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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAGERALD L. DUNHAM,

APPELLANT.

APPELLATE CASE NO. 2019-001538

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 1 (DVD OF BODY CAMERA FOOTAGE); STATE'S EXHIBIT NO. 1-A (USB FLASH DRIVE OF BODY CAMERA FOOTAGE); AND STATE'S EXHIBIT NO. 7 (DVD OF BODY CAMERA FOOTAGE).**

STATE OF SOUTH CAROLINA

----------x

STATE,

Plaintiff,

Case No.

-against- 2018-GS-46-00179

LAGERALD L. DUNHAM

Defendant.

----------x

September 3-5, 2019

York, S.C.

B E F O R E:

HONORABLE WILLIAM MCKINNON

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

T. MATTHEW HOGGE

Attorney for the State

GEOFF DUNN,

Attorney for the Defendant

Aileen Butler

Official Court Reporter

THE COURT: Good morning, ladies and gentlemen. I appreciate you being here on time this morning. Yesterday I gave you all some rules about not discussing the case and not doing any independent research. Was everyone able to follow those rules?

(Jurors respond affirmatively.)

THE COURT: I appreciate that. We are now going to start the trial of the State versus Lagerald L. Dunham. What I am going to do now is give you a general introduction of the law and what's going on happen in this case. This is not my formal explanation of the law to you. That will happen at the end after you heard all the evidence.

The defendant is charged by indictment in this case with two offenses; those are possession with intent to distribute marijuana and trafficking methamphetamine. The indictments are simply the formal written document which brings the defendant in to court. They are not in any way evidence. I'm going to read them to you in just a second so you know what the formal charges are. But I have to tell you, before I do that the defendant has plead not guilty and he is presumed innocent and the State has the burden of proof on all these charges. And it will be your duty, ladies and gentleman, for you to determine

whether or not what the State claims -- which is in the indictments -- whether they have proven them or not.

So again, I am going to read these indictments to you. They not evidence. They are what the State is going to try and prove during the trial.

The State alleges that the defendant, Lagerald L. Dunham, did on on or about May 26, 2017 in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into the state or did provide financial assistance or otherwise aid or abet or attempt or conspire to sell or manufacture or deliver or purchase or bring into the state; or was knowingly or actual or constructive possession or attempted to become an actual or constructive possession knowingly of 28 grams or more of methamphetamine in violation of the law of South Carolina.

The State also alleges that the defendant, Lagerald L. Dunham, on or about May 26, 2017 in York County, South Carolina, did manufacturer, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacturer, distribute, dispense, deliver or purchase or possess with the intent to manufacturer, distribute, dispense, deliver, purchase

marijuana, a scheduled one controlled substance in violation of the laws of South Carolina.

And for the record, those are indictments 2018-GS-46-00179 and 00178. Again, ladies and gentlemen, what I just read to you is not evidence. That's what the State is going to try and prove and it's your job as jurors to determine if they are able to do that. You are the sole judge of the facts in this case. Not me. And if I make any comments regarding the facts of the case you need to disregard it. I am not permitted to have an opinion about the facts in the case. You should determine the facts in this case based on testimony that you hear in court and the other evidence introduced. You can also draw inferences from the testimony which you hear in court and other evidence that you see. It is especially important that you perform your duty in determining the facts diligently and consciously because ordinarily there is no way to correct an error made by a jury in determine the facts of the case. On the other hand and with equal emphasis, the same law that makes you as the jury the judge of the facts make me the judge of the law. The law as I explain it to you at the end of the case is the only law you may consider. You must accept and follow the law as I

explain it to you even if you may disagree with it. I'm not permitted to tell you what the facts of the case are and you're not allowed to disagree with me what the law is or what it ought to be.

Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence.

Ladies and gentlemen, I will just remind you briefly of the rules I explained yesterday. First, please do not do any outside research. Don't google anyone. Don't look up the laws on the internet. Also, you are not permitted to discuss this case with anyone outside the courtroom until it is over. And thirdly, even among yourselves you can not discuss this case until it's time for formal jury deliberation, after all the evidence has been presented from both sides. So please, I expect everyone will be able to abide by those rules. If anyone slips up please tell me because we may be able to fix it. But it goes on and we find out later it may require doing the case over again. Okay.

I don't know if this case will make the news. It's always possible that a reporter may be interested in an ongoing trial. If that happens don't watch any news reports about this case and if there's an article

in the newspaper about this case please don't read it. You can read them after the case is over. But if you're watching the local news and the report comes on on about this case just change the the channel.

All right. Ladies and gentlemen, it is your solemn responsibility to determine the guilt or the innocence of the defendant, and your verdict must be based solely on the evidence that is presented during the trial and the law as I instruct you at the close of the trial.

In just a minute both of the attorneys will make what are called opening arguments. I ask you to pay close attention to the arguments. But I also tell those are not evidence. The arguments of the attorneys are not evidence. They may preview in their opening arguments what they think the evidence will show but that is not the same thing as the evidence itself.

Ladies and gentlemen, from time to time I am going to excuse you from the courtroom. You may hear an attorney say I have objection or I need to discuss something with the Court and this means there is a legal issue that I need to discuss with the lawyers and I will not bore you with those legal discussions so if that happens I will ask you to step out of the

courtroom and you'll be able to take a restroom break or get a soda. Whatever you need to do. If you are smoker you can take a smoke break.

Ladies and gentlemen, it is my job as the judge to to determine whether people are allowed to testify as witnesses in this trial. But once I make the decision to allow someone to testify it is up to you as jurors to determine whether you you believe that witness. All right. In determining whether you believe a witness you have a right to consider any possible interest a witness has, any possible bias, any possible prejudice, whether the witness had the opportunity to see or hear the things about which they are testifying and the way the witness acts on the witness stand. You have a right to consider anything that's in the record that will help you evaluate the testimony of the witnesses. That means it is your duty you to pay close attention to the witnesses, to observe them, to listen to them. Try not to let your thoughts wander. I do not permit note taking by jurors in the courtroom, and the reason for that is based on what you do for a living or what kind of schooling you had, some people are better note takers then others. And if I let the jurors take notes then it can become in the jury room a battle of who has the

best notes, and that is not what we want to have happen. You see we have a court reporter here that is taking down everything that happens in the courtroom and there are microphones all along the courtroom as well. So if during your jury deliberations if you get to a point where there is a disagreement among the jury about what someone said in court it can be replayed for you. We can bring you back in the courtroom and replay that testimony. So I don't allow note taking. You will hear me typing though. I take certain kind of notes so if you hear me typing up here that's what I am doing.

Ladies and gentlemen, one more thing. On your first break I will ask you to elect a foreperson. The foreperson of the jury has only two jobs. In South Carolina a criminal verdict has to be unanimous. So one juror, one vote. Must be unanimous. The foreperson has exactly the same vote as everyone else. Everyone's vote is equal. The foreperson has two jobs. The first is to communicate with me. If there is any issue in the jury room. It's too hot or too cold or the microphone is not working or you can't hear what a witness is saying, the foreperson speaks for the jury and if you're in the jury room you can pass a note to one of the bailiffs and the bailiff

will bring that note to me and we can communicate. And the second job is, when it comes time to deliberate, the job of the foreperson is to make sure that everyone has a say and gets a chance to speak and no one person dominates the discussion and other people don't feel like they have a chance to speak. There vote is the same as everybody else. So on your first break I will ask you to elect your foreperson and let me know who that is. All right. I want to give the attorneys a chance to object to anything I just said in case I made a mistake and then we'll move on and have opening arguments.

Any objections from the State?

MR. HOGGE: None from the State.

THE COURT: Any from the defense?

MR. DUNN: No, sir.

THE COURT: The State has the burden of proof so they open first.

MR. HOGGE: May it please the Court.

THE COURT: I'm sorry, I've just been reminded I have now sworn the jury in so that is important step.

(WHEREUPON, the clerk sworn in the jury.)

THE COURT: Mr. Hogge.

MR. HOGGE: Thank you. May it please the court.

Lagerald Dunham was stopped by Rock Hill Police

Department officers on May 27, 2017 when he committed a traffic violation. As officers approached his car they could smell marijuana coming from the car so they asked him to step out. He consented to a search of his person and they found in one of his pockets something that was a little weird. They found in one of his pockets a wad of empty sandwich bags. It's a little weird.

Now, there's nothing wrong with having a bunch of sandwich bags in your pocket. There's nothing illegal about just going around with lots of empty sandwich bags but it kind of sticks out. Kind of like this cord that is just coming from the ceiling to my computer. Theres's nothing wrong it but it looks a little weird. It sticks out to you. Now why is that? Why does he have that? Well, to give you another piece of the puzzle, in Lagerald's other pocket was a wad of cash; $1,400 in cash.

Now, what is Lagerald Dunham doing on Riverview Road with one bag full of empty baggies and his other pocket, $1,400 in cash just on him. What's that about? I will give you a little more context. He has under his driver's seat a digital scale. Now we are moving past weird and we are getting closer to just suspicious. What is he up to driving around Riverview

Road, a bunch of empty baggies in one pocket and a big wad of cash in his other pocket and he has easy access to a digital scale under his driver's seat. What does he need to be weighing out? Why does he have these empty plastic baggies? Why does he have all this cash?

Now maybe, just may be, it has something to do with all the drugs in his car. The police find 164 grams of marijuana. They find 37 grams of methamphetamine, 26 pills that are pressed with methamphetamine that look like red bull and one bag, 24 pills containing methamphetamine that look like dollar bills and in another bag that is all together 21 pills of red bull, 30 pills of money shaped pills. So 101 methamphetamine pills. Maybe, just maybe, it is all connected. That's why you are all here.

You are here during this trial to be as the judge told you judges of the facts. You determine the factual issues in this case.

Lagerald Dunham he sits here. He is presumed to be not guilty until me, the State, proves him guilty beyond a reasonable doubt. And the judge here, Judge McKinnon, he is the judge of the law in this case. He rules on any legal issues. You don't have to concern yourselves with legal issues during this case. You

don't have to go back in the jury room and ask yourselves what law applies. The judge is going to tell you what law applies. He is going to rule as he told you on objections. Issues like, did the police have a right to pull him over. Did the police have a right to search his car. You don't have to concern yourselves with those legal issues. Those are for the judge. You determine the facts. We don't ask for a bunch of lawyers to come in and have a bunch of lawyers sitting where you're sitting. Instead we bring in common people with their own common sense. That is really the best tool kit that we to determine factual issues.

Now, the judge, he told you a little bit about the law. He will tell you more about the law. I will talk a little bit more about the law and I know that's a lot of law for you but I want to kind of give you like the cliff notes of things to look out for. The things to pay attention to while you're listening to this trial. You heard the judge tell you that Lagerald Dunham is charged with possession with intent to distribute marijuana. He read that indictment and went on and on and on because there are several ways that you can violent that law. And you heard him tell you that he is charged with trafficking in

methamphetamine. So I kind of want to give you an introduction to drug crimes in South Carolina.

There are basically three levels of drug crimes and that is possession, possession with intent to distribute and trafficking. Possession, that's easy enough. You are either actually or constructively and those are legal terms and I will talk more about that in closing argument. Actually or constructively in possession of an illegal drug. That's all it is. That's pretty easy. Now a step above that is possession with intent to distribute. That is where you possess drugs with the intent to at some point in the future sell those drugs, share those drugs, give those drugs away. In some manner distribute those drugs. And what's important in that is the intent to distribute. Now intent is a tricky thing. Intent isn't something that I can go over and pull something off my desk and put it over on the evidence table and then in closing argument and say look, there's that intent. That's not how intent works. Instead you have to look at the surrounding circumstances of the case to get you a picture of what's going on in someone's mind. And in drug cases the things that you look for are empty baggies, digital scales, lots of cash, things like that. And additionally, in South

Carolina we have inference levels and that's where the the law in South Carolina says that just based on the weight of a drug alone you are permitted to infer that those drugs were held with the intent to distribute them. In other words, you got so much of a drug that's not just for personal consumption. You can, just based on that you're allowed to infer, that they intend to distribute. And there are different levels for different drugs. For marijuana that number is an ounce or 28 grams. For methamphetamine that number is one gram. Kind of based on the serving sizes for lack of a better term of these drugs. And in this case the evidence is going to show that Lagerald Dunham had well more than that inference level. He had 164.9 grams of marijuana. So that's possession with intent to distribute in a nutshell. You have those drugs not just for you but with intent to at some point in the future to sell them, share them or whatever.

Now, above that is trafficking. If you tune me out, if you forget everything that I've said, if you don't listen to anything else I say during this trial at least remember what I'm about to say because a lot of times juries have problems with this. All trafficking is is possessing a lot. That's all it is. There are various ways to commit trafficking. A lot

of times people think of trafficking they have this preconceived notion of people running across the Mexican border in a truck with kilos of cocaine. That certainly is trafficking but that's not what you have to do. That's not what the State has to prove in order for someone to be guilty of trafficking.

The State simply says -- the law simply says if you possess this much of this drug that's a big no no. That's trafficking. That's illegal. You heard the judge go through several different things; conspire to sell or transport, and then he said or possess. So that's all it is. And again, there are different levels depending on the amount of drugs for meth. The the first level is 10 grams to 28 grams. In this case the second level, 28 to 56 grams because the evidence in this case is going to show that Lagerald Dunham had 37 grams of methamphetamine, more than the second level of 28 grams. That is in a nutshell the evidence in this case, or the law in this case for you to be looking out for.

This is a relatively simple case. I expect we are only going to be here today, but with that being said it's still an important case. It is certainly important to Mr. Dunham. It is certainly important to me, the State, that you listen to this evidence and

that you follow that oath that you just took. I realize that for the most part you took that oath because it was the thing to do. They asked you to rise and raise your hand and everybody else was doing it. You could have refused. We could have found another juror to come in and sit in your place. But it means something and I ask that you follow that oath during this trial that you well and truly try this case based on the facts and the evidence presented.

Thank you.

MR. DUNN: May it please the Court.

THE COURT: Yes, sir.

MR. DUNN: Good morning. My name is Geoff Dunn. I'm an attorney here in Rock Hill, in York County over in Rock Hill. This is my client. This Lagerald Dunham. From the very first day that I met him he has declared he is innocent. These aren't his and he wanted this trial and that's why we are here today. He thanks you and I thank you for being here willingly even though that willingly came with a summons from York County.

Opening statements in my opinion are sort of crapshoot. And the reason why that is, is the burden of proof that all people are innocent until proven guilty. No matter what the government says, you did,

I did, he did, we are innocent until proven guilty and that innocence stays on the person throughout the trial. That man right there has the burden to prove that he's guilty and because it's his burden he goes first and he has got to present evidence. And so, I don't like opening statements because I don't know what the evidence is necessary going to be. So I don't want to put thoughts into your head that there is going to be this or there's going to be that because maybe this and that doesn't show up and you're looking at me, Geoff, yesterday, today, you told us we were suppose to be expecting X and it never showed up and then you're wondering why. And so I'm not going to tell you what to expect necessarily. But I'm going to remind you that all people are innocent until proven guilty. That that burden has to be overcome. That the State bears the burden to prove a person is guilty and that is beyond a reasonable doubt, and those are three very important standards that all of us have as American citizens as people living here in United States and that includes Mr. Dunham.

What I am going to ask to you do, as you're listening to the evidence and you're listening to the people testify, you're watching videos, you're hearing things. Start asking questions. You're not suppose

to talk about it among yourselves yet, but that doesn't stop you from asking yourself questions. Running things through your mind as the trial unfolds. What am I seeing? What am I not seeing? Is everything being done the way it should be done. Are there are things that are missing from the evidence that maybe we should be seeing that we're not seeing. Where were the drugs found? Whose car was it? What does the video show? What does the video not show? All those sort of things. I want you to ask yourself and run that through your filter, all that evidence through that filter as you're listening to the trial.

So again, thank you for being here. Mr. Dunham thanks you for being here.

THE COURT: That you, Mr. Dunn.

Mr. Hogge call your first witness.

MR. HOGGE: The State calls Shaun Watson to the stand.

SHAUN WATSON, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOGGE:

Q Good morning. Can tell us your name and rank for the record?

A I am a Sergeant with the Rock Hill Police Department and my name is Shaun Watson.

Q And how long have you been working for the Rock Hill Police Department?

A Eleven years.

Q And since you've been working with Rock Hill Police Department what are the various roles that you had in the department?

A I was assigned to patrol initially. Then I went to our Street Crimes Unit, then narcotics. From there I was promoted to a Sergeant. I have been a sergeant on parole. Sergeant over street crimes and then now I'm the sergeant over our Violent Crime Unit.

Q Okay. I assume that you had to get some kind of certification to be a police officer in South Carolina?

A Yes, sir. I attended the South Carolina Criminal Justice Academy.

Q Okay. And do you have ongoing training that you are required to do as law enforcement officer?

A Yes, sir, the Rock Hill Police Department does annual inservice training, forty hours.

Q And this case is a drug case. Is this your first rodeo with a drug case?

A No, sir.

Q If you had to estimate how many drug arrests you made

in your career wild guess what would you say?

A Eleven years, a few hundred. Easy. Yeah, a few hundred.

Q Okay. I want to turn your attention to our case today, May 26 2017. Can you tell us where you were you that day?

A Yes, sir, I was on Riverview Road.

Q And at some point you encountered Lagerald Dunham, is that correct?

A Yes, sir, that's correct.

Q And do you recognize him in the courtroom?

A Yes, sir, I do.

Q Can you point him out for us please?

A Yes, sir, he is sitting right there with the black shirt on.

Q For the record he has pointed to the defendant. At some point you pulled him over. Can you tell us why you pulled him over?

A He did not use a turn signal coming off of Riverview on to Eden Terrace.

Q And I guess I will go ahead and start playing your video. Have you reviewed your body camera video prior to today?

A Yes, sir.

Q And that video does it fairly and accurately depict the events as you witness them that day, May 26th?

A Yes, sir, it does.

MR. HOGGE: Permission to enter into evidence State's Exhibit One, the body camera footage from Sergeant Watson.

MR. DUNN: I'm assuming that is an abbreviated version?

MR. HOGGE: It is abbreviated.

MR. DUNN: No objection.

THE COURT: In evidence without objection.

MR. DUNN: Or the same objections I had yesterday.

THE COURT: Yes, sir.

(WHEREUPON, State's Exhibit One, entered in evidence.)

MR. HOGGE: I will go ahead and publish that to the jury if everyone will bare with me as I get it started.

CONT'D DIRECT:

Q All right, Sergeant Watson, before I start playing the video just to kind of get us oriented so we know what we are looking at. Can you tell us what all this is about up here?

A Yeah, that up there is my view mirror. My dash cam.

Q What about these white letters up here?

A That's the date. So, the first one is the year 2017 and then May 26th and then the next it 23:27. For some reason our system shows zulu time, but it's actually approximately 7:27 in the afternoon.

Q So, it's not 11 p.m. at night?

A That's correct.

Q Can you tell us so I don't have to keep pausing and asking you questions, how does your body camera work?

A It's centered mounted in the middle of our chest. It is constantly running throughout the day. When you hit the button twice -- there's this big metal button. Kind of like iron man. You hit it twice it backs up 30 seconds so everything you said and observed 30 prior it begins recording.

Q So it's not recording -- well, it's kind of recording all day long but it's not saving everything all day long, is that right?

A That's correct. It's like a a 30-second buffer time.

Q Does Rock Hill have the resources to store every second of every officer on the road body camera footage?

A No, sir.

Q Okay. So you press it and then 30 seconds before you press it it saves?

A That's correct. Yes, sir.

Q And who is sitting next to you in your patrol car?

A Tom Paterson, he's a chaplain with the Rock Hill.

Q You call him Chappy?

A Yes, sir, we call him Chappy.

Q All right. I will go ahead and start playing the video. (Playing video)?

So we heard that beep?

A Yes, sir.

Q And I believe -- it's hard for the jury to see -- is that 30 seconds there on the time?

A Yes, sir.

Q Okay. Now, I will pause again, you just heard a beep, can you tell us what that is?

A That was me activating my blue lights on the patrol vehicle.

Q When you activated your blue lights do you also have a dash camera?

A I do, yes, sir.

Q And does that dash camera work in the same way as your body camera?

A No, sir. At that time we had a separate system.

Q Okay.

A It would also back up thirty seconds prior but it would only be recording video.

Q And you said it was a different system back then?

A Yes, sir.

Q And do you still have that video or was that video since been deleted?

A We no longer have access to that system.

Q And if we went back thirty seconds in time from this point, a minute and 17 seconds -- well, thirty seconds or a

minute and 17 is that what the dash camera would have captured?

A Yeah, it would have backed up 30 seconds here. I'm talking about 45 seconds for my body cam so it would have been different.

Q Okay.

MR. HOGGE: Your Honor, may we approach?

THE COURT: You may.

(WHEREUPON, there was an off the record discussion.)

THE COURT: Ladies and gentlemen, I apologize for the technical difficulties in playing this DVD. We are going to try one more time and if there are still issues we may take a short break see if we can get the IT guy because we are having trouble.

(Playing video).

THE COURT: All right. Ladies and gentlemen, I apologize, we are having some computer trouble so I will ask you to go back to the jury room. This will be a great time to elect your foreperson and once we get this sorted out we will bring you back in.

(WHEREUPON, the jurors exit the courtroom)

MR. HOGGE: I'm sorry, judge, it never fails. Every trial I have there are some technical issues. I have been told Dan Sanders is on his way. I will do everything I can to make sure it plays right.

THE COURT: I appreciate that. We will be at ease.

(WHEREUPON, there was a brief recess.)

THE COURT: You have the video USB stick. Mr. Dunn has raised a point. USB sticks are volatile memory unlike they can be altered so with will submit into evidence the USB stick.

MR. HOGGE: That is my plan. CDs, these are CD/RW's so they can also be added to. That's the case with any evidence. I could put in a piece of paper that someone thereafter could mark up. And I think a USB is the same as a piece of paper, and this is the best -- the only way -- the only avenue I have at this point. As an officer of the court I am not going to go back and have make any additions.

THE COURT: I wasn't suggesting that.

Mr. Dunn are you satisfied?

MR. DUNN: Yeah, I suspect if anybody did alter the data on that USB stick that the metadata could be analyzed by somebody that knows something to see when and where it was manipulated. So I don't really have a concern.

MR. HOGGE: And Your Honor, just so I have all this on the record, I didn't know what redactions I had to make to the video until yesterday in the

pretrial hearings. It takes hours to make these redactions and to render them. So last night I stayed late to make those redactions, to render the videos which in my software, Davinci Resolve, can take over an hour. I stayed late. Let if finished rendering. I then burned Sergeant Watson's video on a disc and then I had the computer start the rendering of Shealy's body camera. I did not stay until eight o'clock to wait for that. I came in today and burned that on a disc. So usually hat I do is I come in the courtroom to make sure that the video can play. I wasn't able to do that because I wasn't able to make the redactions until late last week. So I apologize and I hate it, but I think we are all sorted now with using the USB sticks.

THE COURT: All right. So for the record what we will do then is substitute what you have in your hands for State's Exhibits One; is that correct.

MR. HOGGE: Well, it might be best if we make it State's Exhibit One-A.

MR. DUNN: One-A.

THE COURT: Okay.

MR. DUNN: I think that would be better way to do it.

THE COURT: And then while we're on the record I

elected foreperson. If you can raise your hand Miss Belk.

Thank you, ma'am. And ladies and gentleman thank you for the note regarding the two jurors. That's not an issue. We are going proceed with the trial. So thank you for letting me know. We believe we have the technology issue solved. Technology can be a blessing or a curse, but we think we got it solved so let's try it again.

MR. HOGGE: And if I could have State's Exhibit One-A marked.

THE COURT: For the record One-A is the same file but on a flash driver not a CD rom. Any objection Mr. Dunn?

MR. DUNN: Renew my previous objection.

THE COURT: State's One-A is in evidence.

(WHEREUPON, a flash driver was received into evidence as State's 1-A)

MR. HOGGE: Madam clerk, if you you can dim the lights.

(Video was played.)

MR. HOGGE: All right. Madam clerk if we can have the lights.

DIRECT EXAMINATION

BY MR. HOGGE:

Q All right, Sergeant Watson, you mentioned before that you've handled lots of drug cases in the past. When you had a drug case what kind of things are you looking for?

A A large quantity of cash, baggies, digital scales. Things of that nature to kind of put it all together.

Q Okay. What, if anything, do scales and baggies and cash indicate to you as an officer that's making drug arrests?

A The scales come in to play when they are selling the dope or whatever it is, if its crack, or marijuana they weigh it and then they sell it so that way the person knows exactly how much they are getting. They bundle it before hand. They put it into a plastic sandwich bag and tie -- put plastic twist at the end and tie it off. That way with each bag you can get two separate ones because of each corner of the open side and then cash, you know they've been making lots of drug deals that day so they have been pretty active.

(WHEREUPON, State's Exhibit Two and Three were marked for identification.)

Q All right, Sergeant Watson, I am going to hand you what has been marked for identification purposes as State's Exhibit Two and State's Exhibit Three. You can go ahead and open those up so can you can see exactly what's in those bags.

A Digital scale in exhibit two.

Q Okay.

A Exhibit three is sandwich bags.

Q Okay. And looking at both of those exhibits are those the items that you retrieved from this case?

A Yes, sir, they are.

Q Okay. And how do you know that they came from this case?

A During the -- when we remove something off of a person or a car we then place it into evidence and we sign it and drop it into evidence and it stays there until trial.

Q Okay. In looking at those items do they appear to be in substantially the same condition as when you took them off of Mr. Dunham and out of Mr. Dunham's car?

A Yes, sir.

MR. HOGGE: Your Honor, at this point I would like to introduce into evidence State's Exhibit two and State's Exhibit three.

THE COURT: Any objection Mr. Dunn?

MR. DUNN: I renew my objections.

THE COURT: I will admit those into evidence over objection.

(WHEREUPON, State's Exhibit Number Two and Three were received in evidence as of this date.)

Q And I guess just to wrap up, all these events happened in York County?

A Yes, sir.

Q And again what road were you on?

A I was on Eden Terrace at the intersection of Mount Gallant.

Q Okay. All right. That's all the questions I have for you. Please answer any questions Mr. Dunn might have.

THE COURT: Mr. Dunn.

MR. DUNN: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. DUNN:

Q A second ago you testified --

MR. DUNN: May I approach the witness?

THE COURT: You may.

Q A second ago you testified that the reason that you know those were the two items in evidence is because you signed the evidence chain form. Looking at two and three do you see your signature on either one of those forms?

MR. HOGGE: That's not what he testified to. He didn't testify that he signed those bags.

THE COURT: Counsel, would you approach.

(WHEREUPON, there was an off the record discussion.)

THE COURT: I'll overrule the objection.

Q You said we signed the bags. Was your signature on either one of these bags?

A No, sir. Officer Shealy's signature.

Q All right. And that's Officer Shealy over there, is that correct?

A Yes, sir.

Q So it's your testimony -- and we saw on the video you recovered some cash from Mr. Dunham, correct?

A Yes, sir.

Q But the reality is, you don't really know where that cash came from, right?

A No, sir.

Q And the reality is -- would you agree with me, that it's true that some folks just don't have checking accounts?

A Yes, sir.

Q And that's for lots of reasons, right?

A Yes, sir.

Q Some people don't trust the banks. They want to keep this own cash, right?

A Yes.

Q Some people don't have good credit and the banks won't give them a checking account, right?

A Yes.

Q And so it's perfectly -- it's possible that $1,400 is legitimate money, right?

A Yes, sir.

Q The marijuana that we have been talking about in openings and we heard the video, you did not actually recover

that marijuana, correct?

A No, sir.

Q One of the other officers recovered that?

A Yes, sir.

Q But as far as you know that marijuana was recovered underneath the seat of the female that we see in the video?

A As far as I know, yes, sir.

Q And again, you didn't actually -- the pills that were with recovered I believe Officer Shealy also found those, right?

A Yes, sir, that's correct.

Q And again, those pills that you're claiming are meth or ectasy, whatever the evidence will show, those were actually found under Miss Hampton's seat as well, correct?

A Yes, sir.

Q And the car that was being driven by Mr. Dunham and Miss Hamilton was a passenger in, that car was not owned by Mr. Dunham, is that correct?

A That's correct.

Q It turned out it was owned by somebody out of Spartanburg?

A That's correct.

Q In fact when you pulled Mr. Dunham over and you asked for identifying documents; license and registration, he gave you the registration for the vehicle?

A Yes, sir.

Q He was very cooperative in that manner?
A Yes, sir.
Q And he was up front and hones with you that he did not is a drivers license, right?
A Yes.
Q He didn't try and give you a false name or anything along those lines, right?
A That's correct.
Q Which is something you experience from time to time as a police officer?
A Yes, sir.
Q People get pulled over. They don't have what they're suppose to have and they try to pretend they are somebody else?
A Yes, sir.
Q Mr. Dunham didn't do that?
A No, sir.
Q It's fair to say that -- let me ask it this way. When we're watching the video and the body cam video when it first comes on, it looks like we can see a sign, a street sign in the upper right hand corner, right?
A Yes, sir.
Q And I think your testimony was you were on the corner of Riverview and Eden Terrace Road, right?
A Yes, sir.
Q For folks that may not know where Riverview is, that's

the road where McDonalds on Cherry Road is at, right? It's at the end of that road?

A Yes, sir, that is correct.

Q Going I guess if you are on interstate you would go southbound, but it's southbound from McDonald's right?

A Yes, sir.

Q Is it fair to say that it took you a little bit of time before you pulled over Mr. Dunham, right?

A Yes, sir.

Q You made it from the corner of Riverview and Eden Terrace. You didn't actually initiate your traffic lights until you got to the intersection of Anderson Road and Eden Terrace, correct?

A Yes, sir.

Q And I believe at that intersection there's a KFC and Leonards truck or trailers, whatever that is?

A Yes, sir.

Q That's the intersection we are talking about, right?

A Yes, sir.

Q And that's when you initiate your blue lights on your vehicle, right?

A That's correct, yes, sir.

Q And from there he pulled over. You came up on him at the next light which is there at Mount Gallant and Eden Terrace?

A Yes, sir.

Q And is it fair to say it's not a real far distance from Eden Terrace -- excuse me. From Anderson Road to Mount Gallant that's not a real far distance?

A Right.

Q There's nothing indicating to you that he was trying to flee or not pulled over. He stopped pretty quickly after you noticed him to stop?

A Yes, sir.

Q Is it fair to say that the distance from Anderson Road to Eden Terrace is much closer then the distance from Riverview to Anderson road?

A Yes, sir. Yeah.

Q When you got up to the -- you hit your body cam. You indicate on the video that he didn't use his turn signal. You weren't right behind him when he made that turn, right?

A I don't remember. I was decently close but I don't remember how close or how far away I was.

Q And in fact it took you a while from the time that you made that turn before you told dispatch what the license plate number was on the car, right?

A Yes, sir. From me listening to my body cam it sounds like I ran it myself on my in-car computer just to see what it would come back to first.

Q So you ran it yourself. You didn't call dispatch?

A Yes, sir.

Q But the reality when you start talking about letters MGT whatever the numbers were, that is because you were finally able to see what the license plate was and run it through your computer, right?

A Yes, sir.

Q And so what I am getting go at, it took a while from the time you turned on Eden Terrace until you got to Anderson Road for you to even get close enough to see what his license plate number was?

A Yes, sir.

Q And at no point during that process did he commit any or traffic violations?

A No, sir.

Q He didn't speed or anything like that to try and get away from you?

A No, sir.

Q Is it also fair to say that it took you a while from the time you turn on to Eden Terrace from Riverview to get to Anderson it took you a little bit of time just to recognize who was actually in the car?

A The suspect's vehicle?

Q Right.

A Yeah. Obviously I didn't know beforehand.

Q Fair to say that -- is it fair to say that you don't normally get individuals out of their car on a routine traffic

stop for failing to use a traffic signal?

A It depends on the situation. A normal traffic stop without any extraneous factors then no, I wouldn't.

Q The extraneous factor here was someone coming off of Riverview Road, right?

A No, sir, that wasn't it.

Q That wasn't it?

A No, sir. It was the smell of marijuana.

Q And so your testimony it wasn't extraneous factor that it was black man driving a town and county coming -- or a Continental car coming off of Riverview Road?

A No, sir, it was the smell of marijuana.

Q Do you always put people in handcuffs immediately -- excuse me, search people immediately when they take people out of their car?

A When I remove them from vehicle, yes, typically that is something I normally do.

Q Do you immediately put people in handcuffs after you are done searching them?

A Not every time.

Q And before you put Mr. -- you got Mr. Dunham out of his car. You then searched Mr. Dunham pretty quickly, right, and that's for officer's safety? You want to make sure there is nothing on him dangerous to you or threatening to you, right?

A Yes, sir, that's correct.

Q You didn't find any guns? You didn't find any weapons? You didn't find any needles? Anything that would cause you any harm, right?

A That's correct.

Q Do you normally then put people into handcuffs immediately after a doing a search were nothing came up that was dangerous to your person?

A Each situation is different. I can't say I do it or I don't. It just depends on the situation.

Q In this particular instance at least on the video you said because he was acting squirrelly, right?

A Yes, sir.

Q And by squirrelly really all he was doing was putting his hand from this position down to his waist? Just putting his hands back down?

A That and the other time taken a couple of steps just to walk around the car.

Q And the time he tried to take a step -- I think it came later, but the time he took a step he was trying to show you something, right?

A Yes, sir.

Q He wasn't trying to run or flee or do anything of that nature?

A At that time I didn't know. But yeah, he was trying to show me something.

Q At that time he was trying to move because his money had fallen off the car?

A Yes, sir. Yes, sir.

Q And is it fair to say that $1,400 is a pretty significant amount of money?

A Yes, sir.

Q Do you always put people -- excuse me. Do you always put people in the back of police cars before you arrest them?

A Before I arrest them, it depends. Sometimes I do. Sometimes I don't. It depends on the factors I guess.

Q Is it fair to say though at the point Mr. Dunham was going into the back of your car he had not been placed under arrest or at least he had not been told he was arrested, correct?

A Yes, sir.

Q In fact, I think he started arguing with you about going in the back of the police car because he hadn't been arrested, correct?

A Yes, sir.

Q And at that point you placed him under arrest for no driver's license, right?

A Yes, sir.

Q The reality is, on May 26, 2017 you were behind Mr. Dunham. You were just looking for a reason to pull him over, right?

A We were in there doing traffic enforcement. I saw him do a traffic violation so that's why I pulled him over.

Q Now, that traffic violation, at least at that time you were wearing -- in the video you were wearing a uniform, right?

A Yes, sir.

Q And you were driving a Rock Hill police car or cruiser, right?

A Yes, sir.

Q And in fact I think you can see the video camera on that car?

A Yes, sir.

Q And at some point I think after you arrested him you actually turned that camera around. I'm assuming so you can video tape his behavior in the back of your car?

A Yes, sir.

Q That way he can't say you did something to him later on or whoever it is that gets arrested because it's videotaping the encounter, right?

A Yes.

Q But the reality is that video does not exist in this case, right?

A That's correct.

Q The camera for -- as far as you know, the video for Officer Shealy's car is available, right?

A Yes, sir.

Q And it looks like your body cam is available, right?
A Yes, sir.
Q And I believe Officer Shealy's body cam is available, right?
A Yes, sir.
Q And in fact I think there is a third officer on there that looks like maybe he was young and learning the ropes, right?
A Yes, sir.
Q His body cam is available, right?
A Yes, sir.
Q But the one camera that is not available in this trial would be the one that would show the traffic stop, right?
A Yes, sir.

MR. DUNN: I don't have any further questions.

THE COURT: Mr. Hogge anything?

MR. HOGGE: Very briefly.

REDIRECT EXAMINATION

BY MR. HOGGE:

Q Again, getting back to the thirty seconds and the rewind.

MR. HOGGE: Madam clerk, if you can dim the lights.

Q So I believe it's a five seconds is that correct where you call out that he just failed to use his signal at Eden

Terrace and Riverview?

A Yes, sir.

Q Right there as thirty seconds where we hear the beep that's when you activate your body camera?

A Yes, sir.

Q And at that beep at one minute and 16 seconds that's you activating your dash or your blue lights?

A Yes, sir, that is correct.

Q And is it true that when you active your blue lights your dash camera is activated as well?

A Yes, that is correct.

Q So that footage is going to go back thirty seconds in time just like your body camera; is that correct?

A Yes, sir.

Q So we went back thirty seconds in time in this video would it have even shown him failing to use his signal at Riverview and Eden Terrace?

A No, sir, it wouldn't.

MR. HOGGE: All right. I have no further questions.

THE COURT: Mr. Dunn.

MR. HOGGE: Just a few follow up as it relates to that.

RECROSS EXAMINATION

BY MR. DUNN:

Q You activating your blue light is not the only way your video camera in your car can be turned, correct?

A Yes, that's correct.

Q You can actually manually flip a switch and the camera comes on regardless of your blue lights being on?

A That's correct.

Q So the reality is, you had the presence of mind to put on your body cam but you chose not to flip on your dash cam?

A Yes, it's something I didn't think about.

MR. DUNN: I don't have any further questions.

THE COURT: Mr. Hogge.

MR. HOGGE: No further questions. I ask that he be excused and if we approach very briefly.

THE COURT: Mr. Dunn?

MR. DUNN: I have no objection.

THE COURT: Thank you, sergeant. You are excused.

THE WITNESS: Thank you, Your Honor.

(WHEREUPON, there is an off the record discussion.)

MR. HOGGE: The State calls Michael Smothers to the stand.

MICHAEL SMOTHERS, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOGGE:

Q Mr. Smothers, if you can introduce yourself to the jury?

A My name is Mike Smothers, I am currently employed with York Prep Academy.

Q And before working with York Prep Academy where did you work?

A I was employed with the Rock Hill Police Department.

Q And how long had you worked there?

A About 25 and a half years.

Q Okay. And I notice that you got a badge on you. What is your role now at York Prep Academy?

A Well, I'm currently director of security and I'm also a state constable.

Q Okay. While you were worked at Rock Hill Police Department what were some of the things you were go doing that is relevant to this case?

A At the time of this case I was currently working back in the evidence room.

Q Okay. And what are some your duties in the evidence room?

A Well, of course logging in evidence and then also testing marijuana.

Q Okay. What education or training did you have to qualify you to be able to identify marijuana?

A I was trained at SLED.

Q Okay.

A And certified by them.

Q And if had you to take a wild guess and this might be difficult to to do, but during your career how many times have you tested marijuana?

A It's hard to say. Hundreds.

Q Okay. And are you familiar with marijuana?

A Yes, sir.

Q Okay. And are there standardized procedures and testing techniques when it comes to analysis and identification of marijuana?

A Yes, sir. We are trained to test for the microscopic and the chemical test.

Q Could you tell us a little more about those two tests?

A The microscopic is nothing more than just taking a sample and placing it under microscope. Confirming that it matches the leaf and the characteristics of marijuana. And the chemical test is nothing more than taking another sample, putting it into a chemical and then waiting for it to turn a certain color for positive.

Q And how do you go about weighing the evidence, the marijuana evidence, that you get?

A Any container that it's in we take it out and then we place it on the certified scale and weigh it.

Q Okay. When you say certified scale, what do you mean

by that?

A Well, we have someone once a year come in and test our scale.

Q And have you ever been qualified in court before as expert in identifying drugs?

A For marijuana.

Q Okay, just for marijuana?

A Yes.

Q And did you follow all of the procedures in this case that you were trained on?

A Yes, sir.

Q Okay.

(WHEREUPON, State's Exhibit Four was marked for identification only.)

Q I am going to hand you what has been marked for identification purposes as State's Exhibit Four. Can you take a look at that. And that evidence, is that the evidence in this case of the State versus Lagerald Dunham?

A Yes, sir.

Q And how did that evidence make its way to you based on on the chain of custody log?

A It was dropped in to our evidence locker and then at that point about once a week we test all marijuana back in evidence in a lab next door.

Q And who works with you there, or did work with you back

then?

A Well, back at the time it was Rebecca Pryor.

Q Okay. And talking a little bit about that locker, is that a secured locker? Can anybody walk up and put stuff in there?

A Well, it's a secured locker where the police officers normally come back through there and it's accessible to them.

Q And can anybody just open it up?

A Yes, anybody can open it up and drop evidence in.

Q Or can anyone open that storage container and take out what has been put in there?

A No, sir, once its been dropped it can't be retrieved.

Q Okay. When you retrieved that bag from the evidence locker was there any indication that it had been tampered with in any way?

A Well, sir, I didn't physically retrieve it and log it into evidence. But once it has been logged in by either myself or Miss Pryor we place it in evidence and then like I said, once a week we'll take all of our samples next door to the lab and then test it.

Q And when you tested it was there any indication it had been tampered with?

A No, sir.

Q Okay.

MR. HOGGE: At this point I would like to move to

qualify Mr. Smothers as an expert in the identification of marijuana.

THE COURT: Mr. Dunn?

MR. DUNN: Your Honor, I would like to raise something with the Court outside of the presence of the jury.

THE COURT: All right, ladies and gentlemen, please retire to the jury room while I take up and issue with the attorneys.

(WHEREUPON, jury exits the courtroom.)

THE COURT: Yes, sir, Mr. Dunn.

MR. DUNN: May it please the Court. My issue is really twofold. One, the State is trying to get Mr. Smothers qualified as an expert but we really haven't heard anything about his education as far as what would make him qualified to be even begin the process of being considered an expert. Nor have we really heard what the testing methods would be and the special training he got for those testing methods that would help us and help this jury understand why his testimony would be more valuable than anybody else testimony when it comes to identifying plants, these particular plants, and this particular evidence as marijuana versus any other stuff it could be. So it's really twofold. We really haven't heard about his

issues now with similar stuff being tested THC is not in it but CBD is in it and that's not illegal but THC is. If chemical itself is not illegal then we don't have any -- there's been no violation of the law. It's the chemical that the State is worried about and has concerns about.

THE COURT: But the law in this case in marijuana in South Carolina it is just defined as the plant, right? Let's not put the cart before the horse. I'm not going to allow this expert testimony. The reason for the Court's opinion is under Herrera I think it's very clear that a witness without a background in science can not testify as to chemical analysis that was done. And I thing that's the reason why we don't let officers testify in court about field testing and that would be the end of it. And so, I think Herrera leaves open the possibility that there would be witnesses that might be so qualified that they can identify marijuana by sight and smell. But this particular witness testified that his training was, look at the appearance and then confirm with chemical test and it's not marijuana unless it's confirmed with chemical analysis and since I'm not going to allow the chemical analysis testimony to come in I think I have to exclude the testimony completely. So that's the

Court's ruling.

MR. HOGGE: And, would Your Honor then allow me to ask that based on his experience of seeing marijuana and smelling marijuana just based on those alone can he testify that in his opinion this is marijuana and stay away from anything having to do with testing?

THE COURT: No, and the reason no is because he has already testified that the procedure he was trained in, he said the basis for his experience is his training in SLED and his training in SLED was a two-part process where you first look at it under a microscope and it's not marijuana unless it appears to be marijuana under the microscope and it's confirmed with chemical analysis. So without the second chemical analysis I think that the procedure -- he can't follow a procedure that he says he followed. So I have to exclude it. Some other case or some other witness I'm not the sure whether Herrera completely excludes someone from saying I'm a very experienced officer or whatever, but this witness has testified his procedure is a two-part procedure and the second part is chemical analysis. So I will exclude it.

MR. HOGGE: All right. And judge if I could check, I told my SLED chemist to be here at two o'clock and if she is here I would like to call her as

my next witness so she could get out of here, but if she is not here then I will call Shealy.

THE COURT: Okay. Sound good. Mr. Smothers is still on the stand. Anything else we need to take up counsel?

MR. DUNN: No, sir.

THE COURT: Perfect. We are right on time. Please bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Mr. Hogge.

MR. HOGGE: All right, Mr. Smothers it seems I have no further questions for you.

THE COURT: Mr. Dunn any questions for this witness?

MR. DUNN: No, sir.

THE COURT: Thank you, sir, you are excused.

MR. HOGGE: Your Honor, we ask Mr. Smothers be excused.

THE COURT: Any objection?

MR. DUNN: No, sir.

THE COURT: Thank you sir.

MR. HOGGE: I call Maribeth McCormack as my next witness.

MARIBETH MCCORMACK, called as a witness, having been duly sworn by the clerk, was examined and

testified as follows:

DIRECT EXAMINATION

BY MR. HOGGE:

Q Good afternoon Miss McCormack.

A Good afternoon.

Q Can you introduce yourself to the jury.

A My name is Maribeth McCormack and I'm a forensic scientist in the drug analysis department at SLED.

Q Okay. And how long have you worked for SLED?

A For over 11 years.

Q And have you worked anywhere else in your capacity as a scientist?

A No.

Q Okay. And you work essentially in what's the drug lab at SLED?

A Yes.

Q And what are your duties there in drug lab?

A I test evidence for the presence of controlled substances.

Q Okay. And what education or training did you have to have to qualify you to be able to identify illegal drugs and controlled substances?

A I have a bachelor of science in chemistry and a master of teaching secondary science in chemistry and physics both from the university of South Carolina. I've been trained at SLED in

the drug analysis department. I've also attended the forensic chemist seminar at the drug enforcement administration.

Q Okay. Are there standardized procedures in testing techniques accepted by the scientific community for chemical analysis and identification of controlled substance?

A Yes.

Q And do you follow those procedures in testing techniques in your work?

A Yes.

Q And have you ever been qualified in court as an expert in drug identification and analysis before?

A Yes.

Q How many times?

A Thirty-seven.

MR. HOGGE: Your Honor, at this point I would offer Miss Maribeth McCormack as an expert in the identification and analysis of controlled substances

THE COURT: Mr. Dunn.

MR. DUNN: I don't have any questions and I have no objection, Your Honor,.

THE COURT: All right. Ladies and gentlemen, this witness has been qualified as an expert witness without objection. Normally witnesses in Court are only allowed to testify to what they witnessed, things they heard or they saw or they smelled. Expert

witnesses are an exception to that rule. They are allowed to testify and give their opinion on things based on their training or experience or education. But their testimony is to be treated just like every other testimony. You are the jury. You do not have to believe a witness's testimony just because they are an expert.

(WHEREUPON, State's Exhibit Five was marked for identification purposes.)

Q All right Miss McCormack, I am handing you what has been marked for identification purposes as State's Exhibit Five. Take a second and look over that.

Have you had contact with State's Exhibit for identification purposes five before?

A Yes.

Q And where did you get it?

A May I refresh my notes?

Q Yes, you can.

Q I received this evidence from our evidence log-in department from technician Amy Black?

Q Okay. And could you tell us a little bit about SLED and how drugs come in to your drug lab? Where they're stored and things like that?

A Agencies bring in evidence to our evidence log-in department and they are stored in a secured location until the

analyst is ready to pick up the evidence to analyze it.

Q Okay. And when you first received that bag did it appear to have been tampered with in any way?

A No.

Q Was it completely sealed?

A It was sealed, I know that because I wrote okay on the bag and that's just my note to say it was sealed.

Q Okay. And how can you tell if its sealed or unsealed? What did you look for before you wrote okay on there?

A I look at -- inspect around the bag to make sure there is no holes. To make sure there had been a seal properly placed on it. In this case the evidence was submitted in evidence bags.

Q Okay. And when you got it you checked that seal. That seal was there -- could there have -- let me back up. Once you got that from your evidence locker where it comes in from agencies as you testified, was there anything about that bag that told you that it had been tampered with?

A No.

Q Okay. And what was contained in that bag when you received it just in general terms without getting into specifics?

A Okay. There was -- there were two plastic bags containing tablets.

Q Okay. And what did you do with that evidence?

A Once I inspected the back to make sure it was sealed I opened the evidence. I inventoried the evidence, weighed it and then took samples for testing.

Q Okay. And can you tell us a little bit about how you you tested it? The actual procedure you followed to test it?

A Yes, I performed a chemical test which is a preliminary test and also gas spectrometry and mass spectrometry which is our confirmatory test.

Q Okay. And are those the same procedures that are accepted by the scientific community?

A Yes.

Q And based on your testing and your expertise were you able to identify the substances that were contained in that bag?

A Yes.

Q And what is in that bag?

A Methamphetamine was found.

Q Okay. Now, I believe when it made to you, law enforcement didn't initially believe it was methamphetamine. Is that uncommon for you to get drugs that law enforcement might think is one thing but it ends up being something else by the time it lands in your lap?

A That is not uncommon.

Q Okay. Do you see -- in your experience do you see a lot of ecstasy cases that come back as meth?

A Most of them do.

Q Most of them do?

A In recent years, yes.

Q Can you tell us about weighing the drug in this case and how you were able to do that?

A I use a certified balance. There were four different populations of tablets so each of those were weighed. So I have four weights.

Q Okay. When you say they are certified scales. Can you talk to us about that what that means?

A Yes, our scales are certified by an outside vendor. They come in and check them. They do a calibration to make sure they are properly working and every week each analyst will check their balance as well and if there is a deviation from that then they will go out of use.

(WHEREUPON, State's Exhibit Six was marked for identification.

Q I will hand you what has previously been marked for identification purposes as State's Exhibit Six. Can you tell us what that document is?

A This is my lab report associated with this case.

Q And did you create that report at or near the time that you tested these drugs?

A Yes. I performed the testing on December 4, 2017, and the report was completed on December 8, 2017.

Q And is that something that you do in the regular course

of your business at SLED?

A Yes.

Q Okay.

MR. HOGGE: At this time, Your Honor, I would move to introduce into evidence State's Exhibit Six. Is

THE COURT: Any objection?

MR. DUNN: To the report?

THE COURT: To State's six.

MR. DUNN: No, sir.

THE COURT: State's Six in evidence without objection.

(WHEREUPON, State's Exhibit Six was received in evidence.)

Q Can you read out for the jury the weight of the substances that you testified?

A Yes, 9.02 grams, 8.18 grams, 9.96 grams, 10.03 grams.

Q And again, that is what is not yet in evidence, State's Exhibit Five for identification purposes is what that report is about?

A Yes.

Q Okay.

MR. HOGGE: All right. I have no further questions. Answer any questions Mr. Dunn may have for you.

THE COURT: Mr. Dunn.

MR. DUNN: May it please the Court. May I approach the evidence stand.

THE COURT: You may.

CROSS EXAMINATION

BY MR. DUNN:

Q So, you said you received these from Amy somebody. Who was Amy?

A Amy Stevens Black.

Q And she worked down at SLED with you?

A She no longer works there.

Q But did she at the time?

A Yes.

Q On that report it says something about receiving it from Mr. King, I believe of York County. Is he the one that transported -- to the best of your knowledge, is he the one that transported them down?

A Yes.

Q You never saw Mr. King though or did you?

A No.

Q And so on this report that I believe you're still holding, you labeled them item 1.1 and 1.2, correct? Actually you labeled it 1.11 and 1.12?

A Yes, there are two plastic bags and they were each sub-item from that.

Q That's what I was getting at. So there are two plastic

bags 1.1 and 1.2?

A Yes.

Q And inside those two bags there were a mixture of pills, correct?

A Yes.

Q And then you went ahead and you divided those two -- each of those bags into two separate categories, right?

A Yes.

Q And you did that just based on how they looked to you from the naked eye?

A Yes.

Q When you actually tested the drugs you only tested one pill from each one of those four subcategories, right?

A Yes.

Q I believe your report says there's about 130 -- I'm sorry 51, and 50. So 101 pills, is that right?

A Yes.

Q Is my math right? Twenty-six and 24 is 50 and 2 and 71 and then 30 is 101, right?

A Yes.

Q All right. But out of the 101 pills you only actually tested four of them?

A Yes.

Q And that was based on you eyeballing thinking that those were similar substances?

A I separated them based on the markings and the colors. They were multi-colored.

Q When you're doing the -- when you're doing the chemical analysis you said that there was substances present. One of the substances that you identified as meth. What were the other substances, did your analysis tell you?

A Well, we only report the controlled substances. I did not bring my data, but I did glance at it before I left and there was also caffeine indicated to be present.

Q So those tests that you are doing are looking for specific chemicals, is that right?

A We're looking for controlled substances, yes.

Q Within each one of those two bags this was a mixture of pills. One had two mixtures that you split into 1.11 and 1.12, right, and then item 1.2 you had a mixture of substances and you made 1.21 and 1.22, right

A 1.21, 1.22.

Q Okay. As far as where those came from and how they got to your desk all you know is that somebody from York County brought it to Amy whatever her name, Black, and then she gave it to you, right?

A Yes.

Q And I'm assuming at some point you turned it over to somebody who came back down and picked them up right, and that's the extent of your knowledge of what is going on in this case,

right?

A Yes.

MR. DUNN: No further questions, Your Honor.

THE COURT: MR. Hogge.

MR. HOGGE: A few questions.

REDIRECT EXAMINATION

BY MR. HOGGE:

Q Mr. Dunn asked you about only testing a few of the pills. Is that kind of standard policy at SLED to only test a few of the pills not every single one the pills?

A That's our policy once I separated them to treat it as one population and test one of each.

Q Now can you test every single pill that comes in to SLED in a drug case?

A No, we don't.

Q I mean, how long would that take for every single pill that comes in to SLED to test every single one?

A A long time.

Q Okay. And is that standard policy to only test a certain amount, or is that just a determination you made or is that something that SLED as whole kind of does?

A That's our policy.

Q Okay.

MR. HOGGE: I have no further questions.

THE COURT: Mr. Dunn.

MR. DUNN: I have no followup, Your Honor.

THE COURT: Any objection to excusing this witness?

MR. DUNN: No, sir.

MR. HOGGE: No further questions. Have a safe trip back to Columbia.

THE COURT: Thank you, ma'am. You are excused.

MR. HOGGE: The State calls officer Shealy to the stand.

DANIEL SHEALY, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOGGE:

Q Good afternoon Officer Shealy. Please introduce yourself to the jury?

A Daniel Shealy.

Q And what do you do for a living?

A I'm a police officer with the city of Rock Hill.

Q And how long have you been doing that?

A Approximately eight and half years.

Q And were you involved in this case involving Lagerald Dunham?

A Yes, sir, I was.

Q And can you kind of tell us about your role in this

case briefly?

A Yes, sir. I was the backup officer to Sergeant Watson who initially made the traffic stop. I was responding to him to provide support for him.

Q Okay. Now were you the case agent in this case?

A I was the case agent, yes.

Q And what all does that entail?

A All the paperwork in this case, drug -- or evidence collection and submission and paperwork that goes along with the case.

Q Okay. And did you have a body camera on during this?

A I did.

Q And have you reviewed that video before today?

A Yes, sir.

Q And does that video from your body camera fairly and accurately depict the events as you witnessed them that day on on May 26, 2017?

A Yes, sir.

MR. HOGGE: I would like to go ahead and introduce into evidence State's Exhibit Seven which would be the body camera footage from the officer.

THE COURT: Mr. Dunn.

MR. DUNN: I think I objected before so no objection.

THE COURT: Okay, in evidence without objection.

(WHEREUPON, State's Exhibit Seven was received in evidence.)

MR. HOGGE: Madam clerk if you could dim the lights.

(WHEREUPON, the video was played.

MR. DUNN: One second. I had objections yesterday I just want to renew those objections for this video.

THE COURT: The objections are overruled. Received in evidence over objection.

Q All right. Turn the lights back on. All right, Officer Shealy from the body camera it appears that you were the officer that actually found the drugs in this case?

A Yes, sir.

Q I am going to hand you what has been previously marked for identification purposes as State's Exhibit Five. Can you tell us what that is?

A These are the pills that I dropped into evidence that night.

Q And how do you know that?

A My name is right here on the evidence.

Q And you said you dropped it into evidence. Can you tell us a little bit about that?

A We have a secured drug locker that it only allows things to go in. You cannot take things out. Once you're finish with the evidence you place it in the drug locker, you

pull the locker out. It drops in and you shut it and once its shut it's in evidence room and you can't retrieve it.

Q Okay. And whose signatures appears on that evidence bag after that?

A It looks like Rebecca Pryor.

Q And who is Rebecca Pryor?

A She's the evidence technician.

Q And I believe we heard her earlier today. Okay.

A I believe that name is John Raneer (phonetics). I'm not sure what that name is. And the last name was the SLED evidence technician.

Q Okay, Maribeth McCormack?

A That's right.

Q And if you could look at State's Exhibit Six that's in evidence. I believe there is a name of M.R. King on that? Exhibit Six, the drug report. Do you see that name at the top it says M.R. King?

A I do.

Q And can you tell us about how Rock Hill Police Department transports drugs down to Columbia for analysis?

A From my understanding our marijuana is tested in-house but anything more than that has to be sent to SLED. I don't know how often technicians come by. But every so often they come in and they'll pick up the drugs, transport them to SLED and have tested and then bring them back.

Q And they are not every signal case not instantly sending drugs down to the lab as soon as you get them?

A Right.

Q It's in a batch, is that correct?

A Yes.

Q Okay, and M.R. King, is that the person who transported them down to SLED?

A I believe so, yes, sir.

Q Do you know M.R. King?

A Not personally.

MR. HOGGE: Your Honor, at this point the State would move into evidence State's Exhibit Five.

THE COURT: Mr. Dunn.

MR. DUNN: I have a legal issue, Your Honor, to bring up with the Court outside the presence the jury.

THE COURT: All right. Ladies and gentlemen, I will ask you to retire to the jury room while I speak to the lawyers.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Yes, sir.

MR. DUNN: Your Honor, I have two concerns. One is the chain of custody. We have heard from three people that touched it. It sounds like there's two or three other people out there in some way handled the pills. Maybe not individually. Maybe not opened the

bag but handled the pills between the Rock Hill police evidence locker and SLED, before the chemist received them. She testified she got it from somebody else. It looks like they came from Mr. King, Officer King. So first my first concern is just we do not have a complete chain of custody as far as testimony goes for these drugs -- for those pills to make it from Mr. Dunham's vehicle he was driving in to SLED and then back from SLED and back to here. And so the first argument is there a lack of chain of custody. With there being a lack of chain custody I would argue that that they should not be admitted because of that. I've got a second issue but I figure one at a time.

THE COURT: Mr. Hogge.

MR. HOGGE: As to the chain of custody, I think case law is clear, State versus Pope and State versus -- I think it's Hatcher. It's clear I don't have to call every single link in the chain. Instead I have to account for the links which we've done in this trial. That is especially an issue given that I still have cases pending with Mike Doti who was one of the two officers, Brian King being the other evidence that transported items down to SLED. I don't have to call every single link in the chain. However, I just have to account for them which we have done in this case.

THE COURT: Mr. Dunn.

MR. DUNN: I have no rebuttal.

THE COURT: Motion denied on that basis.

MR. DUNN: The second one is to me the more important one. There was one 101 pills that were seized out of that vehicle. The officers gave their number but when it came down to the report there were 101 listed in the report. Only four of of them have been tested.

Now, I know that the law says that if it's a mixture of something that you do the whole. You don't have to test every little part. But when you're dealing with pills each pill is individual. Is separate from the pill next to it. We heard testimony from the chemist that the first thing she did these came down to her in two different bags but she took a step of actually further dividing it into two more piles so we went to two to four.

THE COURT: Mr. Dunn, I hear where you are going this argument. Is this argument against admissibility?

MR. DUNN: Well, it's an argument for now and it's an argument for DV.

THE COURT: I understand where you are going with the DV argument but I am not I'm not entirely

following you with --

MR. DUNN: For admissibility purposes my argument is just simply 101 should not be admitted into evidence. Four pills should be admitted into evidence. The ones that were actually tested and analyzed by SLED that came back as illegal substances or controlled substances.

They tested one of each bag. While I may not be happy with the result of those I think that, you know, those would be proper evidence. The other 97 are my concern because my other concern is this; so not only -- you know where I'm going with this. An hour from now when we have DV motions, my concern is when the jury goes back and starts deliberating they go, we just talked about -- let's assume I win my argument and the Court says only those four pills can go into evidence. Well now, they're looking at 101 and so there's a disconnect between -- even if we get that far, there's a disconnect between only four pills are tested and it came back for less than one gram of substance, but we're looking at 30 something grams. At that point the Court can't just start taking pills out and going only you get this evidence or whatever. It comes in as evidence all 30 something grams or 101 pills come in as evidence. So that's my other concern

at this point is just I don't think those other 97 are appropriate. Only four pills would be the appropriate admission because only four were tested for being an illegal controlled substance.

THE COURT: The question is whether they are relevant and so basically admissibility, right?

MR. DUNN: Sure.

THE COURT: So, I mean, I think they're relevant. You can attack it and say only four pills out of 100 or how many were tested, but they were part of the same packaging. They were together. I think they're relevant.

MR. DUNN: So the relevance would be our first prong of the test. You say it's relevant, over my objection. That's fine.

The second prong would then be the probative versus prejudicial aspect analysis of it which is basically what my argue was in the beginning. You got 97 pills or 101 pills, the prejudicial value outweighs the probative value of the jury looking at that particular evidence, Your Honor.

THE COURT: I disagree with you. I appreciate your argument but the Court's ruling is that I think the probative value outweighs the prejudicial issue. You can attack it absolutely and I'm sure that you

will, but I think as far as whether it comes into evidence the Court is going to allow it in evidence.

MR. DUNN: Yes, sir.

MR. HOGGE: Your Honor, while we got the jury out, if I can inquire if the Court will allow me to to put in -- what exhibit number is it? State's Exhibit Four for identification purposes if I'm allowed to just put that in evidence.

THE COURT: Which one is four?

MR. HOGGE: That's the marijuana. And having testified I retrieved this item in this case and not refer to it as marijuana, but say this is something that I pulled out in this case.

THE COURT: Yes, I will hear from you Mr. Dunn. My initial inclination is yes, it can come into evidence for what it's worth.

MR. DUNN: And if we're talking about a pair of gloves that were found at the scene that's one thing. But we're talking about the crux of what's the charge is. He has got two indictments. One is the meth and one is the marijuana and if you say you can bring it in but we're not going to tell you about it. How are they suppose to -- I mean -- there is no -- there is no expert witness that has testified to the identity or the analysis of what that material is, there's an

officer that says he thinks it's marijuana and there was a Mr. Smothers who basically said he thought it was marijuana but there has been no -- nothing of any kind of scientific testing that would show that is in fact an illegal substance.

When you look at the statute, 44-53-110 subsection 27(a).

THE COURT: Slow down, slow down.

MR. DUNN: I'm sorry, Your Honor.

THE COURT: 44-53--

MR. DUNN: 110.

THE COURT: 110.

MR. DUNN: Which is the definition statute for all of our illegal substances. Number 26 which is on my page four.

THE COURT: Okay.

MR. DUNN: And it says marijuana means -- and I don't really need to get into every single one of them, but there's four subsections of what marijuana means and then subsection (b); we have marijuana does not mean and then we have one, two, three, four, five, six, subsections under that for whatever the things is that they're talking about. If we have not had somebody -- and quite frankly, what it says I don't think it is necessarily that important because what we

do have here nobody has testified as to what marijuana was or isn't, just that they found marijuana. There has been no chemical analysis of it. There's been no expert -- no chemist analysis or identification of it and quite frankly I don't think we're in a position to start second guessing is it under subsection (a) is it under subsection (b). That would be things that --

THE COURT: Mr. Dunn, I'm looking at 27 (a)1. It basically says marijuana means all species of the marijuana plant and all parts thereof. That's the same as like, you know, a dandelion or a rose. Marijuana means a marijuana plant. I don't see any chemical analysis involved.

MR. DUNN: It also says it does not mean under (b) --

THE COURT: The stalk only. If it was just the stalk.

MR. DUNN: Fibers or seeds under subsection two.

THE COURT: None of that requires chemical analysis.

MR. DUNN: It still requires identification I would argue.

THE COURT: I thought your what your argument was that there was a chemical analysis involved. I don't think there is.

MR. DUNN: You are probably right about that, but there is still identification of marijuana whether or not that marijuana is illegal or not. Which quite frankly, I think is why in cases like this the State has the burden of bringing like they did with the SLED agent, to come in and testify to illegal substances. I don't have to like what she says but the reality is she's got the training and background to come in. She's done scientific testing. She's done everything she is suppose to do as far the court is concerned to say why she thinks that those particular pills are meth. I don't like it, but I understand that. We don't have that same analysis of anything in this bag that we're claiming is marijuana. All we have is a bag of something that may be purported to be marijuana but there's no kind of -- nothing else that would suggest that it's an illegal substance, Your Honor. I think without them having the expert witness to come -- the expert chemist to come testify or the chemist to come testify as an expert witness, that evidence itself is just talked about but it's not admissible.

THE COURT: Mr. Hogge.

MR. HOGGE: Your Honor, I would argue that number one, is this relevant? It's certainly relevant. You will see it in the video anyway. It's not that much

different being here in the flesh as opposed to on video. He can argue you don't have any expert testifying as to what exactly that is. I guess it's more on the DV issue when we come to the motion for a directed verdict. But I really don't even have to put the marijuana in to satisfy the corpus delicti in order for this issue to get to the jury and there's case law on that and I will get you that in the future. But I think that is relevant evidence. I think he can testify I pulled this out of the car and then I won't get into what exactly that is. But it's evidence that came out of the car. The jury can find it being marijuana. It's relevant in this case.

THE COURT: I'll rule for the State. I'm not saying what I am going to do on the DV, but on this issue as to whether it's admissible I will rule it is admissible.

MR. HOGGE: Okay. I'm ready for the jury to come back.

MR. DUNN: Before the jury comes back there's one other piece of paper that's on that table that I don't think has been entered into evidence which would be the -- it was the marijuana form.

MR. HOGGE: I'll take that out.

THE COURT: Let's bring the jury back in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Mr. Hogge.

MR. HOGGE: Your Honor, I believe we were at me attempting to introduce State's Exhibit Six -- no, Five into evidence.

THE COURT: I think you mean State's Four.

MR. HOGGE: Oh gosh, let me make sure. State's Five. I don't know if you officially stated it on the record in front of the jury that it's in evidence.

THE COURT: It is.

(WHEREUPON, State's Exhibit Five was received in evidence.)

MR. HOGGE: Okay. And permission to publish by handing this out to the jury.

THE COURT: You may.

MR. DUNN: I renew my objection.

DIRECT EXAMINATION

BY MR. DUNN CONT'D:

Q I will hand you now what has been previously marked for identification purposes as State's Exhibit Four. Without getting into specifics are you familiar with that object, State's Exhibit Four?

A Yes, sir.

Q And where did you find that object?

A I found this under the passenger seat of the vehicle

driven by Mr. Dunham.

Q After you found that object what did you do with it?

A It was placed into evidence.

Q Okay. And whose signature appears on that piece of evidence after you removed it?

A Rebecca Pryor's and then from Rebecca Pryor -- correction, just Rebecca Pryor's.

Q Does that object appear to be tampered with in anyway?

A It does not appear to be.

Q Does it appear to be in substantially the same condition as you found it on back May 26, 2017?

A Yes, sir it does.

MR. HOGGE: Your Honor, at this point I would move into evidence State's Exhibit four.

THE COURT: Mr. Dunn.

MR. DUNN: Same objection as previously been denied.

THE COURT: Can you all approach for a moment.

(WHEREUPON, there was an off the record discussion.)

THE COURT: Counsel, I will delay my ruling on that until later in the trial.

MR. HOGGE: Yes, Your Honor.

Q Now, you saw a abbreviated version of the video, but after this, what happened with the Lagerald Dunham and Jessica

Hamilton?

A They were both transported back to the law center.

Q And again, I can't get into specifics of what Miss Hamilton said, but was a photo taken of her cell phone?

A Yes, it was.

(WHEREUPON, State's Exhibit Number Eight and Nine were marked for identification)

Q I am handing you what has been marked for identification purposes as State's Exhibit Eight and State's Exhibit Nine. Do you recognize what is on those pictures?

A I do.

Q And what'S on those pictures?

MR. DUNN: Your Honor, I will object. First, foundation issues of this particular evidence that we'll need to discuss.

THE COURT: Ladies and gentlemen, I apologize. You need to step back to the jury room one more time.

(WHEREUPON, the jury leaves the courtroom.

THE COURT: Yes, sir.

MR. DUNN: I really think there is plethora of issues.

THE COURT: What are we talking about? I haven't seen what it is.

MR. DUNN: There's two pictures of text messages that are on a cell phone. I will let the Court look

MR. HOGGE: And those are all the additional jury instructions I can think of.

THE COURT: All right. Anything else counsel?

MR. HOGGE: Not from the State.

MR. DUNN: Nothing at this point, Your Honor.

THE COURT: And Mr. Hogge you said you intend to call Officer Rowe at four o'clock.

MR. HOGGE: He texted me. He says he thinks he'll get here about 4:15. I will ask a few more questions of this witness and then Mr. Dunn of course will cross examine him and then by that time we should have Rowe here. It will be very short.

THE COURT: Sounds good. Let's bring them back in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right. This trial will continue with your examination.

DIRECT EXAMINATION CONT'D:

Q All right. Officer Shealy, I believe where we left off we were talking a little bit about cell phone, but I want to go back and talk about the case itself a little more.

When you approached Lagerald Dunham's car, the car that he was in, could you smell anything about the car that drew your attention?

A Yes, sir, I smelled the odor of marijuana.

Q Okay. And I believe that Officer Watson was dealing with Mr. Dunham while you were dealing with the occupant in the car?

A Yes.

Q And I should say the passenger of the car?

A Yes, sir.

Q And what, if anything, struck you about the occupant of the car?

A She was extremely lethargic. Couldn't quite understand a lot of her questions. Just acting kind of zoned out.

Q Okay. And then after -- it seems from the video she talks about having to go to a hospital. Did you guys end up having to transport her to a hospital?

A No, sir.

Q Okay. And can you tell us a little bit more about where exactly you found these drugs? How you found them? Just to go more in detail about that.

A Once we began the search of the vehicle, I searched the passenger compartment area. Obviously where I was that was the closest area. Reached directly underneath the seat, the front passenger seat and found a grey Walmart bag. Pulled it out and that's when I found the items.

Q Okay. And I believe that the pills you didn't initially find?

A No, sir.

Q Okay, but were they together in that Walmart bag all together?

A Yes, sir, they were in the same Walmart bag.

Q And I believe you stated that you thought they were ectasy?

A Yes, sir.

Q Can you talk a little bit about that why you thought it might be ectasy?

A In my experience ectasy is typically in a pressed pill form. Often times it's in kind of something related to like a social pop culture. Something like that in the actual form of a pill. So whereas, you know, it wouldn't be perfectly round. Often times in the shape of something.

Q And since this case have you run into any pills that kind of look this?

A Since this case I don't recall exactly but I'm sure.

Q Okay. Now, when it comes to drug cases and I talked to Sergeant Watson a little bit about this, what are the things that you kind of look for? Things that set alarm bells in your mind when you are investing drug cases?

A Obviously the smell. If you can smell drugs in the vehicle. The demeanor of the passengers and/or drivers. Plastic baggies are indicators of packaging material. Digital scales are indicators of sales, narcotic sales, drug sales. Things like that.

Q Okay, and do you recognize the man that was pulled over on May 26, 2017 in the courtroom?

A Yes, sir, I do.

Q Can you point him out for us?

A Sitting right there in the black shirt is Mr. Dunham.

Q And did all the events that you described did they occur in York County?

A Yes, sir, they did.

Q All right.

MR. HOGGE: I have no further questions. Please answer any questions that Mr. Dunn might have.

MR. DUNN: May it please the Court.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. DUNN:

Q Officer Shealy, you did not actually see the traffic violation that led to Sergeant Watson stopping Mr. Dunham, correct?

A No, sir, I did not.

Q In fact it looks like you came in directly behind him so you weren't that far away though, right?

A No, sir.

Q Were you also patrolling the Riverview area?

A Yes, sir.

Q So there was at least two of you over at that section

of town?

A At least two.

Q And is it pretty safe to say that there's usually a Rock Hill Police presence over in Riverview looking for people?

A Yes, sir, very much so.

Q But you didn't see from whence Mr. Dunham came, right?

A I don't recall.

Q He told you all that he was coming from Frito-lay but there's no way for you to say if that was true or not?

A Correct.

Q The young officer that we saw, was he in your car?

A He was.

Q He didn't come in a different vehicle?

A He was with me.

Q He was new?

A Yes, sir. He was in training.

Q You were training him?

A Yes, sir.

Q Which is why we heard you talk about telling him how to search the truck?

A Yes, sir.

Q You were the case agent in this -- let me strike that. The pills that you found that are in evidence that the chemist is saying is meth, you found those under Miss Hamilton's seat, correct?

A Yes.

Q On her side of the compartment, right?

A Yes.

Q And the marijuana that was found or the substance in that bag over there that was found that was also found underneath her seat?

A Yes, sir.

Q And in fact as soon as you discovered both of those items you detained her and put her in handcuffs, right?

A I don't think I personally did. I believe my trainee did. But she was detained.

Q You instructed him to put her in handcuffs?

A Yes.

Q And he was just responding to your instructions?

A Yes.

Q And in fact I think just from listening to the audio it sounds like you gave a little bit of a -- there was a little bit of an exclamation when you found it like, ah-hah, we got something and now Miss Hamilton is being detained?

A Yes, sir.

Q Is that fair to say that?

A Yes, sir.

Q Now, you are the case agent in this matter, right?

A Yes, sir.

Q What that basically means is even though Watson stopped

the car and initiated a traffic stop you're sort of the one that is in charge of writing the report and following up with the evidence and making sure that everything looks good so when we get hear it all sort of makes it to the courtroom, right?

A Yes, sir.

Q And that's your job as the case worker?

A Yes, sir.

Q And so part of what your responsibility was, you drafted a police report?

A Yes.

Q And you did one. You dropped the evidence off into the evidence locker, right?

A Yes.

Q The drugs?

A Yes, sir.

Q On that camera we see that you were wearing a body cam, correct?

A Yes.

Q You're not wearing one today but you were wearing one that day?

A Yes.

Q And your training -- your trainee was wearing a body cam?

A Yes, sir

Q And sergeant Watson was wearing a body cam?

A Yes, sir.

Q And you went out and you pulled the video from all three of those to secure those as evidence, correct?

A I'm only able to see my video, body camera video.

Q But as case agent did you take the appropriate step to make sure that those three body cams made it into evidence?

A If I can explain that policy?

Q Sure.

A So we use what's called evidence.com. It's where all our videos are funneled into. I will create a case. Create the case number. It can be a brief description. I am only able to view my camera. So what I will do is invite those other individuals through the program to add their videos to that case. So I don't actually see their videos. I just invite them to add their videos.

Q And that's fine. And on this case you did that, right?

A Yes.

Q And those three body cams all got dumped into some central data base up in the cloud, right?

A Yes.

Q You also secured the video that was from your cruiser, correct?

A Yes, sir.

Q We have not seen it but there was a video of one, right?

A Yes, sir.

Q And you were able to, again, put that into the evidence and make sure it was preserved?

A Yes.

Q And you don't have control over somebody else's car, right?

A No, sir.

Q But again, as the case agent it's your responsibility to try to make sure that evidence gets in, right?

A Yes.

Q Did you ever take steps then with Sergeant Watson to get his dash cam into the evidence?

A I'm not sure of the exact conversation, if there was one.

Q You don't even remember if there was a conversation?

A I don't remember.

Q And typically, when you are doing this and you are trying to gather all those dash cams, is it again done through an e-mail sort of link where you invite them to drop their dash cam into evidence or do you actually physically secure something?

A During this time we were under a different system so our body cams are through Axon. Our in-car video is through a program called L-3. There's a centralized computer that is nothing but in-car video. Once you pull into the police

department, you position your vehicle a certain way. It downloads the video.

Again, I only have access to my video for that system as well. But that has to be burned onto a DVD. It's not in a cloud or anything.

Q But when it gets downloaded from your cruiser to -- it's being downloaded to some hard drive somewhere?

A To that central computer as far as I know.

Q The one that's in Rock Hill?

A The one that was there. We no longer have that program.

Q But then you did. Now it's something different?

A Yes.

Q And on May 26, 2016 you had the same program in your car that was in Sergeant Watson's car, correct?

A Yes.

Q The L-3 program?

A Yes.

Q Being run in both vehicles, right?

A Yes.

Q And you don't remember whether or not you asked him to get his evidence -- his video from his car into evidence?

A I don't recall, no, sir.

Q But it's fair to say that as the case agent that would be your responsibility to do that?

A One of many, yes, sir.

Q And you have done that in other cases where you have multiple cruisers and you get everyone's video to make sure that evidence is preserved, right?

A Yes, sir.

Q But that did not happen here and we don't have the dash cam from Sergeant Watson?

A Apparently not.

MR. DUNN: I don't believe I have any further questions.

THE COURT: Mr. Hogge.

MR. HOGGE: Just a couple of followup questions.

REDIRECT EXAMINATION

BY MR. HOGGE:

Q Again, and Sergeant Watson testified. I won't ask you about his testimony. But again, if we had that dash cam or video, when would the dash camera start recording? What initiates that recording?

A The blue light. The initiation of the blue lights is what starts that recording, or would have started that recording.

Q So it would have started recording thirty seconds before?

A Yes, sir, thirty seconds.

Q And so would that have even shown the blinker in this

case?

A From what I saw, no, sir.

Q Okay. All right.

MR. HOGGE: No further questions.

THE COURT: Mr. Dunn.

RECROSS EXAMINATION

BY MR. DUNN:

Q Along the same lines. When you have a body cam you tap it and it comes on, right.

A Yes.

Q It's recording the whole time but in order to activate it you have to initiate it, right?

A Right.

Q And on your dash cam on your vehicle it's an automatic. If you put your blue lights it automatically comes on. That's not something that you control. It something the computer controls inside your car?

A Yes.

Q But if you wanted to you could still activate the camera before you activate the blue lights?

A Yes.

Q If you are doing a DUI stop and you want to get evidence of somebody having a bad drive, you don't want to alert them that you're behind them. You can you flip the camera on. The blue lights aren't going and they don't know you're back

there and you can see how they are driving on your camera, right?

A Yes, sir.

MR. DUNN: No further questions.

THE COURT: Mr. Hogge.

MR. HOGGE: That's all I have.

THE COURT: Any objection to excusing this witness?

MR. HOGGE: No, Your Honor.

MR. DUNN: I have no objection.

THE COURT: Thank you, officer.

Mr. Hogge, your next witness is the witness we discussed?

MR. HOGGE: Yes, Your Honor.

THE COURT: Okay. So you want to take a break?

MR. HOGGE: Yes, sir.

THE COURT: Ladies and gentleman, I am just confirming with the attorneys. The next witness is another police officer and he will not be here for about half an hour. So we try to avoid these breaks in the schedule but this time it is unavoidable. He will be here about 4:15 so we will give you break until 4:15. All right.

(WHEREUPON, the jury leaves the courtroom).

THE COURT: All right. We will be in recess until

4:15.

(WHEREUPON, the court was in recess.)

THE COURT: All right, is the state ready?

MR. HOGGE: Yes, sir.

THE COURT: Let's bring them in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Ladies and gentleman, again, I want to thank you for your patience. We do everything we can to avoid these kinds of breaks in the day, but sometimes witnesses have other obligations so I appreciate your patience. It is not the fault of either of the lawyers. Mr. Hogge.

MR. HOGGE: Thank you, Your Honor. The State calls its last witness, Chris Rowe.

CHRISTOPHER ROWE, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOGGE:

Q Good afternoon, Officer Rowe. Please introduce yourself to this jury?

A Good afternoon, my name is Christopher Rowe. I'm employed with Rock Hill Police Department. I have been so since 2010. I am currently assigned to York County Muti-Jurisdictional Drug Enforcement Unit.

Q And how long have you been on the drug enforcement unit or D.E.U.?

A Just over three years now.

Q And during that time if you could estimate how many drug cases that you have worked on?

A Probably hundreds.

Q Okay. And what was your involvement in this case?

A In this particular case patrol made an arrest of two individuals. They were brought back to the Rock Hill Police Department and I assisted them with interviewing those two individuals.

Q Okay. And I believe you spoke to Jessica Hamilton from this case?

A That is correct.

Q I am going to hand you what has been previously mark for identification purposes as State's Exhibits Eight and Nine. Now, without reading what is on the text messages if you could give us a basic idea of what State's Exhibits Eight and Nine are?

A Sure. During Miss Hamilton's interview she gave myself and Officer Beckner consent to look through her cell phone and these were pictures of text messages that were found within her cell phone.

Q Okay. And what are relevance of those text messages in this case?

A She stated these are text messages between her and the defendant Mr. Dunham.

Q Okay. And how do you know that those pictures are pictures of her cell phone?

A I took them.

Q Okay. How do know that you took those photographs?

A That's my hand in the photo.

Q Okay. All right. And are those photos fair and accurate depictions of her cell phone?

A Yes, sir.

MR. HOGGE: Your Honor, at this time I would like to introduce State's Exhibits Eight and Nine.

THE COURT: Mr. Dunn.

MR. DUNN: No objection.

THE COURT: All right, in evidence without objection.

(WHEREUPON, State's Exhibits Eight and Nine were received in evidence.)

THE COURT: All right.

MR. HOGGE: Permission to publish?

THE COURT: You may publish.

MR. HOGGE: I have no further questions of Officer Rowe. I'll go ahead and hand these out to the jury. If there are questions that Mr. Dunn wants to ask I have no problem with pausing them looking through the

pictures. I don't want them looking through the pictures while he's asking questions.

THE COURT: All right. Mr. Dunn.

MR. DUNN: Your Honor, can we approach? Take the pictures and approach for a second.

THE COURT: You may.

(WHEREUPON, there was an off the record discussion.)

CROSS EXAMINATION

BY MR. DUNN:

Q So just to reiterate your testimony, this is from Miss Hamilton's, right, the phone was?

A That's correct.

Q And -- I don't have any questions on that. You were not present during the arrest, correct?

A No, sir.

Q You weren't present during the stop?

A No, sir.

Q Apart from that day when you were down there interviewing the two folks on May 26, 2017, did you have any further involvement in the case?

A No, sir.

Q So you didn't take any steps to identify who F.E. was? It says F.E. on the top of the phone. You didn't take any steps to identify who F.E. was?

A Correct, I did not at that time.

Q And on May 26th you didn't take any steps to identify the phone 803-415 -- whatever the 3040 or 4030 or whatever the other numbers are on that?

A No, again, Miss Hamilton stated that it was Mr. Dunham's phone number and she was dating Mr. Dunham at the time.

Q So the extent of what you know about the conversations is what Miss Hamilton told you?

A Correct.

MR. DUNN: I don't have any further questions.

THE COURT: Any redirect?

MR. HOGGE: None, Your Honor. I ask he be excused.

THE COURT: Mr. Dunn, any objection for excusing this witness?

MR. DUNN: No, sir.

THE COURT: Thank you. You are excused.

MR. HOGGE: The State rests.

MR. HOGGE: All right.

THE COURT: Ladies and gentlemen, the State has rested its case. We'll have some legal matters I need to take up with the lawyers now but that will be the conclusion of today courtroom's proceeding as far as jury is concerned.

I very much appreciate your attention. I know it

has kind of been stop and today and I'm really sorry for that. Sometimes it just can't be avoided. I would ask that it be 9:30 tomorrow morning. And again, I'll remind you, please don't do any outside research. Do not discuss this case with anyone at home or anywhere else. And please do not discuss this case with each other until it is time to deliberate. Ladies and gentlemen, thank you very much.

THE COURT: Yes, ma'am.

JUROR: I didn't show anybody else these.

(Indicating exhibits)

THE COURT: Okay. Well, we'll take a couple of minutes and you can pass them around. Thank you.

I appreciate you pointing that out to me. Ladies and gentlemen, just so you know, all of the evidence that's been discussed you will have all of it with you in the jury room. So you don't have to memorize what's on that piece of paper.

All right. Ladies and gentlemen, again, thank you for your attention. I will see you back at 9:30 tomorrow morning.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Mr. Dunn.

MR. DUNN: Your Honor, I had two motions but I think I have one now because I don't think that the

marijuana was entered into evidence so therefore I don't think -- actually I do have two.

THE COURT: Well, the Court -- the marijuana is not in evidence because the Court deferred the ruling on the motion.

MR. HOGGE: But to kind of short circuit this I would prefer if we not put it in evidence so I don't have to worry about that appellant issue. There might be an appellant issue out there and I'm fine in just going forward and not putting that into evidence.

THE COURT: Okay. In that case for the record the State has withdrawn it's request to enter State's Four into evidence.

MR. DUNN: Which means we're down to one indictment.

THE COURT: I don't think Mr. Hogge is going to concede that.

MR. DUNN: No, he will not concede that, will he?

THE COURT: No.

MR. DUNN: I got two arguments then. So, we'll deal with the marijuana issue first.

Your Honor, I think as far as the indictment is concerned whether or not there is sufficient evidence to go forward on the marijuana indictment, the PWID marijuana indictment, the State has not met its burden

and there's not sufficient evidence to go forward. And it's really two-fold. One, nobody has testified.

THE COURT: Mr. Dunn, I actually think it maybe more helpful if I let Mr. Hogge go first on the marijuana because the Court shares your concerns about the marijuana indictment. But if I could hear Mr. Hogge's arguments why I should not grant a directed verdict.

MR. DUNN: Who am I to stand in the way.

THE COURT: If that's okay?

MR. DUNN: I'll defer to him.

MR. HOGGE: This has been an issue before. There's an unpublished opinion which I know has no real precedential value, but the Court of Appeals has at least reviewed the same exact issue in a case that came out of our circuit, State versus Moffit, where someone was tried for PWID marijuana. No marijuana was introduced into evidence and so the argument was that a directed verdict shouldn't have been entered because there was no marijuana in that case and the Court of Appeals affirmed and the analysis was for PWID of marijuana there are a number of ways to accomplish that. There is to conspire to manufacturer, distribute, dispense, deliver, purchase or possess with intent to manufacturer.

THE COURT: I agree with you in a theoretical way. You could have a case where the marijuana evidence got lost or something and you could have testimony, well, there was marijuana. I saw him distribute the marijuana. I understand that. But in this case, what evidence has the State actually put in on that issue?

MR. HOGGE: So in this case as to that issue, the text messages.

THE COURT: Text messages say trees though.

MR. HOGGE: It does say tree and snow. I don't believe we're talking about Christmas ornaments.

THE COURT: I understand that, but I don't recall any testimony on that point.

MR. HOGGE: No, but the evidence that's introduced in that State's Exhibit in taking in a light most favorable to the State I believe that there is sufficient evidence that marijuana was involved in this case. That it can survive to the jury.

THE COURT: Okay. The evidence you got is the text message referring to trees.

MR. HOGGE: And I would say also the video and officer testimony they smelled marijuana in the car. In the video in this case -- again, I'm not -- it's a corpus delicti kind of issue and I think that under State versus Abraham this is sufficient under corpus

delicti because there is circumstantial evidence that he possessed with intent to distribute marijuana on May 26, 2017.

THE COURT: Okay. The smell doesn't get you PWID, does it?

MR. HOGGE: No, but the text messages and the scales and the baggies do.

THE COURT: But he also charged with trafficking in methamphetamine.

MR. HOGGE: That's correct.

THE COURT: The scales, all of that could easily be attributable to the methamphetamine, right?

MR. HOGGE: That's true, however, they're pills. You don't typically weigh out pills. It's done by quantity.

THE COURT: All right.

MR. HOGGE: You can just count pills and put them into a sandwich bag, whereas marijuana you normally weigh that.

THE COURT: Mr. Dunn your up.

MR. DUNN: Your Honor, the reality is Officer Rowe, the State could have asked him, explain to us what trees and snow and all the other things may or may not mean in the context of narcotics. It wasn't done. The only evidence we have are these vague text

messages that may or may not say what we want them to say.

What the State introduced was pictures of text messages. They didn't discuss or try to establish a timeline. They didn't do in any way to show that these text messages were related to these drugs. Either one of them. Let alone the marijuana. But we're talking about the marijuana. And so what we really have is, hey, look we got this cool text messages that we think says something about drugs but we didn't really establish in any way, shape or form to a jury that that's in fact what it is. And so I don't think the text messages are a good barometer to use in deciding whether or not the marijuana is tied back to these text messages.

As the Court has already pointed out, merely the smell of marijuana doesn't establish how much weight and so when you couple that with my earlier arguments of, even if the State doesn't want to introduce the physical evidence of the marijuana, we still don't have any testing done on it. We still don't have any analysis done on it. And so it's really just we smell something. We see what we think is plant marijuana and that's the extent.

THE COURT: That is not even in evidence. Mr.

Hogge, what you got is, you got two officers who testified they smelled marijuana. You have no marijuana in evidence and then you got a text message that refers to trees. I don't think I can take judicial notice on that. I mean I have heard other officers testify as to what that word can mean, but I don't think that's so common place that I can take judicial notice of that. I think you got a text message that doesn't mention marijuana.

My law clerk is pointing out the videos are in evidence and the videos show a bag of something being pulled out of the car.

Mr. Hogge, I will give you one more chance, but I think I am going to grant a directed verdict on the marijuana charge.

MR. HOGGE: All right, judge, I will just point out the evidence in this case when it comes to possession with intent to distribute marijuana just to summarize that would be the video evidence from this case where you see a large bag of a green leafy substance being pulled out and we have testimony from officers --

THE COURT: I'm not -- I'm not even sure you can see that. I watched the video. There's a big bag of something being pulled out. Can you see green leaves

in that video?

MR. HOGGE: I believe you can, but again, the lighting in this courtroom isn't great. You see -- you see that bag. They smell marijuana coming from the vehicle. There are bags, several sandwich baggies which the officers testified are indicative of distribution of drugs, a digital scale which lends itself towards distribution of drugs, and highly suspicious text messages. And taken in a light most favorable to the State which is the standard for a directed verdict motion, I believe that there is enough for it to make it to the jury as a circumstantial case. Again, its less of a direct evidence case because marijuana isn't going back. Instead of having to contend with that issue in the appellant world I would rather to contend with the issue of this being a circumstantial possession with intent to district marijuana case.

THE COURT: Give me one second counsel. I pulled up a recent case on the standard.

MR. HOGGE: Judge, on second thought, now that you mentioned standard. The standard for a circumstantial case is circumstantial and I don't have that. So I think you should grant a directed verdict.

THE COURT: That is what I was about to say. I was

making sure I was going to get my wording right.

Mr. Hogge, I salute for you conceding the point. Okay. The Court's ruling is there no substantial circumstantial evidence in the case. I will grant a directed verdict on that charge.

MR. DUNN: Thank you. The second motion deals with the pills. I touched on this earlier when I was dealing with the admissibility of it. At the end of the day what we have is 101 pills that the State seized from this car. Two separate bags that were then divided in two more bags. So we have these four samples. As far as how these samples were created the chemist said that she just sort of -- not sort of, she tried to group them based on what they looked like. On her report she calls them multi-colored and she talks about one is stamped with a dollar sign and one with a red bull.

THE COURT: She puts them in four groups.

MR. DUNN: Yeah, she puts them into four groups but then she only tests one pill from each of those four groups. The statute -- one of the things that I hate to have to tell my clients because they always get mad at me when I tell them, hey look, sure there is 300 grams of meth even if it's waste. They always claim well, it is not all meth. Most of it's

byproduct and waste product. And I always have to tell them, yes, but it's commingled and therefore it's one substance as far as the law is concerned. There's nothing I can do about it and I realize you're not using this for illegal purpose that you wanted too. We don't have that here. What we have here is we have 101 separate doses of methamphetamine, which only four were tested. We don't know that the other 97 doses or pills were meth. It's very common for folks to have fake drugs. To have other substances to try and pass stuff off. Counterfeit stuff off as the real thing. The reason why we have this other statute that talks about how if it's commingled it doesn't matter. That's the very reason. But you usually have a big blob of cocaine or big blob of powder cocaine, crack. Whatever the substance is. It's one big blob. It's really hard to ascertain. We don't have that. That's how this is different from there. We have 101 pills. Sure it may be a pain for the State to test all that but that's not the burden. The burden on the State is to prove beyond a reasonable doubt, right. The law says you have to test the chemicals -- or test the substances to make sure these are illegal controlled substance. The fact that it might take the State a little bit longer to test 101 I don't think should

have a bearing on this. The reality is, she had 101 pills. She only tested four. Those four pills and the weights that she ascertains in her report she gives the weights for those four and as much as I would like to keep those out I think those four would be appropriate for the jury to consider. I think that the rest of the weight that is trying to be alleged here to bring us into the trafficking territory would be inappropriate. And as such I'm asking the Court to find a directed verdict on the --

THE COURT: All but the four pills.

MR. DUNN: Yes, if the State wants to proceed on possession I can't really argue that because it's a lesser included.

THE COURT: Mr. Dunn, I think the directed verdict standard helped you a lot on your previous motion. I think it hurts you on this one. The standard, that's direct evidence. She testified, in her opinion this forty something grams of methamphetamine and there is some evidence in the record to support that. Her conclusion was it's all meth. She testified there's 40 plus grams of meth, correct?

MR. DUNN: Thirty-seven. Whatever the number is it's a lot.

THE COURT: There is some evidence in the record

to support that. I understand you're going to argue to the jury that she only tested four pills and that's going to give you a jury argument.

MR. DUNN: I would argue as a matter of law that the only evidence that can be submitted to a jury on a controlled substance would be that which has been tested.

THE COURT: So you want me to apply the direct verdict standard separately to each pill and say there's no evidence in the record on 98 of the pills?

MR. DUNN: Ninety-seven of the 101.

THE COURT: I will hear from Mr. Hogge. I'm a little sceptical.

MR. DUNN: Yes.

MR. HOGGE: If you were to follow that logic and you were to extend it out to cocaine, then you could say, well, he tested this much of the cocaine that was in this pile. But why didn't you test this other. Then maybe there was sugar over here. And so, this is a directed verdict standard and in viewing it in a light most favorable to the State there's sufficient evidence that this is a trafficking case.

The SLED chemist testified that is their procedure. That's what they do and that makes them satisfied that these substances are what they test.

THE COURT: Mr. Dunn.

MR. DUNN: The only thing I would argue on that, Your Honor, this isn't my first rodeo. I've seen lots of drug cases where they go in a house and they find different stashes and when they combine them and come up with their number to try and make it trafficking so it's a worse case. I get that. But they still weigh each of those four -- however many stashes and say, hey, we took this quantity. There was meth in this quantity. There was meth in this quantity. There was meth in this quantity. We now have ten grams. It's trafficking. Good luck with your client. That substance is in each.

It's not like the State's analogy where there's a stash and we only tested one and the other two, sure it could be powdered sugar, but it's not because they tested it to make sure that it wasn't before they started bringing it together.

THE COURT: I understand your argument, but your argument would apply to every pill case; Xanax, Hydrocodone, Oxycodone. It would apply to all of them, right? I'm not aware of any law in South Carolina that says to survive a directed verdict the State must individually test every pill. I just don't think -- logically, I understand what you're saying.

I just don't think that's the law.

MR. DUNN: My only argument to that would be then, Your Honor, pill cases typically are a little bit different because those pill cases are commercially produced pills. You know, you go to Walmart and you get your pseudoephedrine or you go to the doctor and you get your xanax or whatever. Those are produced commercially from pharmaceutical companies. I don't think anybody is going to -- nobody has testified and I don't think anybody would testify that what we have here are commercially produced.

THE COURT: Pill cases are often not commercially produced. There's a fair amount of pill cases that are not commercially produced.

MR. DUNN: Fentanyl might be the only one at this point that I can concede.

THE COURT: Mr. Dunn, let me leave it like this. I'm not -- although your argument I understand the logic of it, but I'm not aware of any other case in South Carolina that says that's the standard for the State.

I will deny your motion, but if you can find me case law over night I will reconsider tomorrow morning but for right now I am going to deny the motion.

MR. DUNN: Yes, sir.

THE COURT: Okay. Anything else counsel?

MR. HOGGE: Nothing from the State.

THE COURT: All right. See you all at 9:30 tomorrow morning.

MR. DUNN: Yes, sir.

(WHEREUPON, court was in recess until September 5, 2019)

(WHEREUPON, the trial resumed on September 5, 2019)

THE COURT: Okay, so we met in chambers a couple of times and my understanding is the final version of the charge and the verdict form we have no objection from either side with the exception of the latest addition regarding the chemical mixture or compound; is that correct?

MR. DUNN: It is, Your Honor. I believe that charge stems out of South Carolina 44-53-392. I believe that's the statute that the State was referring to when they proposed that charge.

Your Honor, that's the statute that talks about the weight of the controlled substance. That the weight of the substance in its pure form or any compound or mixture thereof.

Your Honor, I would argue that statute would apply as it relates to the individual pills and therefore,

Mr. Dunn, call your first witness.

MR. DUNN: Your Honor, the defense rests.

THE COURT: All right. Ladies and gentlemen, the the defense has rested. So that means that the evidence in this case is now closed. So what will happen now is I will give you my charge, which is my formal explanation of the law to you. I am going to ask you to pay you close attention but I will give you a written copy of the jury instructions in the jury room so you don't have to memorize them, but please try to pay close attention.

If any of you have taken a public speaking class or in school the teacher always said make eye contact when you are speaking. Don't read off a piece of paper. I have to break that rule when I give you the jury charge because it is very important that I explain the law to you I will be mostly be reading off this piece of paper and I apologize for that but I had give you a written copy ever it.

Madam foreperson and members of the jury, you have now heard the evidence and will soon hear the closing arguments of both parties. First, I will now explain to you the rules of law which you must follow and apply in deciding this case. When I have finished, you will hear argument and then go to the jury room

and begin your deliberations.

I will give you a written copy of these instructions. During your deliberations you may refer to these instructions to guide your decision-making. You must consider the instructions as a whole and not follow some parts and ignore other parts.

Your decision must be based only on the evidence presented in court. You must not be influenced in any way by either sympathy or prejudice against anyone.

The indictment in this case charges the defendant, Lagerald Dunham, with trafficking methamphetamine. An indictment is simply the formal written instrument which contains the charge made against the defendant. I remind you that the fact the defendant was arrested, charged, and indicted in this case is not evidence and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

The defendant has pled not guilty to the charge of of trafficking methamphetamine and that puts the burden on the State to prove him guilty beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocence.

I charge you that it is an important rule of law

that the defendant in a criminal trial, no matter what the seriousness of the charge is, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt -- are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

So what is reasonable doubt in the law? Some of you may have served as jurors in a civil cases where someone is suing someone else, where you were told that it is only necessary to prove that something is more likely true then not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful then that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not requires proof of that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty. Put another way, a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

I remind you that, during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this cases, and I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the evidence before you. If there is any testimony that I ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any other exhibits which are part of

the record and any agreements or stipulations of the attorneys.

I have the additional duty to charge or explain to you the law applicable to this case which is what I am doing now. As the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have an idea as to what the law is or what the law ought to be and it does not the agree with what I am now telling the law is, you must abandon that idea and apply the law exactly as I state it to you.

In every case tried in this court before a jury, you the jury are the soul and exclusive judge of the facts in the case. As a trial judge I cannot intimate or suggest or state or comment on or make any statement to a jury about the facts in the case. Since you, the jury, are the soul judge of the facts in the case, you should not infer from anything I've said during the progress of the trial in ruling on evidentiary issues or anything else or anything I'm now saying during these instructions, you should not infer that I have any opinion about the facts in this case. The law does not permit me to have an opinion about the facts in this case. That is a matter solely

for you, the jury, to determine. As jurors, it is your duty to determine the effect, the value, the weight and the truth of the evidence presented during the trial.

As I said before, you must consider only the evidence that I have admitted in the case. That includes the witness's testimony and exhibits. You should not assume from anything I've said that I have any opinion about the facts. In fact, except for my instructions on the law that I am giving you now, you should disregard anything I've said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters. In considering the evidence, you must use your reason and common sense to make deductions and reach conclusions.

Ladies and gentlemen, during the presentation of this case you may have noticed that certain sections of the audio or video that were presented in this case were redacted or edited out. This is due to the rules of court and was a decision made by me. Please do not speculate as to what may or may not have contained in those portions, and you're not hold those portions against either party.

With regard to the arguments of the attorneys,

while arguments of the attorneys are beneficial part of every trial you should remember that attorney statements are not evidence. In presenting arguments, attorneys often refer to the evidence. However, you should base your verdict on the evidence as you remember it. If there are any conflicts between the recollection election of the attorneys and your own recollection, you should rely on your own understanding of the evidence.

When I say that you must consider all the evidence, in the case I do not mean that you must accept it all as true or accurate. You should decide whether you believe what each witness had to say and how important their testimony was. In making those decisions you may believe or disbelieve any witness in whole or in part. The number of witnesses testifying about a particular point doesn't necessary matter.

To decide whether you believe a witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth, or personal interest in the outcome of the case? Did the witness have the opportunity and ability to accurately observe the thing he or she testified about? Did the witness appear to understand

the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other evidence.

However, please keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as they remember it. People naturally tend to forget some things or not remember them accurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse or mistake in memory or because of an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or unimportant detail.

Expert witnesses. The rule of evidence ordinarily do not permit witnesses to give their opinions or their conclusions. An exception to this rule exists for witnesses we call "expert witness". A witness who, by education and experience, has become expert in some art, science, profession, or calling may give their opinion as to relevant and material matters, in which the witness claims to be an expert and may also state the reasons for their opinion.

You should consider any expert opinion received in in this case and, like any other evidence, give it the weight that you think that it deserves. If you decide

the opinion of an expert witness is not based on sufficient education or experience or if you decide the reason given in support of the expert's opinion are not sound, or if you decide the opinion is outweighed by other evidence, you may disregard the expert opinion entirely.

An expert witness' testimony is not to be given any greater weight then that of other witnesses simply because they are an expert. Further, you are not to require to accept is an expert's opinion, even if it is not contradicted.

Ladies and gentlemen, I instruct you and I emphasis to you that the fact that the defendant did not testify in this case is not a factor to be considered by you in any way during your deliberations and in consideration of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. A defendant in the United States has the constitutional right to remain silent and that assertion or use of that right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact a defendant did not testify. The fact that the defendant did not testify should not even be discussed by you in the jury room.

Regarding knowledge of a control substance. In order to prove the defendant knowingly possessed or trafficked any control substance the State is not required to prove the defendant knew the particular type of controlled substance that was in his possession, only that he knew he possessed some type of controlled substance.

Trafficking methamphetamine, a person who knowingly -- let's see, a person who knowingly sells, manufacturers, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets or attempts, or conspires to sell or manufacturer or deliver or purchase, or bring into the State, or who is knowingly in actual or constructive possession or who knowingly attempts to become a in actual or constructive possession of ten grams or more of methamphetamine, is guilty of trafficking methamphetamine.

The State does not need to prove the defendant knew the weight of the methamphetamine to prove its case. The weight of a controlled substance is calculated by the weight of that substance in the pure form or any compound or mixture thereof.

Actual possession means that the methamphetamine was in the actual physical custody of the defendant.

Constructive possession means the defendant had dominion and control, or on the right to exercise dominion or control, over either of the methamphetamine itself or the property in which the methamphetamine was found, mere presence at the scene where drugs are found is not enough to prove possession.

The defendant's knowledge of possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with other evidence in the case, and is to be given the weight you decide it should have.

Ladies and gentlemen, there are two possible verdicts in this case; guilty or not guilty. There is no significance whatsoever in the order in which I just stated those verdicts. It's simply one must be listed first.

Ladies and gentlemen, your verdict must be unanimous. Madam foreperson, when the jury agrees on a verdict -- this is your verdict form -- you will check the box either not guilty or guilty, sign your name as the foreperson and then notify the bailiff that you have a verdict and come back in.

Ladies and gentlemen, in just a second you are going to hear the closing arguments of the attorneys. Again, the State has the burden of proof so they go first. Once you go back to the jury room after the closing arguments don't start deliberating yet. Give us just a few minutes to make sure all the photographs and the papers are in order and there is nothing missing. Your signal that it is time to begin deliberations will be when the bailiff brings all the evidence. That is your signal. It is okay to begin talking about the case.

Counsel, any objections to my instructions?

MR. HOGGE: None from the State.

MR. DUNN: No, sir.

THE COURT: All right, Mr. Hogge.

MR. HOGGE: May it please the Court. Who was the most important witness in this trial? Think about the time you spent in this courtroom and I realize that unfortunately you spent most of your time back there in the jury room. But think about the moments that you spent here in this jury room. In this courtroom. And who was the most important witness? Was it Officer Watson who testified about what he looks for when he makes drug cases. What bags means. What scales mean. What all that cash on a person means.

What it his body camera footage that he showed you that showed what was on Lagerald Dunham. It shows the way Lagerald Dunham was acting. Was it may be Officer Shealy, his testimony, his body camera footage that showed him actually finding those drugs all together in that Walmart bag. His body camera that again speaks for itself, showing the way that the passenger in that car was acting. This passenger who seemed out of it who didn't actually end up having to go to the hospital. Maybe it was the SLED chemist who came in and testified about looking at these pills, discovering it was actually methamphetamine in this case.

No, the most important witness that you heard from in this trial was common sense. What did common sense tell you during this trial? What did you hear her whisper in your ear as you watch that video play out? That you kind of had an idea of what was going on in this case and as things unfolded and then you saw a scale and then you saw the way Legerald Dunham was being a little squirrelly. What did common sense whisper in your ear. What was common sense's testimony whenever you were looking at those text messages yesterday at the end of the day. What were you thinking? What was common sense telling you when

you read through there about leaving some tree and some snow. Did common sense tell you that Lagerald Dunham is a successful sandwich artist who doesn't believe in banks. Did common sense tell you that when he's texting his girlfriend about leaving her pills, tree and some snow that he was talking about Christmas decorations? Is that what he's talking about there? Or did common sense tell you that Lagerald Dunham is a drug dealer who was up to no good that day on Riverview Road? Again, this is a relatively simple case. They pulled him over. They found all these drugs there in Lagerald Dunham's car.

The judge has told you a little bit just now about possession, what it means. About the difference between actual possession, constructive possession. He told you the defendant's knowledge and possession may be inferred when a substance is found in the property under the defendant's control.

Again, this is a case where there's a boatload of drugs in the defendant's car there with him and he has got all this stuff in his pockets that link him to the things that are in his car.

It's very important that when you look at this case you look at this case as a whole. You don't fall into this tactic of divide and conquer where you separate

all these different facts and you look at them in a vacuum not connected to anything else in this case. This case isn't just the fact that Lagerald Dunham had all those sandwich baggies in his pocket. This case is isn't just that he had in his other pocket a wad of money; $1,400 in cash. This case isn't just that he was out there on Riverview Road that you heard the police tell you is notorious. This case isn't just that he had a digital scale right there underneath him. This case isn't just the way that he starting acting a little squirrelly when the police were talking to him. This case isn't just that he's got a passenger in the car who appears to be pretty high. This case isn't just the fact that there are all those drugs there in his car. This case isn't just that there all these text messages to the girl in his car about him living her some pills. This case is all of that together as a whole. Think about it. What are the odds that all of these things line up. That all of these things are present in this case. It's one thing if he just had some bags in his pocket. But all of these things line up together, what is common sense's testimony to you about that? That he's talking about tress and snow literally.

What does common sense tell you that he picked up

his girlfriend from Frito-lay and she snuck these drugs into the car between Frito-lay and the car and he never knew about it. And two people can jointly possess one type of drug. It's not exclusive. They could have both known about it and both been guilty of it.

Now, in this case defense has thrown out a lot at you. There was a lot of talk in this case about the traffic conditions. Where cars were. Is that where the McDonalds is? How far -- do you remember how far? Where's the blinker video? Again, this is not a traffic case. This is a trafficking case. The blinker, all that -- and again, the video wouldn't even have shown that. It doesn't really matter. That video wouldn't have shown anything, this lost video. It would have just shown the front view of that car. It wouldn't have shown any of the blinker situation and again, if the police had a right to stop the defendant, if they had a right to search the car, again those are legal issues for the judge. They're not factual issues you have to concern yourselves. Instead you are just asked to utilize your common sense and tell us factually what's going on here.

There was also a lot of talk about the pills and how many pills were tested. There are 46 counties in

South Carolina. SLED is not going to test, especially in light of the opioid epidemic, every single that makes it way to Columbia to be tested. It's just not feasible. And again, talking about odds. What are the odds she pulls four pills out of there and all of them come back with methamphetamine. All these pills are bundled up together. It's one bag and within that bag there are two separate bags. There are these red bull pills and these pills that look like money. And she testified that is the standard. That is the policy. It is accepted within our community in testing drugs. That's what they do. If we went through and we broke apart all these pills and subjected them to the mass spectrometer and gas test and the chemical test, their would be a whole lot to come in to court and show you after we gone through and looked at every single pill. Again, what are the odds? All of these are bundled together. That's obvious. It's common sense. That's what you utilized in this trial.

Now again, trafficking, the judge told you about trafficking, about methamphetamine. He's told you that a person who knowingly sells, manufacturers, delivers, purchases, or brings to the state, yada, yada, yada, or, who is knowingly and actual or

constructive possession. That's what I was talking to you about in my opening statement. There are many ways to commit trafficking, but in South Carolina if you have this much that's a big no, no. You don't have to find that they actually intended to distribute or anything like that. It's enough that you had actual or constructive possession of the drugs in this case.

Also, it doesn't matter that some of these pills contain caffeine in them. The drug told you that the weight of the controlled substance is calculated by the weight of that substance in pure form or any compound mixture thereof. So the fact that these pills of methamphetamine may not be 200 proof methamphetamine, they may not be pure methamphetamine. That doesn't matter. It doesn't matter that they could be cut with other substances. Instead it's these pills have methamphetamine in them.

So again, utilize your common sense when you get back there. Beyond a reasonable doubt. Lagerald Dunham was up to no good when he had all that stuff on him. All the drugs in his car.

Again, the judge told you that proof beyond a reasonable doubt is not proof that leads you to certainty. It is impossible, especially in today's

day and age, that we pick out 12 random people and they just so happen to all totally agree on something with certainty. Unfortunately that's not the world we live in, where 12 people can all agree on something perfectly. It's not you getting back there and saying I know for sure. Instead, it's 12 people coming together and they all are able to say I am firmly convinced of this defendant's guilt. In other words, it's this moment where you think about everything, you look at everything as a whole and you say, yeah, this guy did it. Yeah, this guy did it. It's in his car. He's there. He's got all the tools of the trade. Jessica Hamilton might have been in the car with him, but she's not the mastermind. Being lethargic. You saw the way she was acting. You can play that video again. We can either have you come back into the courtroom or we can send it back into the jury room with a laptop. But it's clear who the mastermind is. The person who has the scale there right under him. The person who has all the cash on him. Use your common sense when you look at this case.

I want to thank you for being here. I know again you didn't have much of a choice. Thank you in bearing with us as we have all this construction going on, cords hanging from the ceiling, technical

difficulty, but again, thank you for being here and I ask that when you go back there you follow that oath because again it's important that you well and truly try this case based on the evidence presented.

That word verdict is an important word. It is you speaking the truth of this case telling us what happened. That's what the word means. Verdict comes from the Latin, ver which means the truth and dict which means to speak and I ask that you do that in this case and that you follow that oath.

Thank you.

THE COURT: Mr. Dunn.

MR. DUNN: May it please the Court, Your Honor. Good morning. So I would start off arguing it's hardly a boatload of drugs. But the same exaggeration the State is using now to call this a boat load is the same exaggeration that Sergeant Watson was using that morning when he says Mr. Dunham was acting jittery or squirrelly or whatever the adjective was that he used. If you go back and look at officer Shealy's body cam which has a great view over the top of the car to show what's going between Sergeant Watson and Sergeant Dunham, (sic)he's not acting squirrelly. His hands are the car. He puts his hand and then he gets handcuffed. And you might be ask yourself, what does

that matter? What does that matter? Well, it matters for this, just because how we get to where we are now is important. It's important that how the police officers do their job and make these cases is important. We listen to Sergeant Watson, Officer Shealy and the State's chemist and Officer Rowe and the Court tells us we need to listen. You have the right to judge the credibility. Well, how somebody does something goes to their credibility, right?

Officer Shealy -- excuse me, Officer Watson says that he saw Mr. Dunham over here not use his signal. We'll never know if that's true or not. We have to take him at his word for that. What we do know is that there's a body cam from Officer Shealy, there's a body cam from Sergeant Watson that we've seen. There's testimony there was another body cam from another officer which we didn't see. And we heard there was a video from Officer Shealy's car which we didn't see. What's on his body cam -- or excuse, what's on his car cam doesn't really matter because he's not the one that we have to believe when it comes to why the stop happened. It's Sergeant Watson's. But conveniently the one piece of evidence that we need to see what happened isn't even there. It goes to his credibility. It goes to his credibility when

Sergeant Watson says, well, Mr. Dunham started acting squirrelly and that's why I put him in handcuffs even though he wasn't under arrest. For my own safety. Look at Officer Shealy's video cam -- his body cam. It shows what's going on over the top of the car and that's not what I see on that video. It's not what Sergeant Watson testified to. It's that simple. He wasn't acting squirrelly. He wasn't in any way showing any kind of threat to anybody. He wasn't trying to do anything except take his hands down. One or two times he tried to walk away. Sergeant Watson's testimony was he wasn't going anywhere. He was trying to show him something. And I think, again, the body cam backs that up. It gives us two different angles from the same scene. It's important. It's important because Mr. Dunham, Lagerald, gets immediately put into handcuffs over a traffic stop and immediately gets -- almost immediately taken to the back of the police car before he's even arrested for a traffic stop.

I submit to you that the traffic stop is not really the reason why his car was pulled over.

MR. HOGGE: Objection.

THE COURT: Counsel approach please.

(WHEREUPON, there was an off the record

discussion.)

THE COURT: You may continue. Objection is is overruled.

MR. DUNN: All I was getting at is that I think Officer -- Sergeant Watson was looking for a reason to pull Mr. Dunlap (sic) over that day. And so now we have to -- we get to the judge talked to you a little bit about what's reasonable doubt? That is, at the end of the day, what's the crux of any criminal case. I told you that there were three things that were important in my opening.

All defendants are innocent until proven guilt. I told you that the State bears the burden of proof. And that burden is a reasonable doubt. And so that's the crux of why we're here and that's the crux of why the State and I argue to you at the very end of the trial to tell you why we think reasonable doubt has or has not been met.

So let's go through the evidence and you'll see why reasonable doubt has not been met. Beyond a reasonable doubt has not been met by the State.

Who owns the car? Not Mr. Dunham. We know that when Sergeant Watson pulls out the registration and he's on the phone with somebody who I think is probably Officer Rowe who we heard testify. He says

oh, no, it's not owned by Lagerald. It's own by somebody out of Spartanburg. So we know that the car is not owned by Lagerald. We know that the drugs, the very reason why we're here, this bag right here, was not found on him. We know that this bag was not found underneath his seat. We know that quite frankly this bag was not found within his dominion or his control. That where he was sitting if he tried to reach for it he would not have been able to get to it. What we do know from the video and from the evidence and the testimony that was given is that it was found under Miss Hamilton's seat. We know, or we can suspect, that maybe she was under something. She was acting kind of weird. The State says she was high. Who knows. She was acting -- but she was definitely acting lethargic. We know that when she got questioned and she came out and started talking and showed her cell phone to Officer Rowe and he said, hey, you know, I took a picture of what these text messages are.

I know a couple of things. One, I know nobody testified as to what any of this meant. As far as I can tell it's just gibberish. I also know that nobody testified who Fee is, F.E.? It's not Lagerald. It's not Dunham. I know that nobody testified who's number

303-415-6040 is. That's what I know.

I also know that when the drugs are found underneath her seat and the narcotic agent is questioning her about it she's going to do things to try and defer or deflect suspicion from her to somebody else. I suspect that's what she did that day. That's what I know.

Let's talk about the elephant that's in the room. I will not say it's a boatload, but it's a substantial amount of drugs. Let's talk about it. What I know that when given the opportunity that the chemist only tested four out of 101. Is that reasonable doubt? How do we know what those other 97 pills are. Even if you think -- you know, we know she said that four of them are meth. All right. What about the other 97? We don't know what those other 97 pills are and because we don't know when you start adding the weight up of the four that we do know, which she was nice enough to put on her report for you all to look at -- that the four of those when added together equal less than one -- don't equal very much. That when you add the four of those up together 0.4 grams according to her report. 0.4 is not the same as 10 grams.

The State is asking you to find beyond a reasonable doubt that Mr. Dunham is guilty of trafficking which

requires 10 grams. And then the State talks about how maybe it's not practical, it's not practical to make the chemist test all the pills. All right. Even if I concede that, which I'm not, is it practical they only tested four out of 101. Maybe they should have tested more than four percent of the pills. Maybe they should have tested 10, 15, 20. What's reasonable doubt? Fifty? They could have tested more of four but they choose not too.

So I ask when you go back to the jury room look at all the evidence. Look at Officer Shealy's body cam again. Was Mr. Dunham acting in such a manner that Sergeant Watson says he was or was that an exaggeration.

I submit to you when you go go back and you start adding all of these factors together that you will pause and you are going to pause and you're going to say, well maybe, well maybe, its not true. Just because of this doesn't mean this. And when you do that that's the reasonable doubt. And our system requires that you find him guilty beyond a reasonable doubt. I submit to you that there is not enough evidence from what we heard yesterday for that to happen.

Thank you.

THE COURT: Thank you Mr. Dunn.

All right, ladies and gentlemen, that concludes the trial of this matter. So again, I am going to ask you to go back to the jury room. Do not begin deliberations yet. You will begin your deliberations very shortly. Your signal will be when the bailiff brings you back all the evidence, your copy of the jury instructions and your verdict form. That will be your signal that it's time to begin deliberations. Until then feel free to talk about other things. Use the restroom.

Thank you ladies and gentlemen.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Counsel, any objection to releasing the alternates?

MR. HOGGE: No.

MR. DUNN: No. Your Honor.

THE COURT: Let's bring in Mr. Hill and Mr. Brazell, the two alternates please.

(WHEREUPON, the two alternates enter the courtroom.)

THE COURT: Mr. Hill, juror 101.

JUROR: Yes, sir.

THE COURT: And Mr. Brazell, number 36.

JUROR: Yes, sir.

THE COURT: Gentleman, your service is complete. I know you have the most frustrating job in the entire justice system. There is no way around that. Being the alternate jurors you have to pay attention to the whole trial just like everyone else. At the end of the trial you don't get to vote. So I'm sorry, there is no way around that. But your service is invaluable because if one of the regular jurors had gotten sick or had an emergency we would not have had to start the trial over. One of you gentleman would have stepped in. So on behalf of the State of South Carolina and York County we are grateful for your service. We don't have any further trials this week so your jury service is complete for the week.

If you would like to stay and see what the verdict is you're welcome to do so. You can have a seat back here on these benches but you don't have to. Your service is complete, thank you, very much.

Give the bailiff your juror badges.

Counsel, if you all want to come around and check out the exhibits and make sure everything is in order.

(WHEREUPON, the jury starts deliberating at 10:55 AM)

THE COURT: All right, counsel we have a verdict.

(WHEREUPON, At 11:55 A.M. the jury enters the

courtroom.)

THE COURT: Madam foreperson, I understand the jury reached a verdict?

THE FOREPERSON: That's correct, Your Honor.

THE COURT: Will you pass the verdict to the bailiff please.

Madam clerk, will you publish the verdict please. Defendant please rise.

THE CLERK: Indictment 2018-GS-46-00179, the State versus Lagerald Dunham, we the jury by unanimous consent find the defendant, Lagerald Dunham, as to the the charge of trafficking methamphetamine guilty. Signed by the foreperson, dated today's date.

Ladies and gentlemen of the jury, if this be your verdict so say you all by raising your hand. Affirm this verdict. Let the record show all jurors affirmed the verdict

THE COURT: Mr. Dunn, would you like the jurors individually polled?

MR. DUNN: Yes, sir.

THE COURT: Madam clerk will you poll the jury please.

THE COURT: Please stand. Juror 19, is this your verdict?

JUROR: Yes, ma'am.

the foreperson you need to sign the indictment here. Write guilty and sign it.

Thank you very much.

All right. It seems like we should probably proceed to sentencing Mr. Hogge, Mr. Dunn?

MR. DUNN: I have no objection.

THE COURT: Yes, sir, Mr. Hogge.

MR. HOGGE: May it please the Court.

Your Honor, of course I'm not going to go over the facts. You heard the facts in this trial. But going over Mr. Dunham's prior record. Going back all the way to 1997, he was convicted August 7, 1997 assault and battery. And then on December 9th of 1997 he was sentenced to possession of crack cocaine, first offense. He received a sentence of five years suspended on three years of probation. That probation was later revoked on April 28, 2018. And then on June the 6th of 2000, he was convicted of simple assault and battery, and on July the 11th of 2001 he plead to assault and battery of high and aggravated nature. I believe he was originally charged with criminal sexual conduct with a minor but plead down to assault and battery of a high and aggravated under that provision of the statute. Received a sentence of eight years suspended on time served. And then on December 9th of

2003 he was convicted after trial of possession of crack, second. I believe he was charged with PWID crack. The jury came back with the lesser included possession of crack. Also convicted of possession on marijuana, second offense. He received a ten-year sentence on that for the crack and then one-year concurrent for the marijuana. And then May 24, 2010, he was convicted of forgery. I believe he received a probationary sentence for that. And then on July the the 21st of 2011 -- and this is one of the Court's exhibits I believe -- is the indictment out of Lancaster where he was convicted of conspiracy and possession with intent to distribute marijuana. He received a four-year sentence for that. And then on February 14, 2019 he plead guilty to domestic violence, third degree. The victim in that was case was Jessica Hamilton and also that day he plead guilty to use of vehicle without permission. He received a sentence of time served.

THE COURT: Okay. And just for the record Mr. Hogge, the predicate conviction for the second is which one?

MR. HOGGE: For the second one would be possession of crack, second offense.

THE COURT: Okay.

MR. DUNN: What year?

MR. HOGGE: That was the 2003. He received that sentence of ten years and also it's a second offense, I believe, under 44-53-470. It's at any time since it was a second offense.

MR. DUNN: I'm not sure -- the conviction has to be within ten years or the sentence is within ten years. Just because it was a ten-year in 2003 doesn't put us into --

MR. HOGGE: That's true, but it was a second offense. So if it's at any time because it was a second violation.

MR. DUNN: I understand what you are saying.

MR. HOGGE: And Your Honor as to sentencing, very briefly. My old judge, Judge Burch, he had a philosophy whenever he sentenced someone and they were pleading straight up he would look at the case and he would like at that range that the legislature set up and based on what he heard about the case, what he heard about the defendant's record, he would either drift to the right of that range or he would drift to the left of that range.

Now, based on his prior record, the fact that he just prolific drug dealer that you just drift right to that range.

THE COURT: Mr. Dunn.

MR. DUNN: Your Honor, may it please the Court. I was appointed to represent Mr. Dunham and it is true that his record was pretty bad when was younger. In the last five or ten years he hasn't had that much. And I know that it sounds like a weird thing to say, when you look at all his charges, most of that happened when he was younger. He did plead guilty to a couple of things this year under Alford for a time served sort of sentences to get rid of those charges. But he got arrested back in '17. He has been out on bond all that time and been out and working. We ask the Court to consider that. He's also 40 years old at this point. If you give him a long sentence that's going to turn into a life sentence basically. There is a range here from seven on up and we would ask the Court to consider the lower end of it.

The Court also heard the evidence and the nature of the stop and the other problems that were in this case and we would ask the Court to look at the lower end of it. When you're talking about trafficking you go from a little bit of ten grams to hundreds of grams. We're not at the bad end of the trafficking statute. I know the solicitor used the word boatload, but I would disagree with the characterization of that in this

case. He's at the lower end of the trafficking range and we would ask the Court to take that into account in making its ruling.

As far as my client saying anything I would advise him to keep his mouth shut since this is going on appeal. He doesn't need to say anything that may hurt him later on, but it's his right to speak it he wants to.

THE COURT: Mr. Dunham, would you like to speak? As your attorney said, you should probably listen to your attorney's advice, but you do you have the right to speak if you want to.

THE DEFENDANT: I do want to address the Court and say --

THE COURT: Stop for a second. Before you speak talk to your lawyer and tell him. You have the right to talk if you want to.

THE DEFENDANT: All right.

I just want to address the Court and say I ask for leniency. My mom's sick. My dad's got cancer. You know what I'm saying. I'm an only child. I do ask for leniency.

THE COURT: Do you have calculation on time served?

MR. DUNN: I believe he only served one day in

jail on this arrest, Your Honor.

THE COURT: Indictment 2018-GS-46-00179, State versus Lagerald Dunham, the charge is trafficking methamphetamine, 28 grams or more second offense, given the fact and circumstances of this case as well as the defendant's record, the sentence of the Court is Mr. Dunham is committed to the custody of South Carolina Department of Corrections for a period of 18 years with credit for one day time served.

(END OF TRANSCRIPT)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor

MARK A. KEEL
Chief

M.R. King
York County Sheriff's Office
1675-2A York Highway
York, SC 29745

DRUG ANALYSIS
December 08, 2017
SLED LAB: L17-14164
Your Case No: P1705260886
Incident Date: 05/26/2017
[S] Lagerald Dunham

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Sub # 1 — On September 19, 2017, items were received from M.R. King of the York County Sheriff's Office.

Item: 1.1 — Plastic bag containing...

Item: 1.1.1 — Twenty-six (26) multi-colored tablets (Red Bull)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 9.02 +/- 0.01 grams (139.19 +/- 0.15 grains). Confidence level for the weight is 99.7%.

Item: 1.1.2 — Twenty-four (24) multi-colored tablets (money)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 8.18 +/- 0.01 grams (126.23 +/- 0.15 grains). Confidence level for the weight is 99.7%.



CALEA

ALI-359-T

Item: 1.2 Plastic bag containing...

Item: 1.2.1 Twenty-one (21) multi-colored whole tablets and partial tablets (Red Bull)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 9.96 +/- 0.01 grams (153.70 +/- 0.15 grains). Confidence level for the weight is 99.7%.

Item: 1.2.2 Thirty (30) multi-colored tablets (money)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 10.03 +/- 0.01 grams (154.78 +/- 0.15 grains). Confidence level for the weight is 99.7%.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Maribeth C. McCormack
Forensic Scientist

Supplement to Analysis for Controlled Substance

I, Maribeth C. McCormack, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 9 years and 8 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 32 times. I have received the following training as a Forensic Scientist.

BS Chemistry, University of South Carolina, Columbia, SC 2003
MT Secondary Science Education, University of South Carolina, Columbia, SC 2004
Marijuana Analyst Certification, South Carolina Law Enforcement Division, 2008
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2008
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2008
Drug Enforcement Administration, Forensic Chemist Seminar, 2009

Sub # 1 On September 19, 2017, items were received from M.R. King of the York County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

[X] Chemical Test
[ ] Microscopic Exam
[ ] Infrared Spectroscopy
[ ] Visual Examination
[X] Gas Chromatography
[X] Mass Spectroscopy
[ ] Physical Test
[ ] Published Literature

See Drug Analysis Report L17-14164 for Results.

Forensic Scientist

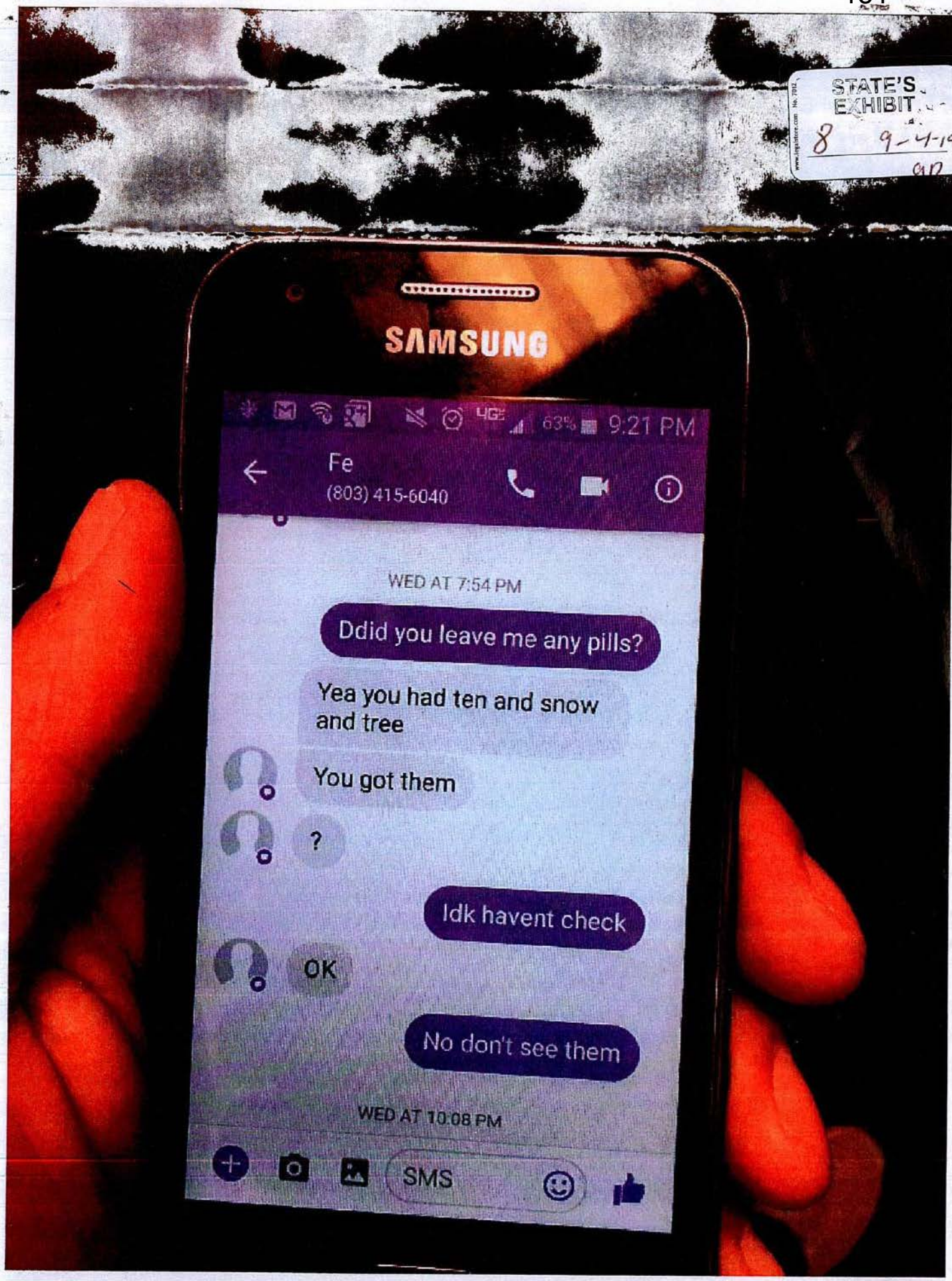
Maribeth C. McCormack

Maribeth C. McCormack

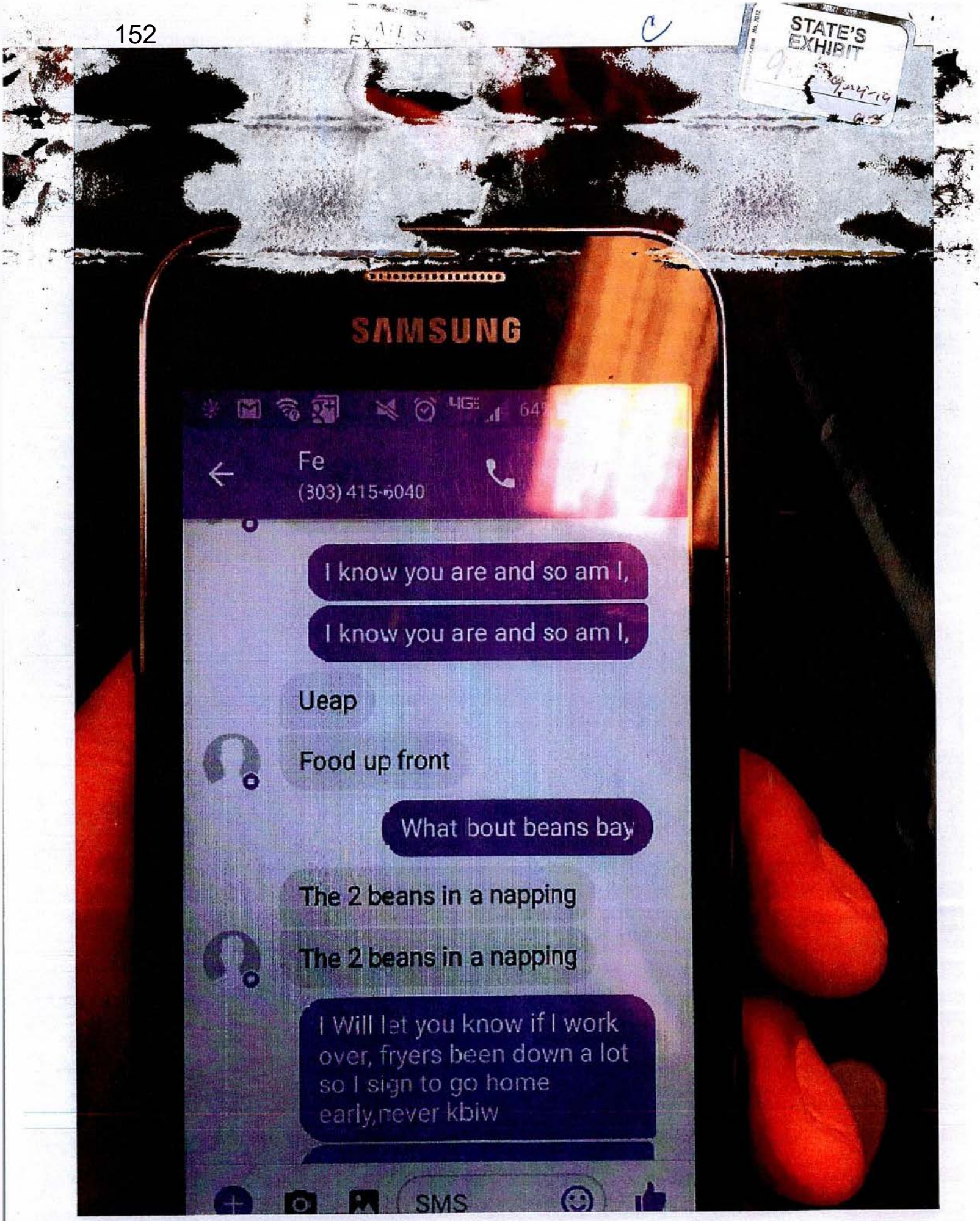
Date: December 08, 2017

C

STATE'S EXHIBIT
8 9-4-19
GD



STATE'S EXHIBIT



WITNESSES

RHPD

Witnessing Officer: Tripp

ARREST WARRANT NUMBER

2017A4620300973

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1-18-19

VERDICT

Directed verdict for defense.

#2761

Foreperson of Petit Jury

Date: September 4, 2019

DOCKET NO. 2018-GS-46-00178

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 18, TERM 2018

THE STATE

VS.

LAGERALD L. DUNHAM

INDICTMENT FOR

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

SC Code: § 44-53-370

CDR Code: ~~0187~~ 0188 wsm

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

Defendant

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

Defendant

Witness:

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

154

STATE OF SOUTH CAROLINA

COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant, Lagerald L. Dunham, did on or about May 26, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a schedule I controlled substance, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

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

T. MATTHEW HOGGE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

TRAFFICKING METHAMPHETAMINE

The defendant, Lagerald L. Dunham, did on or about May 26, 2017, in York County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight grams or more of methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of 44-53-375(C), Code of Laws of South Carolina (1976, as amended).

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

T. MATTHEW HOGGE
ASSISTANT SOLICITOR

WITNESSES

RHPD

Witnessing Officer: Tripp

ARREST WARRANT NUMBER

2018-GS-46-00179

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1-18-18

VERDICT

Guilty
Ellen Beck
9/5/19

Foreperson of Petit Jury
Date:

Direct Indictment

DOCKET NO. 2018-GS-46-00179

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 18, TERM 2018

THE STATE

VS.

LAGERALD L. DUNHAM

INDICTMENT FOR

TRAFFICKING METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0389

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

156

Defendant

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

Defendant

Witness:

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

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

NTY OF YORK

STATE VS.

LAGERALD L DUNHAM

AKA: Lagerald Dunham, Lagerald Feon Dunham

Race: Black Sex: M Age: 39

DOB: [redacted] SS#: [redacted]

Address: 1226 E Moore Street

City, State, Zip: Rock Hill, SC 29730

DL# [redacted] SID# SC01131369

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018-GS-46-00179
A/W: 2018-GS-46-00179
Date of Offense: 05/26/2017
S.C. Code §: 44-53-375(C)
CDR Code #: 0389

SENTENCE SHEET

ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Trafficking Methamphetamine 28g or more 2nd Offense (NLT 7 YEARS TO 30 YEARS & $50,000)**
In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0389

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

T. Matthew Hogge, Assistant Solicitor — 100126 SC Bar # | Defendant | Attorney for Defendant — 72541 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 18 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 Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Credit for 1 day

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: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

*Fine:		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 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	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$ 150
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$_____
TOTAL		$ 275

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: _____
Judge Code: 2701
Sentence Date: 9/5/19

Clerk of Court/Deputy Clerk: DAVID HAMILTON
Court Reporter: Aileen Butler

SCCA/217 (04/2018)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 17th day of September, 2020.

Respectfully Submitted,

s/ Lara M. Caudy
Appellate Defender

RECEIVED
Sep 17 2020
SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT