23 THE COURT: Beg your pardon?

24 SOLICITOR MABBS: I believe he cut off Mr. Yarborough
25 from finishing his answer.

1 THE COURT: I would like for him to let him -- this is
2 not an argument, Mr. -- this is a question and answer
3 session. So, let him finish his answers.

4 A They look very similar, Mr. Morton.

5 Q Okay. So, you just stated that the ones on the picture
6 are drugs.

7 How would you---

8 A I, I, I said I think they're drugs.

9 Q Okay. And you don't think the package in front of you
10 drugs?

11 A Well, you know, it doesn't have that same texture, and
12 stuff you, you see in, in the packages.

13 Q Oh, so, you see that through that picture?

14 A That's why I said that one looks like drugs.

15 Q I don't understand, Mr. Yarborough.

16 A You know what?

17 It's, it's---

18 Q I can't---

19 A You can't see the difference?

20 Q I'm wondering what -- could you explain to us what's
21 the difference?

22 A The stuff in the, in the picture looks chalky, and this
23 stuff looks really hard, and not chalky.

24 Q Oh, okay.

25 THE COURT: Mr. Morton, I've asked you not to make

William Yarborough - Direct examination
By The Defendant

1 comments on answers you get.

2 THE DEFENDANT: I just agreed with him, sir.

3 THE COURT: well, and I know you do, but you asked him
4 an opinion. He has a right to give you his opinion.
5 That's what you asked for.

6 THE DEFENDANT: okay. so, would I---

7 THE COURT: Go ahead. Show him the picture. I didn't
8 stop you from showing him.

9 THE DEFENDANT: I'm saying the -- okay.

10 A I -- that looks familiar, yes.

11 Q okay. Do that hand look familiar?

12 A I don't know. No.

13 Q You don't know?

14 A The hand doesn't look familiar.

15 Q okay.

16 A I'm sorry.

17 Q okay. And -- okay. So, my wife came to your office
18 with me one day?

19 A Yeah.

20 Q And you and Jake was at the office, right?

21 A I, I don't know if Jake was there. I was there.

22 Q Yes, sir.

23 You offered a defense in my defense?

24 A I offered a defense in your defense?

25 okay.

William Yarborough - Direct examination
By The Defendant

1 Q Okay. Do you recall that defense?

2 A You know, Mr. Morton, I think that we've had a couple
3 of discussions about different defenses.

4 Q And what was those defenses?

5 A One was an entrapment defense. There's been three.
6 One was an entrapment defense. One was a -- that those were
7 fake drug defense, and third was that, that you felt like
8 that you had been mistreated by the police officers.

9 Q Okay. Now, mistreatment is not a defense when you done
10 some wrong. So, we can exclude that one.

11 A Right.

12 Q Would you say?

13 A Right. And I, I think I told you that, but I, I, I
14 felt, felt bad for --.

15 Q You felt bad for me?

16 A I did.

17 Q Thank you. Thank you, sir.

18 So, we have two defenses.

19 The entrapment defense, where did that come from?

20 A That came from, from---

21 SOLICITOR MABBS: Your Honor, I'm gonna have to
22 object.

23 THE COURT: What's the objection?

24 SOLICITOR MABBS: Your Honor, I'm just not quite sure
25 exactly where we're going here.

William Yarborough - Direct examination
By The Defendant

1 THE COURT: well, I, I'm gonna ask the jury to step
2 back to the jury room. I think we need to have a
3 discussion with the parties.

4 Please step back and don't discuss anything about the
5 case at this time.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 SOLICITOR MABBS: Your Honor, if I can maybe state my
9 objection---

10 THE COURT: Please do.

11 SOLICITOR MABBS: ---more clear.

12 Your Honor, if we're going into exactly what
13 entrapment is, and things like that, again, I, I don't know
14 if that's appropriate for a witness---

15 THE DEFENDANT: objection.

16 SOLICITOR MABBS: ---when Your Honor---

17 THE COURT: Let her finish, Mr. Morton, and then I'm
18 gonna let you talk. You don't have to agree with what she
19 says. I don't expect you do.

20 Yes, ma'am, go ahead.

21 SOLICITOR MABBS: Your Honor, again, in a, in a trial,
22 Your Honor is the one who should be instructing on the law.
23 I understand Mr. Yarborough is, obviously, an attorney.
24 But I don't know if it would be appropriate for him to be
25 the one instructing the jury as to what entrapment is or is

1 not.

2 THE COURT: well, even a larger, and the reason I
3 wanted to take a break, the larger issue here is that for
4 information or evidence to be relevant, it has to bear on
5 the issues before the Court, and make the facts that are in
6 the -- matters that are in controversy more or less likely
7 to have occurred. You're charged with trafficking in
8 cocaine, and with possession with intent to distribute
9 marijuana.

10 It became apparent to me on Monday that you weren't
11 pleased with your defense. I know that.

12 Stand up while I'm talking to you, Mr. Morton.

13 (WHEREUPON, the Defendant complies.)

14 THE COURT: Thank you, sir.

15 That you were not pleased with your defense, and you
16 wanted to fire your lawyer. In fact, you did that as the
17 jury was coming to the courtroom.

18 Now, if the purpose of this questioning is to
19 demonstrate the fact that you aren't pleased with your
20 lawyer, we've already learned that, and that's already been
21 taken care of by you firing your lawyer. If the -- any of
22 this information bears on the question of whether or not
23 you did or you did not commit the offenses that are
24 contained in the indictment, that would make that
25 information relevant, but the defenses you, you covered

William Yarborough - Direct examination
By The Defendant

1 with your lawyer in his office, while interesting, I'm not
2 sure how that bears on those issues of whether or not you,
3 in fact, did what they say you did or not.

4 So, I'm beginning to question the entire relevance of
5 any of these questions. So, if you're, you're going to
6 develop relevant evidence from this line of questioning,
7 I'd like for you to explain to me when, when we're gonna
8 get there, and what it's gonna be or, otherwise, I'm gonna
9 find it not relevant to the issues that are before this
10 Court.

11 So, if it's simply to demonstrate you're not happy
12 with your lawyer, I knew that Monday morning.

13 THE DEFENDANT: May I speak?

14 THE COURT: Absolutely. Please do.

15 THE DEFENDANT: No, my development come with
16 withholding information, with, with, with, with working
17 with the solicitor office knowing that he's supposed to be
18 my lawyer, giving my defense to them so they can trap me,
19 and trap me inside of this, and find me guilty. They done
20 did everything -- I can show you exactly the same paperwork
21 that she has, the same book, the filing book, and the same
22 person wrote these letters on this thing that she wrote on
23 hers, and they had the same two books, and I can show it to
24 you.

25 I got, I got videotape of this man where I told him

1 sir, I don't want you or your office representing me. That
2 was five months ago. I asked him to file a motion for me.
3 He never did. He kept on trying to coach me into oh, it's
4 gonna be okay. I'm, I'm gonna take care of you. That when
5 they brought Jake in.

6 Once Jake came in, Jake understood my defense. Jake
7 emailing this lady every day showing her everything that I
8 have for my own defense that I asked Mr. Yarborough six
9 months or five months ago that I did not want him on my
10 case no more. I told him and Jake. I got it in my phone.
11 I got text messages where I been texting both of them. I,
12 I set my phone down. I play my phone when I go in they
13 office cause I know they gonna try B.S. to me.

14 So, I sit there and push record. I got a recording
15 device on my phone. You hear them loud and clear saying
16 that yeah, you right. They don't have a, a, a, a, a, a, a
17 chain of custody. And then we supposed to went to trial.

18 You say you been on the docket twice, right?

19 The first time we was on the docket I had this whole
20 defense. He tried to come at me, and feed me an
21 entrapment. I say that no, sir, I don't want that. I want
22 to be able to tell the truth that I sold -- it was
23 synthetic. It wasn't real drugs. Oh, you think they're
24 gonna buy that, such and such, I say, sir, guess what God
25 say? If it's the truth, it gone set you free, and I'm here

1 to say the truth. And he knew it, and Jake know it. That
2 why Jake couldn't make it this morning.

3 You see what I'm saying?

4 Y'all just a more experienced liar than Jake. Jake is
5 a young liar. And I hate to say that, but I paid this man
6 money that my wife went out and took a loan out to try to
7 help me, and he turned his back on me and left me, throwed
8 me out to y'all to do this to me. But it's on tape cause
9 I'm a man. I'm a man. I'm gonna stand up for mine.

10 So, no matter if I get 30 years or what, you take that
11 all down, ma'am. They know I'm telling the truth, and he
12 know I'm telling the truth. He know it. And I'm ready to
13 move forward.

14 THE COURT: well, again, I, I tried to get you to tell
15 me what information you're going to develop from this line
16 of questioning that would bear on whether or not you sold
17 drugs on February the 2nd.

18 THE DEFENDANT: Mine---

19 THE COURT: 2018.

20 THE DEFENDANT: My line of questioning, my line of
21 questioning come way before their defense. So, that shows
22 that I been actual -- my defense is been that these are the
23 same exact thing that I sold this guy. So, by me selling
24 this guy this same exact package that I keep parading
25 around this room, this courtroom, he knew this information,

William Yarborough - Direct examination
By The Defendant

1 and I told them. I said, Mr. Yarborough, I got my Brady
2 motion that you filed. I got a copy of my codefendant
3 Brady motion, and neither one of these has a, a, a chain of
4 custody.

5 Now, what they did, Your Honor, they went back and
6 said well, he the only one with those papers with the
7 filing date, and the numbers to them. We'll go back and
8 we'll straighten out the whole things out cause every last
9 one of them papers got three holes in them from a scrapbook
10 where you close it so they can keep track of it.

11 Okay. My papers don't have that, but all papers do
12 have date and filing dates and page numbers on them. You
13 will not allow me to put nothing into, to the exhibit
14 because it had the numbers and the dates on them. But it's
15 okay, Your Honor, because I understand what's going on
16 here. I'm a part of it. It's okay.

17 So, I'm ready to move forward.

18 THE COURT: What does that mean?

19 I'm gonna ask one more time. Now, you're, you're
20 arguing about discovery issues, which are interesting, but
21 I'm trying to get down to the indictments and the charges
22 and what information you have that has to do with your
23 guilt or innocence on those.

24 Now, I realize that, in representing people in
25 criminal cases quite often, defense lawyers and prosecutors

1 get together. They discuss the merits of their cases one
2 way or the other. The defense lawyer's trying to get a
3 better deal or a dismissal. The prosecutor's trying to get
4 more time. They negotiate all the time, and they sometimes
5 share information. That happens. That's not unusual.

6 So, I understand that sort of thing happens. But it's
7 not a subject for trial on the issues that are in the
8 indictment.

9 Yes, sir.

10 THE DEFENDANT: Okay. If I'm able to show in front of
11 the jury that my own lawyer took my defense and gave it to
12 the solicitors, and then they corrected all the proper
13 paperwork, and corrected all the drugs, changed the,
14 changed the fake drugs out, then that shows that it's
15 corruption here, that it---

16 THE COURT: I've been asking for you to show that for
17 four days now.

18 THE DEFENDANT: And I'm showing it.

19 THE COURT: I'm going to ask that you not get into the
20 negotiations that went on in the case. I've already made
21 that ruling. If the state makes objections as to
22 relevance, I'll determine the relevance at the time
23 objections are made.

24 Bring the jury in.

25 THE CLERK: Your Honor, I have just the photocopy.

William Yarborough - Direct examination
By The Defendant

1 THE COURT: Yes, ma'am, give that to the court
2 reporter.

3 THE CLERK: Okay.

4 (WHEREUPON, the statement was marked as Court's
5 Exhibit No. 2 for identification purposes only at this
6 time.)

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: Mr. Morton, you may proceed.

10 CONTINUED DIRECT EXAMINATION

11 BY THE DEFENDANT:

12 Q Mr. Yarborough, will you ever -- have you ever or will
13 you ever sell your client short?

14 A Tell your client what?

15 Q will you sell your client short?

16 A No, I wouldn't sell my client---

17 Q You wouldn't?

18 A No.

19 Q And in the year or so that you knew me, how, how, how,
20 how long have you knew the solicitor here, this, this man
21 and this lady?

22 A The, the man I've known for an awfully long time. The
23 lady---

24 Q And how long would that be?

25 A Twenty-five, thirty years.

William Yarborough - Direct examination
By The Defendant

1 Q would you consider him your friend?

2 A Yeah, Russell and I are -- have been friends, and
3 acquaintances over the years.

4 Q Do you ever go out to eat together?

5 A No, I've had dinner with him I don't think.

6 Q You ever had a drink with him?

7 A You know, I don't drink Mr. Morton. So, no.

8 Q Okay. So, how long have you knowed the young lady
9 here?

10 A A couple of years. Maybe a little, maybe a little bit
11 longer.

12 Q would you consider her your friend?

13 A Yeah, we're an acquaintance.

14 Q How long you say that you know me?

15 A Since you got charged.

16 Q would you consider me your friend?

17 A Yeah, I'd consider you my friend.

18 Q Thank you.

19 what was the first date that you filed for my
20 paperwork, Mr. Yarborough?

21 A Mr. Morton, I, I gave you my file yesterday.

22 SOLICITOR MABBS: Your Honor, I'm gonna object.

23 Again, I don't see the relevance here.

24 THE COURT: You're, you're asking about the file --
25 the, the Brady motion?

William Yarborough - Direct examination
By The Defendant

1 THE DEFENDANT: No, I'm asking -- no, this the deputy
2 for -- report for incident. It, it have the same warrant
3 numbers, the 17020072 on it. This is the same exact stuff
4 that's in there.

5 THE COURT: well, that didn't really answer my
6 question. You said when did he file your paperwork, and
7 I'm trying to decide what paperwork you're talking about.

8 THE DEFENDANT: Yeah, it's -- it says deputy, deputy
9 report of incident. It's no Brady motion or none of that.

10 THE COURT: well, I don't know if Mr. Yarborough can
11 answer that question. I'll let him.

12 THE DEFENDANT: Okay. May I give him this---

13 THE COURT: Sure.

14 THE DEFENDANT: Okay.

15 what date was that filed, sir?

16 A I have no idea what date that was filed. It's got a
17 4/7/2017 on it.

18 Q And most -- nine times out of ten, that's the date that
19 it's filed?

20 Isn't I'm (sic) correct?

21 A well --.

22 THE COURT: He answered that he had no idea. So, if
23 you're asking him to speculate, I told you I don't allow a
24 witness to, to guess or speculate. So, he said he didn't
25 know.

William Yarborough - Direct examination
By The Defendant

1 THE DEFENDANT: No further question (sic), Your Honor.

2 THE COURT: You may cross-examine.

3 SOLICITOR MABBS: Thank you, Your Honor. Very
4 briefly.

5 CROSS-EXAMINATION

6 BY SOLICITOR MABBS:

7 Q Mr. Yarborough, you filed a Rule 5 request with our
8 office?

9 A I did.

10 Q And we sent you the initial pack of discovery.
11 Is that correct?

12 A You did.

13 Q If I may grab what's been marked as Defense Exhibit 4,
14 and, Mr. Yarborough, at the top of the document---

15 A Uh-huh. (Affirmative.)

16 Q ---it appears -- it says page, I believe it's 22, and
17 there's a date that's hard to read on that.

18 would you say that those dates and numbers are usually
19 added by our office when you receive discovery that would
20 reflect the date that we provided it to you?

21 A Yeah, I'm not sure if that's the exact because
22 sometimes the stuff sits up there for, you know, a couple of
23 days, or whatever, but that would of been the date that I
24 guess it would of -- you would of answered---

25 THE DEFENDANT: Objection, Your Honor.

1 A ---my request.

2 THE COURT: The, the objection is?

3 THE DEFENDANT: He stated earlier that he files with
4 the clerk first, and then the clerk will actually send it
5 to him or sent it to whoever filed it. Exactly what he had
6 said.

7 THE COURT: Well, again, you're not objecting to the
8 admissibility of his testimony. You're disagreeing with
9 it, and saying it's inconsistent. And I'll give a chance
10 to explore those inconsistencies to see if you think they
11 exist, but there's nothing for me to rule on there. His
12 testimony is what it is.

13 So, you can ask him about it when you get a chance to
14 redirect if you choose to. You're not required to.

15 You may proceed. I don't know if I have anything to
16 rule on then.

17 Q Mr. Yarborough, to clarify, when you file a Rule 5,
18 that has to be clocked in at the Clerk's office?

19 A The clerk sends a copy -- the Clerk's office, and then
20 I think we give it to you.

21 Q Okay. And then our office is the one that would
22 actually hand you the, the discovery request?

23 A Yeah, you leave them in packages, and we pick them up.

24 Q And then, throughout the course of any case, including
25 this one, if new evidence becomes available, we would give

1 it to your office?

2 A There's an ongoing reciprocal Brady motion that y'all,
3 y'all always file it.

4 Q And then---

5 A Sometimes you'll get a package together.

6 Q Yes, sir.

7 And, in this case, was there occasion that we, we
8 supplemented the initial discovery?

9 A Yeah, you supplemented it with the, with the lab
10 reports, and the chain of custody.

11 Q And then, at a later date, we gave you any information,
12 and, and the big -- the buy videos?

13 A I remember that specifically because what happened is
14 we were, we were discussing the case, and whether it was
15 gonna go on the trial docket or not. And my client wanted
16 to see the still footage or he, he wanted to see the video.
17 And you said I'll, I'll give you the still footage. So, you
18 gave me the still footage, and I got him in to look at it.

19 Q Okay. And then, eventually, before it was on the trial
20 docket, I did give you the, the entirety of the video.

21 Is that correct?

22 A You gave me the entirety of the video, and I remember,
23 originally, you let me watch it here at this office, and
24 then, at some point, I showed it to Mr. Morton.

25 Q And I believe either -- someone from your office sent

1 specific requests for any additional videos that may be
2 available?

3 A Yes.

4 Q At, at that point in time, I informed you that we'd
5 provided everything that is available to us?

6 A You'd gotten everything that was available.

7 Q So, as far as you're aware, we have provided all the
8 information that, that we have on this case---

9 A And I---

10 Q ---to your office?

11 A And I think you and I met and went through your file,
12 and I, I double checked and made sure I had everything.

13 SOLICITOR MABBS: I have nothing further, Your Honor.

14 THE COURT: You may redirect as to new matters that
15 were brought up by the state just in, in their
16 cross-examination.

17 REDIRECT EXAMINATION

18 BY THE DEFENDANT:

19 Q When she say she filed those papers with the Clerk of
20 Court, what is the procedure of going to file it?

21 Do you get those papers for free?

22 Do anybody -- can anybody go to the Clerk of Court, and
23 receive free copies of anything?

24 SOLICITOR MABBS: Your Honor, I'm gonna have to object
25 to relevance here.

1 THE COURT: well, I'm not sure it was new matter, but
2 he is asking about the discovery receipt, and you asked
3 him -- you, you asked about its deliver. So, I'm gonna let
4 him do that.

5 A No. No.

6 Q Is it free?

7 A I, I don't -- I, I think that, that -- oh, you --
8 you're asking anybody get it is what I was answering, and
9 the, the answer that anybody just can't get it. I think
10 you've got to be a, a lawyer to get it, and then is it free.
11 And I, I don't think we pay a fee to get the discovery here.

12 Q Okay. So, the discovery, a client wouldn't be able to
13 file his own discovery, would he?

14 A would they be able to file it?

15 I think they could probably file it.

16 Q And he can receive it basically?

17 A If he's got a lawyer, I don't think he can receive it.

18 Q You don't think---

19 A I think the lawyer's the one that has to get it.

20 Q If he's representing himself?

21 A Huh?

22 Q If he's representing himself?

23 A If he's representing himself?

24 Q If he's representing himself?

25 A If he's representing himself and he had a lawyer before

William Yarborough - Redirect examination
By The Defendant

1 that, he'd have the file---

2 Q No, sir.

3 A ---because the lawyer would give it to him.

4 Q I apologize for the inconvenience.

5 But what I mean, sir, is that, if a client was
6 representing himself and he had to go through the same
7 process for these paperworks, would he be able to receive
8 his own paperwork?

9 A You know, it would take a little while, but I think he
10 could, Mr. Morton.

11 Q Uh-huh. (Affirmative.)

12 A I think -- in this district, they have an open file
13 policy.

14 Q Okay. And, and once he do, if he went to a Clerk of
15 Court, do you think that he would have to pay for these,
16 these paperwork?

17 A I -- you -- you're asking me something I don't know the
18 answer to.

19 THE DEFENDANT: Okay. No further questions, Your
20 Honor.

21 THE COURT: All right, sir. You may step down.

22 THE WITNESS: May I be excused, Your Honor?

23 THE COURT: You're free to go.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, I'll ask you to step back to the jury room. Don't
2 discuss the case until I ask you to do so. So, step back
3 please.

4 Thank you very much.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Mr. Morton, any other
8 witnesses you wish to call in the case?

9 THE DEFENDANT: No, sir, I'm fine.

10 THE COURT: Does the State intend to call anybody in
11 reply?

12 SOLICITOR MABBS: No, Your Honor.

13 THE COURT: Okay. We've reached the stage of the case
14 where we're going to be going into closing arguments, and,
15 excuse me, my charge on the law.

16 Does the State have any specific requests for charging
17 by this Court?

18 SOLICITOR MABBS: Your Honor, I don't think we have
19 any specific charges that we would request beyond whatever
20 Your Honor would do in a narcotics case.

21 THE COURT: Okay. Mr. Allen, I don't know if you've
22 had a chance to answer any questions he may have about this
23 stage of the proceedings. We're at 3:30 in the afternoon,
24 and I normally do not send -- it's been my practice for the
25 many years I've been on the bench not to send the jury out

1 after four o'clock. And so I don't know if it would be
2 helpful to you and to Mr. Morton if we take a break till in
3 the morning, and give you a chance to talk to him about---

4 (WHEREUPON, the Defendant raises his hand.)

5 THE COURT: Mr. Morton, I'm talking to Mr. Allen now.
6 would you please leave me alone for just a moment, and
7 then I'll hear from you if you want to speak to me?

8 I don't know if you want to talk to him about the
9 process that we go through, the procedure that we go
10 through, what he would be allowed to do, and what he
11 wouldn't be allowed to do, things of that nature, cause it
12 is somewhat of a more technical part of a case for people
13 that are representing or being repre---

14 (WHEREUPON, the Defendant raises his hand.)

15 THE COURT: Mr. Morton, I'm trying to talk to Mr.
16 Allen, and you continue to interrupt. I'm gonna give you a
17 chance to speak in just a moment.

18 So, I don't know if that would be helpful to you in
19 doing that. I don't know if he's had a chance to request
20 any specific charges or talk about that with you. So,
21 they're several things, I would think that if I were in
22 your position and his, that I would want to discuss at this
23 time before we go forward. So -- and I'm not sure Mr.
24 Morton understands the importance of this. He keeps
25 shaking his head no, but I'm not sure he understands where

1 we are.

2 MR. ALLEN: I agree with a lot of what Your Honor
3 says. We have spoken -- I have spoken to him in some
4 generalities about the process of closing statements,
5 motions, and that sort of thing, and tried to write a
6 couple of things for him. Not his closing statement, but a
7 couple of more technical things.

8 I would certainly -- I would certainly accept the
9 Court's invitation to talk to him more. However, as the
10 Court detected, he was whispering things to me while the
11 Court was talking, and he seems to be kind of urgent that
12 he would not want to talk to me any, any more. I'm not
13 quite sure.

14 THE COURT: Well, let me, let me see if I can explain
15 it to you a little more, more clearly, Mr. Morton.

16 If we go into closing arguments this afternoon, it is
17 now 3:00 -- a little after 3:30. Closing arguments most
18 surely will take us past four o'clock. Then I've got a
19 charge on the law that's probably gonna take 30 minutes or
20 so itself. That will take us past 4:30. I'm not gonna
21 send the jury out at all today anyway. No matter what
22 happens.

23 So, it might behoove you to take this opportunity to
24 be better prepared to do what you need to do before you
25 talk to the jury because, if you do things you're not

1 supposed to do, I'll be interrupting you. I'll be stopping
2 you. It will, it will disrupt the flow of your argument.
3 I don't want to do that. I want you to be able to speak
4 clearly and plainly to the jury.

5 so, just having done this for many years, I think it
6 would be in your best interest that you take a little time,
7 talk to your lawyer, and be better prepared for this
8 situation.

9 THE DEFENDANT: May I speak, Your Honor?

10 THE COURT: Oh, talk to, talk to Mr. Allen first, and
11 then you can speak.

12 (Pause.)

13 THE DEFENDANT: Your Honor?

14 THE COURT: Yes.

15 THE DEFENDANT: I am ready to move forward.

16 THE COURT: Well, the Court, in managing its docket,
17 will decide to wait until in the morning to do that.

18 THE DEFENDANT: Thank you very much, Your Honor.

19 THE COURT: Now, are there any -- let's what -- while
20 we're here, the State just told me they don't intend to
21 call any witnesses in rebuttal.

22 Mr. Allen, would you help him with making any
23 appropriate motions that he needs to make at this point in
24 time, and let's get those on the record?

25 MR. ALLEN: Yes, Your Honor.

1 (Pause.)

2 THE DEFENDANT: I would like to move for directed
3 verdict on grounds of my previous motion and objects --
4 objections which has ruled against the defense, and also on
5 the grounds that the evidence taken in the light most
6 favorable to the state failed to establish each element of
7 the offense, offenses charges.

8 THE COURT: All right. I made this review at the
9 close of the state's case, and I'll make the review again
10 at this time, and, based on my view of the evidence, and
11 taking that, that evidence in the light most favorable to
12 the state, I find there is sufficient evidence to justify
13 the case going forward to the jury, and, therefore, the
14 motion for directed verdict is denied.

15 Does the state wish to take up anything with the court
16 before we break for the evening?

17 SOLICITOR MABBS: Beg the court's indulgence, Your
18 Honor.

19 (Pause.)

20 SOLICITOR GHENT: Your Honor, may I?

21 THE COURT: Yes, sir.

22 SOLICITOR GHENT: I would simply ask that, per
23 argument tomorrow for the matter of the jury's comfort,
24 among other things, I would ask that the podium be put over
25 here between the jury box and either of us.

1 THE DEFENDANT: I object.

2 SOLICITOR GHENT: I'm not through.

3 THE COURT: Okay.

4 SOLICITOR GHENT: Either of us for the jury's comfort.

5 THE COURT: well, here's what we'll do. I believe --
6 my understanding of the rule is that the state will have
7 the right to open and close in this matter with the defense
8 going in the middle.

9 Is that your understanding, Mr. Allen?

10 He has presented evidence in the case.

11 MR. ALLEN: They should open in full.

12 THE COURT: Yes, sir, and then have a rebuttal at the
13 end after he---

14 MR. ALLEN: He gets to close in full, and they can
15 only do rebuttal.

16 THE COURT: Do rebuttal, that's right.

17 MR. ALLEN: Yes, sir.

18 THE COURT: Is that your understanding as well?

19 SOLICITOR MABBS: Yes, Your Honor.

20 THE COURT: Okay. So, during your arguments, we'll
21 place the podium wherever you want it. If Mr. Morton
22 doesn't want it, before he starts, we'll put it somewhere
23 else as long as it's within reason to the jury box.

24 So, go set it up for him before we start tomorrow.

25 THE DEFENDANT: Thank you.

1 SOLICITOR GHENT: Yes, sir.

2 MR. ALLEN: All right. Do you want to take up the
3 matter of specific charges at this time?

4 THE COURT: If, if -- well, are you -- if you have any
5 requests, I'll be happy to hear from them at this point in
6 time.

7 MR. ALLEN: Okay. Shall I just make it for him?

8 THE COURT: Sure.

9 MR. ALLEN: Your Honor, I think Mr. Morton would like
10 to request the charge as discussed at the bench earlier on
11 spoliation. I don't have a specific written charge written
12 out.

13 THE COURT: I have already included what I would
14 intend to charge on that point in my charge, and I think it
15 covers that. At the end of my charge, I always give the
16 parties an opportunity to either object or ask for
17 supplemental charges. And if I don't cover it properly,
18 you can let me know at that time.

19 MR. ALLEN: Yes, sir.

20 And also I think he would like to request a charge of
21 possession of marijuana as a lesser included offense to the
22 indictment of possession with intent to distribute or the
23 distribution of marijuana. I think there's evidence in the
24 record that would tend to---

25 THE COURT: Your client's disagreeing with you. I

1 don't think he wants that.

2 THE DEFENDANT: Yeah, I don't---

3 MR. ALLEN: Actually he's not my client.

4 THE COURT: I mean---

5 MR. ALLEN: I'm just assisting.

6 THE COURT: well, let's, let's -- why don't you listen
7 to him. He's shaking his head no and raising his hand
8 again. So --.

9 MR. ALLEN: Do you not want the lesser included
10 offense of marijuana?

11 THE DEFENDANT: No, I'm wanting all these to go away
12 cause I ain't guilty of none of them.

13 MR. ALLEN: well, I know you want to be found not
14 guilty.

15 THE DEFENDANT: Yes, sir.

16 MR. ALLEN: I'm asking that -- maybe I should discuss
17 that with him tonight.

18 THE COURT: Maybe you should discuss that with him
19 this evening.

20 MR. ALLEN: Yes, sir.

21 THE COURT: we'll make a decision on that in the
22 morning.

23 MR. ALLEN: Thank you, Your Honor.

24 THE COURT: All right. That's the reason I thought we
25 needed to take a little time to discuss these things before

1 we moved forward.

2 okay?

3 MR. ALLEN: I agree with you.

4 Thank you.

5 THE COURT: Bring the jury in.

6 Be seated, Mr. Morton.

7 (WHEREUPON, the Defendant complies.)

8 THE COURT: Thank you, sir.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The jury has returned to the
12 courtroom.

13 Mr. Morton, you've informed the Court that you do not
14 have other witnesses to call.

15 Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: And the State has indicated that it does
18 not intend to call any witnesses in reply.

19 Is that also correct?

20 SOLICITOR MABBS: That's correct, Your Honor.

21 THE COURT: All right. Well, ladies and gentlemen of
22 that jury, that completes the presentation of evidence in
23 this case, and we've reached the stage of the proceedings
24 where the attorneys will be given an opportunity, and
25 Mr. Morton will be given an opportunity to sum up their

1 case or give a closing or final argument. Once that's
2 finished, it will be my responsibility to charge you
3 concerning the law to be applied in this case, and we'll go
4 over that at that time.

5 Those steps in the proceeding, if we were to do that
6 this afternoon, would take us up to or passed five o'clock,
7 and then you'd have to begin your deliberations, and I'm
8 not sure you want to be here that late tonight. So, we're
9 gonna start again at nine o'clock in the morning with
10 attorney argument. I'll follow that with my charge on the
11 law. Once that's completed, the case will be yours for
12 your deliberations and verdicts in this matter.

13 As you leave the courthouse, I will tell you, again,
14 to follow the instructions I've given you every time you
15 left the courthouse. I'll ask you about this again in the
16 morning. We'll resume at nine o'clock or as soon
17 thereafter as we can get started. I hope you have a good
18 evening, and you're free to go at this time.

19 Thank you very much.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Court will be in recess until
23 nine o'clock in the morning.

24 Thank you very much.

25 SOLICITOR GHENT: Your Honor, may I ask one question?

1 THE COURT: Yes, sir.

2 SOLICITOR GHENT: will we still be able to -- allowed
3 to address this question of spoliation in the morning?

4 THE COURT: well, you, you certainly would have the
5 right to discuss it with me in the morning since we're
6 gonna discuss other charges. But, as I told you at the
7 bench conference, the testimony I heard from one of the
8 witnesses today was that he believed the video had been
9 made, and that one doesn't exist. So, that's in the
10 record.

11 SOLICITOR GHENT: well, this will be my point, Your
12 Honor. That's a supposition of a witness. This Defendant
13 had the opportunity to question further about that.
14 Further questions could of been asked about that. That,
15 Your Honor, I would respectfully submit, was as much
16 surmise as anything else.

17 THE COURT: well, again, it's in the record, and the
18 question is -- I don't, I don't weigh the evidence. I
19 don't say it's strong. I don't say it's weak. But if
20 there's evidence that would support the charge in the
21 record, I'm suppose to address it.

22 SOLICITOR GHENT: Yes, sir.

23 THE COURT: I'll talk about it in the morning if you'd
24 like to.

25 SOLICITOR GHENT: Thank you, Your Honor.

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THE COURT: Thank you very much.

Court's in recess until nine o'clock.

SOLICITOR GHENT: Thank you, Your Honor.

THE COURT: Yes, sir.

(WHEREUPON, Court was in recess for the evening.)

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Friday, October 18th, 2018

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. We're on the record in the case of the State of South Carolina versus Dana L. Morton.

We had some -- one matter that we were discussing yesterday afternoon that I know we need to take back up this morning, and I know the State wanted to discuss one of the charges with me.

So, I'll hear from the State first.

SOLICITOR GHENT: Your Honor, the -- I'm sorry. For a minute, I, I thought Your Honor meant one of the criminal charges.

THE COURT: Well, you indicated yesterday that you may have some objection to my charging concerning the spoliation of evidence.

SOLICITOR GHENT: Yes, sir.

First of all, to clarify?

THE COURT: Uh-huh. (Affirmative.)

SOLICITOR GHENT: Your Honor has not ruled because, if Your Honor has ruled, I'm not arguing with the Court's ruling.

THE COURT: Well, no, I, I have already included it in my charge, my prepared charge, but I haven't made the

1 charge yet.

2 SOLICITOR GHENT: Yes, sir.

3 THE COURT: And I didn't know it would be contested
4 until yesterday. So, I'm -- it's not, until I make the
5 charge, I'm always open to suggestions.

6 SOLICITOR GHENT: Thank you then, Your Honor.

7 THE COURT: Uh-huh. (Affirmative.)

8 SOLICITOR GHENT: Relying on two cases from South
9 Carolina --

10 THE COURT: Uh-huh. (Affirmative.)

11 SOLICITOR GHENT: -- which both, again, relying on --
12 by relying on Supreme Court precedent.

13 The first case would be a '99, 1999 case, State versus
14 May, 412 S.E.2d 386, and I would refer the Court to Page
15 389. The state does not possess an absolute duty to
16 preserve potentially useful evidence, which could be
17 subjected to tests which might exonerate a defendant. A
18 defendant must demonstrate either that the state destroyed
19 evidence in bad faith or that the state destroyed evidence
20 that possessed an exculpatory value that is apparent before
21 the evidence is destroyed, and the defendant cannot obtain
22 other evidence of comparable value by other means.

23 Your Honor -- and, and the other case, The State
24 versus Hutton, which is at 358 S.C. 622, a 2004 case, and
25 I've taken those two cases, Your Honor, to basically show

1 the uniformity of the decisional law in this state.

2 If I may briefly just read---

3 THE COURT: Yes, sir.

4 SOLICITOR GHENT: ---read this portion from Hutton at
5 Page 631.

6 This standard, that is due process, requires criminal
7 defendants to be afforded a meaningful opportunity to
8 present a complete defense. The State does not, however,
9 have an absolute duty to preserve potentially useful
10 evidence that might exonerate a defendant. Whatever duty
11 the constitution imposes on the States to preserve
12 evidence, that duty must be limited to evidence that might
13 be expected to play a significant role in the suspect's
14 defense, and this is the key language.

15 To establish a due process violation, the defendant
16 must, a defendant must demonstrate, one, the State
17 destroyed the evidence in bad faith. We did not destroy at
18 any point, and there's no evidence of bad faith.

19 THE COURT: Well, now, when you refer to the State,
20 that would include the police agencies as well.

21 SOLICITOR GHENT: Yes, sir, and, and I'm including
22 them when I say the State, any members of the State.

23 THE COURT: And, and I don't think -- Mr. Allen, you
24 and I've discussed this matter yesterday, and, Mr. Morton,
25 I'll give you a chance to speak on this if you feel you

1 need to, obviously. But, at any rate, the -- I don't think
2 you're claiming a due process violation which would result
3 in the dismissal of the charges or anything of that nature.

4 I think what you are asking is that I charge the jury
5 that, should they find that a party had evidence and failed
6 to produce it, or destroyed it, that -- I'll read from the
7 charge that I was -- that I included in my charge. When
8 evidence is lost or destroyed by a party, that's either
9 way, lost or destroyed, you may infer that the evidence
10 which was lost or destroyed by that party would of been
11 adverse to the party if you first find that the evidence
12 was spoiled or destroyed. If you further find the evidence
13 could help establish the innocence of a defendant, then you
14 may consider those facts in deciding whether or not the
15 State has met its burden of proof.

16 So, it's simply an evidentiary charge saying that
17 the -- they -- the jury may do that if they were to find
18 that it was either lost or destroyed.

19 SOLICITOR GHENT: But---

20 THE COURT: So, he's -- I don't think you're asking
21 for a due process violation that would result in a
22 dismissal of the case.

23 MR. ALLEN: That's correct, Your Honor. We are not.

24 THE COURT: All right. Well, Mr. Morton's shaking his
25 head yes, but that's what we discussed yesterday.

1 MR. ALLEN: Yes, sir.

2 THE COURT: Mr. Morton, I'll hear from you.

3 Go ahead.

4 THE DEFENDANT: I didn't -- I just -- I'll speak with
5 him because I don't know the difference.

6 THE COURT: well, talk to your lawyer about it.

7 THE DEFENDANT: My adviser.

8 (Pause.)

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You agree with what we said?

11 THE DEFENDANT: Yes, sir.

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

13 well -- so, so, do you understand what the, the -- I
14 think I'm drawing a distinction between the cases that you
15 have where, if it was found that the state had not -- had
16 acted in bad faith in producing discovery or destroying
17 evidence, that would be a due process violation where the
18 state will -- the state would have the case dismissed is
19 one of the, one of the results of that. So -- and I didn't
20 hear any evidence that anybody actually destroyed those or
21 had an intent to destroy it, but the witness did say that a
22 video had been produced.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir---

25 SOLICITOR GHENT: And---

1 THE COURT: Now, you just need to -- I'll call on you
2 in just a minute.

3 Okay. Mr. Morton, let's, let's try to get through
4 this last day if we can.

5 Okay. Thank you, sir.

6 SOLICITOR GHENT: And, Your, Your Honor, it was fully
7 explored, the circumstances of the takedown, for lack of a
8 better way of putting it.

9 THE COURT: Yes, but the testimony was, that if you
10 turn on your front lights, the, the camera would start
11 rolling, and they pulled him over. I'm sure that it was a
12 traffic -- regular traffic stop up to the time it became
13 something else as far as the occupants of the car were
14 concerned, and it is -- there is evidence that the camera
15 was rolling.

16 SOLICITOR GHENT: Your Honor, if I may?

17 THE COURT: Yes, sir.

18 SOLICITOR GHENT: I understand that, but it was my
19 understanding that the entire takedown, and pulled him
20 over. The officer, I think, testified, and I can be wrong,
21 there's no need to replay it, if Your Honor heard it
22 another way, that's fine, that he turned on his rear---

23 THE COURT: No.

24 SOLICITOR GHENT: ---lights.

25 THE COURT: That was the guy in the back of the line.

1 so, he may of only turned on his rear lights cause he was
2 in the back of the group. He may of not turned on his
3 front lights. There were two officers who testified about
4 the takedown. One was in the first car that actually did
5 the stop, and one was in the rear car, and he said he may
6 of only turned on his back, back lights, and his camera
7 wouldn't of been rolling.

8 But he testified that, once you turn on the front
9 lights for a traffic stop, I think he said it backs up
10 three seconds, and then it starts recording.

11 SOLICITOR GHENT: Your Honor, could I then---

12 THE COURT: That's what the testimony actually said.

13 SOLICITOR GHENT: Could I hear that again of what Your
14 Honor actually intends to charge?

15 THE COURT: well, what I intend to charge is this. In
16 this case, that -- and I'm not gonna charge it exactly the
17 way this reads. I say in this case there is evidence that
18 evidence may evidence -- that evidence, that evidence may
19 have been lost or destroyed, and I'll say the State not
20 only has the burden of proof of guilt, but it also has the
21 burden of producing evidence which could establish the
22 innocence of a defendant.

23 When evidence is either lost or destroyed by a party,
24 you may infer that the evidence which was lost or destroyed
25 by the party could have been ad -- would have been adverse

1 to the party. You can do that. You don't have to. If you
2 first -- find first that the evidence was either spoiled or
3 destroyed, and if you further find the evidence could help
4 establish the innocence of the defendant, then you may
5 consider those facts along with all the other facts in the
6 case in deciding whether or not the State has met its
7 burden of proof.

8 SOLICITOR GHENT: Your Honor, then I would ask this
9 because I don't want to reach a point -- it sounds like
10 Your Honor has thought this through. I would simply ask
11 that the Court change it from lost or destroyed to not
12 produced because there's no evidence, and that is---

13 THE COURT: well, it---

14 SOLICITOR GHENT: ---a very negative inference.

15 THE COURT: well, if it existed and there is evidence
16 that it did exist, there's some testimony, you could infer
17 from the testimony that I heard that it did exist at one
18 time.

19 SOLICITOR GHENT: Yes, sir.

20 THE COURT: It hasn't been preserved cause it's not
21 here. If it's here---

22 SOLICITOR GHENT: It hasn't been produced.

23 THE COURT: ---here, produce it.

24 SOLICITOR GHENT: No. well, I don't, I don't know,
25 Your Honor.

1 THE COURT: Okay. There we go. I'm saying it's not
2 here, and it wasn't produced. Now, I'm not accusing
3 anybody of any intentional act. Maybe they just didn't
4 bother to, to keep it, and it's been taped over. I don't
5 know what happened to it, but I do know it's not here, and
6 it wasn't produced. And the evidence was, you can infer
7 from what I heard, that a tape was made --

8 SOLICITOR GHENT: Yes, sir.

9 THE COURT: -- if the equipment was operating
10 properly.

11 SOLICITOR GHENT: Yes, sir.

12 THE COURT: Nobody said they ever saw it.

13 SOLICITOR GHENT: Your Honor, I'm gonna---

14 THE COURT: He said, he said, once they turn on those
15 front blue lights, those cars are equipped. That -- those
16 cars were equipped. It was a traffic car. It would back
17 up three seconds and start taping.

18 SOLICITOR GHENT: Your Honor, may I have just one
19 moment?

20 THE COURT: Yes, sir.

21 (Pause.)

22 SOLICITOR GHENT: Your Honor, at this point, I do not
23 want to give the appearance of arguing with the Court's
24 ruling.

25 THE COURT: Well, no, it was -- I want to be sure we

1 cover it thoroughly, but I'm, I'm gonna charge the charge
2 in a fashion I think is consistent with the evidence that
3 was produced.

4 SOLICITOR GHENT: Yes, sir.

5 THE COURT: And it's something---

6 SOLICITOR GHENT: Thank you, Your Honor, for hearing
7 me.

8 THE COURT: ---you may or may not want to address.
9 I'm not saying the jury has to decide that issue against
10 the State. They certainly did -- can consider that issue
11 one way or the other.

12 Now, lesser included offense was another matter that
13 was raised. There was a disagreement, I believe,
14 Mr. Morton, between you and your lawyer about that or a
15 misunderstanding perhaps, and I asked you to talk with him
16 further about that.

17 So, Mr. Morton, if you -- have you had a chance to
18 talk to Mr. Allen about what we mean by a lesser included
19 offense?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And what he had asked that we do is, in
22 the case of the marijuana, that we present to the jury, if
23 they do not find you guilty of the possession with intent
24 to distribute marijuana, that they have the right then to
25 consider whether you were guilty of simple possession of

1 marijuana. That's a lesser included offense.

2 Now, do you need to talk to Mr. Allen any further
3 about that request?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you want me to charge that to the jury?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And I'll include that in my charge.
8 Thank you, sir.

9 THE DEFENDANT: Thank you.

10 THE COURT: And a possible verdict.

11 Any other matters that the State thinks we need to
12 take up or wants, wants me to take up before we do the
13 argument?

14 SOLICITOR MABBS: Yes, sir, Your Honor.

15 In reference to closing arguments, the State
16 anticipates the defense may raise some issues that would be
17 inappropriate for closing about facts not in evidence.

18 THE COURT: Well, I'll be glad to mention that to him
19 and explain what we mean by that.

20 Is that what you'd like for me to do?

21 SOLICITOR MABBS: Yes, Your Honor.

22 THE COURT: I intended to do that anyway, but I'll do
23 that.

24 SOLICITOR MABBS: And, Your Honor, if that does come
25 up in closing, I would request that I would be able to

1 object once, and have that be a continuing objection
2 throughout the closing and perhaps after---

3 THE COURT: well, no, I'm gonna ask you to object to
4 specifically whatever you're objecting to so we've got a
5 record as far as what the objections are.

6 SOLICITOR MABBS: Yes, sir.

7 would you like that to be -- I'm, I'm trying to make
8 this as -- for each topic?

9 THE COURT: I'm not gonna tell you how to object.
10 That's your decision as a lawyer. I'll rule on them if you
11 object.

12 SOLICITOR MABBS: Yes, sir, Your Honor, and if---

13 THE COURT: Okay.

14 SOLICITOR MABBS: ---appropriate I would request a
15 curative instruction as well.

16 THE COURT: All right. Anything you think is
17 objectionable, you have a right to object to it.

18 Now, Mr. Morton, if you'll stand up just a moment.

19 (WHEREUPON, the Defendant complies.)

20 THE COURT: I'm sure you've had an opportunity to talk
21 to Mr. Allen about this closing statement or argument that
22 you're about to make to the jury, and I do want to caution
23 you that the rules of the court are, and that's, that's for
24 the state and for you, that you -- your comments should be
25 confined to matters that have been put into the evidence in

1 the case.

2 so, if you start talking about matters that were not
3 put into the evidence in the case, that were not part of
4 the record of the case, the state has the right to object
5 to that argument because it's not within what is put before
6 the jury.

7 Do you understand the, the logic behind that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, if -- so, if you start talking about
10 something that's not in the record, I'm sure the State's
11 gonna object, I'll probably sustain that objection in front
12 of the jury. I don't want to hurt your jury argument.

13 So, I'm gonna caution you about that before we start.
14 I'm not picking on you. I'm not talking to them because
15 they know that rule. I want to be sure that you understand
16 that rule.

17 So, have you got an understanding of that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did Mr. Allen talk to you about that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Very good. I just wanted to be
22 sure we had an understanding.

23 All right. Now, you understand the State's gonna go
24 first. Then you'll have an opportunity to speak, and then
25 the state will have a chance to get back up and address any

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 13 2020

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

Appellate Case No. 2018-001909

The State,Respondent,

v.

Dana L. Morton,Appellant.

Record on Appeal – Volume III of III

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State’s Exhibit No. 1 (a DVD) will be transported to the Court.

1 matters to rebut what you said.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. That's the way we go.

4 All right. The State ready to proceed?

5 SOLICITOR MABBS: We are, Your Honor.

6 THE COURT: And, Mr. Morton, are you ready to proceed?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Bring---

9 SOLICITOR MABBS: Actually, Your Honor---

10 THE COURT: Yes.

11 SOLICITOR MABBS: ---very briefly. I did notice that
12 one of the Defense Exhibits that was for I.D. purposes is
13 up with Ms. Moffitt. I would, again, just request that not
14 be used.

15 THE COURT: well, if it's not -- I've told him if it's
16 not in the record of the case, he can't use it for
17 arguments.

18 SOLICITOR MABBS: Yes, sir.

19 THE COURT: So, anything that was not put into the
20 record of case, you can't use for argument.

21 SOLICITOR MABBS: Yes, I was---

22 THE COURT: Do you want to specifically tell him what
23 that is---

24 THE DEFENDANT: Yeah.

25 SOLICITOR MABBS: It's just the---

1 THE COURT: ---so he knows what it's---

2 SOLICITOR MABBS: It's the Facebook post, Your Honor.

3 THE COURT: I'm sorry?

4 SOLICITOR MABBS: The Facebook post.

5 THE COURT: Oh, okay.

6 THE DEFENDANT: So, can I receive that back?

7 THE COURT: No, sir, I marked it for I.D. purposes.

8 THE DEFENDANT: Oh, okay.

9 THE COURT: So, it's part of the -- it's in the record
10 of the case. I didn't let you put it in.

11 THE DEFENDANT: Okay.

12 THE COURT: So, if you want to appeal my decision not
13 letting it in, it's there for the Court to review down the
14 road.

15 THE DEFENDANT: Okay.

16 THE COURT: And they can look at it, and see if I was
17 correct in not letting it in or not. So, you want to leave
18 it in there.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But it won't -- you can't pick it up and
21 show it to the jury, and argue it to the jury because it's
22 not in evidence.

23 THE DEFENDANT: Okay.

24 THE COURT: I didn't let it in because you couldn't
25 authenticate that, and you couldn't show any records from

1 Facebook as to who actually owned that, that page or
2 whatever you call that, that site.

3 THE DEFENDANT: May I speak, Your Honor?

4 THE COURT: Sure.

5 THE DEFENDANT: How would I go about getting something
6 else marked that way, later on down the road, I be able to
7 do the same exact thing?

8 THE COURT: Well, you have to---

9 THE DEFENDANT: I just want---

10 THE COURT: You have to proffer it or offer it, and
11 then I have to refuse it, and it has to be marked for I.D.
12 purposes.

13 THE DEFENDANT: Will I have a chance to do that?

14 THE COURT: Well, we're at the point in time where we
15 got to get ready to start arguments in the case.

16 Can you tell me what you're talking about?

17 THE DEFENDANT: It's only one sheet, Your Honor. It's
18 South Carolina, State of South Carolina, County of
19 Spartanburg, South Carolina, it's an affidavit of
20 discovery.

21 THE COURT: Show it to the State.

22 SOLICITOR MABBS: Your Honor, this appears to be just
23 the initial affidavit that would have been the receipt from
24 Mr. Yarborough from the original discovery.

25 THE COURT: Do you have any problem me marking that

1 for identification purposes?

2 SOLICITOR MABBS: For identification purposes, no,
3 Your Honor.

4 THE COURT: All right. Give it to, to the court
5 reporter. We'll mark it for I.D. purposes, and it will be
6 in the record, but not in evidence.

7 THE DEFENDANT: Thank you.

8 (WHEREUPON, the affidavit was marked as Defendant's
9 Exhibit No. 8 for identification purposes only at this
10 time.)

11 THE COURT: That's, that's the only thing you wanted
12 to put in like that?

13 Is that right?

14 THE DEFENDANT: Yes, sir, I ain't gonna take---

15 THE COURT: Okay. That's fine.

16 THE DEFENDANT: ---no more.

17 THE COURT: I wanted to be sure I covered it.

18 SOLICITOR MABBS: And, Your Honor, as we're talking
19 about things that have not been placed in evidence, the
20 package that's been used as demonstrative, since that's not
21 in evidence, I'd request that that be---

22 THE COURT: Well, I'm, I'm not gonna go through every
23 paper he might have on his desk, and, and do that.

24 SOLICITOR MABBS: No, sir.

25 THE COURT: I've explained it to you.

1 SOLICITOR MABBS: The, the package of what he's saying
2 is fake drugs.

3 THE COURT: I've allowed him to use that for
4 demonstrative purposes. He can pick it up and talk about
5 it.

6 SOLICITOR MABBS: Okay.

7 THE COURT: He can't pass it among the jurors.

8 SOLICITOR MABBS: Yes, sir.

9 THE COURT: It's not in evidence.

10 SOLICITOR MABBS: Yes, Your Honor.

11 THE COURT: But, for demonstrative purposes, I've
12 allowed him to use it in the trial. I'll let him use it
13 for demonstrative purposes in his argument.

14 Do you understand the difference?

15 THE DEFENDANT: Thank you.

16 THE COURT: All right. Bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. Good morning, ladies and
20 gentlemen. I hope everyone had a good evening.

21 If anybody had any problems or difficulties in
22 following my instructions overnight, please stand.

23 (No response.)

24 THE COURT: It appears that all jurors have been able
25 to comply with my instructions up to this point in time.

1 I told you that we had reached the stage of the trial
2 where the parties will be allowed to do their summation or
3 their closing argument to you, and this is the second time
4 that attorneys are allowed to directly address the jury.
5 And, under the rules, the state will be going first,
6 followed by the defense, and then the state will be given
7 an opportunity to rebut, rebut the defense's arguments.

8 So, at this time, the state will be going first.

9 You may proceed.

10 SOLICITOR MABBS: Thank you, Your Honor.

11 May it please the Court?

12 THE COURT: Yes, ma'am.

13 SOLICITOR MABBS: Members of the jury, I'm gonna start
14 my closing the same way I started my opening statement, and
15 I'd like to thank you. Like to thank you for your patience
16 this week, for your continued attention, and for your
17 continued service as you'll start your deliberations soon.

18 Now, members of the jury, as you know, at this point,
19 you've two separate indictments before you. I'm gonna
20 briefly discuss each of them in turn.

21 The first one is the trafficking in cocaine over
22 100 grams. Now, the Judge will instruct you on the law at
23 the end of closing arguments. But just to briefly go
24 through it again, trafficking is a word that the South
25 Carolina Legislature has chosen (sic) to discuss large

1 amounts of drugs. In this case, over a hundred grams.

2 Now, trafficking can mean anything from possession to
3 distribution, attempting to possess, and so on and so
4 forth. But, in this case, there's evidence of both
5 possession and the distribution.

6 You've heard that this is what the Sheriff's Office
7 calls a buy/bust operation, and the buy/bust operation
8 would be the controlled buy in front of the cameras, and
9 that they eventually do the traffic stop afterwards to
10 prevent that large sum of cash to be let out into the
11 public.

12 Now, you've heard from several officers in this case.
13 You've heard from Investigator Lachica, who's the case
14 agent. You've heard about his experience with law
15 enforcement. You heard from Investigator Swad, who was his
16 partner that day, but has thirty-five years in law
17 enforcement. He said he's a five out of five. And you
18 heard them explain that this -- they followed all the
19 regular procedures.

20 That they arrived at the house. They searched the
21 informant, both of them did. They searched the residence,
22 and that included the hiding spot that Mr. Vaughn admitted
23 that he had. They knew to search there. That they stayed
24 at that residence the entire time. That they gave him the
25 funds from the Sheriff's Office, \$5,200.00. That they set

1 up the two cameras in Mr. Vaughn's kitchen to be able to
2 observe the transaction, and so we can show y'all today.

3 You heard that, when they were able to make contact
4 with the Defendant, that they turned those cameras on.
5 That Investigator Swad and Lachica went back into the
6 bedroom, and into, I believe, the master bathroom to make
7 sure that they could stay at the home, observe the
8 operation from inside, and keep everything safe and
9 controlled.

10 And then you were able to watch the video, which I'm
11 gonna play a part of again briefly in a minute. And you
12 can see for yourselves exactly what happened. And you see
13 the Defendant arrive at Mr. Vaughn's residence. You see
14 him drop a large white package on the table. You see
15 Mr. Vaughn weigh that out cause he's explained that's
16 something that they do in the drug trade to make sure it's
17 about the right amount of money so or the right amount of
18 drugs so you know you're giving them the right amount of
19 money.

20 You saw -- you'll see Mr. Morton take that money. He
21 counts it. Then he leaves and comes back and gives the
22 marijuana.

23 Like I said, I'm gonna play that video again very
24 briefly.

25 (WHEREUPON, the video was played for the jury.)

1 SOLICITOR MABBS: So, members of the jury, not only do
2 you have the witness' testimony to see the transaction, you
3 have the videos. And I can play both of them. You've seen
4 both, and you'll have the opportunity to take the D.V.D.
5 and take it back in the jury room, and re-watch it if, if
6 y'all would like to as many times as y'all want to. But
7 you can see that he had the drugs. You see him take them
8 out of his pocket, and give them to Mr. Vaughn.

9 Now, that's obviously the main package of drugs.
10 There's also the residue that were on the digital scales
11 that were recovered from him at the traffic stop, which
12 we'll talk about the traffic stop a little bit more later.

13 Now, the other main element that we have to prove is
14 that it is cocaine, and that it weighs over a hundred
15 grams. Now, you heard from several witnesses. We went
16 through what we refer to as the chain of custody, and the
17 chain of custody is very important. It's to make sure
18 nothing gets tampered with or one drug that was suppose to
19 go to one case doesn't go to another. And we went through
20 and we went from, for the large package of drugs, which is
21 here in State's Exhibit 3, and you'll see, at the end of
22 the video, that, again, I'm not gonna play right now,
23 you're welcome to watch it again in the jury room, but you
24 see Investigator Lachica take the bags, and take custody of
25 them from Mr. Vaughn.

1 And he explained that he goes, and he takes the drugs
2 back to the narcotics office, that he puts it in the blue
3 bag here, which we've been referring to as either the
4 B.E.S.T. bag or the B.E.S.T. kit, and he explained how it's
5 labeled, how there's the control number up at the top here,
6 that matches with all the paperwork. He explained how this
7 is what's either called a tamper proof or tamper evident
8 bag that different people call different things, but that
9 you can't get into that bag without anyone knowing. It's
10 not like a zip-lock bag that you can open and close, and no
11 one would ever know.

12 It's sealed and he explained he followed the proper
13 procedures, and took that to the evidence lockers at the
14 Sheriff's Office. And he explained how the evidence
15 lockers are obviously locked. And then we heard from
16 Angela Nelson, and she explained to you the way that the
17 evidence room works. She explained that the keys for the
18 evidence locker are kept in the evidence room. She went
19 through all the different procedures that they have to make
20 sure that that room stays secure. Therefore, the keys to
21 the evidence locker stay secure. She explained how there's
22 a key, a pass code, and even a fingerprint scanner all
23 needed just to get into the evidence room, and, and she
24 explained that, again, even to get back where they end up
25 storing any narcotics or drugs while they wait, again,

1 requires more security levels.

2 she explained her job and the paperwork of adding some
3 of the names to the documents, and that she does her own
4 form. I believe she does the Form C in the chain of
5 custody.

6 Then you heard from Holly Tobias, who was qualified as
7 an expert witness in chemistry, and the analysis of
8 narcotics. And she explains how it's her job to go and
9 pick up the drugs from evidence, walk down the hall to her
10 lab, which, again, is locked and secure, and she's gone
11 through the testing that she does. That they do what is
12 called the field test or the presumptive test just to get a
13 basis of what they think the substance might be. In this
14 case, cocaine.

15 she explained that then she puts it into, and I'm not
16 gonna try and say the long name, but G.C.M.S. machine. She
17 explained how that's calibrated, and that that runs this
18 through, and I believe the way she described it is drugs
19 are like fingerprints. They're unique.

20 So, you can go and you can read the calculations and
21 you know exactly what that substance is. In this case, it
22 was cocaine.

23 And then she explained how, after all this, that's
24 when she weighs it, and she weighs it without the bag. She
25 just weighs the powder substance, which is the most fair

1 because, obviously, a bag would add some additional weight
2 to it. So, by weighing the powder substance by itself, you
3 know that you're getting the true weight, and this is even
4 after some small amounts have been taken out for field
5 testing, and then for the G.C.M.S. And she explained, at
6 that point, the cocaine weighed 111.76 grams, and that the
7 same procedures were handled with the digital scale that
8 was found on Mr. Morton's person, and, in this case,
9 because there's just residue, there's not enough to get a
10 weight obtained, but it was proven to be cocaine. Again,
11 using those same steps, the same machines, we know that
12 this was cocaine.

13 And, again, you'll be able to take both of these items
14 back with you. You can take a closer look at them once you
15 get back into the jury deliberation room. And she
16 explained that, on both of these items, once she's done,
17 she then goes and does this outer heat sealed bag, again,
18 to make sure that nothing gets tampered with, and that
19 everything stays intact.

20 The second indictment for your consideration is the
21 possession with intent to distribute marijuana. Now,
22 again, the Judge will instruct you on the law, and I know I
23 mentioned this at the beginning of the case. There's a few
24 different elements to possession with intent to distribute.
25 The first, of course, being possession.

1 In this case, we heard from Mr. Vaughn that, off
2 camera, he got a little bit of marijuana from the Defendant
3 after they concluded with the deal for the cocaine, so,
4 that's part of what they would normally do when they would
5 interact, and that the narcotics officers told him to do
6 things as normally as he could. While it might not have
7 been part of the initial plan, it's still all within the
8 regular police procedures.

9 And you also heard from Investigator Harbin, who was
10 present during the traffic stop or the takedown, whatever
11 you want to call it. And she explained that, after
12 Mr. Morton was placed under arrest for the distribution of
13 the cocaine, that they searched his person, which, again,
14 is normal police procedure, and that they found additional
15 marijuana on his person.

16 Now, the next step -- and there's two different types
17 of possession. There's what's considered constructive
18 possession and actual possession.

19 Now, constructive possession is -- has to do with if
20 you have something that might not physically be in your
21 hand, but you have control over it. So, for example, right
22 now these are my notes that are sitting here on the witness
23 stand. They're not in my hand, but they're still my notes.
24 I can reach out. I can grab them. I still have possession
25 of them. Now, actual possession would be if I picked them

1 up and held them in my hand because I am actually
2 possessing them.

3 So, in this case, we have actual possession because
4 the drugs were taken out of Mr. Morton's pocket.

5 Now, the intent to distribute is something that's a
6 little built loftier because, obviously, it's impossible to
7 read someone's mind. So, we have to look at context clues
8 and think about what the intent was here.

9 Now, in this case, the intent to distribute is
10 probably more clear than it is in most cases because he
11 actually did distribute it by giving it to Mr. Vaughn.
12 Additionally, the marijuana that was found in his pocket
13 came in multiple bags, and you can infer that, if you
14 have -- if you're gonna carry drugs for your own personal
15 use, probably just keep them in one bag. If you're keeping
16 in multiple bags, it's more likely they're going to be
17 giving them to someone else.

18 Now, again, with the marijuana, we go through with the
19 chain of custody, and, in this case, instead of using the
20 B.E.S.T. bag, as explained, they have the manila envelopes
21 that they refer to as the marijuana bags. And, again,
22 these are all filled out by the officers. In this case,
23 they explain that they don't have control numbers because
24 it's just an envelope. It's not those specific B.E.S.T.
25 bags that are ordered. And, again, we go through the chain

1 of custody. We go through the evidence room that I, I just
2 discussed.

3 Again, Holly Tobias explained that she tested these.
4 It was slightly different test. But, again, both items did
5 test positive for marijuana. The marijuana that was given
6 to Mr. Vaughn came back as .28 grams, and then the two
7 separate baggies found on Mr. Morton's person came back as
8 .54 grams and 5.27 grams. So, again, we have three
9 different baggies, which would tend to show intent to
10 distribute.

11 Now, in this case, you also have not just the actual
12 items, not just the drugs, but you have the chain of
13 custody documents that I'm just gonna go through very
14 briefly here. You'll be able to take them back, and you'll
15 be able to see them. I know a lot of these have been
16 passed around already. You'll see the original signatures,
17 that all the information's filled out. They've been
18 through the fact that a notary, while there is a spot for
19 it, it's not required. It's not their common policies and
20 procedures to follow.

21 Now, some of these exhibits have been taken out of the
22 original exhibit, but I think y'all will be able to figure
23 out which one goes with which by following the names on the
24 documents, and, again, you'll be able to take those all
25 back. There are a few defense exhibits in there that are

1 copies of the chain of custody documents, but you'll be
2 able to tell which ones are the originals, and you'll have
3 the copies to consider as well.

4 Now, members of the jury, it's my responsibility to
5 prove both of these indictments to you beyond a reasonable
6 doubt, and that was done through witness testimony, through
7 the evidence that's been entered in, through the video, and
8 it's now up to you.

9 At the beginning of this trial I said that you started
10 off as 12 or 13 people, and, in a few moments, once we're
11 done with closing arguments, and the judge charges you,
12 this is the time that you become one. You will not be the
13 12 eyes and ears that were able to watch the witnesses, see
14 their demeanor, listen to their testimony, observe the
15 evidences (sic), watch video. You won't be the 12 people
16 who came in, brought your own common sense, and life
17 experience. You'll become one. You'll become one voice,
18 one verdict, one jury, and we will ask that the verdict be
19 guilty.

20 Thank you.

21 THE COURT: Mr. Morton, your opportunity to address
22 the jury.

23 THE DEFENDANT: Thank you.

24 THE COURT: Yes, sir.

25 THE DEFENDANT: Good morning, ladies and gentlemen of

1 the jury.

2 I'm here. You have heard plenty testimony that
3 they -- so-called testimony, but you also have heard a
4 bunch of lies and fabrications that are made to make
5 certain people look a certain way. Once you obtain certain
6 information about the judicial system, they feel that you
7 are a threat. So, they would do anything in their power to
8 eliminate you.

9 When I mean anything, you have heard testimony from
10 officers that claim to be professional at what they do, and
11 don't know the definition of professional at the end. And,
12 at the end of the day, you have just say a hundred people
13 against one man. And I don't know if I can change your
14 mind, but I know that I have a heart. I have a soul inside
15 of me, and I refuse to sell that for anyone. And if you
16 don't play the game they want you to play, they will make
17 you out example, and that is what I am going through.

18 I don't know -- I cannot tell you what to believe, and
19 what not to believe because you have people that's
20 "professionals" that are willing to taint, and tamper with
21 evidence to make someone wrong at the end of the day.

22 So, if I -- if that man sat up here and gave testimony
23 that, that he know about what flexing is, the handshake,
24 the hug, the kisses, and all that come with flexing
25 somebody out they money when you need money to provide for

1 your family. So, I do whatever it take to do for what I
2 love.

3 So, I cannot tell you how to feel unlike some people.
4 They can tell you what to feel. They can play the video.
5 My thing is this.

6 If you trusted a person so much, why would you have to
7 search this person?

8 If he was so reliable, why would you have to search
9 this person?

10 why would you have to search his house?

11 why would he have to call someone so many times to try
12 to persuade someone to come to where they at, and make them
13 feel like oh, yeah, you comfortable, yeah, it's okay?

14 You know, like I said earlier, now, this is not to
15 degrade these people because I understand what's going on.
16 Once you obtain certain information about the system, they
17 feel that you are a threat. No matter if it's me, no
18 matter if it's you, no matter if it's your brother, no
19 matter if it's your baby, they would get rid of you at all
20 costs.

21 And, like I say, if you watch that video, the video
22 speak for your itself. You cannot have, and I refuse to
23 accept the fact that this video has been tampered with,
24 have two different dates on it, and they expect for people
25 just to accept anything they say because they're in a

1 position of power, and we the ones that give them that
2 power.

3 And you what they'll do?

4 Turn around and use that same power on you, and that's
5 all I got to say.

6 I'm sorry for your time, but thank you.

7 THE COURT: State may reply.

8 SOLICITOR MABBS: Thank you, Your Honor.

9 If I may---

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 SOLICITOR MABBS: Members of the jury, I'd like to
13 just briefly address a couple of the issues that Mr. Morton
14 just raised.

15 First off, as far as the dates on the camera, you were
16 able to hear Investigator Swad explain to you that, when he
17 does the cameras, the cameras that are shifted, and he's,
18 with all of his 35 years of experience, he might not be the
19 most tech savvy person we've ever seen, and he explained
20 that the dates on the cameras, sometimes they automatically
21 set. There's a whole separate system that has to go into
22 making sure that the dates get changed.

23 To me, it reminds me a little bit of back before we
24 all used cell phones to take pictures, when we had the
25 actual digital cameras with the video recorders. It's one

1 thing to print a picture or things like that, but to go in
2 the camera and change the date, it's a slightly different
3 procedure. But follows some different protocols, and it's
4 a little bit messy sometimes.

5 But you can see from watching the videos, not only
6 from the audio, but you can also tell from, if you watch
7 the T.V. in the background of both videos that it's from
8 the same date. But I believe that's been fully explained
9 by Investigator Swad, and, again, y'all will be able to
10 watch the videos, and see that it all lines up.

11 As far as the procedures go with searching the
12 informants, that is standard police procedure. That is
13 forever's protection. That is for the protection of Mr.
14 Morton because, as Investigator Lachica said when he was
15 being examined by Mr. Morton and he was asking, you know,
16 did you trust Mr. Vaughn, and he said well, trust comes at
17 different levels. You can trust someone, but you still
18 want to check and verify.

19 And it's important in these cases, because we have --
20 we, the state, have to prove this beyond a reasonable doubt
21 that everything falls in line, and that's why these
22 searches are performed, to make sure that drugs aren't
23 swapped out, to make sure things aren't tampered with, to
24 make sure that the chain of custody is full and complete as
25 it is in this case.

1 Members of the jury, this is not anything here
2 personal against Mr. Morton. We're not here today to judge
3 whether or not he's a good person. We're here to judge
4 that, whether or not, he brought this hundred grams of
5 cocaine into Spartanburg County. We're here today to judge
6 whether or not he possessed marijuana with the intent to
7 distribute it.

8 That's the question that we have for today, and, with
9 that question, I ask that you return a verdict of guilty.

10 Thank you.

11 THE COURT: Now, ladies and gentlemen of the jury,
12 that completes the final arguments or summations from the
13 parties. It's now my responsibility to charge you
14 concerning the law.

15 We're gonna take a short break before I start that.
16 There's a couple of things I need to go over with the
17 lawyers with before I make that charge. It won't take
18 long, but I will ask you to step back to the jury room,
19 and, as always, until you begin your deliberations, my
20 instructions are don't discuss anything about the case
21 until I ask you to begin those deliberations.

22 You may retire to the jury room.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: I wanted to go over with the State and

1 with Mr. Morton the presumptions that weight gives. I
2 know, in the case of cocaine, the State has charged in the
3 indictment, and, and the code provides that there is a
4 presumption when more than a hundred grams is sold, and I
5 think you want me to charge that presumption.

6 Am I correct?

7 SOLICITOR MABBS: Yes, sir, Your Honor.

8 THE COURT: Now, in the case of the marijuana, the
9 indictment does not state a presumptive amount.

10 Are you asking for a charge of, of a presumptive
11 amount in that case?

12 SOLICITOR MABBS: No, sir, Your Honor.

13 THE COURT: Okay. I just wanted to be sure I was
14 correct in doing -- in not charging that presumptive
15 amount.

16 All right. Any other matters that you'd like to take
17 up with me before I begin the charge, from the State?

18 SOLICITOR MABBS: No, sir, Your Honor. If I may, just
19 so I don't forget to take out Exhibit 1 from the laptop --

20 THE COURT: Why don't you go ahead and do that right
21 now?

22 SOLICITOR MABBS: -- while the jury's out. And, Your
23 Honor, would you like me to make---

24 THE COURT: Is there -- is that a clean computer we
25 can send back to them to watch it?

1 SOLICITOR MABBS: It is, Your Honor. That was gonna
2 be my next question.

3 THE COURT: Okay.

4 SOLICITOR MABBS: I'll be happy to pack it up into a
5 bag so they can take it back. The only issue with this
6 computer---

7 THE COURT: why don't you go ahead and do that, and
8 let's get it ready for them.

9 SOLICITOR MABBS: Yes, sir, Your Honor. The only
10 thing I'll inform the Court is they can let the jury know
11 is this is one of the older laptops. It will need to be
12 plugged in for it to turn on.

13 THE COURT: Okay. I'll tell them, I'll tell them. If
14 they have a problem, they can ask for help.

15 (Pause.)

16 THE COURT: Do you want to step up?

17 Mr. Allen, can I get you and Mr. Morton to come up for
18 just a moment, and go over one thing with you. And I'll do
19 it on the record. It's not a bench conference.

20 I intend to send the indictments back to the jury.
21 I'm gonna tell them that in my charge, but I want you to
22 look at them first and see if there's anything you find
23 objectionable on the indictments before I send them back.

24 SOLICITOR MABBS: And, for the record, Your Honor, we
25 don't put if there's any history or anything on our---

1 THE COURT: Okay.

2 SOLICITOR MABBS: ---narcotics indictments.

3 THE COURT: I didn't see any prior events in there,
4 prior allegations.

5 SOLICITOR MABBS: No, and we don't include the C.D.R.
6 code either. So --.

7 THE COURT REPORTER: Excuse me. I can't---

8 THE COURT: They don't include C.D.R. code in there.

9 THE COURT REPORTER: Okay.

10 (Pause.)

11 THE COURT: This is the verdict form I intend to send.
12 Do you want to take a look at that, and see if there's
13 a problem with that before I explain it to them?

14 (Pause.)

15 THE COURT: Let the State take a look at it, and see
16 if they have any objections.

17 THE DEFENDANT: Oh, I'm sorry.

18 SOLICITOR MABBS: That's okay.

19 THE COURT: Just a moment. Let's let them look at
20 that, and then we'll talk about it.

21 SOLICITOR MABBS: No objections, Your Honor.

22 THE COURT: All right. Any objections?

23 THE DEFENDANT: No, sir.

24 THE COURT: If you'll step back, I'll get whatever you
25 want to tell me.

1 SOLICITOR GHENT: Your Honor, there were two officers
2 who were involved in the case. So, looking in, could they
3 come in before the charge is---

4 THE COURT: Yeah, go ahead and let them come in before
5 the charge.

6 Mr. Woodward, Officer Woodward, or Joan, if they want
7 to come in. Some people like to just look through the
8 porthole there. It's safer out there I think.

9 All right. Mr. Morton, during our bench conference
10 concerning the indictments, and the verdict form, you
11 indicated you might want to say something.

12 So, I'll be happy to hear from you.

13 THE DEFENDANT: Your Honor, will you be able to say
14 something to the jurors about the, the camera situation
15 that we spoke on?

16 THE COURT: The camera situation?

17 THE DEFENDANT: Yeah, about the film, about the
18 taping.

19 THE COURT: Well, I've already gone over that with you
20 this morning, if you're referring to the taping at the
21 scene of the stop---

22 THE DEFENDANT: Yes, sir.

23 THE COURT: ---I do intend to give the charge that I
24 talked about earlier.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: Thank you.

3 THE COURT: I've, I've, I've re -- I've worded it a
4 little differently, but the gist is the same. You'll hear
5 it, and, once I finish, I always send the jury out, and
6 give both parties an opportunity to object or ask for
7 clarification or ask for additional charges before I tell
8 them to start deliberations.

9 THE DEFENDANT: Okay.

10 THE COURT: So, you'll have a chance to tell me if you
11 feel like I didn't cover it properly.

12 THE DEFENDANT: Okay.

13 THE COURT: Okay.

14 THE DEFENDANT: Thank you.

15 SOLICITOR MABBS: All right. I'm just going to see if
16 they want to come in during closing -- charge.

17 THE COURT: All right. Let's bring the jury in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect the
21 jury has returned to the courtroom. And, first of all, I
22 want to thank you, as members of the jury, for your
23 attention to your duties in this case. It's gone on for
24 the full week, and I appreciate your diligence in appearing
25 on time, and being available when we needed you. And, and

1 I'll talk to you a little bit more about that a little
2 later on.

3 It is now my duty to charge you concerning the law in
4 this case. And while you are the sole judges of the facts
5 in this case, the state and the rules and our Constitution
6 makes me the sole judge of the law in this case.

7 I'm going to begin discussing the law of the case with
8 you by going over the indictments in this case with you.
9 You may recall, when we did jury selection, I went over
10 these with you at that time. These documents will be given
11 to you, and you can take them back into the jury room, and
12 look at them.

13 I will point out to you that these are the documents
14 that contain the charges in the case. They are not
15 evidence in this case. They cannot be used by you as
16 evidence in this case. They are simply the documents that
17 bring these cases into this court, and they inform us, as a
18 court, what charges are to be tried. It informs the
19 Defendant of the charges that have been lodged against him.
20 So, they are informational documents. They inform us of
21 what this case is about.

22 But, in that regard, it's the state's obligation to
23 prove the allegations contained in the indictment to you by
24 proof beyond a reasonable doubt. And I'll discuss all of
25 those concepts with you for later in the charge, but I want

1 to be sure you understand the indictments, and what they
2 mean, and, when I give them to you, how they can be used.

3 The first indictment that I'm going to talk about will
4 be case Number 17-4141. This indictment is for the charge
5 of possession with intent to distribute.

6 It says, in part, and you'll be able to read it when
7 you have it, but I'll go over it with you now so we have an
8 understanding of the charges, that Dana L. Morton did, in
9 Spartanburg County, on or about February the 2nd, 2017,
10 manufacture, distribute, dispense, deliver, purchase, aid,
11 abet, attempt, or conspire to manufacture, distribute,
12 dispense, deliver, or purchase, or possess with the intent
13 to manufacture, distribute, dispense, deliver, or purchase
14 a quantity of marijuana. That's schedule 1 controlled
15 substance. That's alleged to be in violation of Code
16 section 44-53-370 of the Code of Laws of South Carolina,
17 1976, as amended, and all indictments end by stating that
18 this action was against the peace and dignity of the state,
19 and contrary to the statute in such case made and provided.

20 That's the first indictment that's before the court.

21 The second indictment is Case Number 17-4142, and this
22 charge is for trafficking in cocaine, and this indictment
23 states that Dana L. Morton did, in Spartanburg County, on
24 or about February 2nd of 2017 knowingly sell, manufacture,
25 deliver, purchase, or bring into the state, or did provide

1 financial assistance, or did otherwise aid, abet, attempt,
2 or conspire to sell, manufacture, deliver, purchase, or
3 bring into the state or did knowingly or actually or
4 constructively possess, and did knowingly attempt to
5 actually or constructively possess more than 100 grams of
6 cocaine, a schedule 2 controlled substance, in violation of
7 section 44-53-370 of the code of laws of south carolina,
8 1976 as amended, against the peace and dignity of the
9 state, and contrary to the statute in such case made and
10 provided.

11 Again, those are the indictments. That's the charges
12 that are before the court, and the charges that we're to
13 try.

14 Now, again, those cannot be used as evidence by you in
15 determining your verdict, and the fact that they exist does
16 not create any inference or presumption of guilt. Again,
17 it's simply an informational document.

18 The indictments allege the two different offenses, and
19 each indictment is a separate charge. And you, the jury,
20 will be called upon to write a verdict, a separate verdict,
21 for each of those two charges, and you'll decide each
22 indictment separately from the other, but based upon the
23 law and evidence presented during the trial in this case.

24 Therefore, a defendant can be convicted or acquitted
25 on either or both of the indictments that are before the

1 Court, and, again, you'll be asked to write a separate
2 verdict of guilty or not guilty as to each of those
3 indictments.

4 The defendant has pled not guilty to the indictments.
5 That plea, under our system of justice, places the burden
6 of proof in this trial solely upon the State. The
7 Defendant or a person who's charged with a commission of a
8 criminal offense in this state is never required to prove
9 himself innocent. I charge you that it's an important rule
10 of law that, no matter how serious a crime might be, a
11 defendant will always be presumed to be innocent of the
12 crime for which an indictment has been issued until and
13 unless you, the jury, have had his guilt proven to you by
14 proof that you find meets the standard of proof beyond a
15 reasonable doubt.

16 Now, the presumption of innocence doesn't end when you
17 begin your deliberations. It continues throughout the
18 trial, and into your deliberations. It continues until
19 such time as this presumption of innocence has been taken
20 by the -- from the Defendant by evidence that satisfies you
21 of the Defendant's guilt beyond a reasonable doubt.

22 Some people describe that presumption of innocence
23 like a robe that the judge wears into the courtroom. At
24 the beginning of the trial, that presumption of innocence
25 is around the Defendant's shoulder. It remains on his

1 shoulders throughout the trial. It's on his shoulders into
2 the jury room and as you begin your deliberations. And it
3 remains in that place until it's taken from him or stripped
4 from him by evidence that satisfies you of the Defendant's
5 guilt beyond a reasonable doubt.

6 So, the presumption of innocence is not a legal
7 therapy. It's not a legal phrase. It's a substantial
8 right that every defendant is entitled to unless you, the
9 jury, find the Defendant guilty beyond a reasonable doubt.

10 Now, you've heard me talk about this proof beyond a
11 reasonable doubt about three or four times already in this
12 charge, and I will tell you that that is a very important
13 concept in our criminal justice system.

14 First of all, let me point out one thing before I talk
15 about reasonable doubt. There are different standards of
16 proof in courts of law for, depending on the type of cases
17 that's being, that's being handled, let me explain what I
18 mean by that. If this case has been a case where someone
19 was seeking monetary damages, they can be because there's
20 been an accident. It can be because somebody didn't comply
21 with their contracts, or they didn't pay their bills, where
22 someone's seeking monetary, monetary relief in the court.
23 That's a civil case, and, in civil cases, in, in our court
24 system, for someone to win that case, they have to prove or
25 have the greater weight or the preponderance of the

1 evidence on their side.

2 so, if you imagine the scales of justice, in a civil
3 case, if the weight of the evidence tilts ever so slightly
4 in favor of a plaintiff, the plaintiff wins, or, if the
5 evidence tilts ever so slightly in favor of a defendant,
6 the defendant wins. so, that's in a civil case where just
7 the tilting of the scales one way or the other can result
8 in a verdict in favor of one side or the other. so, if
9 you've been involved in a civil case, that's the standard
10 you would of applied in those cases.

11 Now, this isn't a civil case. This is a criminal
12 case, and the standard of proof required for one side to
13 win is proof beyond a reasonable doubt.

14 Now, you might ask yourself well, what do you mean by
15 proof by reasonable doubt. Just what does that mean. And,
16 you know, the Courts that have tried to define what a
17 reasonable doubt is have used generally this definition.
18 They say that a reasonable doubt is that kind of doubt that
19 would cause a reasonable person to hesitate to act. The
20 state has the burden of proving the defendant guilty beyond
21 a reasonable doubt.

22 Now, the State does not have the burden, however, of
23 proving a defendant guilty beyond any doubt whatsoever
24 because there's very few things that happen in our lives
25 that can be proven beyond any doubt whatsoever. so, that's

1 not the standard of proof. They don't have to offer that
2 to over, overcome every possible doubt. What I will tell
3 you that if, after you weight the evidence in the case, if
4 you are firmly convinced of the Defendant's guilt beyond a
5 reasonable doubt, you must find the Defendant guilty. If,
6 however, you think there's a real possibility that the
7 Defendant is not guilty from the evidence that you've
8 weighed, then you must give the Defendant the benefit of
9 that doubt, and find the Defendant not guilty.

10 Now, during this trial, you and I have had certain
11 duties to. It's my, as the judge, it's been my
12 responsibility to preside over the trial of the case, and
13 I've had to be very active in this one this time, and I
14 want to caution you that, that, in doing my job as the
15 presiding officer in this case, you should not take from
16 anything that I might have said or done, in making rulings
17 on motions or making rulings on objections or even having
18 you step in and out of the courtroom, don't take from
19 anything that I have done during the trial of this case to
20 somehow indicate that you I -- that I have an opinion one
21 way or the other as to how you decide this case. I want
22 you to know you are the sole judges of the facts in this
23 case. The law doesn't allow me, as the judge of the law,
24 to have an opinion concerning the facts.

25 So, don't infer from anything that I have done that I

1 have an opinion one way or the other as to how you decide
2 the case. You are the sole judges of the facts in this
3 case, and I have no opinion as to how you determine the
4 facts in this case.

5 I am the sole judge of the law in this case, and,
6 under your oath, you are required to accept the law exactly
7 as I give it to you, and apply that law to the facts as you
8 decide the facts to be. That should put you in a position
9 to render a verdict in this case.

10 Now, in making your decision in this case, it's going
11 to be your duty at the -- during deliberations to determine
12 the effect, the value, the weight, and the truth of the
13 evidence that's been presented to you. You have the right
14 to determine what inferences you think can be reasonably
15 drawn from the evidence that you've heard.

16 In deciding a case, you have the right to consider two
17 types of evidence in reaching a verdict in this case, and
18 you may say well, what do you mean by two types of
19 evidence. Well, the law divides evidence into either
20 direct or circumstantial evidence, and let me explain to
21 you what that means so you'll understand, later on when I
22 talk about these concepts, what I mean.

23 Direct evidence is testimony from a witness who claims
24 to have direct knowledge of the facts about which that
25 witness testifies. In other words, somebody who actually

1 saw the event, experienced the event, heard what happened,
2 smelled what happened. They, they directly experienced the
3 things that they're talking about or testifying about in
4 court. That's direct evidence in a case.

5 Now, the other type of evidence that a jury has the
6 right to consider in reaching a verdict in this case is
7 what we refer to as circumstantial evidence. Now,
8 circumstantial evidence is proof of a chain of facts or
9 circumstances that somehow indicates the existence of some
10 other fact. It's been described as proof of collateral
11 facts from which a main fact can be reasonably inferred.

12 Now, that's some pretty fancy lawyer talk in my
13 opinion, and I try to make it a little bit easier to
14 understand what I mean by proof of a fact by collateral
15 facts.

16 Let's say, last night before you went to bed, you went
17 to the window in your bedroom, and you looked outside and
18 the stars were shining. You could see the moon out, and
19 everything looked really nice, and beautiful. A little
20 chilly last night. And then so you got in bed, and you
21 slept well all night. Didn't wake up at all during the
22 evening, and, the next morning, you get up and you walk
23 over to the very same window that you were at the night
24 before. And you look outside, and the sun's up, but then,
25 when you look a little closer, you notice there's water

1 dripping out of all the trees. There's puddles in the
2 walkway or the sidewalk or the road in front of your house
3 that wasn't there the night before. Maybe the lawn's
4 covered all over with, with a lot of water.

5 Now, you know you slept all night. You didn't see it
6 rain. You didn't hear it rain. You didn't directly
7 experience that happening. But, from the collateral facts
8 that you've observed, and you know to be true, water
9 dripping out of the trees, puddles that weren't there
10 before, water all over the lawn, you can reasonably infer
11 that, at some time during the night, it rained. So, that's
12 what we mean by proof of collateral facts from which you
13 can reasonably infer the existence of another fact.

14 Now, the law doesn't make a distinction between the
15 weight or the value that you can give to either direct or
16 circumstantial evidence. Nor does the law require a
17 greater degree of certainty for circumstantial evidence
18 than that of direct. I will tell you that you should weigh
19 all of the evidence in this case. You give it the weight
20 or the value that you think it deserves.

21 And, after weighing all of the evidence in this case,
22 if you are not convinced of the guilt of the Defendant
23 beyond a reasonable doubt, you must find the Defendant not
24 guilty. But, on the other hand, if you are firmly
25 convinced of the Defendant's guilt beyond a reasonable

1 doubt, you must find the Defendant guilty.

2 Now, in doing your job as jurors in determining the
3 facts of the case, it's necessary that you determine the
4 credibility of the testimony you heard. Credibility means
5 believability.

6 Now, I'll tell you, and I will suggest to you that you
7 should use your own good common sense in determining the
8 credibility or the believability of what you've heard in
9 this case. You know every single day of your life, whether
10 think about it or not, you make common sense decisions as
11 to what you believe, and what you choose not to believe.
12 You do it every day about a lot of things that you might
13 hear. So, you make those decisions sometimes without even
14 thinking about that, using your own good common sense.

15 And I want you to do that in this case, and that is
16 use your own good common sense. It's your duty, as jurors,
17 to analyze and evaluate the evidence. Determine which
18 evidence convinces you of its truth.

19 As the sole judges of the facts in this case, you have
20 the right to believe one witness against all the others,
21 all the others against one. You have the right to believe
22 all of, part of, or none of what a witness may have
23 testified to. You have the right to consider such factors
24 as whether or not a witness may have a stake in the outcome
25 of the trial, whether or not a witness may have a reason

1 for a bias or a prejudice one way or the other. You have
2 the right to consider whether a witness actually had the
3 ability to know the facts about which the witness
4 testified. And I suggested to you earlier, and I will tell
5 you again, one of the more important things you do is you
6 observe the courtroom as it goes on, the witnesses as they
7 testify. That's why we put this seat right in front of the
8 box, your jury box, so that you can observe the witnesses
9 as they speak, the way they deliver their testimony.

10 Again, apply your good common sense to what you've
11 observed in the courtroom, and listen to, make a
12 determination as to the credibility, the believability of
13 the testimony that you've heard in this case.

14 Now, during the trial of this case, we had witnesses
15 and persons who had prior criminal records, and those were
16 brought up during examination. A past criminal record
17 doesn't affect the ability of anyone to testify. Someone
18 with a past record has the right to testify in a case.

19 The past record of, of a witness can be considered by
20 you, if at all, only in determining the credibility or the
21 believability of the witnesses. Remember, you're the sole
22 judges of the facts in this case. You're the sole judges
23 of the believability of any and all witnesses who've
24 testified in this case, and make that determination based
25 on the evidence, and what you have observed.

1 Also, during this trial, you heard discussion about
2 possible penalties that might exist for the crimes that are
3 before this court. In determining the guilt or the
4 innocence of a defendant, a jury should not consider any
5 possible penalty for any particular crime in making that
6 decision. The punishment for a crime is not a matter for
7 you, the jury, to determine. Your job is to determine
8 whether or not the state made its -- met its burden of
9 proof, and whether or not it has proved the defendant
10 either guilt or not guilty. The punishment for a crime is
11 for me, the judge, to determine, and should never be
12 considered by you in any way in arriving at an impartial
13 verdict as to the guilt or the innocence of the Defendant
14 in this case.

15 Now, in this case, there was some evidence that some
16 evidence may have existed, and was not produced at the
17 trial. And I will tell you the State not only has the
18 burden of proof of guilt, but it also has the burden of
19 producing evidence. Even evidence which might establish
20 the innocence of a defendant. And I will tell you that,
21 when evidence is either lost or destroyed by a party, you
22 can infer that the evidence which was either lost or
23 destroyed by that party would have been adverse to that
24 party.

25 Now, should you find that the evidences, first of all,

1 was lost or destroyed, or if you should further find that
2 the evidence would help to establish innocence of a
3 defendant, then you have the right to consider those
4 factors in determining, along with all of the other factors
5 in this case, to determine whether or not the State has met
6 its burden of proof.

7 Now, we had some discussion during the trial about
8 witnesses who were qualified as experts. And, when I
9 qualified those witnesses as experts, I mentioned I'd talk
10 to you about that later on during my charge, and so I'm
11 going to do that now.

12 As I explained at that time, the rules of evidence
13 generally don't allow witnesses who testify before you to
14 state opinions. The average witness, the ordinary witness
15 who testifies must, must testify from their own personal
16 knowledge about things, and not give you opinions about
17 things that, that might be in their experience. But now
18 there's an exception to that rule, and the exception to
19 that rule is that, when the Court qualifies a person as an
20 expert within a field or a profession or a calling or
21 whatever they do, if they're declared to be an expert, then
22 that person will be allowed to state their opinion within
23 the area of their expertise, and state the reasons why they
24 might have that opinion.

25 Now, you, the jury, as the sole judges of the facts,

1 and you have the right to consider the testimony of any
2 witness, including an expert, just like any other witness.
3 You have the right to give that testimony the weight you
4 think it deserves. Should you find that the opinion of an
5 expert was not based on sufficient knowledge or training or
6 should you find that the opinion of an expert is outweighed
7 by other evidence or if you conclude that the reasons given
8 in support of the opinion are not sound, then you have the
9 right to either accept the opinion or disregard the opinion
10 in its entirety.

11 I will tell you that just because this court has
12 declared someone to an expert in, in a field doesn't mean
13 that you have to give that testimony any greater weight
14 than any other witness simply because that person was made
15 an expert, and you're not required to accept an expert's
16 opinion even though it might be not contradicted by other
17 evidence. Again, you're the sole judges of the facts. You
18 determine the weight and the value that you give to any
19 witness' testimony, being they lay witnesses or expert
20 witnesses. That's for you to decide.

21 Now, I will instruct you on one thing, and I'm gonna
22 emphasize this fact to you. The fact that the Defendant
23 did not testify in this case is not a factor to be
24 considered by you in any way in your deliberations in this
25 case, in your consideration of whether the Defendant is

1 guilty or not guilty. The fact that the Defendant did not
2 testify should not be consider by you in any manner in
3 reaching your decision in this case.

4 That's because all defendants have a constitutional
5 right to remain silent, and the assertion by a citizen of
6 one of their constitutional rights is not an evidentiary
7 fact that should be considered by you in any way in
8 reaching a verdict. I will repeat to you, under the oath
9 you've taken as jurors, you are to draw no conclusions
10 whatsoever from the fact the Defendant did not testify.
11 The fact that the Defendant did not testify should not even
12 be discussed by you during your deliberations of this case.

13 As I told you, the burden of proof in this case is
14 upon the State, and only upon the State, and that burden
15 continues throughout the trial. A defendant is not
16 required, in any case, to prove his or her innocence, and
17 the burden of proof remains upon the State, and that
18 burden, again, is to prove the Defendant's guilt beyond a
19 reasonable doubt.

20 Now, I'm going to talk to you about the law that
21 applies to the specific charges in this case at this time.
22 The first charge that I'm gonna talk to you about will be
23 the marijuana charge, and that charge is possession with
24 intent to distribute, and the drug that's named in the
25 indictment is marijuana. And, in this particular case, in

1 that charge, the State has a burden of proving, beyond a
2 reasonable doubt, that the Defendant possessed the
3 marijuana with the intent to distribute it.

4 To prove possession, the State must prove, beyond a
5 reasonable doubt, that the Defendant had both the power and
6 the intent to control the disposition or the use of the
7 marijuana, and possession can be either what the law calls
8 actual or constructive possession for it to be in the
9 Defendant's possession.

10 Now, actual possession is exactly what that means.
11 Actual possession means that the drug in question was in
12 the actual physical custody of the Defendant.

13 Constructive possession, on the other hand, means that
14 the Defendant had dominion and control over the marijuana
15 itself or the property on which the marijuana was found or
16 stored.

17 Now, I'll tell you, just being present at the scene
18 where drugs are found is not enough to prove possession.
19 The Defendant's knowledge and possession may be inferred
20 when a substance is found on property under the Defendant's
21 control. However, that's just an inference, it's an
22 evidentiary fact. It can be taken into consideration along
23 with other evidence, and be given the weight you think it
24 should have. Two or more persons can have joint possession
25 of a drug, and the State must prove the Defendant intended

1 to distribute the drug.

2 Now, distribute means to deliver other than means of a
3 legal administration of a drug. Intent can be shown by the
4 acts and conduct of the Defendant, and other circumstances
5 from which you may normally and naturally infer intent.

6 Let me talk just a moment about intent. Intent's the
7 state of mind that someone has when an event occurs. We
8 can't open up people's heads and look inside of them to see
9 what they intended to do. So, we can't scientifically
10 prove what people intended to do. So, intent is always
11 proven from the facts and circumstances that surround the
12 occurrence. It's by circumstantial evidence, what you can
13 infer from what happened in the event. That's how you
14 prove intent in a case.

15 In determining the Defendant had intent, you can
16 consider the facts and circumstances surrounding the
17 alleged possession. You can consider the amount of the
18 substance that was possessed. You can consider the manner
19 in which it was possessed, how it was packaged, things of
20 that nature. You can consider the place where it was
21 possessed. You can consider any factor which you consider
22 to be important in determining whether or not the Defendant
23 had an intent to distribute a drug. You must find that the
24 Defendant did not have the intent for the drug, marijuana,
25 to be used solely for his own use.

1 Now, should you find that the State has failed to
2 produce evidence that the Defendant is guilty of possession
3 with intent to distribute, in other words, you find the
4 defendant not guilty of that charge, then you must consider
5 a lesser included charge as well. We haven't talked about
6 this before. So, I want to be sure you understand that.

7 So, if the State doesn't prove that he possessed it
8 with the intent to distribute, then you must decide whether
9 the State has proven simple possession. That is a lesser
10 included offense under the law.

11 Simple possession means that the Defendant possessed
12 the drug, and I've talked to you what possession, about
13 what possession means. That he had it knowingly. That
14 means with knowledge, consciously, not accidentally.
15 Intentionally means that he had it wilfully and intended
16 the result which occurred in the case. To prove
17 possession, the State must prove, beyond a reasonable
18 doubt, that the Defendant had both the power and the intent
19 to control the disposition and use of the drug. And,
20 again, possession, as I told you earlier, can be either
21 actual or constructive, and I won't go through that again.
22 I think you understood that. And I'll tell you again, just
23 being present where drugs are found is not enough to prove
24 possession, and possession of a drug is -- it's illegal, is
25 a crime, unless it was obtained through a valid

1 prescription or ordered from a licensed practitioner.

2 Now, the next offense I'm to talk to you about is the,
3 the other indictment, and that is the indictment for
4 trafficking in cocaine, and that's a separate charge.
5 You'll write a second verdict as to that charge.

6 The State, in this case, must prove, beyond a
7 reasonable doubt, that the Defendant knowingly sold,
8 manufactured, cultivated, delivered, purchased, brought
9 into the state, provided financial assistance, or otherwise
10 aided, abetted, attempted, or conspired to either sell,
11 manufacture, cultivate, deliver, purchase, or bring into
12 the state, and was in knowing -- was knowingly in actual or
13 constructive possession, or knowingly attempted to become
14 in actual possession or constructive possession of cocaine.

15 The state must prove, beyond a reasonable doubt, that
16 the amount of cocaine that the Defendant possessed, under
17 those circumstances, was a hundred grams or more, but less
18 than 200 grams in order for it, for it to qualify as
19 trafficking.

20 Now, let me define a couple of things to you. Deliver
21 means to actually constructively attempt to transfer a
22 drug. Distribute means to deliver, other than by
23 administering or dispensing by a valid prescription, a
24 drug. Manufacture means to produce, prepare, convert,
25 process, either plant, cultivate, grow, or harvest. Those

1 can all be manufacturing a drug, and that can be done
2 either naturally or chemically. Manufacturing it includes
3 packaging or repackaging of a drug or labeling or
4 relabeling the drugs container.

5 Ms. Morton, if you'll raise your hand?

6 (WHEREUPON, the juror complies.)

7 THE COURT: You're going to be the foreperson of the
8 jury. I told you I'd appoint somebody during my charge,
9 and I'm going to ask that you do that for me.

10 Now, what that means is that you will be the person
11 who will, in effect, preside or lead the discussions of the
12 jury in the jury room. If the jury has a question during
13 deliberations, I would ask that the jury agree upon that
14 question, that you write it down on a piece of paper that
15 will be provided to you, submit it to the bailiff, who will
16 be seated right outside the door of the jury room. He'll
17 present that question to me or she will, and, at that time,
18 I will decide what the appropriate answer might be.

19 Now, I can't answer every question you might have
20 during your deliberations. I'm not allowed to get involved
21 in your discussions on the facts, and I can't express an
22 opinion about the facts. So, there's some things I can't
23 discuss with you during your deliberations. But I'm not
24 asking you to edit any questions. Whatever question the
25 whole jury wants to pose to me, write it down, submit it

1 to me, and I'll decide whether I can answer it and not --
2 well, or not, and the manner, the proper manner, in which I
3 can respond to your question. So, submit them to me.

4 During deliberations, if there is any problem or
5 issue, I would ask that you communicate that to the bailiff
6 right outside the door.

7 Now, I know it's about 10:30. I don't know how long
8 you'll be discussing this case, and reviewing the evidence.
9 That's up to you to decide in your deliberations. If we go
10 into the lunch hour, we will deliver lunch to you. The
11 bailiffs will come into the jury room to discuss that with
12 you, and make arrangements for the delivery of lunch to
13 you. The reason I'm telling you about that is that, at any
14 time if there's someone in the jury room who is not a
15 member of the jury, suspend discussions. Don't talk about
16 the case. Don't discuss the case in their presence. Wait
17 until they leave, the door is closed, and then resume your
18 deliberations.

19 You're not to discuss this case with anyone outside of
20 the 12 jurors who are deliberating. And so, when they're
21 present, talk about getting lunch, talk about the place
22 we're gonna order, whatever you need to talk about, but
23 don't talk about the case when they're present.

24 Now, I'm going to give you a verdict form in just a
25 few minutes. I'll go over the verdict form with you. And,

1 when a verdict is reached, it will be your job to record
2 the proper verdict on the form and sign it. Then you,
3 again, knock on the door. Let the bailiff know a verdict's
4 been reached. You will be brought back into the courtroom
5 where I will receive the verdict. We will go over those
6 documents with you.

7 Now, I, I will tell you that the jury cannot reach a
8 verdict in this case on any issue unless all 12 of you
9 agree. In other words, it has to be a unanimous verdict
10 before the jury has even reached a verdict. All of you
11 must agree on the result before a verdict is reached.

12 So, you would not record any verdict on the verdict
13 form until all 12 jurors are in agreement with the verdict
14 that's been reached in this case. Then you would complete
15 the form, knock on the door again, let the bailiff know
16 that the verdict has been arrived at, and then we will
17 bring you back into the courtroom to receive the verdict.
18 And I will tell you, just because I've appointed Ms. Morton
19 as the forelady of the jury, gives her no greater say in
20 the outcome of the case than any other juror. Since it
21 requires unanimity, all of you have to agree. Every juror
22 has an equal say in the outcome of the case.

23 So, just because she's the forelady doesn't place her
24 in any greater position as far as her vote or that sort of
25 thing than anybody else on the jury. Every one has their

1 vote, and, of course, it has to be unanimous before a
2 verdict is reached.

3 Now, I've gone over a good bit with you, and I want to
4 be sure I haven't misspoken or I said something wrong or
5 don't cover it fully enough. So, I'm gonna let the lawyers
6 discuss my charge with me briefly. We're gonna gather the
7 evidence together that's been put into the record. That
8 will go back in the jury room with you so you can look at
9 it, and observe it, and that sort of thing. So, I got to
10 be sure that only the properly admitted evidence goes into
11 the jury room. So, we're gonna get all that set aside and
12 be sure we have all that together for you before you go
13 back there.

14 We're going to allow the video to go back there to you
15 on a clean computer. I'm told by the folks that control
16 that computer that it's kind of an old model. It doesn't
17 have an interior battery. So, you got to plug it into the
18 wall to get it to work, but it shouldn't be anything else
19 on there, and it should allow you to play the videos so you
20 can view that if you'd like to. You're not -- I'm not
21 telling you you have to look at it, but you got a right to
22 look at all the evidence in the case. So, it will be made
23 available to you during the time that you're deliberating.

24 So, this may be the last time I'm going to tell you to
25 step outside the courtroom and not begin any discussions.

1 The next time I'll be telling you to start those
2 discussions.

3 So, this time, I'm gonna ask you to step to the jury
4 room. Don't discuss the case until I bring you back for
5 further instructions.

6 Take them back to the jury room.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Corrections or exceptions to
10 the charge from the State?

11 SOLICITOR MABBS: Nothing from the State, Your Honor.

12 THE COURT: Anything from the defense?

13 THE DEFENDANT: Yes.

14 THE COURT: Yes, sir.

15 THE DEFENDANT: I asked the Court to explain or charge
16 that a person cannot conspire with an agent of the State,
17 including a undercover officer or a confidential informant,
18 or that the word conspire does not include an (sic)
19 discuss, discussion or arrangement with a person who was an
20 agent of the state including an undercover officer or a
21 confidential informant, Your Honor.

22 THE COURT: I don't follow that.

23 MR. ALLEN: If I may, Your Honor?

24 THE COURT: Mr. Allen, let him -- do you want to help
25 him phrase that so I can understand it?

1 MR. ALLEN: Yes, Your Honor.

2 I think what he means, what I meant by writing it, is
3 the Court, in finding or charging on trafficking, used the
4 word conspire, and it's my understanding of the law that
5 conspiracy cannot include or does not include someone who
6 is an agent of the State, which includes a confidential
7 informant. There may of been discussion. My concern is
8 that if there's been some attack on the, the chain of
9 custody and whether or not there was a hundred grams of
10 cocaine discussed between those two folks, and,
11 therefore---

12 THE COURT: Sure.

13 MR. ALLEN: ---I'm concerned that the word conspire --
14 it's my understanding of the law he can't be conspiring
15 with an undercover agent or a confidential informant.

16 THE COURT: Any problem with my making that statement
17 to the jury, that a conspiracy, in my charge, does not
18 include a conspiracy with any agent of the state?

19 SOLICITOR GHENT: Your Honor, it's not alleged that he
20 conspired, but if Your Honor wants to clarify---

21 THE COURT: well, it's in my charge. I didn't use
22 that word that's in the charge, standard charge that I've
23 used.

24 SOLICITOR GHENT: Yes, sir. True.

25 THE COURT: so, I'll, I'll just make that statement.

1 I'll, I'll do -- I will correct that I think.

2 MR. ALLEN: Thank you.

3 THE COURT: Anything else, Mr. Morton?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. Thank you very much.

6 I'm gonna ask that, Mr. Allen, if you'll help Mr.
7 Morton. We're gonna segregate the evidence. Come over and
8 be sure we got that set aside properly.

9 SOLICITOR MABBS: So, Your Honor, Defense Exhibit 7 is
10 the one that was marked for I.D. So, that would not go
11 back to the jury if I'm correct.

12 THE COURT: That's right.

13 SOLICITOR MABBS: So, I'll set that aside.

14 THE COURT: That's the Facebook posting.

15 SOLICITOR MABBS: That's---

16 SOLICITOR GHENT: Your Honor, may I ask a question as
17 it's---

18 THE COURT: Well, we got, we've got two things going
19 on.

20 Do you want it on the record?

21 SOLICITOR GHENT: Yes, sir.

22 THE COURT: Okay. Go ahead.

23 SOLICITOR GHENT: All I want -- and, again, this is a
24 rhetorical question. I know the answer. But will Your
25 Honor be releasing the alternate at this point?

1 THE COURT: Oh, yes, sir, I, I release the alternate
2 when I -- that's what the statute says to do. So, I follow
3 it.

4 SOLICITOR GHENT: Yes, sir, thank you.

5 THE COURT: I think some judges hold on to them, but
6 I, I follow the statute.

7 SOLICITOR GHENT: Yes, sir, thank you.

8 THE COURT: I think the statute is not written very
9 well, but that's okay.

10 SOLICITOR GHENT: Thank you.

11 THE COURT: I'm not in charge---

12 SOLICITOR MABBS: Your Honor, if---

13 THE COURT: ---of the Legislature.

14 SOLICITOR MABBS: while we're doing this, I'd ask that
15 Mr. Morton refer from -- I don't want to say the word
16 threaten, I don't think it got to that point, but making
17 comments.

18 THE COURT: About what?

19 SOLICITOR MABBS: Your Honor, he's asking how I sleep
20 at night making me a little uncomfortable if he's
21 whispering them, and not putting it on the record.

22 THE COURT: Mr. Morton, you're up here to look at the
23 evidence. Let's look at the evidence, and let's keep our
24 comments to ourselves.

25 THE DEFENDANT: Your Honor -- oh, okay.

1 THE COURT: Please. That's not hard to ask you to do.

2 (Pause.)

3 THE COURT: All right. Have we set the, the exhibits
4 aside in a separate stack?

5 SOLICITOR MABBS: Yes, Your Honor. The ones on --.

6 THE COURT: All right. The State's in agreement with
7 those exhibits going back?

8 SOLICITOR MABBS: Yes, Your Honor.

9 THE COURT: Mr. Morton, are you in agreement with
10 those exhibits going to the jury?

11 THE DEFENDANT: I'm not agree, but I will.

12 THE COURT: Do you agree that those are the ones that
13 are in evidence that need to go to the jury?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Thank you, sir.

16 You ready?

17 THE COURT REPORTER: Yes, sir.

18 THE COURT: Bring the jury in.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: Now, ma'am, I have had the bailiff hand
22 you some papers. If you'll turn that over. I think the
23 one on top is the verdict form.

24 Is that right?

25 THE FORELADY: Uh-huh. (Affirmative.)

1 THE COURT: Let me go over that with you so we
2 understand what that's about.

3 THE FORELADY: Yes, sir.

4 THE COURT: At the top you'll see it has the state and
5 county, and the court that we're in, and it has a statement
6 of who the parties are, the State and Mr. Dana Morton. And
7 then below that it's the body of the verdict form that says
8 that we, the jury, unanimously find. Question number one
9 applies to the charge of possession with the intent to
10 distribute marijuana. That's the indictment -- the
11 indictments are directly behind that form.

12 THE FORELADY: Okay.

13 THE COURT: And, as to that charge, there's two
14 choices, a not guilty or guilty. I have a little blank
15 right in front of each choice. I want you to put an X or a
16 check on the line that's appropriate once the jury has
17 reached a unanimous verdict on that particular charge.

18 Now, should the jury find the Defendant not guilty of
19 that charge, that the State did not prove possession with
20 intent to distribute marijuana, then you'd go to Question
21 1-A, which is right under that, and that says, should you
22 find him not guilty of that charge, then you must decide --
23 consider the charge of simple possession, and, again, the
24 choices are guilty or not guilty. You'll only answer that
25 question if you find the Defendant not guilty of the first

1 charge. If you find him guilty of the possession with
2 intent to distribute, you don't answer 1-A.

3 Do you understand that, ma'am?

4 THE FORELADY: Yes, sir.

5 THE COURT: All right. Now, the next question, and
6 that's on the next page, has to do with the charge of
7 trafficking cocaine. And, again, the choices are not
8 guilty or guilty. Once a unanimous verdict is reached on
9 that charge, you would check the appropriate blank in front
10 of the verdict. Then, of course, you -- once it's
11 completed, the form's completed, you'll sign it and submit
12 it or inform the bailiff that a verdict has been reached.

13 Now, let me tell you the fact that I've put those
14 choices in any order on that form, don't take that that
15 means my preference for any verdict. I can assure you,
16 been doing this a lot of years, and every verdict form I've
17 ever prepared in any case is always in those same orders.
18 I always put not guilty first, and guilty second. So,
19 that's no preference on my part. That's just the way I
20 prepare the forms, and I've done it for years. So, that's
21 not a preference.

22 Below that is the indictments both for the charge
23 of -- marijuana charge, and for the cocaine charge. And
24 they're informational documents. They are there to be of
25 assistance to you considering the charges.

1 Now, during my charge, I missed -- mentioned, in the
2 cocaine portion of that charge, about a conspiracy, and I
3 tell you, under the law, the conspiracy that I was talking
4 about or in the charge cannot or would not include a
5 conspiracy with a government agent. A government agent
6 cannot be a part of the conspiracy I was talking about. It
7 would have to be a conspiracy between two persons in the
8 public. So, that's not the kind of conspiracy I was
9 talking about. Any conspiracy with a government agent
10 would be excluded from that definition.

11 All right. Now, at this point in time, I'm going to
12 ask you to step back to the jury room. I'm going to tell
13 you to begin your deliberations. We've separated the
14 exhibits. We're going to send those back to you.

15 Let me caution you. Do not try to open any of the
16 bags yourselves. If you find -- believe there's a need to
17 open any of the bags, please let us know, and we'll
18 consider how we might handle that. The -- those substances
19 are alleged to be dangerous substances. Certain doses can
20 be fatal. And so we're asking you don't try to open those
21 bags on your own.

22 So, I cautioned you about that, Madam Forelady. If
23 that is about to occur, please let us know so we can take
24 the appropriate action.

25 Now, there is a -- I told you there's a computer.

1 It's coming back with you with the disc. So, if you want
2 to watch the videos, it's available. If you have any
3 difficulty in making that operate, let us know. We'll get
4 somebody to step in, and get it running for you so that
5 you'll be able to see. We want it to be available to you
6 so you can see it if you need.

7 So, at this point in time, I'm going to ask the jury
8 to begin deliberations.

9 Ma'am, you're the alternate. I'm gonna ask you to
10 remain seated in your seat.

11 Okay?

12 All right. The 12 of you may retire to begin your
13 deliberations.

14 (WHEREUPON, the jury retired to begin their
15 deliberations at 10:45AM.)

16 (WHEREUPON, the alternate juror was excused at this
17 time.)

18 THE COURT: Any objections to my final instruction
19 from the State?

20 SOLICITOR MABBS: No, Your Honor.

21 THE COURT: Any from the defense?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. We'll be in recess until such
24 time as we receive a question or a verdict.

25 Thank you very much.

1 Mr. Allen, he wishes to say something. The case --
2 I've, I've rested the case. So, I don't know what he wants
3 to say.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. I have been informed that a
6 verdict has been reached in the case.

7 State ready to receive the verdict?

8 SOLICITOR MABBS: We are, Your Honor.

9 THE COURT: You ready to receive the verdict?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, I note that they have placed shackles
12 on your hands.

13 THE DEFENDANT: Uh-huh. (Affirmative.)

14 THE COURT: I'm gonna urge you to put that under the
15 table.

16 THE DEFENDANT: Uh-huh. (Affirmative.)

17 THE COURT: There could be a problem with the jury or
18 a verdict that I have to send them back for them to
19 continue deliberations. I don't want them to see you in
20 those shackles. That could work against you later on. So,
21 I'm gonna ask you to remain seated and keep your hands out
22 of sight.

23 THE DEFENDANT: Okay.

24 MR. ALLEN: If I may, Your Honor?

25 (Pause.)

1 THE COURT: All right. Bring the jury in.

2 (Whereupon, the jury returned to the courtroom at
3 11:17AM.)

4 THE COURT: All right. The record will reflect that
5 the jury has returned to the courtroom.

6 Has the jury reached a verdict, Madam Forelady?

7 THE FORELADY: Yes, sir.

8 THE COURT: Pass the form to Mr. Alford please.

9 (WHEREUPON, the forelady complies.)

10 THE COURT: Thank you very much.

11 Madam Clerk, you may publish the verdict.

12 THE CLERK: State of South Carolina, County of
13 Spartanburg, State of South Carolina versus Dana Morton.

14 In the Court of General Sessions, Seventh Judicial
15 Circuit, we, the jury, unanimously find as the following
16 indictment:

17 In Case Number 2017-GS-42-4141, possession with intent
18 to distribute, guilty.

19 In the Case 2017-GS-42-4142, trafficking in cocaine,
20 guilty.

21 I certify this is the decision of the, of the --
22 unanimous decision of the jury signed by Melissa Morton
23 today, October the 19th, 2018.

24 Ladies and gentlemen of the jury, is this your verdict
25 and still your verdict, if so, please raise your

1 right-hand.

2 (WHEREUPON, all juror raise their right-hands at this
3 time.)

4 THE CLERK: So say you all.

5 THE COURT: Thank you.

6 Anything further from the State before I release the
7 jury?

8 SOLICITOR MABBS: Nothing from the State, Your Honor.

9 THE COURT: Anything from the defense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Yes, sir.

12 THE DEFENDANT: I would like a poll.

13 THE COURT: All right. Madam Clerk, we'll poll the
14 jury.

15 Ladies and gentlemen of the jury, we're gonna call
16 your names. You need to follow the clerk's instructions as
17 to how to respond to her question.

18 Madam Clerk.

19 THE CLERK: Ladies and gentlemen, I'll be asking you
20 the question, and the question is is this your verdict and
21 still your verdict. Once I call your name and number, if
22 you'd just please raise your right-hand, and answer yes or
23 no.

24 Juror 163, Brittney Sarratt, is this your verdict and
25 still your verdict?

1 THE JUROR: Yes.
2 THE CLERK: Juror 123, Melissa Morton.
3 THE JUROR: Yes.
4 THE CLERK: Juror Number 80, Robert Hartranft.
5 THE JUROR: Yes.
6 THE CLERK: Juror Number 33, Sarah Clemons.
7 THE JUROR: Yes.
8 THE CLERK: Juror Number 90, Edna Jackson.
9 THE JUROR: Yes.
10 THE COURT: Juror Number 155, Matthew shields.
11 THE JUROR: Yes.
12 THE CLERK: Juror Number 13, David Bowyer.
13 THE JUROR: Yes.
14 THE CLERK: Juror Number 11, Crystal Bland.
15 THE JUROR: Yes.
16 THE CLERK: Juror Number 104, Jordan Lawson.
17 THE JUROR: Yes.
18 THE CLERK: Juror Number 123, Thai Nguyen.
19 THE JUROR: Yes.
20 THE CLERK: Sorry.
21 Juror Number 22, William Morris.
22 THE JUROR: Yes.
23 THE CLERK: And Juror 179, Kelsey West.
24 THE JUROR: Yes.
25 THE CLERK: So say you all.

1 THE COURT: All right. After polling, it appears the
2 verdict is unanimous.

3 (WHEREUPON, the jury panel was released at this time.)

4 THE COURT: Mr. Morton, you can stand.

5 (WHEREUPON, the Defendant complies.)

6 THE COURT: Mr. Morton, I have received the sentencing
7 sheets in your case, and you have been found guilty by a
8 jury of your peers of the two charges that are before this
9 Court, which is possession with the intent to distribute
10 marijuana, and trafficking in cocaine.

11 Now, it does not -- I note that you have signed the
12 sentencing sheet. There's a blank for the -- there's a
13 blank for an attorney for the Defendant, and, of course,
14 you were representing yourself.

15 Do you have any objection to my adding that you were
16 pro se, that's a Latin word that meant you were for
17 yourself?

18 THE DEFENDANT: No.

19 THE COURT: Do you have any objection to me adding
20 that to the sheet?

21 THE DEFENDANT: No.

22 THE COURT: All right, sir.

23 All right. At this time, the Court is considering the
24 appropriate sentencing in this case. I will tell you that
25 I have been informed that the offense of trafficking in

1 cocaine 100 grams or more, but less than 200 grams is
2 classified in this state as a violent and a serious
3 offense. As such, it carries certain restrictions
4 concerning availability of parole, and things of that
5 nature. This Court does not determine parole. At this
6 point in time, my job is to determine the appropriate
7 sentencing in this case.

8 Now, I'll talk to the State.

9 Ms. Mabbs, my understanding of the sentencing for
10 trafficking in cocaine at that level is a mandatory 25
11 years.

12 Is that correct?

13 SOLICITOR MABBS: Correct, Your Honor, and a---

14 THE COURT: And a fine of \$50,000.

15 SOLICITOR MABBS: That's correct, Your Honor.

16 THE COURT: All right.

17 MR. ALLEN: Your Honor?

18 THE COURT: And the other offense, which is possession
19 with the intent to distribute marijuana, and I believe that
20 you're asking that this be classified as a second offense.

21 SOLICITOR MABBS: That's correct, Your Honor, and I do
22 have the certified convictions if Your Honor---

23 THE COURT: Okay. I'll let you put that in at the
24 appropriate time.

25 My understanding of the maximum sentence on that

1 particular charge is anywhere from zero up to ten years
2 and/or a fine of zero up to \$10,000.

3 SOLICITOR MABBS: That's correct, Your Honor.

4 THE COURT: Is that your understanding?

5 SOLICITOR MABBS: Yes, Your Honor.

6 THE COURT: Yes, sir, Mr. Allen.

7 MR. ALLEN: May he make a posttrial motion, Your
8 Honor?

9 THE COURT: Yes, sir, I'll be glad -- I, I just wanted
10 to go over it to be sure we had an agreement as to the
11 potential penalties.

12 MR. ALLEN: Okay.

13 THE COURT: And do you have a disagreement with what
14 we said about that, either Mr. Morton or Mr. Allen,
15 concerning those potential penalties?

16 MR. ALLEN: No, Your Honor. That's my understanding
17 of the law.

18 THE COURT: Is that your understanding as well, Mr.
19 Morton?

20 THE DEFENDANT: I assume so.

21 THE COURT: Okay. Now, you -- I understand you do
22 wish to introduce or place in the record posttrial motions.
23 I'll hear from you at this point in time.

24 THE DEFENDANT: I move for a new trial on the grounds
25 as I have previously stated in my motions for direct

1 verdict based upon all the previous motions, and objections
2 made during this -- during the trial, and rule against the
3 defenses, Defendant, which is me.

4 THE COURT: Yes, sir.

5 All right. I note those motions, motion for new
6 trial. I have been present and reviewed the evidence
7 throughout the trial. I see no reason to disturb or
8 overturn the verdict or for me to act as a 13th juror. So,
9 at this point in time, the motions will be denied.

10 MR. ALLEN: Yes, sir.

11 THE COURT: I'll allow the conviction to stand at this
12 time.

13 Now, Mr. Morton, I'm going to give you an opportunity
14 to speak to me about sentencing --

15 THE DEFENDANT: Uh-huh. (Affirmative).

16 THE COURT: -- at this point in time. And, once
17 you've finished, I'm going to talk with the State about the
18 situation. They're going to go over with me your prior
19 criminal record, and some other information they want to
20 share. I'll come back to you and give you a chance to
21 respond to that once they've finished.

22 Do you understand that?

23 THE DEFENDANT: Yeah.

24 THE COURT: All right. Mr. Morton, anything you'd
25 like to say to me concerning sentencing, I'll be happy to

1 hear from you.

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Now, the State, can you tell me
4 some information please, ma'am?

5 SOLICITOR MABBS: Yes, sir, Your Honor.

6 would you like to start with his prior record?

7 THE COURT: That would be fine, yes, ma'am.

8 SOLICITOR MABBS: Your Honor, his prior record is, in
9 1997, possession of cocaine.

10 1999, driving under suspension.

11 2000, giving false information, and a Court charge
12 that was not submitted. It appeared the arrest was for
13 loud music.

14 2001, failure to stop for a blue lights.

15 2002, simple assault and battery.

16 2003, fraudulent check.

17 2005, malicious injury to personal property.

18 2006, criminal domestic violence first, and simple
19 assault and battery.

20 2007, simple possession of marijuana, and giving false
21 information.

22 2011, possession with intent to distribute marijuana,
23 possession with intent to distribute cocaine base third
24 offense, and receiving stolen goods.

25 And, Your Honor, as I did mention, I do have certified

1 convictions from Greenwood. Your Honor, those are for the
2 possession of crack cocaine from 2010, or was it -- I'm
3 sorry, Your Honor, 2011. And then I do have the possession
4 of marijuana with intent to distribute as well, Your Honor.

5 THE COURT: All right.

6 SOLICITOR MABBS: I believe it would---

7 THE COURT: If you would, please let's pass those over
8 to let him look at those.

9 (Pause.)

10 THE COURT: Have you had a chance to look at those,
11 Mr. Morton?

12 THE DEFENDANT: Uh-huh. (Affirmative).

13 THE COURT: They're asking that I put that in the
14 record concerning your prior record primarily because they
15 are asking that you be charged, on the marijuana charge,
16 it's a second offense.

17 Is that correct, ma'am?

18 SOLICITOR MABBS: That's correct, Your Honor.

19 THE COURT: All right. Do you understand that?

20 THE DEFENDANT: I guess so.

21 THE COURT: well, that's to establish the fact you do
22 have prior convictions.

23 THE DEFENDANT: Uh-huh. (Affirmative).

24 THE COURT: Because they're claiming that that charge
25 would be -- constitute a second offense. At least a second

1 offense.

2 All right. You may put those into the record.

3 SOLICITOR MABBS: Thank you.

4 (WHEREUPON, the indictments were marked as Court's
5 Exhibit Nos. 3 and 4 and received into evidence at this
6 time.)

7 THE COURT: Mr. Mabbs, any other information the State
8 would like to share concerning sentencing?

9 SOLICITOR MABBS: Your Honor, as far as sentencing
10 goes, I believe this was mentioned briefly before we
11 started the trial. Mr. Morton was placed on a list by the
12 Spartanburg County Sheriff's Office narcotics team that we
13 quickly refer to as the target list.

14 Your Honor, that was a list that our office spoke to
15 the Sheriff's Office about, and asked them to pick
16 basically their four biggest targets in Spartanburg County
17 that they were concerned about bringing drugs into
18 Spartanburg County. Mr. Morton was on that list, Your
19 Honor. As I believe I mentioned earlier, that's how the
20 structure of the previous offers was done. We did that for
21 all of the targets on that list.

22 Your Honor, since he was such a high target, we would
23 request consecutive sentencing.

24 THE COURT: All right. Any -- I told you I'd let you
25 speak to me after she did. If there's something you'd like

1 to respond to or correct.

2 THE DEFENDANT: Your Honor, I'd like to get it all in
3 one. That way it can be 40 years, or whatever it is, all
4 in one instead of doing two. I'd be able to go down, get
5 my G.E.D., high school diploma, whatever I got to do.

6 THE COURT: Okay, sir. I know he has been out on bond
7 while this charge was pending.

8 Do you know how much time he may have served already?

9 SOLICITOR MABBS: Your Honor, let me pull his bond
10 sheet, and I can confirm that.

11 THE COURT: Thank you, ma'am.

12 SOLICITOR MABBS: Your Honor, he was arrested on
13 February 2nd, 2017. It appears he posted bond on
14 February 3rd, 2017.

15 THE COURT: Okay. One day?

16 SOLICITOR MABBS: Yes, sir, Your Honor.

17 THE COURT: Mr. Morton, I know that you've been in
18 custody during the trial of this case. So, I am giving you
19 credit for six days of time already served.

20 All right. Mr. Morton, in the case 2017-4142, the
21 trafficking in cocaine, it's the sentence of this court
22 that you be confined in the State Department of Corrections
23 for a period of 25 years, and pay a fine of \$50,000. Give
24 him credit for six days. I have run that concurrently with
25 the other sentence. That sentence is ten years, again

1 concurrent, with credit for six days on the marijuana
2 charge.

3 Good luck to you, sir.

4 THE DEFENDANT: Thank you.

5 SOLICITOR MABBS: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 Court is adjourned at this time.

8

9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15th, 16th 17th, 18th, and 19th days of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 18th, 2019

PAMELA E. GREEN, Court Reporter

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA
 County/ Municipality of
Spartanburg

Personally appeared before me the affiant Anthony Lachica

being duly sworn deposes and says that defendant Dana L. Morton
did within this county and state on or about 2/2/2017

State of South Carolina (or ordinance of County/ Municipality of
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on February 2, 2017, in the city/county of Spartanburg, one Dana L. Morton did knowingly sell, manufacture, deliver, bring
into this state and/or possess between 100 and 200 grams of cocaine, a schedule II controlled substance, without authority to do so.
Affiant's belief based on police investigation. MF

FILED
COURT OF COURTS
SPARTANBURG COUNTY
FEB -7 AM 8:42
HOPE BLACKLEY

[Handwritten Signature]

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg 29303-
Affiant's Telephone (864)503-4500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/2/2017 defendant Dana L. Morton
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 g

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 2/2/2017

[Handwritten Signature] (L.S.)

Dwight Gibson Smith
Judge Code: 7151

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-5221
Judge's Telephone (864)596-2228
Issuing Court Magistrate Municipal Circuit

ORIGINAL

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ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT 3/6/17
2017A4210200375

STATE OF SOUTH CAROLINA
 County/ Municipality of
Spartanburg

THE STATE
against

Dana L. Morton

Address: [Redacted]
Greenwood, SC 29648-

Phone: [Redacted] SSN: [Redacted]
Sex M Race: B Height: 5 Weight: 150
DL State: [Redacted] DL #: [Redacted]
DOB: [Redacted] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff
Prosecuting Officer: Anthony Lachica - 0772

Offense: Drugs / Trafficking in cocaine, 100 g or more, but
less than 200 g

Offense Code: 0280
Code/Ordinance Sec: 44-53-0370(e)(2)(c)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law. (L.S.)

Date: _____
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Dana Morton
on 2-2-17

[Handwritten Signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

DOCKET NO. -

17-GS-42-4141

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2017

TERM

THE STATE

vs.

DANA L. MORTON

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

WITNESSES

SCSO

[Handwritten Signature]

ARREST WARRANT NUMBER

2017A4210200377

ACTION OF GRAND JURY

[Handwritten: Grand Jury Bill]

Foreperson of Grand Jury

Date:

VERDICT

[Handwritten: Guilty]

[Handwritten: Mary P. Morton]

Foreperson of Petit Jury

Date: 10/19/18

RECEIVED
OCT 24 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 18 2017, the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Dana L. Morton did in Spartanburg County on or about February 2, 2017, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE 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.

Allison Mills
ASSISTANT SOLICITOR

DOCKET NO.

17-GS-42-4142

WITNESSES

SCSO

[Handwritten signature]

ARREST WARRANT NUMBER

2017A4210200375

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

[Handwritten signature]

[Handwritten signature]

Foreperson of Petit Jury

Date: 10/19/18

A. 1202

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 21 2017

TERM

THE STATE
vs.

DANA L. MORTON

Indictment for
TRAFFICKING IN COCAINE

SC Code: 44-53-370

RECEIVED
OCT 24 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 18 2017

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Dana L. Morton did in Spartanburg County on or about February 2, 2017, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (100) One Hundred grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE 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.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS. Dana L. Morton

INDICTMENT/CASE#: 2017GS4204141
A/W#: 2017A4210200377
Date of Offense: 2/2/2017
S.C. Code §: 44-53-0370(b)(2)
CDR Code #: 0187

AKA:
Race: B Sex: M Age: 40
DOB:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Possession With Intent To Distribute Marijuana, 2nd offense- 0-10 years and/or \$0-10,000 [X] CONVICTED OF or [] PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0187
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury, [] Negotiated Sentence, [] Recommendation by the State.
The plea is: [X] Without Negotiations or Recommendation, []

ATTEST: MABBS, ALLISON M (SC Bar#) Defendant
Dana L. Morton (SC Bar#) Defendant
Attorney for Defendant (SC Bar#)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 10/19/18
[] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
[] Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211(A)(1) (Conv. Surcharge) \$100, §14-1-211(A)(2) (DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Def/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114(BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$8.25. TOTAL \$283.25

Obtain GED []
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling []
Random Drug/Alcohol testing []
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

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SC Court of Appeals

[] Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: KG McKinney
Court Reporter: Amelia Moffatt

Presiding Judge:
Judge Code: 2135
Sentence Date: 10/19/18

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Dana L. Morton

AKA:

Race: B Sex: M Age: 40

DOB:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 100 g or more, but less than 200 grams- 25 years and \$50,000

in violation of § 44-53-0370(e)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0280

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

MABBS, ALLISON M

101795 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 50,000.00 provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 10/19/18

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 6 days (six)

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

*Fine:

§14-1-206 (Assessments 107.5 %)		\$ 50,000.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 53,750.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3,120.75

TOTAL

\$ 107,145.75

Clerk of Court/ Deputy Clerk

Court Reporter:

KG McKinney

Shonda Moffitt

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS4204142

A/W#: 2017A4210200375

Date of Offense: 2/2/2017

S.C. Code § 44-53-0370(e)(2)(c)

CDR Code #: 0280

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SC Court of Appeals
SENTENCE SHEET

CONVICTED OF or PLEADS

Presiding Judge

Judge Code: 2135

Sentence Date: 10/19/18

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

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Aug 13 2020
SC Court of Appeals

Appellate Case No. 2018-001909

The State,Respondent,

v.

Dana L. Morton,Appellant.

Rule 210, SCACR Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

August 13, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Roger L. Couch, Circuit Court Judge

Aug 21 2020

SC Court of Appeals

Appellate Case No. 2018-001909

The State,Respondent,

v.

Dana L. Morton,Appellant.

Supplemental Record on Appeal

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404 Main Street
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(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant

Alan Wilson
Attorney General

William M. Blicht, Jr.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, Sc 29211
(803) 734-3727

Barry J. Barnette
Solicitor, Seventh Judicial Circuit

Attorneys for Respondent

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Memorandum from Chief Justice Jean Hofer Toal to All Solicitors dated March 1,
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Rule 210, SCACR Certification.....2



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

POST OFFICE DRAWER 12466
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1584
FAX: (803) 734-1167
E-MAIL: jtoal@sccourts.org

MEMORANDUM

TO: All Solicitors

FROM: Chief Justice Jean Hoefer Toal

RE: Plea Agreements and Discovery

DATE: March 1, 2004

It has come to my attention that solicitors in some circuits are offering plea agreements to defendants on the condition that they forgo discovery. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file.

Furthermore, I believe it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. See Rule 3.4, R.I.D.E., Rule 407, SCACR. I ask that any solicitors who are currently pursuing this practice to stop immediately.

On a separate issue, apparently some magistrates are setting bonds after *ex parte* meetings with alleged victims. This is also unethical and, although I will be communicating directly with the magistrates regarding the issue, I ask for any assistance you might be able to provide if you are aware that this is happening in magistrates courts in your area.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM SPARTANBURG COUNTY **Aug 21 2020**
Court of General Sessions
Roger L. Couch, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2018-001909

The State,Respondent,

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Rule 210, SCACR Certification

The Record on Appeal and Supplemental Record on Appeal contain all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

August 21, 2020

A. 1210