

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Newberry County

Honorable R. Kirk Griffin, Circuit Court Judge

TOABY ALEXANDER TRAPP,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000283

APPENDIX

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State of South Carolina)
) Court of General Sessions
 County of Newberry) 2012-GS-36-00267

State of South Carolina)
) vs.) Transcript of Record
)
 Toaby Alexander Trapp)
) DEFENDANT)

October 30, 2014
 Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

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 Attorneys for the State

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 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(IC) Robert Dennis, In Camera

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State's

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Court's

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1 THE COURT: Solicitor, what case are you calling now?

2 MR. SCOTT: Your Honor, this is the State versus
3 Toaby Alexander Trapp. Indictment, 12-GS-36-0267 and the
4 charge is trafficking crack cocaine. It was true billed
5 by Newberry County Grand Jury March 16th of 2012.

6 THE COURT: All right, folks, as I did last time, my
7 questions now are going to be more focused on this
8 indictment which is an allegation made by the State
9 against Mr. Toaby Alexander Trapp who is in the courtroom
10 with his attorney, Dietrich Lake. Mr. Scott, y'all
11 remember my routine was, introduce the witnesses, the
12 lawyers involved, do you know any of them, married, close
13 personal friends, would that not make you be fair and
14 impartial. So that is kind of the routine we are going to
15 go through. So, Mr. Scott, will you introduce everyone at
16 your table and then likewise, Mr. Lake, will you introduce
17 yourself and Mr. Trapp. All right, Mr. Scott.

18 MR. SCOTT: Thank you. My name is Dale Scott and I
19 introduced myself to you Monday. I am the Deputy
20 Solicitor here in the Eighth Circuit primarily prosecuting
21 cases in Newberry and Laurens County. I work for David
22 Stumbo, he is your elected Solicitor of the Eighth Circuit
23 which also includes Abbeville and Greenwood Counties.
24 Assisting me is going to be Taylor Daniel, also the
25 Assistant Solicitor for this Circuit. And Captain Robert

1 Dennis is going to be my lead investigator.

2 THE COURT: Mr. Lake.

3 MR. LAKE: Good afternoon, my name is Dietrich Lake.
4 I am a practicing lawyer, I practice in Columbia, I
5 practice here in Newberry also. This is my client, Toaby
6 Trapp.

7 THE COURT: All right, ladies and gentlemen of the
8 jury, any member of the jury panel related by blood,
9 marriage, close personal friends to any of the parties
10 just introduced. If so, please stand. Tell me your name,
11 please, ma'am.

12 JUROR: Shirley Myers.

13 THE COURT: Ms. Myers, which party are you related by
14 blood or marriage or close personal friends?

15 JUROR: Captain Robert Dennis.

16 THE COURT: And you are friends or related?

17 JUROR: Related by marriage.

18 THE COURT: And tell me the proximity of the
19 relationship, you are married to whom and how it is
20 connected to him.

21 JUROR: He is my nephew by marriage, his wife is my
22 husband's niece.

23 THE COURT: All right. Out of an abundance of
24 caution I am going to excuse you from serving on this
25 case. That is close enough for me.

1 All right, what is your name?

2 JUROR: Keyondra Curry.

3 THE COURT: Ms. Curry, you are juror number 37.

4 Which party are you related by blood or marriage, close
5 personal friends.

6 JUROR: Mr. Lake, he did a case for me.

7 THE COURT: Mr. Lake?

8 JUROR: Yes, sir.

9 THE COURT: So Mr. Lake has helped you with a legal
10 matter in the past?

11 JUROR: Yes, sir.

12 THE COURT: Is that matter now been resolved?

13 JUROR: Yes, sir.

14 THE COURT: Now the fact that he helped you in this
15 matter, would that affect your ability to be fair and
16 impartial to the State and to Mr. Trapp?

17 JUROR: No, sir.

18 THE COURT: You can do that?

19 JUROR: Yes.

20 THE COURT: Thank you, Ms. Curry.

21 MR. SCOTT: Your Honor, what was her number?

22 THE COURT: 37. All right. That was my next
23 question. Has any member of the jury panel ever had any
24 of the attorneys perform legal services for them in the
25 past in any manner? If so, please stand. Other than Ms.

1 Curry. She's already responded to that question.

2 (No response.)

3 THE COURT: No one is standing. Potential witnesses
4 in this case include Captain Dennis, Ben Chapman, Brad
5 Epps, Garrett Lominack, Lynn Black. Any member of the
6 jury panel related by blood, marriage, close personal
7 friends to any of those potential witnesses please stand.

8 MR. SCOTT: Judge, let me add Patricia Crooks from
9 SLED as an additional State's witness.

10 THE COURT: Patricia Cooks also. Anyone related by
11 blood, marriage, close personal friends to any of those
12 six witnesses I have so named? I have got one. Yes sir,
13 please stand. Tell me your name.

14 JUROR: Bryan Hare.

15 THE COURT: Mr. Hare. Which witness?

16 JUROR: I know Mr. Lominack.

17 THE COURT: Deputy Lominack's in the courtroom.

18 JUROR: Yes, sir. And just friends.

19 THE COURT: And would that affect your ability to be
20 fair and impartial?

21 JUROR: No, sir.

22 THE COURT: He's a potential witness. Not
23 necessarily going to be a witness, but a potential
24 witness. Can you be fair to both the State and Mr. Trapp?

25 JUROR: Yes, sir.

1 THE COURT: Very well.

2 MR. LAKE: Your Honor, just for the record, what
3 number was he, 59, I believe?

4 THE COURT: 59. Any member of the jury panel, a
5 member of your immediate household ever been accused of
6 distribution or trafficking in drugs? If so, please
7 stand. Information purposes only.

8 (No response.)

9 THE COURT: No one standing. Any member of the jury
10 panel, a member of your household, a member of any of the
11 temperance organizations such as M.A.D.D., S.A.D.D.,
12 Citizens Against Violent Crimes, any organizations of that
13 type relating to the rights of the victims in any crimes?
14 If so, please stand.

15 (No response.)

16 THE COURT: No one standing. Any member of this
17 jury, a member of your household or a member of your
18 immediate family a member of law enforcement in any
19 capacity? If so, please stand. Got one, a couple. All
20 right. I am going to ask who is it, and how they are
21 related and can you be fair and impartial. Tell me your
22 name.

23 JUROR: John Major.

24 THE COURT: Mr. Major, your juror number?

25 JUROR: 95.

1 THE COURT: 95, is that right? And who, is it with
2 your family?

3 JUROR: My brother works as the nurse at Newberry
4 Detention.

5 THE COURT: Would that affect your ability to be fair
6 and impartial to the State and to Mr. Trapp?

7 JUROR: No, sir.

8 THE COURT: Thank you, sir. Over here, tell me your
9 name?

10 JUROR: Chris Burge.

11 THE COURT: Mr. Burge, which member of your family?

12 JUROR: Dean Stribble, father-in-law.

13 THE COURT: Father-in-law. I'm going to excuse you
14 from serving in this trial, because I happen to know
15 Detective Stribble is a member of the Sheriff's
16 Department. I don't think that would be appropriate, so
17 you can be seated. Yes, ma'am. Tell me your name?

18 JUROR: Sabrina Waldrop, juror number 151.

19 THE COURT: 151, is that right? All right. And
20 what's the relationship for you?

21 JUROR: My stepfather.

22 THE COURT: And your stepfather?

23 JUROR: Marvin Miller.

24 THE COURT: Retired now, but still partially active,
25 a member of the Sheriff's Department.

1 JUROR: Yes.

2 THE COURT: I'm going to excuse you from sitting on
3 this case. Thank you, Ms. Miller. Anybody else? What
4 about the one who had a cousin? Stand up, please, ma'am.
5 Tell me your name?

6 JUROR: Juror number 22.

7 THE COURT: All right. Tell me your name?

8 JUROR: Annette Chapman.

9 THE COURT: Ms. Chapman, 22?

10 JUROR: 22.

11 THE COURT: All right. And which member in your
12 family?

13 JUROR: Cousin.

14 THE COURT: And who?

15 JUROR: Randy Epps.

16 THE COURT: Chief Epps, a member of the Sheriff's
17 Department also. Epps works out at security. I'm going
18 to excuse you from sitting on this case. I got one more.
19 All right. Tell me your name?

20 JUROR: Robin Richardson, juror 121.

21 THE COURT: And, Ms. Richardson, which member of your
22 family?

23 JUROR: Well, my father-in-law is here and my husband,
24 Jimmy, is retired from the Prosperity Police Department
25 and Probation and Parole.

1 THE COURT: And this would be your father-in-law?

2 JUROR: Yes.

3 THE COURT: I'm going to excuse you from this trial,
4 also, Ms. Richardson. All right. He works courthouse
5 security. All right. Next question. Any member of the
6 jury panel know any reason whatsoever they cannot be fair
7 and impartial to both the State and the Defense? Now,
8 outside, I don't want anybody that's already been excused
9 to stand up if you have a reason to now. Anybody know any
10 reason whatsoever they can't be fair and impartial to both
11 the State and the Defense in this matter, please stand?

12 (No response.)

13 THE COURT: No one standing. Any member of the jury
14 panel not understand that the Court, and that is the
15 Judge, is the instructor of the law and a Defendant comes
16 into court presumed innocent until proven guilty. Anybody
17 have a difficulty understanding that the Judge instructs
18 the law in the case and will have difficulty accepting the
19 oath to follow the law as instructed? Please stand.

20 (No response.)

21 THE COURT: No one standing. All right. Any other
22 voir dire from the State?

23 MR. SCOTT: None from the State, Your Honor.

24 THE COURT: Any more from Mr. Lake?

25 MR. LAKE: Nothing from the Defendant, Your Honor.

1 THE COURT: Very good. Please pull me a jury, Ms.
2 Brehmer. All right. Now, how about while we're doing
3 that, anybody I excused, will y'all go ahead and leave
4 because y'all are done for the week. That way, it'll open
5 some seats up for me. All right. Now, y'all folks, will
6 y'all stand up, either sit down or just stand in the areas
7 back here so that we can seat the jury after selection
8 here. Okay?

9 MADAME CLERK: Judge, what's the strikes?

10 THE COURT: Five and five. The attorneys get some,
11 please excuse the jurors afforded them under our statutes
12 since they are making certain we have the right number.
13 All right. Ms. Bowers, it'd be better to present them
14 over here or present them over there by the, that side?

15 MADAME CLERK: Now, what was the question? I'm
16 sorry.

17 THE COURT: I think if you stand there and we present
18 them on this edge over here where the Bailiff is.

19 MADAME CLERK: Present them over here?

20 THE COURT: Can you rotate around, Mr. Lake, and
21 we're going to present the jury right in this corner.

22 MR. LAKE: Yes, sir.

23 THE COURT: All right. That way they can come across
24 and be seated. All right. Folks, as y'all's name is
25 called, come over here. We're going to do the same

1 routine. The lawyers get to have a look at you. They'll
2 either excuse you or please seat you. And so if Ms.
3 Bowers calls your name, bring your belongings with you.

4 MADAME CLERK: You ready?

5 THE COURT: Yes, ma'am.

6 MADAME CLERK: Number 166, John Wolfe. What says the
7 State?

8 MR. SCOTT: Please present the juror.

9 MADAME CLERK: The defense?

10 MR. LAKE: Please present this juror.

11 MADAME CLERK: Come around and have a seat in one of
12 these chairs, please, sir.

13 THE COURT: It's your pick.

14 MADAME CLERK: 128, Richard Scheffler. What says the
15 State?

16 MR. SCOTT: Please present the juror.

17 MR. LAKE: Please present the juror.

18 MADAME CLERK: I'm sorry?

19 MR. LAKE: Present him.

20 MADAME CLERK: Come around and have a seat, please.

21 160, Susan Wicker. What says the State?

22 MR. SCOTT: Please present the juror.

23 MADAME CLERK: The Defense?

24 MR. LAKE: Please excuse this juror.

25 MADAME CLERK: You're excused, Ms. Wicker. 51, David

1 Fain. What says the State?

2 MR. SCOTT: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. LAKE: Please present this juror.

5 MADAME CLERK: Come around and have a seat please,

6 sir. 95, John Major. What says the State?

7 MR. SCOTT: Please present the juror.

8 MR. LAKE: Please excuse this juror.

9 MADAME CLERK: You're excused. 142, Glenda Suber.

10 What says the State?

11 MR. SCOTT: Please present the juror.

12 MADAME CLERK: The Defense?

13 MR. LAKE: Please present this juror.

14 MADAME CLERK: Have a seat over here, please. 106,

15 Tim Miller. What says the State?

16 MR. SCOTT: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. LAKE: Please present the juror.

19 MADAME CLERK: Have a seat over here, please. 74,

20 Sandra Hunter-Lewis. What says the State?

21 MR. SCOTT: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. LAKE: Please present this juror.

24 MADAME CLERK: Come around please, ma'am. 144,

25 Michael Thomas. What says the State?

1 MR. SCOTT: Please present the juror.

2 MADAME CLERK: Defense?

3 MR. LAKE: Please present this juror.

4 MADAME CLERK: Come around please, sir. 93, Fabian
5 Lozano. What says the State?

6 MR. SCOTT: Please excuse the juror.

7 MADAME CLERK: You're excused. 35, Richard Crotwell.
8 What says the State?

9 MR. SCOTT: Please present the juror.

10 MADAME CLERK: The Defense?

11 MR. LAKE: Please excuse this juror.

12 MADAME CLERK: You're excused. 66, Elizabeth
13 Hedgepeth. What says the State?

14 MR. SCOTT: Please present the juror.

15 MADAME CLERK: The Defense?

16 MR. LAKE: Please present this juror.

17 MADAME CLERK: Come around please, ma'am. 29,
18 Litronda Coleman. What says the State?

19 MR. SCOTT: Please present the juror.

20 MADAME CLERK: Defense.

21 MR. LAKE: Please present this juror.

22 MADAME CLERK: Come around, please. 72, Ralph Howe.
23 What says the State?

24 MR. SCOTT: Please present the juror.

25 MADAME CLERK: The Defense?

1 MR. LAKE: Please present this juror.

2 MADAME CLERK: Come around please, sir. 43, Nicholas
3 Dudek. What says the State?

4 MR. SCOTT: Please present the juror.

5 MADAME CLERK: Defense.

6 MR. LAKE: Please present this juror.

7 MADAME CLERK: Come around please, sir. 149, Lucille
8 Vance. What says the State?

9 MR. SCOTT: Please present the juror.

10 MADAME CLERK: The Defense?

11 MR. LAKE: Please excuse this juror.

12 MADAME CLERK: You're excused. 62, Bryan Harris.
13 What says the State?

14 MR. SCOTT: Please present the juror.

15 MADAME CLERK: The Defense?

16 MR. LAKE: Please present this juror.

17 MADAME CLERK: Come around please, sir. You want an
18 alternate?

19 THE COURT: Yes, ma'am.

20 MADAME CLERK: 110, Roberta Myers.

21 MR. SCOTT: Is this the alternate?

22 MADAME CLERK: Yes.

23 THE COURT: Yes.

24 MADAME CLERK: What says the State?

25 MR. SCOTT: Please present the alternate.

1 MADAME CLERK: Defense?

2 MR. LAKE: Please present.

3 MADAME CLERK: Come around please, ma'am.

4 THE COURT: All right. Are there any matters of law
5 the Court needs to take up regarding the selection process
6 employed and/or the composition of this jury for the State
7 or the Defense?

8 MR. SCOTT: None from the State, Your Honor.

9 MR. LAKE: None from the Defense, Your Honor.

10 THE COURT: None from Defense?

11 MR. LAKE: None.

12 THE COURT: All right. Good deal. Y'all sit tight.
13 Those not so lucky to be selected, I'm sorry. You do not
14 get to enjoy the candy I provide jurors. Y'all are free
15 to go for the week.

16 MR STUMBO: Do you mind if I address them briefly?

17 THE COURT: Yes.

18 MR. STUMBO: Guys, I just want to thank y'all. As
19 the elected Solicitor, I know y'all didn't get picked on
20 either one of the juries this week but without what y'all
21 do just showing up here, we can't do our jobs as your
22 prosecutor, so thank you. I won't keep you any longer and
23 God bless y'all. Have a good weekend.

24 (Whereupon, the remaining jury panel was excused for
25 the week.)

1 THE COURT: All right, folks. I got another Jury
2 working in the Jury Room which is the waiting room in
3 Family Court. It's right over there. They'll probably be
4 finished here shortly. I don't know, it may take longer.
5 When y'all come back after lunch at 1:30, we're going to
6 try to get started with this trial. What I want you to do
7 is come right to this metal detector. Y'all just walk
8 through and there will be a Bailiff there and they will
9 show you to either go in this room or put you in another
10 room depending on whether or not this Jury Room is empty.
11 Until then, don't begin discussing the case even though
12 you don't know much about it. I'll have y'all back and
13 ready to go about 1:30. See you after while. All right.

14 (Whereupon, a short break was taken.)

15 THE COURT: All right. And, Solicitor, you ready for
16 these pre-trial matters?

17 MR. SCOTT: I think so, yes.

18 THE COURT: Mr. Lake, you ready?

19 MR. LAKE: Yes, Your Honor.

20 THE COURT: All right. These are your matters.

21 MR. LAKE: Thank you, Your Honor. First, the
22 Defendant would ask to move to suppress the search warrant
23 that was issued in this particular case, Your Honor. The
24 basis of that is that it's our contention that the
25 affidavit or basis for the, I guess, probable cause for

1 the search warrant contains essentially what would be
2 false information and that was the basis of it. I think
3 within the body of that affidavit, it basically says or
4 that basically the probable cause is that, that it's upon
5 going to this particular location, they observed a pill
6 bottle in plain view. And based upon that, they get a
7 search warrant and then come back and execute a search
8 warrant. And they allege that they find some additional
9 information in that, Your Honor. We are contesting that
10 when they went to that particular location, there was
11 actually no pill bottle there. But then there are some
12 later pictures that illustrate that. Just for the record,
13 Your Honor, I think I have a number of photographs that
14 I'd like to show the Court prior to, packets of
15 photographs provided to me. Could I get them marked?

16 THE COURT: We want those as the State's, Defense?

17 MR. SCOTT: I can take a look at them.

18 THE COURT: We are just going to mark them Defense 1,
19 2, whatever, however many there are?

20 MR. LAKE: Yes, sir.

21 (Whereupon, Defendant's exhibits 1, 2, 3, 4, 5, 6,
22 and 7 were marked for identification only.)

23 MR. LAKE: Your Honor, I'm going to hand these up to
24 you, but I just kind of wanted to slowly kind of go
25 through them. And I don't know exactly which one is which

1 that I'm referring to.

2 THE COURT: All these are interior rooms of the
3 house?

4 MR. LAKE: Yes, sir.

5 THE COURT: Okay.

6 MR. LAKE: Now, what we have is, again, is the
7 question where they -- the law enforcement is actually
8 responding to a call for a burglary. When they go to the
9 scene, they actually start photographing and kind of
10 responding to it as a burglary. There were a number of
11 photographs that were taken of Mr. Trapp's home. Now,
12 there were photographs that were taken before anything was
13 disturbed or anything on those lines was in the condition
14 that it was in prior to this alleged location of the
15 drugs. They are actually indicating and I'll pass this up
16 to the Court, you have Defendant's exhibit number 1 and 2
17 which show the entranceway into that particular location.
18 And you can see at that particular time it's in the same
19 condition as the burglary, because there are a number of
20 boxes that are located in that particular area. I think,
21 Your Honor, what's important is when you look at pictures
22 number 3, 6 and 7. And also just showing you 4 and 5 also
23 shows additional photographs of that same location. Well,
24 3, 6 and 7, Your Honor, are important. Because they have
25 photographs of this particular dresser as it looked, you

1 know, prior to the search and -- and right at the
2 burglary. And as you look at that photograph, Your Honor,
3 you get a chance to see what's on that particular dresser
4 at that particular time, and there is of course, no pill
5 bottle.

6 (Whereupon, State's exhibit 8, 9 and 10 were marked
7 for identification only.)

8 MR. LAKE: Thank you, Your Honor. And then when you
9 get a little bit closer and they take some additional
10 photographs. And you can tell they've kind of, law
11 enforcement has kind of disturbed the scene again. When
12 you look at photographs 8, 9 and 10, then all of a sudden
13 something new has been added to the photograph. Okay. It
14 is our contention, Your Honor, and with not even
15 addressing, I guess, what would later on be the
16 chain-of-custody issue, we believe just based upon the
17 photographs alone we have shown, I guess, a substantial
18 showing that there was false information that was added
19 into the search warrant. Your Honor, if you look at the
20 search warrant -- and I'll provide you with a copy of
21 that. Your Honor, if you look at the affidavit for the
22 search warrant, the basis of that search warrant,
23 essentially it shows that the scene of the, that once
24 arriving at, the officer stated processing the scene, a
25 bottle containing a quantity of a white rock-like

1 substance believed to be crack cocaine and a razor blade
2 with residue on it was observed in plain view in a bedroom
3 of the residence. I guess, you will hear testimony from
4 Defense and I don't think there is going to be any dispute
5 that we're talking about what would be Mr. Trapp's
6 bedroom. And the basis of that search warrant is this
7 allegation that, of course, this was in plain view. But,
8 Your Honor, we present photographs showing pre-search or
9 pre-whatever you want to do that, there is actually no
10 pill bottle that was located on that dresser. And I'm not
11 sure whether Deputy Spreng, whose going to testify or not,
12 because he's not listed as a witness in this particular
13 case. But as far as the initial report goes, Your Honor,
14 that was done by Sergeant Bouknight at the time. You
15 know, there again, and it's basically, it's hearsay
16 information. The Court basically says that the -- once
17 the pill bottle contained a quantity of white, cookie-like
18 substance believing to be crack cocaine was observed,
19 Spreng called the reporting officer and the reporting
20 officer advised Spreng that the reporting officer would
21 get a search warrant and not to go any further processing.
22 Spreng stopped processing the scene and placed Trapp into,
23 I guess, investigative detention. So I don't know whether
24 Spreng, he didn't touch anything after that of discovery.
25 But we know for a fact, Your Honor, that when the scene is

1 not disturbed and there are boxes all over everywhere and
2 one of the things that Deputy Epps will testify and I hope
3 he testifies at this particular hearing, he testified that
4 one of the reasons why he actually didn't go into Mr.
5 Trapp's room was because of the number of boxes that were
6 actually located in that particular room and everything
7 like that. But if you can see, if you look at those
8 photographs, Your Honor, it's clear that there is no pill
9 bottle on that dresser. And then suddenly, there is a
10 pill bottle on the dresser. So based upon that, Your
11 Honor, we think that we have met the burden of showing
12 some falsity in that particular affidavit. Now it's up
13 to, I guess, the State in this particular case to, I
14 guess, explain the falsity within that particular
15 document. But I think that if we can establish that there
16 is a preliminary showing, we're entitled to a hearing on
17 the issue of whether the Magistrate in this particular
18 case was given what's -- was given substantial information
19 to make a determination of probable cause. So I think
20 we're entitled to a hearing, Your Honor. And if we prove
21 by a preponderance of the evidence that there is a false
22 statement, then we are entitled to have that information
23 suppressed.

24 THE COURT: All right. What you got, Mr. Scott?

25 MR. SCOTT: I guess I could proffer Robert's

1 testimony. He might be able to explain it. My
2 understanding is the, I guess the motion is that there was
3 a false statement in the affidavit. And that, I guess,
4 the pill bottle was actually not on the dresser. Is that
5 what your understanding is?

6 THE COURT: Well, that's what the photographs --
7 well, there's photographs of the dresser without the pill
8 bottle and photographs with it. The timing of the
9 photographs, I have no idea.

10 MR. SCOTT: Right.

11 THE COURT: But that's what Mr. Lake is arguing.

12 MR. SCOTT: All right. Let me call Robert Dennis
13 then.

14 THE COURT: All right. Come around to be sworn, Mr.
15 Dennis.

16 MR. LAKE: Your Honor, at this particular time we
17 would object to Lieutenant Dennis testifying in this
18 particular case.

19 THE COURT: He's Captain Dennis now.

20 MR. LAKE: Captain Dennis. I'm sorry.

21 THE COURT: Captain Dennis.

22 MR. LAKE: Captain. I apologize. To him testifying
23 in this particular case for several reasons. One he
24 wasn't involved in the determination of probable cause.
25 This is the information that was passed on, I assume, from

1 Spreng to Investigator Bouknight and Investigator
2 Bouknight testified as to the Magistrate. Captain Dennis
3 was not a party to that conversation. And I don't think
4 he's allowed to testify to that. Also, Your Honor, we
5 have been provided no discovery that he has in any way,
6 played any kind of role in the obtaining that search
7 warrant at all.

8 THE COURT: All right. Well, what's Captain Dennis'
9 involvement?

10 MR. SCOTT: I'm kind of learning this as we go. I'm
11 going to have to proffer some testimony from him, Judge.

12 THE COURT: All right. Come around and be sworn. I
13 understand your objection.

14 MR. LAKE: Thank you.

15 THE COURT: If he doesn't have sufficient knowledge
16 for proffer, this is an in-camera anyway.

17 ROBERT DENNIS, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q All right. Captain Dennis, October 8, 2011, did you
22 respond to Mr. Trapp's home at ■ Little Ranches Road?

23 A I did.

24 Q And what was the -- why'd you go there?

25 A The first call I received was from Investigator

1 Robert Spreng at the time who was the on-call
2 investigator. One of my job duties and roles during that
3 period of time was I was over the Investigations Unit. I
4 scheduled the on-call investigators. The on-call
5 investigators, once they're called out, they make us aware
6 and notify us that they're responding to whether it's a
7 burglary or whatever the case may be. So he had made us
8 aware of that he was responding to a burglary at ■ Little
9 Ranches Drive. The second call I received was from
10 Investigator Nick Bouknight who had been summoned by
11 Investigator Spreng. And his discovery after being there
12 for a burglary, he had discovered what he thought was some
13 controlled substance. And was asking, you know, what he
14 needed to do from that point. He was advised by Bouknight
15 to hold his position, not letting anyone go back in the
16 residence or anything like that until he could secure a
17 search warrant. I was notified of that as well and that's
18 what prompted me to respond to the scene.

19 Q Okay. So when you went to the scene, did you observe
20 the pill bottle?

21 A Once I got there to the scene, I was pretty much
22 briefed of what was going on. And then was advised
23 through Robert Spreng by, we have digital cameras. So he
24 could actually show you the pictures through the digital
25 process.

1 Q Okay. And where was the pill bottle when you got
2 there?

3 A The pictures I looked at, they were on a dresser that
4 was in the bedroom.

5 Q All right. I'm not talking about pictures. What did
6 you actually observe yourself?

7 A The actual pill bottle was still left on the dresser
8 in Mr. Trapp's room or what was identified as Mr. Trapp's
9 room. And as a matter of fact, they still had him, they
10 were sitting in the front living room.

11 Q And did you get to talk with Mr. Trapp?

12 A I did. I mirandized Mr. Trapp and---

13 MR. LAKE: Objection. I think he's going out the
14 scope of this particular hearing. What we're here to
15 testify to only relates to probable cause for the search
16 warrant.

17 THE COURT: Okay. But, I mean, I think he's still
18 there. I mean, I understand, but let's get it all out
19 there so I can kind of get an understanding of what's
20 going on.

21 MR. SCOTT: Yes, sir. And really the testimony goes
22 to probable cause as well.

23 Q Okay. So you did talk with Mr. Trapp?

24 A I did.

25 Q And what did he say to you?

1 A The first thing I asked him about was the, we were
2 just kind of like talking about the break-in. And then I
3 advised him the reason why I was there for the call of
4 there was alleged drugs there in the room. And during
5 that conversation, Mr. Trapp advised that it would be
6 determined to be crack cocaine. That he basically forgot
7 it was in there. That whenever he notified our dispatch
8 that his home had been broken into, the dispatcher advised
9 him don't touch anything, don't move anything, we have
10 officers responding. So he said he didn't do anything.
11 He waited until law enforcement got there.

12 Q Okay. So you responded to a burglary. He says his
13 home has been broken into and he gives you consent to come
14 inside and investigate. At that point, your agency
15 located this pill bottle. You said he then admitted to
16 you that it was crack. He said that he admitted that he
17 had forgotten it was there?

18 A That is correct.

19 Q All right. Well, let's, I guess, look at these
20 pictures Mr. Lake was talking about. This is Defense
21 exhibit 8. And what are we looking at there?

22 A This is a closeup of a picture of the dresser, the
23 top of the dresser with the pill bottle and a razor blade.
24 Looks like a perfume bottle and some Alka-Seltzer on
25 there, an ashtray on top.

1 Q All right. Is that what you observed when you got
2 there?

3 A This is what I observed when I got there, yes.

4 Q Okay. And then again, I guess---

5 A That's exhibit 8.

6 Q 8, and then 9, is pretty much the same thing with the
7 pill bottle, and you can see it's kind of in front of like
8 the little cable box, whatever that is?

9 A That is correct. In picture 9, the difference
10 between picture 9 and 8 is just, you know, a distant shot
11 as far as number 8 being a close-up. Number 9 being just
12 a little bit further back.

13 Q I think what Mr. Lake is talking about if you look at
14 Defense 6 and 3. You can see the cable box and you can
15 see the T.V. How do you explain why the pill bottle is
16 not in that picture?

17 A The only thing that, you know, we would have to look
18 at the individual pictures on the disc to look at the time
19 that they were taken to see if anything had been removed.
20 I'll be honest with you, we stepped on boxes, we stepped
21 on clothes and different things to move in and around that
22 room.

23 Q And his room had been ransacked?

24 A It had drawers pulled out, shoeboxes thrown all over
25 the place. At one point, I crawled across the bed to get

1 into the room to where the dresser was at.

2 Q Did you put that pill bottle there? Did you put that
3 pill bottle on his dresser?

4 A No sir, I did not.

5 Q That pill bottle was there on the dresser when you
6 arrived?

7 A It was.

8 Q Okay. I mean, is it possible that when these
9 pictures were taken it had already been seized and, I
10 guess, taken into evidence?

11 A That is correct.

12 MR. LAKE: Objection, Your Honor. That calls for
13 speculation. He has no personal knowledge. I think he's
14 testified to that.

15 MR. SCOTT: Judge, I think that's probably as far as
16 establishing probable cause with a search warrant.

17 Q At that point when you see the pill bottle, what do
18 you do, what's your next step?

19 A Well, that information had already been relayed
20 between Officer Spreng to Bouknight as far as what was
21 going on. I pretty much just confirmed with Bouknight who
22 was, had already met with the Judge and was in route back
23 to the scene. And that's whenever I had shared with him
24 the information of what I'd learned through talking with
25 Mr. Trapp.

1 Q Okay. So initial entry is by consent. And then once
2 you found the pill bottle you apply for a search warrant
3 and you list that pill bottle in your affidavit?

4 A That is correct.

5 Q And then do you return to the home with a search
6 warrant?

7 A Well, I never left the home once I got there.

8 Q Oh.

9 A Officer Bouknight is the one that retrieved the
10 warrant and returned with the warrant. I was on the scene
11 the majority of the time until Spreng, not Spreng,
12 Bouknight got there.

13 Q Okay. And then did you search the house further
14 after that?

15 A I was. I actually was the executor on the search
16 warrant and explained that to Mr. Trapp once Bouknight got
17 there.

18 Q Did you seize any additional evidence?

19 A I would have to look at the search warrant just to
20 refresh. I'm sorry. I've got it right here.

21 Q Okay.

22 A Thank you. On the return of the search warrant, we
23 listed pictures taken by Robert Spreng. Two plastic bags
24 with white solid substance found on the floor in bedroom
25 in front of dresser. A pill bottle on dresser with white

1 solid substance. A CD case scale, a spoon and razor blade
2 with residue and a straw.

3 Q Okay.

4 A And those items were seized on October the 9th, 2011
5 around 1:24 a.m., which that's the time we started the
6 search warrant and execution of it.

7 Q Okay.

8 MR. SCOTT: Okay. Judge, I think Captain Dennis has
9 explained that he personally observes the crack on the
10 dresser, that Mr. Trapp admits to it. I think what Mr.
11 Lake has to do, I believe it's Franks v. Delaware. If
12 he's alleging a false statement in the affidavit he's got
13 to, a), show there is a false statement. I contend there
14 is none.

15 MR. LAKE: Your Honor, I haven't had a chance to even
16 question him.

17 THE COURT: Yeah. All right. Let him question him
18 and then we can argue it.

19 MR. SCOTT: Okay.

20 THE COURT: I agree with that. Let me Mr. Lake have
21 an opportunity to cross-examine Captain Dennis.

22 CROSS-EXAMINATION

23 BY MR. LAKE::

24 Q Captain Dennis, you played absolutely no role in
25 providing any information to the Magistrate, did you?

1 A No, I did not. No.

2 Q Did you ever talk to the Magistrate after that night?

3 A Not that night, no.

4 Q And were you present when Investigator Spreng
5 actually took the photographs?

6 A Not at that moment, no.

7 Q So you weren't present when he took the photographs
8 and you played no role in the search warrant itself. And
9 actually, in fact, you arrived at the scene almost the
10 same time that Investigator Bouknight arrived at the scene
11 with the search warrant, correct?

12 A He was probably maybe four or five minutes behind me
13 pulling in.

14 Q He already has the warrant at this particular point,
15 correct?

16 A That is correct.

17 Q And this would have been before you go into the house
18 and before you even see anything that you allege is there,
19 correct?

20 A Ask it again, Mr. Lake.

21 Q Have you had a chance to read Investigator
22 Bouknight's report?

23 A I have.

24 Q And I think in his report he indicates that you got
25 there just right before he did?

1 A That's correct.

2 Q But he doesn't distinguish how many minutes---

3 A No. No.

4 Q ---whether it was at the same time or anything along
5 those lines, correct?

6 A I was there long enough for Investigator Spreng to
7 brief me on what he had as well as phone conversation of
8 Investigator Bouknight explaining to me what Spreng had
9 explained to him. And he was going to get the search
10 warrant which prompted me to come on out.

11 Q Okay.

12 A So once I got there on scene, it was there -- I was
13 there long enough for Investigator Spreng to explain to me
14 what was going on up to the point of going up to your
15 client, Mr. Trapp, and then talking with him before Mr.
16 Bouknight pulled in.

17 Q So it's fair to say that before you actually went in
18 the house and saw what you alleged to be the drugs, I
19 mean, the search warrant is there at this particular
20 point, correct?

21 A Yes, sir. But if you remember, I clarified that --
22 in direct testimony that Investigator Spreng visually
23 showed me what he had taken pictures of prior to my
24 arrival. So that way, he was giving me an indication of
25 what he had seen and what testimony he had given to

1 Investigator Bouknight to be explained to the Magistrate.

2 Q Do you have any personal knowledge as to whether
3 Investigator Spreng actually spoke with the Magistrate in
4 this particular case to give any supplemental type of
5 testimony regarding the affidavit that was given at that
6 time?

7 A I cannot answer that.

8 Q So you don't have any knowledge about that, correct?

9 A No, sir.

10 Q Okay. And the only thing that you know about the
11 search warrant is that the basic premise of the probable
12 cause is solely based upon the container that is alleged
13 to be on the dresser at that particular time?

14 A That is correct.

15 Q And so you were -- when he took these particular
16 photographs, you don't know what -- at what point this
17 was, do you?

18 A No sir, I do not. Give me just a moment, please. On
19 Defendant's exhibit 2, 5, 4 and 1, after being there that
20 is what I visually observed once the search warrant had
21 arrived on scene and after talking with Mr. Trapp. In
22 Defense exhibit 8, 9 and 10 is the bottle, the razor
23 blade, of what I actually saw with my eyes on the dresser
24 before actually going and making any type of contact with
25 the evidence. And then in 7, 3 and 6, without further

1 investigation of these pictures as far as timestamp, I
2 cannot tell you if this was before your claim of the
3 bottle being there or not being there or after it was
4 seized as evidence.

5 Q Well, who would have moved it?

6 A It would have been picked up---

7 Q The question is, do you have personal knowledge as to
8 who moved it, within those photographs and then who moved
9 it before or after in relation to those pictures?

10 A The search warrant would have been issued or executed
11 by me which would have been the documentation of it. And
12 to maintain that chain, Investigator Nick Bouknight would
13 have been the one collecting that bottle of evidence.

14 Q Do you have any personal knowledge as to when anyone
15 moved it at that particular time, whether it's moved
16 before or after or anything on those lines?

17 A I believe my testimony was just---

18 Q Before you give the, expound upon your answer--

19 A -- if you would allow me to answer the first
20 question, then I can elaborate.

21 THE COURT: Now, hang on. Don't talk all over each
22 other.

23 Q Captain Dennis, answer my question first and then
24 you'll get a chance to explain it. The question that I
25 asked you is a yes or no question. I asked you did you

1 have any personal knowledge yourself as to when that
2 bottle was moved and by who it was moved?

3 THE COURT: That's not yes or no. When and who is
4 not yes or no, so when and who.

5 Q Yes or no? I've added two questions, but do you have
6 any personal knowledge?

7 (Whereupon, Defendant's Exhibit 8, 9, and 10 were
8 marked for identification only.)

9 A I will answer that the same way I answered it earlier
10 in the explanation. In Defendant's exhibit 2, 5, 4 and 1,
11 that is what the scene depicts as I entered personally and
12 viewed the room. Defendant's exhibit 8, 9 and 10, that is
13 what I viewed on the Defendant's dresser of his room.
14 Defendant's pictures 6, 3 and 7, without the timestamp of
15 those pictures I cannot give you any time or who or when
16 that evidence was moved until we're able to view that.

17 Q Is there anything up until today that has prevented
18 you from learning that information as to time, who, when,
19 or if these pictures were derived?

20 A There is nothing that has prevented me from doing
21 that other than being able to look at what the disc on
22 where these pictures were given to you under Rule 5.

23 Q And it will be fair to say that Deputy Epps at the
24 time indicated that he couldn't go into the room because,
25 if you look at his report, because of the number of

1 shoeboxes that were on the floor, correct?

2 A I think it would be fair to say that he probably
3 didn't want to make entry into the room due to that.

4 Q And would it be fair to say that in these particular
5 photographs, specifically number 3, that it's the same
6 kind of condition in terms of shoeboxes that are all over
7 the place, correct? That is consistent with what he
8 described in his report?

9 A That is correct.

10 Q And in this particular photograph and Deputy Epps is
11 actually the responding officer, correct?

12 A That's correct.

13 Q And in that particular photograph, do you see a pill
14 bottle on that particular dresser, yes or no?

15 A No.

16 Q And you're not listed on the return in this
17 particular case either, are you? The return for the items
18 that were found on the warrant?

19 A I believe I am. That is my signature on the search
20 warrant executed on October the 9th, 2011 at 1:24 a.m.

21 Q Okay.

22 A That is my handwriting.

23 MR. LAKE: Beg the Court's indulgence.

24 Q In this search warrant that Investigator Bouknight
25 got at the time, in that particular affidavit that was

1 done, it also doesn't mention anything or makes any
2 allegations about any kind of confession or statement or
3 anything along those lines, does it? That's not contained
4 in this affidavit, is it?

5 A No, sir.

6 Q And did you ever provide any type of report at all in
7 this particular case?

8 A Investigator Bouknight who was the lead documented in
9 his report which is listed as case number 11-9364 of
10 supplemental report, Lieutenant Dennis did read Trapp his
11 Miranda warnings after deputies found the substance.
12 Trapp did tell Bouknight and Dennis that he had forgot the
13 crack was in the bedroom and just didn't think about it
14 once he seen his house had been broken into. Trapp said
15 the dispatcher and his friend told him, don't touch
16 anything before law enforcement get there.

17 Q Did you actually -- I guess would the answer be no,
18 that you did not provide a report yourself. That's the
19 question I was asking you.

20 A No, I did not.

21 Q And so there is no report of this alleged statement
22 that you assert that my client made, other than what
23 you're saying Investigator Bouknight alleged in his
24 report?

25 A What he has reported, and I do not dispute what he

1 just typed and what I just read.

2 Q Is there anything that prevented you from doing any
3 type of supplemental report?

4 A No.

5 Q Have you given any statements to any law enforcement
6 officers about your role that particular night other than
7 what you've testified to today? Did you provide any type
8 of statements or anything along those lines?

9 A No, sir.

10 Q And just so I can be clear, a lot of this information
11 that you have gotten about what happened that particular
12 night, it's either based upon what either Investigator
13 Spreng provided to you and gave you or what Investigator
14 Bouknight told you?

15 A And Mr. Trapp, yes.

16 MR. LAKE: No further questions, Your Honor, at this
17 particular time.

18 THE COURT: Okay. You can step down.

19 MR. LAKE: Your Honor, this is a lot to argue with.
20 I renew my argument that Captain Dennis is not qualified
21 to testify on the issue of the affidavit. You know, he is
22 basically testifying that he really had no personal
23 knowledge. The affidavit has been provided or done based
24 upon information that Investigator Spreng provided to
25 Investigator Bouknight. I think we made a prima facie

1 case that those photographs, you know, as described by the
2 conditions of Deputy Epps, that there was boxes all over
3 everywhere. And we didn't show all of the photographs,
4 that showed later on that the area had been cleared out
5 and moved. And if you watch those photographs, that some
6 of the items had been moved. But you clearly see that
7 there is no photographs. I think we've met our burden in
8 terms of showing that. It's the State's burden at this
9 particular point to have a qualified witness that can
10 testify essentially that the Magistrate's basis for
11 probable cause was done on substantial evidence. I don't
12 think that they can do that, because of none of the
13 witnesses are here will be able to testify.

14 THE COURT: Correct me if I'm wrong, did Captain
15 Dennis not testify he arrived on the scene, was briefed,
16 went inside and spoke with Trapp and observed the pill
17 bottle himself on the dresser. Did he not say that?

18 MR. LAKE: No, Your Honor, the issue is the search
19 warrant.

20 THE COURT: No, I'm going to forget the search
21 warrant for a second. You may be right on the search
22 warrant. But if he walked in, spoke with Trapp and saw
23 the pill bottle, there's no need for a search warrant, is
24 it?

25 MR. LAKE: No, Your Honor, the search warrant is

1 actually based upon the probable cause that was alleged by
2 this pill bottle as being there.

3 THE COURT: What I'm saying, let's suppose there was
4 no search warrant. If Trapp calls the police, the County
5 goes out there, road deputy, then Spreng and then Dennis
6 and then Bouknight. And all of them see the pill bottle,
7 that's all that's picked up and they talk to him. There's
8 no need for a search warrant. Now, the scale, the straw
9 and all that stuff that I haven't heard a whole lot about,
10 that may be suppressible because that was gathered in the
11 search warrant. But why is the search warrant an issue
12 with the pill bottle if this police officer saw it with
13 his own eyes?

14 MR. LAKE: Well, your Honor, how did it get there.
15 And we are really talking about speculation, conjecture.

16 THE COURT: But he said he saw it.

17 MR. LAKE: No, we're not arguing that there is not a
18 photograph of the pill bottle being there.

19 THE COURT: I'm not talking about a pill bottle. I'm
20 talking about his testimony when he got there. When he
21 got there, he walked in and spoke to this guy in the front
22 room, walked in the bedroom and he saw it.

23 MR. LAKE: The problem is, Your Honor, you have
24 photographs that contradict what he has listed as the --
25 the testimony or basically their case is on. They're

1 basically saying we get there, I know what you're trying
2 to say, because it's in plain view they can discover the
3 pill bottle and things of that sort. But that's also the
4 basis of their search warrant. Our contention is that
5 that bottle was never there. I mean, that's what our
6 whole bone of contention is in this particular case.

7 THE COURT: But this officer saw it. Did I
8 misunderstand him, I mean I may have. I thought he said,
9 I walked in the house, spoke with the accused and walked
10 in the back bedroom, it was cluttered up and I saw the
11 pill bottle sitting there. I thought he said that. How
12 are you, how do you get around him?

13 MR. LAKE: Your Honor, the question would be, I
14 understand your question. But I think we're looking at it
15 from a different viewpoint. I think the sole issue is, of
16 course, they've got to show possession, they've got to
17 show knowledge in this particular case.

18 THE COURT: And do you not do that, too?

19 MR. LAKE: He didn't show possession. He showed that
20 he found a bottle but that necessarily hadn't got to the
21 particular point where it could be attributed to Mr. Trapp
22 in this particular case.

23 THE COURT: Maybe I misunderstood what he said. But
24 I thought he said I talked to Mr. Trapp and Mr. Trapp told
25 me that you going to find crack back there. Did he not

1 say that too?

2 MR. LAKE: Your Honor, that's not what I understood
3 the testimony to be. That's not consistent with what the
4 report said they kind of written. The problem is in this
5 particular case, Your Honor, in terms of trying to go
6 forward with this search warrant and the issue of
7 suppression, you're really talking about trying to get a
8 lot of hearsay information in.

9 THE COURT: All right. I understand there's two
10 officers that aren't here. One of them can't come. That
11 they were out there, but this guy has firsthand I, I
12 viewed this, I talked to the accused, I saw this. Whether
13 there is a picture or not, he can testify to all that,
14 can't he?

15 MR. LAKE: Your Honor, he has to be lawfully there.
16 I mean, at this particular point, I mean, the---

17 THE COURT: The police were called for a burglary and
18 he's not lawfully there? I'm baffled. I mean, you know,
19 if they just knocked on the door to see what's going on
20 and busted in there yeah, I'm with you, but they were
21 called out there.

22 MR. LAKE: I understand, but you're looking at it
23 through a, I think the vacuum of saying, okay, throw all
24 of there other issues out in terms of how they come to be
25 out there. I can only look at the issues of what

1 precipitated the search, the recovery, the search warrant
2 and things of that sort.

3 THE COURT: Spreng's out there lawfully, because he
4 was called to investigate another crime. He sees
5 something that causes him concern, calls Bouknight who
6 calls Dennis. A search warrant is in progress. Let's
7 suppose they couldn't find a Magistrate and there was
8 never a search warrant issued and all facts are the same,
9 Dennis goes out there, Mr. Trapp, what's going on? Y'all
10 going to find some crack back there. And sure enough,
11 Dennis walks back and looks, there it is. Why is that
12 search warrant relevant to those facts? I understand the
13 search warrant comes in and the pictures are
14 contradictory. But how do you get around Dennis'
15 firsthand knowledge of those facts just as I laid them
16 out?

17 MR. LAKE: Your Honor, but I think that, but the
18 Court is supposing that this conversation occurred with
19 Mr. Trapp before he actually goes into the location and
20 gets this particular information. You know, if the Court,
21 Mr. Trapp doesn't have to testify in this particular case.
22 But when there is variances in terms of where things
23 started off to where they would eventually become and how
24 things kind of transpired. But the contact with, Captain
25 Dennis testified, I guess, it was initially Mr. Trapp was

1 outside. That's where he encounters Mr. Dennis. He said
2 that, you know, and from there they go in there and
3 particularly locate this, these alleged to be drugs and
4 things of that sort. Any conversations and my client,
5 like you say, he didn't have any conversations with
6 Captain Dennis or with Lieutenant Dennis at that
7 particular time. The only conversation that he had was
8 with the Investigator Bouknight at that particular time.
9 And he testified that's going to be his only -- you know,
10 that would be his testimony. He had no communications. I
11 know Captain Dennis has, you know, testified, but we have
12 no report. That's the problem. What you are relying
13 upon, Your Honor, is a hearsay -- you're relying upon a
14 hearsay statement by Investigator Bouknight that
15 Investigator Dennis read him his Miranda and that
16 Investigator Dennis got this information before going in
17 there.

18 THE COURT: It's not hearsay when he comes in and
19 says it.

20 MR. LAKE: His testimony is actually based upon would
21 be hearsay. I mean, because he said, well, this is what
22 it said in the report. I'm his supervisor. I review the
23 things. I'm the person that decides who goes out there
24 and makes these decisions. But it's not his case
25 individually.

1 THE COURT: All right. I mean, here's where you're
2 losing me, I guess, is Dennis going out there not knowing
3 that the police officer was going to be unavailable later
4 on. So you got at least three police officers out there
5 and he has firsthand knowledge of the condition of the
6 house and can describe it. It was ransacked. It looked
7 like it'd been burglarized. There's boxes everywhere. He
8 went in that house himself. Bouknight may have told him
9 oh, the house is a mess. Well, that doesn't matter. He
10 has firsthand knowledge of walking in the house and
11 looking at it and describes the condition. If he saw the
12 pill bottle there, why is that not just as good as any
13 testimony you can get? Suppose you suppress the pictures,
14 can he come and testify just to that? And suppose I grant
15 you that your pictures don't come in, can't he testify to
16 that?

17 MR. LAKE: Well, Your Honor, then I think you have an
18 issue of scope and lawfulness of being there. And I know
19 it sounds like I'm parceling and things that I'm trying to
20 dance around. I'm really not. I can only deal -- address
21 the issue of what actually happened that particular night
22 in terms of what law enforcement was deciding based upon
23 their, the records that were provided to me. But our
24 understanding, you know, is that it's seen, you know, it's
25 alleged to be seen in plain view.

1 THE COURT: And he testified consistent with the
2 testimony that Bouknight provided to the Magistrate,
3 didn't he, or did he or did he not? I mean, I may be
4 wrong.

5 MR. LAKE: Well, the question -- I mean, Your Honor,
6 I would say there's a different question that needs to be
7 asked. And you're talking about what Captain Dennis saw
8 after that particular, you know, once he got to the scene.
9 We're referring to the issue of what occurred before he
10 got to the scene. Now, I wasn't there. I don't know what
11 he saw. I can only deal with the issues of as the scene
12 is described.

13 THE COURT: Now, here's where you're losing me is,
14 you're working on the assumption that your exhibits, 1
15 through 7, were taken beforehand. And 8, 9 and 10 were
16 taken after hand. How do you know that?

17 MR. LAKE: Your Honor, I inquired as to that fact
18 from the Solicitor's Office. And they told me, yes, they
19 were taken in order. They have the burden of proof, Your
20 Honor. I asked Captain Dennis on the record, is there
21 anything that prevented you from getting that information?
22 I mean there is nothing that prevents them from bringing
23 that camera in here and going straight through it to
24 figure out what the progression of those photographs are.
25 There was nothing that prevented them from doing that, not

1 one single thing. I asked the Solicitor's Office. I sent
2 them that in an email. I asked him that on the stand and
3 he said, no, there was nothing. Well, today, Your Honor,
4 we're here for trial. I mean, I think the ship has
5 passed.

6 THE COURT: I know but you've chosen the order of the
7 pictures.

8 MR. LAKE: No, Your Honor, they just gave me the
9 pictures. I mean, they just gave me the pictures. I was
10 just able to print them last night.

11 THE COURT: I mean, I'm with you on that. I
12 understand that.

13 MR. SCOTT: Your Honor, that's not true. That's not
14 true.

15 THE COURT: Captain Dennis doesn't even need the
16 pictures to testify to what he testified to just now.
17 From what I can tell, he went out there, he spoke, he went
18 in the house, he can describe the house without the
19 benefit of a picture. The pictures help, certainly,
20 showing the condition of the house. But if he has
21 firsthand knowledge of being called out there, dispatched
22 by county control, an investigator that he supervises
23 called and he asked for his assistance and makes the
24 decision to go out there. And he goes on the scene and he
25 observed everything, it seems to me that the State would

1 be prevented from just calling him as a witness of what'd
2 you see, when'd you get there, what'd you do next. All
3 the pictures don't have to come in.

4 MR. LAKE: No, Your Honor, I mean the fact of the
5 matter is, I mean, the Defendant would want some of the
6 photographs to come in. The issue that, I mean, I think
7 that the Court is looking at a different issue from what
8 our argument is to the Court. Our argument to the Court
9 regarding this particular matter was that because we have
10 shown a prima facie, you know, evidence that it appeared
11 that the affidavit was false at that particular time,
12 because he hadn't gotten there at that particular time.

13 THE COURT: How is it false? If he saw stuff like it
14 looked---

15 MR. LAKE: Well, Investigator -- neither Investigator
16 Bouknight, neither was Investigator or Captain Dennis
17 there at the time, because he doesn't know when the
18 photographs were taken.

19 THE COURT: What difference do the photographs make?
20 I mean, you're making a big difference. Here's where
21 you're losing me. And I have got to address the Jury so
22 I'm going to stop arguing with you.

23 MR. LAKE: Okay.

24 THE COURT: Here's what Dennis said, I got on the
25 scene after receiving a call from one of the people I

1 supervise. When I got out there, Mr. Trapp was on the
2 scene somewhere. Went in the house, the house was a
3 wreck, and I saw the pill bottle on the dresser. Sometime
4 after that, it was removed and he's not sure when. What
5 difference does it make what the pictures look like if he
6 can testify to those facts and didn't he just testify to
7 that?

8 MR. LAKE: But, Your Honor, you made the assumption
9 like I said, I didn't introduce all of the photographs
10 when they started going through here. You're making the
11 assumption that the pill bottle was moved after he was
12 there, but he didn't testify to that. He has no clue when
13 those photographs were taken. He has no clue where.

14 THE COURT: But he has a clue when he walked in and
15 saw the pill bottle sitting on the dresser.

16 MR. LAKE: I understand.

17 THE COURT: He has firsthand knowledge of that. So,
18 doesn't that just end it?

19 MR. LAKE: Well, Your Honor, I disagree with it in
20 terms of the argument that is in this particular case. He
21 is there based upon a search warrant. That is why he is
22 there.

23 THE COURT: No, he's not. No, he's not. He went out
24 there to assist the investigators on the burglary. He
25 just happened to be there and see the house ransacked and

1 the pill bottle and he's qualified to testify to what he
2 saw. He didn't go out there for the search warrant. Now,
3 he could have gone out there and done the exact same thing
4 Bouknight did and driven to see the Magistrate and got the
5 exact same thing. But it seems to me that the search
6 warrant was sought to see what else they'd find in
7 addition to the pill bottle. The pill bottle was a given.
8 It was what else is there. That's why they had to go get
9 the search warrant.

10 MR. LAKE: And, Your Honor, I mean, but that's why
11 we're making the suppression. Because we're saying
12 essentially he's not qualified to testify to that
13 particular fact as it relates to the probable cause.

14 THE COURT: All right. I need to stop. I'm not
15 saying I'm ruling yet. I need to deal with the other
16 Jury.

17 MR. LAKE: Thank you, Your Honor.

18 THE COURT: I've got a question from the other Jury
19 and I'd like to send an answer to them, okay?

20 MR. LAKE: Yes, sir.

21 (Whereupon, the Court answers a question for the
22 prior trial for the Jury.)

23 THE COURT: All right. Mr. Scott, I want to hear
24 from you, and then I'm going to come back to Mr. Lake
25 before I issue a ruling. What is your position? I've

1 been sitting here really enjoying my discussion with Mr.
2 Lake.

3 MR. SCOTT: And, all right, let me see if I can cover
4 it as much as I can. Judge, some of that conversation, it
5 would be my argument that the assumption there is that the
6 pictures with the pill bottle in them were taken after the
7 pictures that don't show the pill bottle there. Why don't
8 we just for the sake of argument, I'm going to play
9 devil's advocate and say Mr. Lake is correct. Well, why
10 does that matter? Why does that matter as far as probable
11 cause? It's in the house. Robert Dennis goes and sees it
12 in the house. Toaby Trapp, according to his testimony,
13 admits to it to some degree. They ask him, what is this
14 pill bottle. And he says, well, you're going to -- it's
15 going to be crack. I forgot it was there. I get these
16 cases all the time where they take a bunch of evidence
17 from the house and put it on the bed and then take a
18 picture of it right there. I don't understand how that
19 affects probable cause. They find the crack in the house.
20 Mr. Trapp to some degree admits to it, takes ownership of
21 it, claims that that's his bedroom. That's what the
22 search warrant was based on. That being the probable
23 cause, I can't really wrap my brain around Mr. Lake's
24 argument. I guess the insinuation is that law enforcement
25 planted it there. I don't know. He can argue that to the

1 Jury, I think, but as far as probable cause if he's
2 arguing that there's a false statement, I think he has to
3 make, he has to find three things and that being that
4 there was a false statement made in the affidavit and that
5 the officer made it recklessly or intentionally. And then
6 third, that it was material to the finding of probable
7 cause. Obviously, the pill bottle was material to
8 probable cause. But the argument is that the, it's not a
9 false statement. And so I can't, I hope I've addressed
10 what his argument was, but that's essentially it. Robert
11 Dennis gets on the scene and personally observes it,
12 personally hears Mr. Trapp. He tells me it's a one-on-one
13 conversation between he and Mr. Trapp as far as yeah, it's
14 going to test positive for crack and I forgot it was
15 there. So I think, Your Honor, it's a pretty clear-cut
16 case of probable cause being present for the search
17 warrant.

18 THE COURT: Okay. Let me hear from Mr. Lake again.

19 MR. LAKE: Thank you, Your Honor. And I'll just
20 point to and I'll provide the case, the case of State v.
21 Lorenzo Jones. It's cited at 500 S.E.2d 499 where it
22 basically says the only thing, that once a Defendant makes
23 a substantial preliminary showing that a false statement
24 knowingly and intentionally or with reckless disregard for
25 the truth is included, why they didn't have it in the

1 warrant affidavit. It is necessary to a finding of
2 probable cause that a hearing is required at the
3 Defendant's request. I mean, that's my only essential
4 allegation is that because there is an issue as to when
5 those photographs, you know, were taken and when those --
6 the photographs depict that at the time that he first got
7 there. Because right now we don't know when, what Spreng
8 did because he hadn't testified. All we're hearing is
9 hearsay testimony. Speculative type testimony as to when
10 Spreng took the photographs, whether he took them before,
11 after. Well, that's the sole purpose of these kind of
12 hearings, Your Honor, that we can't decide evidence based
13 upon conjecture or speculation as to whether this was
14 taken before or whether it's taken after, during or
15 anything along those lines. What we're saying is that
16 because there is some photographs that show that in
17 certain photographs where the scene is still kind of
18 disruptive. And we don't see the pictures, I mean see the
19 container and then in other pictures we do see the
20 pictures, I mean do see the container. The only thing
21 we're saying is that we are entitled to a hearing
22 regarding the probable cause regarding the other items
23 that were found. Because they are alleging that they
24 found additional items subsequent to the search warrant.

25 THE COURT: All right. I tend to agree with that

1 argument. But here's what I disagree, is that Captain
2 Dennis can testify what he saw when he walked in the
3 house. He can also utilize one of those photographs or
4 any of those photographs and answer the question, do these
5 photographs actually depict what you saw there in your
6 presence. Affirmatively or negatively, he can testify to
7 that. If the pictures come in, if he can make that
8 statement, then the pictures could come in. But of his
9 own testimony, sworn testimony in this hearing which
10 you've got, he can testify to what he saw that night on
11 the scene, a conversation with your client if he had any,
12 and what that room looked like without regard to the
13 pictures. Now, my guess is that there's something else in
14 the search warrant you may want suppressed and that may be
15 another argument. But Detective Dennis can testify
16 without regard to the search warrant to what he saw when
17 he got there that night and do these pictures accurately
18 depict what he saw that night. I think that comes in. So
19 whether something is suppressed on the search warrant
20 other than that, but his testimony is consistent -- and
21 it's just by happenstance that he didn't go get the search
22 warrant, that Detective Bouknight did. But it seems to me
23 they would be interchangeable affiants in front of the
24 Magistrate. Either one of them could have gone and said
25 the same thing as to what they saw. It just happened to

1 be Detective Bouknight went. So without the benefit of
2 the search warrant, Detective Dennis could have seized
3 that pill bottle any way, in my opinion. I mean, he had
4 firsthand knowledge. He wasn't -- it wasn't hearsay. He
5 walked in and there it is. I mean, in fact, he was
6 briefed on it ahead of time.

7 MR. LAKE: Is it my understanding that the Court will
8 then allow Captain Dennis to testify insofar as the
9 probable cause for the search warrant. Because I mean
10 that's ultimately what the issue and that I'm referring to
11 is, that I'm suppressing, I made a motion to suppress the
12 search warrant based upon, you know, again the lack of
13 probable cause at that particular time. Because I can
14 only deal with the issue that that's what the additional
15 searches were based on.

16 THE COURT: All right. Well, what else is
17 inconsistent about what Captain Dennis has said if he were
18 the affiant on the search warrant? What is inconsistent
19 with Detective Bouknight's representation to the
20 Magistrate Halfacre?

21 MR. LAKE: I would argue if Spreng had direct
22 communications with Captain Dennis and Captain Dennis
23 talked to Halfacre, then this issue -- this is a moot
24 point and things of that sort. Because he's within the
25 loop of that conversation and then probable cause to the

1 Magistrate can be based upon hearsay type of testimony.
2 But we're talking about things of which he had no
3 knowledge of the conversation between Spreng and
4 Investigator Bouknight as to what he found, when he found,
5 the condition or anything along those lines. And
6 Investigator Bouknight, based upon whatever Spreng has
7 told him goes to Judge Halfacre and gets a warrant which
8 only alleges that the allegation is based upon the pill
9 bottle. Okay. Because they're not making -- they're not
10 saying it's based upon any kind of -- any other evidence.
11 They're just basically saying this item was found in plain
12 view so that is the basis of their probable cause. They
13 chose not to search or anything along those lines. They
14 didn't even arrest him that night. So we're not even
15 talking about searches to arrest.

16 THE COURT: Tell me why the search warrant is
17 necessary for Detective Bouknight or Detective Dennis to
18 seize that pill bottle other than the additional evidence
19 they may have been looking for.

20 MR. LAKE: Your Honor, we're talking about the
21 additional evidence. That's what I'm specifically
22 referring to, additional evidence that they were looking
23 for.

24 THE COURT: What is it? I mean, what are you trying
25 to, what are you trying to suppress. Because I am kind of

1 confused.

2 MR. LAKE: Well, Your Honor, they're alleging
3 essentially that based upon the search warrant they find
4 some additional drugs that were right there in front of
5 the dresser but on the floor.

6 THE COURT: See, that's where I been missing. I been
7 wondering what the hell you care about that pill bottle.

8 MR. LAKE: And sometimes, Your Honor, I mean that's
9 what the essential allegation is that there is some
10 additional drugs that are found. One right there, I think
11 one directly in front of, I think they're basically both
12 of them were directly in front of this dresser but on the
13 floor. And my argument again was just the fact that
14 because we're -- we made at least a prima facie showing of
15 a little preliminary investigation that says, hey, those
16 photographs, one depicts one thing and the other depicts
17 something else.

18 THE COURT: I disagree with you on that. Detective
19 Dennis gives consistent testimony firsthand of the exact
20 representation made to Magistrate Halfacre. It looks spot
21 on to me. What is the difference.

22 MR. LAKE: Well, he -- he never had a conversation
23 with Halfacre.

24 THE COURT: Well, so what? I mean, but all I'm
25 saying is, so what?

1 MR. LAKE: Well, that's the basis of the probable
2 cause is what the -- the sworn affidavit that you provide
3 to the Magistrates. Without that sworn affidavit, then
4 you lack the probable cause--

5 THE COURT: All right. Well, where's the falsity in
6 the affidavit if his testimony is consistent with it,
7 because he says identical information.

8 MR. LAKE: But what I'm saying is that he's -- he
9 would be essentially testifying based upon limited
10 information. Because he's testifying I have no clue when
11 these photographs were taken, one, whether the item had
12 been moved before or after.

13 THE COURT: All right. That's where you are losing
14 me. Why is it necessary, these photographs keep coming
15 in. If he went in that house and saw the condition of the
16 house, the pill bottle sitting there, spoke with the
17 Defendant, there to investigate a burglary, what's false
18 about that? That's all true according to the State's
19 version right now based upon the sworn testimony of
20 Detective Dennis. He was called out to investigate a
21 burglary. Went in, spoke to the victim, now the
22 Defendant. Observed the house in terrible disarray and
23 observed a pill bottle sitting there. What is in that
24 affidavit that Detective Bouknight told Magistrate
25 Halfacre that would be different than what Detective

1 Dennis says he saw firsthand right there himself?

2 MR. LAKE: Well, Your Honor, when you look at the
3 totality.

4 THE COURT: Okay. Well, tell me what's different?

5 MR. LAKE: Okay. When you look at the totality of
6 it, I'm looking more from the standpoint of what would be
7 their testimony essentially as to the condition of the
8 location when they first got there. When they first got
9 there, the condition of the location, there were boxes
10 everywhere. And they take photographs of -- you saw some
11 of the photographs is just when he has just entered into
12 the room to take photographs of what the burglary is.

13 THE COURT: You keep working on that, the photographs
14 look identical to me, just different vantage points. The
15 only different thing, the pill bottle missing from some of
16 the photographs. I don't have any idea what timing is on
17 how the pictures were taken and I don't really see that it
18 makes a difference.

19 MR. LAKE: It would make a difference if those
20 photographs that were taken earlier in the process, you
21 know, if you got a photograph that is taken earlier and if
22 you took a picture of that same area and something is not
23 there. And then in later photographs somewhere down the
24 road that's taken subsequent, all of the sudden you see
25 that item there. Then there has to be some explanation as

1 to how that item got there.

2 THE COURT: You see, you keep putting that order and
3 I disagree with that.

4 MR. LAKE: But, Your Honor, they have never shown any
5 other order. They have never, they have had the
6 opportunity to come in here and say no, Judge, this is how
7 it happened. These are the sequence of photographs. This
8 is when the events occurred. This is how the photographs
9 were taken.

10 THE COURT: But see, the photographs weren't part of
11 the representation made to the Magistrate. You're
12 bringing them into the Magistrate and Magistrate Halfacre
13 was not provided photographs.

14 MR. LAKE: He wasn't, he would not have been provided
15 with the photographs. But what, well see, Your Honor,
16 again, we don't know what he told Investigator, what
17 Investigator Bouknight told Judge Halfacre.

18 THE COURT: What he told him is in his sworn
19 statement, isn't it?

20 MR. LAKE: I would assume that he -- they get
21 information that he responded to a burglary. And he
22 testifies to that on his affidavit that there was a
23 burglary, that they responded to. But the question
24 becomes then is, are these photographs that Investigator
25 Spreng, that he took, did they predate the warrant, did

1 they come after the warrant?

2 THE COURT: That doesn't show falsity. I understand
3 your argument, I am going to deny it. I am not going to
4 suppress that search warrant because it's consistent with
5 sworn testimony that Detective Dennis has given, that the
6 Magistrate did not rely on the photographs, he relied on
7 the affidavit that Bouknight provided them. Detective
8 Dennis then participated in the execution of the search
9 warrant. He was present the entire time. And I think
10 that just completes the loop as the fairness of the
11 probable cause required to get a search warrant. That's
12 just what I see. I understand your argument but that's
13 just what I see.

14 MR. LAKE: And I just kind of state my objection for
15 the record.

16 THE COURT: Okay.

17 MR. LAKE: I also do have a motion to suppress based
18 upon lack of chain.

19 THE COURT: All right, Mr. Scott, what you got on
20 that?

21 MR. SCOTT: Well, I'm going to produce, we've got
22 Robert. I've got Ben Chapman who's the Evidence
23 Custodian. Within the chain would be Patricia Crooks,
24 let's see, Selena Kinard would have been the intake person
25 at SLED. She's no longer with SLED. I think she's moved

1 out-of-state. Patrician Crooks would be another internal
2 SLED chain witness and she's retired. Ultimately, or the
3 next person in that chain would be Lynn and she's going to
4 be here to testify. I believe it's State v. Hatcher case
5 has relaxed some of the---

6 THE COURT: I thought it was Valentine or something
7 like Hart. It had something to do with Hart. What is it?

8 MR. SCOTT: Hatcher is the one I'll, that may be some
9 of its progeny, prodigy? But Hatcher was the first one
10 that I'm aware of.

11 THE COURT: All right. And I'll look at that case
12 first before we try to seek, I want to study that. I am
13 hungry, I want to get something to eat. Is that your last
14 motion, is the chain?

15 MR. LAKE: There was a few other things but we can go
16 ahead.

17 THE COURT: That's all right. You get to argue.

18 MR. SCOTT: But just as far as practical that the
19 chain can be established as long as you -- I mean, you can
20 even have missing links. But as long as you can
21 establish.

22 THE COURT: I thought there was some argument or---

23 MR. LAKE: You can't have a missing link.

24 THE COURT: ---suggestion that the gaps could be
25 filled in if reasonably can or something along, language

1 along those lines.

2 MR. SCOTT: Yeah, but that's the one right there that
3 I would offer for my proposition.

4 THE COURT: All right. The court reporter needs a
5 break as bad as I do. We'll stand at ease.

6 (Whereupon, a lunch break was taken.)

7 THE COURT: All right, who are the chain witnesses or
8 some of them were, piece it together for me. What have we
9 got and what are we missing?

10 MR. SCOTT: We got Robert seizing the dope. And it
11 would have been Ben Chapman as the Evidence Custodian. It
12 would have been checked in there.

13 CAPTAIN DENNIS: It would be myself, Nick Bouknight.
14 At the time, it would have been Jerry Wright who's
15 retired. Now, Ben Chapman, and then whoever you got at
16 SLED.

17 MR. SCOTT: Okay. And so then at SLED it would have
18 been, it would have been checked in with Selena Kinard?

19 CAPTAIN DENNIS: Yes.

20 MR. SCOTT: Patricia Crooks, so here's who we're
21 missing. Obviously Nick, Mr. Wright, who substitutes, as
22 the new Evidence Custodian, Ben Chapman in his place.
23 Selena Kinard has moved out of state. She is the intake
24 person at SLED and Patricia Crooks is retired. Again,
25 these are just internal chain people, Patricia Crooks and

1 Selena Kinard and ultimately, Lynn Blackmon will illicit
2 testimony from her that it comes to her in one of the Best
3 Kits. And it's sealed and she'll be able to establish a
4 chain of all of the people who came before her. Of
5 course, we'll have Robert testifying, and then we call Ben
6 if we need to. I think to me the important people in this
7 is the ones who seize it and then, ultimately, the one who
8 tests it. And I think my understanding of the Patrick
9 case, I think those internal chain people, as long as we
10 can establish the links in the chain, their absence is not
11 necessary or their presence is not necessary.

12 THE COURT: All right, Mr. Lake.

13 MR. LAKE: Oh, thank you, Your Honor. Again, we
14 would move to suppress the chain-of-custody. I don't
15 believe they can make sufficient, the chain-of-custody.
16 And I'll kind of work my way back from what would be, I
17 guess, the beginning of when these drugs are actually
18 taken into possession till eventually when they are, I
19 guess, turned in at some point. You know, again, I'll
20 start back with the fact that the photograph shows that
21 the drugs have been moved, at least some of the drugs have
22 been moved. Now, who moved them, when they moved, they
23 don't have anybody that could testify to that. And so
24 it's really -- we really just got to speculate and
25 conjecture as to what happened during that timeframe until

1 Investigator Bouknight took control of the item. And then
2 eventually turned it over to what would be Captain Dennis.
3 Your Honor, I'll point out a few things that I think is
4 critical in determining that this item is, that were put
5 into the investigation should be suppressed. If you look
6 at the return, Your Honor, and I'm not sure whether you
7 have a copy of it in front of you.

8 THE COURT: I did, but I don't have it in front of me
9 now.

10 MR. LAKE: I'm sorry. I actually have it on my desk.
11 I apologize for that.

12 THE COURT: All right. I knew it was up here,
13 because I thought I had handed it back to somebody else.

14 MR. LAKE: Now, if you look at the items that were
15 seized by Investigator Bouknight, you know, it points out
16 that only two people participated in that search,
17 Investigator Spreng and Bouknight. And there were two
18 plastic bags and a white solid substance found on the
19 floor. There was a pill bottle on a dresser with a white
20 solid substance on there. There's a CD case with a scale
21 and there is a spoon and a razor blade with residue and
22 there was a straw. I think that's important because, Your
23 Honor, when you go look at it, the only thing that I've
24 been given in terms of the evidence log, and I provided a
25 copy of it to the Court. And when I got a copy of the

1 evidence log, it was things that were submitted to, I
2 guess, the Evidence Custodian who is not identified on the
3 only form that I have. They only indicate that
4 Investigator Bouknight had it. They indicate now there's
5 two razor blades. And now all of the sudden, the straw is
6 actually missing. Now, I'll hold this up to the Court.
7 If you look at the, what was taken from the beginning, you
8 go from one razor blade till now, all of the sudden,
9 there's two razor blades that were somehow taken into
10 custody in this particular case and those are the only
11 things that are kind of ID'd. And, Your Honor, when you
12 go to -- on October the 21st what would be the information
13 that was submitted to SLED, neither of the razors were
14 submitted even though they are indicated they're in -- in
15 the Best Evidence case. They're not in there, because
16 they're not tested. I don't think she's going to be able
17 to testify that there are razor blades in there. There is
18 no evidence that the straw made it, because it didn't --
19 somehow it didn't make it into evidence. Didn't make it
20 to be tested. And, Your Honor, the thing that's a little
21 bit more troubling, is if you look at the Form B, Rule 6
22 form that was signed, all of the sudden, there is a new
23 item that's on this item. Apparently, there is a quantity
24 of a white residue that is actually, was submitted. But
25 if you look on that return, Your Honor, there is nothing

1 that indicates that there is some separate residue that is
2 actually found. What you have is they say residue on the
3 scale and when we look at the analysis, then the analysis
4 will discuss that on the alleged scale, which would be
5 item 1.4. There is a powder type substance which is
6 already tested. And then you'll also find there is,
7 again, another substance that has been submitted to them
8 with no idea as to where this substance came from. And so
9 we know that at some point the razors have disappeared,
10 the straw has disappeared. If all of these items are
11 placed in the Best Evidence Bag and now all of the sudden,
12 we've got a new item that has been introduced. We don't
13 know the condition that it was in when it was --
14 throughout this entire time, the condition in which
15 Investigator Bouknight received it from Captain Dennis,
16 the condition in which Investigator Bouknight turned it
17 over to the Evidence Custodian. And even on the form that
18 I've been given and the only form that I've been given,
19 they don't even identify the person that it was given to,
20 when they got the form, when he -- what they do with it,
21 the condition that it was in, when did he get it back, how
22 long did he keep it. And, you know, where did he take it
23 when he got the item back, who did he give it to. I mean,
24 Your Honor, I think it's clear that this is more than just
25 a person that's actually missing and then things of that

1 sort. We've now got things that are in addition to what
2 was recovered and things that were recovered and things
3 that were recovered that are now not listed -- I mean that
4 are now not on the, that weren't tested or weren't
5 submitted in terms of the, to SLED. Even though on the
6 evidence log, it indicated these items were on there. I
7 mean, where did the extra blade come from when the return
8 only mentions one blade.

9 THE COURT: You were referencing something else, some
10 other form. Where is that form?

11 MR. LAKE: Which form are you referring to?

12 THE COURT: That's what I don't know. You kept
13 talking about like there was another form and I don't have
14 it.

15 MR. LAKE: I made reference to the chain-of-custody,
16 I mean for not the chain-of-custody but the drug analysis.
17 But the drug analysis doesn't mention the straw or the
18 razors and they were all allegedly put in the Best
19 Evidence Kit at the first time by Investigator Bouknight
20 back on October the 9th. So they're not even in this item
21 so the question becomes if they are placed in the Best
22 Evidence Kit, where are they now?

23 THE COURT: All right. Mr. Scott, what have you got?
24 I thought there was a document that generally followed the
25 evidence around that was a chain-of-custody document that

1 kind of memorializes, it who took it from where to where
2 to where. Does that document exist?

3 MR. SCOTT: Yeah, it's probably going to be stapled
4 to the Best Kit.

5 MR. LAKE: I asked for that, Your Honor. I have not
6 been provided that to date. So, of course, if it's
7 something he produces now, we would object to present
8 discovery, but I did ask for it. There is an internal
9 chain with the Richland County Sheriff's Department and
10 that is what, the form that I provided to you is what
11 Solicitor---

12 MR. SCOTT: Probably what he's handed to you is the
13 evidence log-in sheet.

14 THE COURT: He did.

15 MR. SCOTT: Okay. So that's the chain I've got.
16 It's, let me show, here is the certified chain from SLED.
17 So you see here that Nick drives it up and Selena
18 Kinard---

19 THE COURT: Yeah, that's what I've been looking for.

20 MR. SCOTT: Okay.

21 THE COURT: Does he not have that?

22 MR. SCOTT: He's got it. Selena would have checked
23 it in.

24 THE COURT: I want a copy of that and then let me
25 look at it. I can't follow y'all's argument without

1 having something to go by, a little roadmap.

2 MR. SCOTT: You don't need the final analysis,
3 though, do you?

4 THE COURT: No, I just want to see that little chain.

5 MR. SCOTT: Okay.

6 THE COURT: That document that showed it, so I can
7 just see, I want to see the gaps.

8 MR. LAKE: Your Honor, not only is there gaps but---

9 THE COURT: All right. Now, hang on. I want to see
10 it, then hear you. It helps me to listen when I have
11 something to follow. Mr. Lake, go through that again.

12 MR. LAKE: Yes, sir.

13 THE COURT: I mean, you had to be following it
14 somehow or maybe you weren't. I don't know. I got lost
15 in the rapid delivery you were giving me.

16 MR. LAKE: I apologize, Your Honor.

17 THE COURT: It's okay.

18 MR. LAKE: It's kind of two-fold. One relates to the
19 pill bottle in terms of the movement of that. There has
20 been no testimony. I don't think there can be any
21 testimony as to when it was moved, how it was moved, who
22 touched those, that pill bottle during the timeframe. We
23 see photographs of it there, then it not being there, but
24 there's no testimony as to who moved it during that
25 timeframe. We do know that at some point, Investigator

1 Bouknight does come into possession. But if you look at
2 the return, Your Honor, the return specifically lists the
3 items that were recovered, allegedly recovered from this
4 location. There was two plastic bags, a pill bottle, a
5 scale and a spoon and a razor blade with residue. Now,
6 those were the items that were submitted to Investigator,
7 I'm sorry, Captain Dennis. Okay. At some point, we don't
8 know when, we don't know in what condition, whether it had
9 been something had changed or not. We do know at some
10 point Investigator Bouknight comes back into possession of
11 these documents because he has logged it down into the
12 property. But now you can see that now once it is logged,
13 I think, Your Honor, in looking here at my document, I
14 think now the straw is now not, wasn't included in the
15 evidence. Okay. And now there are two razor blades that
16 have now been entered into, I guess, what they would call
17 a Best Evidence Bag and things of that sort. Your Honor,
18 the discovery they provided to me does not identify the
19 person that the drugs were handed to, in what condition,
20 whether they were sealed, unsealed. We know that
21 something had to be, the minimal had to been taking out of
22 the initial envelope that Investigator Dennis handed over
23 to Bouknight because the straw is no longer in there. So
24 we know there has been some tampering to a certain degree
25 regarding the items. Okay. And but even if you look at

1 the items that were actually submitted to the Sheriff's
2 Department without identifying who and they didn't tell us
3 when and all these other kind of conditions. But when it
4 makes its way to SLED, now you're missing those razor
5 blades. And now, all of the sudden, you have an extra
6 powdery substance. If you look at the scale, I mean if
7 you look at the search warrant, it mentions that there is
8 a scale with a powdery residue. And she identifies it as,
9 that she found some, I guess, residue or determined there
10 was a certain amount on the scales. But now, all of a
11 sudden, there is an extra powder that cannot be explained.
12 I think he's listed as item 6 on his Form 6. Now, that is
13 something new from what was recovered initially at the
14 scene and there is no one to essentially testify how that
15 got there in the chain-of-custody surrounding that, those
16 particular items. Because, I mean, it's clear evidence
17 that now there's something new, because that's not
18 mentioned on the return at all that there is some extra
19 powder or residue out there. Asked what he has already
20 identified on the spoon and on the razor blade.

21 THE COURT: What about it, Mr. Scott?

22 MR. SCOTT: Judge, I'm having a lot of trouble
23 following the argument. I'm going to produce Robert
24 Dennis, Brad Epps who would be in the chain. And I'm
25 going to produce Ben Chapman if we need to and the SLED

1 chemist. As far as items showing up, I'm not following
2 what Mr. Lake's noting.

3 MR. LAKE: Your Honor, it's clear that when you put
4 something in the bag, the same items should make it to
5 SLED. If those same items don't make it to SLED, then
6 someone has opened the bag, moved the bag, tampered with
7 the bag to a certain degree. So again you're speculating
8 as to the, what's happening during the chain. So based
9 upon that, a suppression is warranted. I think the case
10 law is clear, that suppression is warranted when you have
11 no way of identifying or explaining how things appeared
12 and then disappeared.

13 MR. SCOTT: I think Robert can testify why SLED or he
14 wouldn't submit razor blades to SLED.

15 THE COURT: Well, do y'all have the evidence in the
16 courtroom yet?

17 MR. SCOTT: Sir? Where is the evidence? Where is
18 Ben?

19 MR. DENNIS: He's on his way. I mean, we had to
20 immediately call him and take him away from some other
21 priorities.

22 MR. LAKE: Your Honor, he cannot testify to that. He
23 didn't put those items into--

24 THE COURT: No, I don't care. If he's got the bag,
25 would it not help us to see it. Because this is just what

1 somebody else is saying was part of the evidence.

2 MR. LAKE: This is what Investigator Bouknight
3 himself has put down there in terms of the items that he's
4 indicated were put into the Best Evidence.

5 THE COURT: I understand that. But what if the bag
6 got something else in it. I mean, wouldn't it help to
7 look at it today?

8 MR. SCOTT: Yeah, he's on his way now. Let's call
9 the case and if the SLED agent gets up there and says,
10 well, you know, I remember when the bag, it came to me,
11 the Best Kit was tampered with but I tested it anyway. I
12 think then you can challenge at that point.

13 MR. LAKE: My client is entitled to a preliminary
14 hearing on this particular matter. I don't think he is
15 required to wait during the trial and have someone who had
16 no, didn't, other than I guess turn it over to
17 Investigator Bouknight. I don't even think he testified
18 that he had any contact with the drugs. Trying to testify
19 to something that Investigator Bouknight did. I just
20 don't think that is proper testimony. I don't think he is
21 allowed, the rules of evidence don't allow him to testify.

22 THE COURT: Well, I mean, all right. Now, why is it
23 that these ancillary items, the razor blade and straw
24 residue, well, I don't know whether that is included in
25 any of the weight or analysis of the drugs that are

1 allegedly at issue here.

2 MR. LAKE: But that's not the issue, Your Honor.

3 THE COURT: Well, it is the issue, isn't it?

4 MR. LAKE: No, the issue is whether these drugs,
5 they're supposed to be in the same condition in which they
6 were collected. All of these items are placed into the
7 Best Evidence. So if these items are placed into the Best
8 Evidence Bag, Your Honor, the same items should come out
9 of the bag.

10 THE COURT: Well, I mean, shouldn't Detective Dennis
11 be able to provide testimony as to what he sees, what was
12 given to him?

13 MR. SCOTT: Yes, sir. That's why I think this is
14 premature at this point, we are speculating to what these
15 people are going to testify to.

16 MR. LAKE: Your Honor, he is not, he had no contact
17 with this bag after he gave it to Investigator Bouknight.
18 I have never been given any discovery that he has done
19 anything else with this bag or anything like that other
20 than when he gave it to Investigator Bouknight. After
21 that, Investigator Bouknight took control of the items and
22 I would bet that his testimony will be he had no other
23 contact with this particular case, other than that
24 particular time. To allow him to testify to hearsay as to
25 what condition it was in at the time that he gave it to

1 him.

2 THE COURT: All right. Well, now all right, you keep
3 running off before and get in front of me. If Dennis can
4 testify as to what condition it was in when he gave it and
5 it's essentially the same condition now, doesn't it follow
6 that the gap that Investigator Bouknight gives us perhaps
7 could be filled in with the case law? I don't know. I
8 mean, you keep going on the supposition that if anything's
9 modified then everything is tampered with and, therefore,
10 suppressed. I'm not sure I follow that.

11 MR. LAKE: Well, Your Honor, at that particular point
12 the Court is speculating as to whether it is or whether
13 it's not.

14 THE COURT: Well, you're speculating and wanting a
15 preliminary hearing on it and I'm trying to do that. But
16 I can't look at these two documents and then say, you know
17 what, you're right, it's been tampered with, case over.
18 That doesn't seem fair to me. I think we got to do
19 something more than -- I agree with you, that's kind of an
20 inconsistency. I'll grant that, but that's not enough to
21 say motion granted.

22 MR. LAKE: Your Honor, I mean that's why the pretrial
23 motions so they can proffer this testimony.

24 THE COURT: Well, let's get on with it. Call him.

25 MR. SCOTT: All right. Robert Dennis.

1 THE COURT: Again, come on back up, Captain.
2 Captain, you're already placed under oath from the hearing
3 we had just before lunch.

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Robert, again on October 8, 2011, when you arrived at
7 ■ Little Ranches Road address, who was there?

8 A Whenever I arrived on the scene, it was Robert Spreng
9 and Deputy Brad Epps. When I arrived on the scene and
10 then shortly after being there, Investigator Nick
11 Bouknight arrived on the scene.

12 Q Okay. And let me just kind of move to the pill
13 bottle. You observed that where?

14 A Once I was brought up to speed on pretty much double
15 information from receiving a phone call from Spreng, from
16 receiving a phone call from Investigator Bouknight, I was
17 then walked through the scene. The pill bottle was
18 sitting on top of the dresser in the -- what I would call
19 the master bedroom which was identified as Mr. Toaby
20 Trapp's bedroom.

21 Q Okay. And that's what we see in Defendant's ID
22 number 9, the pill bottle there on the dresser, that's how
23 it appeared when you saw it?

24 A That is correct.

25 Q Okay. So then you talked about it a little bit

1 earlier in the other hearing. Well, there was a search
2 warrant obtained.

3 A In my process of coming to the scene, Investigator
4 Bouknight had had the phone call prior to me advising what
5 Investigator Spreng had seen and he was going to get the
6 search warrant based off of Investigator Spreng's
7 testimony and then that to the Magistrate. And then like
8 I said, as soon as I had gotten there to be oriented to
9 the scene, Investigator Bouknight showed up with the
10 search warrant.

11 Q All right. So then what else did you find after you
12 began executing the search warrant?

13 A As before the search warrant was executed, Mr. Trapp,
14 who had been outside, we did come into the living room
15 area. Sitting on the couch, he was given his Miranda
16 warning by me which he acknowledged he understood. We
17 began talking about what had been seen, what had been
18 found in his room. He acknowledged that it was crack and
19 that he had forgot it was in there. So once we started
20 the actual search warrant going through the bedroom of
21 where the initial pill bottle was found on top of the
22 dresser, we began moving boxes and clothes and picking up
23 the dresser drawers. And there on the floor was a plastic
24 bag containing a substance, a white substance that we call
25 it kind of like in cookie formation. It looks like a

1 cookie but it's all white.

2 Q Okay. So it was on the floor. Did you say, was it
3 near that dresser where the pill bottle was?

4 A It was right in front of that dresser on the floor.

5 Q So again Defendant's exhibit 9, we see the dresser
6 and we see the pill bottle. You saying that the crack was
7 down here in front of the dresser?

8 A That was straight down.

9 Q All right. And did you seize that cookie of crack?

10 A It was photographed and it was seized.

11 Q Okay.

12 A And subsequently turned over to Investigator
13 Bouknight.

14 Q Okay. Well, who is doing the seizing? Do you recall
15 who actually picked up the pill bottle and actually picked
16 up the crack cookie?

17 A I know I am sitting on the couch with a flashlight
18 looking at the evidence. As far as picking it up, I
19 cannot say which one of us picked it up.

20 Q You're the supervising---

21 A -- but sitting there on the bed was me. If you got
22 pictures.

23 Q I think I do. But you were the highest ranking
24 deputy there at the time, is that correct?

25 A That's correct.

1 Q Would you have been supervising the -- I guess the
2 execution of the search warrant, the investigation that
3 was going on?

4 A That's correct. Just there as assisting role
5 capacity.

6 (Whereupon, State's exhibit 1 was marked for
7 identification only.)

8 Q State's ID 1, can you tell what that is?

9 A This is one of our old forms of evidence log-in for
10 Newberry County Sheriff Office. It has the case number,
11 Officer Bouknight. It has the -- it actually has two
12 dates on it, 10/8/11, 10/9/11, the case number, Mr.
13 Trapp's information, two razor blades, a pill bottle
14 containing a quantity of white substance, a pipe, two
15 plastic baggies containing a quantity of white cookie-like
16 substance, a spoon with a white residue, scale with a
17 quantity of white residue on it. And then the
18 chain-of-custody is Bouknight and the date is 10/9/2011.
19 Now, that's the first pack. And it has a brown envelope
20 attached to it. Do you have a pair of scissors? I can't
21 see and read. This evidence form that I read off of is
22 sealed in a heat-sealed bag. But also in that heat-sealed
23 bag is a envelope that has the case number written on it,
24 ■ Little Ranches Road collected 10/9/2011. And the
25 description of the items: Plastic baggies, razor blade,

1 pill bottle. And then there is an additional heat-sealed
2 bag that has a spoon; a Bill Cosby, it looks like CD type
3 but it's the scale. And there are some other envelopes in
4 there that I can't readily see. And then there is a SLED
5 drug analysis secure envelope in there. Control number
6 B215834, date sealed 10/10, sealing envelope Nick
7 Bouknight. That's all I can see on that one.

8 Q Probably Nick's the one who seized it if he's the one
9 who signed the sealed---

10 MR. LAKE: Objection.

11 THE COURT: What?

12 MR. LAKE: Not only is he leading the witness, but
13 he's speculating as to who seized it.

14 THE COURT: I know, but it's, we're in-camera.

15 MR. LAKE: I understand.

16 THE COURT: Sit down. I mean, we're proffering. I'm
17 going to rule.

18 MR. LAKE: Okay. All right. I apologize.

19 THE COURT: You going overboard for me. I'm going to
20 give you a chance to argue.

21 MR. LAKE: Thank you, Your Honor.

22 THE COURT: I promise. And you can say Judge, he
23 walked him around by his nose, okay?

24 Q Captain, what is this?

25 A That is what is classified as the SLED, what we

1 classify as the Best Kit. That is what we would actually
2 send drugs down to SLED to be further analyzed and
3 testing.

4 Q All right. And who's it signed by?

5 A Nick Bouknight.

6 Q Is that relevant in any way who signed the
7 heat-sealed Best Kit?

8 A At the time during this case, Investigator Bouknight
9 was the narcotics officer for the Newberry County
10 Sheriff's Office. And he would be handling and dealing
11 with all the narcotics evidence that would have come in
12 during that time-period.

13 Q Okay. But you can't specifically recall whether it
14 was you or Nick who collected the evidence from the scene?

15 A Not at this time, I can't say which one. I can say
16 that all three of us were there.

17 Q Okay. All right.

18 MR. SCOTT: I think the answer to this was right
19 under our nose the whole time. Judge, do you have that
20 Form B, Rule 6 up there?

21 THE COURT: I do.

22 MR. SCOTT: Well, just, I guess read it into the
23 record.

24 THE COURT: Let's mark it as an exhibit.

25 MR. SCOTT: Yeah.

1 (Whereupon, State's exhibit 2 and 3 was marked for
2 identification only.)

3 MR. SCOTT: All right. Judge, I'm just going to read
4 it into the record. We all have a copy. But the Form B,
5 Rule 6, this is the Certificate of Proof of Chain of
6 Physical Custody. It reads, This is to certify that I,
7 Nick Bouknight, an employee by Newberry County Sheriff's
8 Office, and that on 10/9/11, I seized from Toaby Trapp
9 pursuant to search warrant at or near ■ Little Ranches
10 Road, Newberry, South Caroline, 29108.

11 And then it lists the items that were seized. I
12 think this indicates Nick was the one who actually seized
13 it. He lists on here, plastic baggy containing quantity
14 of white cookie-like substance. Plastic baggy containing
15 quantity of white cookie substance. And then, 3), orange
16 pill bottle containing quantity of white cookie substance.
17 4), scale containing quantity of white residue. 5), the
18 spoon with a quantity of white residue. And 6), quantity
19 of white residue. So I think, I guess, that was under our
20 nose the whole time. It seems to answer that particular
21 question.

22 Q So deputy or, excuse me, Captain Dennis, you were the
23 supervising agent over, I guess, Nick at the time? You
24 were the -- you were a lieutenant at the time?

25 A That's correct.

1 Q And what was his rank?

2 A He was a sergeant.

3 Q Okay. And so you were -- you would have been the
4 higher ranking deputy at the time?

5 A That is correct.

6 Q This looks like there's a counter or a bed that you
7 were sitting on?

8 A It was actually the bed in the master bedroom.

9 Q Okay. And this is State's ID number 3. Who is this
10 in the picture?

11 A That is myself sitting on the edge of the bed with a
12 flashlight. The floor in front of me is -- has been
13 cleaned from the boxes and the dresser drawers and
14 locating the white plastic bag or the white substance in
15 the plastic baggies on the floor in front of the dresser.

16 MR. SCOTT: And, Judge, this is just a picture. As
17 Robert was saying, that's him sitting on the bed and
18 pointing at the crack that was located in front of the --
19 oh, okay.

20 Q Well, why weren't razors sealed in the Best Kit if
21 you can, and to your knowledge?

22 A One of the reasons why SLED would not want razors to
23 come down in the Best Kit, because it is plastic, and
24 there could be the chance of someone cutting themselves on
25 those razors. So it is a safety issue of not packaging

1 those razors or sharp objects in a plastic bag.

2 MR. SCOTT: Okay. You know, I think that's probably
3 the extent of my questions.

4 THE COURT: Mr. Lake has the opportunity to question.

5 CROSS-EXAMINATION

6 BY MR. LAKE:

7 Q Captain Dennis, you would agree that on this
8 particular evidence log, it does not indicate who
9 Investigator Bouknight gave whatever items he had to?

10 A And because we have gone through a transition and
11 because of this being -- and Nick Bouknight being the
12 narcotics officer at the time. I believe he would have
13 been the Evidence Custodian of all narcotics regardless of
14 whether you just have his name here. So if he took it, he
15 would maintain control and put it in his evidence log.
16 That has since been changed to where -- at the retirement
17 and Bouknight moving on, Investigator Ben Chapman and
18 Richie Moore are sole custodians of all the evidence that
19 comes into the Sheriff's Office.

20 Q Well, but aren't you speculating as to that?

21 A I don't -- speculate to what?

22 Q When you turn in -- this right here it says the
23 evidence log-in, correct? Is there, does this particular
24 document right here show who he gave that particular
25 document to on October the 9th or what condition that

1 document was in on October the 9th? That's a yes or no
2 question.

3 A I don't think it is.

4 Q Okay.

5 A Because the first thing I--

6 Q Captain Dennis -- Captain Dennis, hold on. Before
7 you answer the question, you have to answer my question
8 first and then you can expound. I asked you a simple yes
9 or no question. Does that form indicate the name who
10 Investigator Bouknight provided that form to on October
11 the 9th, 2011. Yes or no?

12 A Yes, it does.

13 Q Who does it -- whose name is listed on there besides
14 Investigator Bouknight?

15 A Investigator Bouknight. If it had been anyone else
16 that he had given it to, then they would have been in the
17 chain listed as number two, three, four or five.

18 Q So he kept it the entire time up until time -- is it
19 your testimony that he took it and kept it?

20 A That would be the indication of this evidence log-in
21 report until you go to Form B and then whatever evidence
22 log that you get from SLED.

23 Q And do you know what condition he would have had it
24 in during this entire time from October the 9th till
25 October the 21st when it was turned over to SLED?

1 A That would be -- that would be a question for SLED on
2 how they received it.

3 Q That will be a question for SLED. And you received
4 the evidence on that, from the return, correct?

5 A I did what to it?

6 Q From the return from the search warrant.

7 A I documented it on the search warrant. That is
8 correct.

9 Q If you look at that on the search warrant and then
10 compare it to the Form 6, there appears to be a quantity
11 of white residue which will be item number 6. Where did
12 that particular item come from or where was it found?

13 A I've got what's classified on the return of the
14 search warrant, CD case scale. On the from B it says,
15 Scale containing a quantity of white residue on it. So I
16 would say that the white residue was on the scale.

17 Q Okay. If you listen to the question that I asked
18 you. The Form B represents a scale containing a quantity
19 of white residue on it.

20 A Yes.

21 Q Which is number 4.

22 A Yes, sir.

23 Q And then there is a number 5 which is a spoon with a
24 quantity of white residue on it, correct?

25 A But, Mr. Lake, that's not what, that's not the

1 question you asked me. The question was, was the scale
2 and then the white residue. And now you're asking me
3 about a spoon.

4 Q Okay. Well, I apologize, that was poorly worded.
5 The question I was asking you is that there is a mention
6 that there was a scale containing a quantity of white
7 residue on it. And there's a spoon with a quantity of
8 residue on it which is number 5. The question I asked you
9 is number 6 that was submitted to, on the Form B, the
10 quantity of a white residue. I'm asking you, where did
11 that item come from?

12 A Number 6 on Form B?

13 Q Correct.

14 A Okay. I cannot answer that.

15 MR. SCOTT: Judge, it seems like we're getting
16 outside the scope of just the chain issue. We're back to
17 suppression-type argument.

18 MR. LAKE: You know, that's what a chain-of-custody
19 is a suppression issue.

20 MR. SCOTT: Well, it sounds like it's suppression of
21 the evidence. We are tracking the drugs, is that what the
22 chain--

23 MR. LAKE: Your Honor, if you can't make a sufficient
24 chain then, of course, it's suppression of the drugs.

25 MR. SCOTT: It's all seized by Nick, and then it's

1 taken to SLED. We've identified everybody in the chain.

2 THE COURT: We going to take a break.

3 (Whereupon, a short break was taken.)

4 CONTINUE CROSS-EXAMINATION

5 BY MR. LAKE:

6 Q Captain Dennis, again, you have no knowledge whether
7 between October the 9th of 20011 and October 21st of 2011
8 the condition of the items that were submitted into
9 evidence?

10 A No, sir.

11 Q And in fact do you have any knowledge, any condition
12 as to how they were on the date that they were submitted
13 on October the 9th, 2011?

14 A I am not sure I am following what you are asking.

15 Q Let's kind of back up a little bit. How did you
16 provide, you indicated I guess on the return that you were
17 actually given the items, certain items on the return,
18 correct?

19 A What I do is I document what items we are collecting.
20 And then those items were given to Investigator Bouknight
21 for his secure control, access to, for as evidence log-in
22 and then to SLED.

23 Q Were you present, other than the fact that you signed
24 off on the document. Were you present when, I guess, he
25 took control of the items and put them in a bag or did

1 anything with them?

2 A I was present when he secured those from the
3 residence to his vehicle.

4 Q And after that you have no knowledge what happens to
5 them at that particular point, do you?

6 A I can't testify to that, no.

7 Q Okay. And so you don't know what condition they were
8 in from the time they left on October 9th up until the
9 time today, correct?

10 A Only knowing that they would be in his custody and
11 control until he takes it to SLED. And whatever he takes
12 to SLED as indicated on the Form B.

13 Q And do you recall what even type of container or
14 whatever he had the items in, would he place the items in,
15 do you have any personal knowledge.

16 A What we use would be the envelopes, the manila
17 envelopes is what we use or if we, we now have what we
18 call integrity bags. We use those now.

19 Q Those manila envelopes, can you heat seal those
20 items?

21 A No, we actually use tamper proof tape, evidence tape
22 to seal over the actual seals where the envelopes are
23 taped together so to speak or posted together. You can
24 see the tape that would come around on it.

25 Q And were these items sent to SLED together or how

1 were they sent to SLED?

2 A Without seeing the actual intake form I can only say
3 this is what was submitted to SLED on the Form B.

4 Q You have no knowledge as to whether they were sent
5 separately together or anything like that, do you?

6 A No.

7 Q And I know you had indicated that, you know, these
8 items, I guess the pill bottle wasn't submitted to SLED.
9 But does that right here, on this particular item
10 indicates that the pill bottle was submitted to SLED?

11 A As I said earlier, I can only read what I am looking
12 at and what you are giving me as far as the Form B which
13 is the Best Kit Certificate of Proof of Chain of Physical
14 Custody of Control. And then once that is taken down, as
15 you see in the paragraph of what is there on that. And
16 then if you look at the intake form which is when
17 Investigator Bouknight takes it to SLED and logs it into
18 SLED laboratory forensic request and evidence log-in, he
19 is turning it in as what is classified as a one, one item
20 Best Kit Evidence. So, if I had to, without having SLED
21 testify for you, everything that you see that is outside
22 in the back as well as this would have been sealed in this
23 packet. And all of it would have been in here as one item
24 but yet broken down on Form B which SLED would also have a
25 copy of once that packet is open.

1 Q Do you know that for sure or are you speculating on
2 that?

3 A I can say with a one-hundred percent surety that is
4 how it would have been sent down and collected and
5 received by SLED during their protocol as being in twenty
6 plus years of taking evidence down to SLED.

7 Q And you mentioned, I guess testified earlier that a
8 razor blade wasn't submitted down there. But this
9 appears, I guess, the plastic baggies, the razor blade and
10 pill bottle are all in the same?

11 A And if you look, these are two separate heat sealed
12 bags. This one still has the evidence form on it for
13 Newberry County Sheriffs office for Mr. Bouknight. So
14 that would have probably stayed in his evidence control
15 where as this bag contains the Evidence Best Pack from
16 SLED with all the evidence--

17 Q -- you say they didn't receive a pill bottle or they
18 did receive the pill bottle?

19 A Right there is the pill bottle with the Best Kit and
20 if you read on Form B which is item 3, orange pill bottle
21 containing a quantity of white cookie substance.

22 Q And on this particular item right here, what are the
23 items that were submitted to SLED for testing or analysis
24 for this particular item?

25 A I would have to open this up and this would be some

1 testimony that you would have to receive from Ben Chapman
2 because these are new stickers of labels that he is
3 utilizing for the evidence log-in. And although it says
4 here, description, plastic baggies, razor blade, pill
5 bottle. I can't see through that envelope to tell you
6 what is in there.

7 Q So would that mean Mr. Chapman is, I guess, moved the
8 items around or something?

9 A The only way I can explain this is go back as I
10 testified earlier. And I don't know if maybe we need to
11 put it down on a board or something so that everyone can
12 understand it. Back during 2011 Investigator Bouknight
13 would have been in control as well as the Evidence
14 Custodian for all narcotics. Investigator Bouknight is
15 not here with us any longer. So therefore Chief Wright
16 who is now retired was the overall evidence control for
17 other items outside of narcotics. Now that Chief Wright
18 has retired Lieutenant Ben Chapman and Lieutenant Richie
19 Moore are the Evidence Custodians for the Newberry County
20 Sheriffs Office. We have moved probably three times to
21 different locations. From Main Street, we had to move
22 evidence to 520 Wilson Road and utilize a building where
23 Chief Wright maintained that control up until his
24 retirement, turning over and counting all evidence and
25 turning that chain of command to Lieutenant Chapman.

1 Since then we have moved from 520 Wilson Road to 550
2 Wilson Road which is right next door. Lieutenant Ben
3 Chapman has taken all of that evidence from the 520
4 address and moved it to the 550 address in which he has
5 now set up a system in order to maintain the evidence
6 control when it is logged in from deputies or narcotics.
7 And then placed in a specific location in the evidence
8 room.

9 Q With regards to this specific item right here, do we
10 know whether it was moved?

11 A Yes, it was moved. And we know that it is moved
12 because he now has the bar code items on it which are
13 listed on both bags separately.

14 Q Do we know whether, I think you said Chief Wright,
15 whether he specifically moved this particular item
16 himself?

17 A Chief Wright was retired when this item was moved.

18 Q Who specifically moved this particular item here?

19 A Lieutenant Ben Chapman.

20 Q And when did he move it?

21 A You would have to ask him.

22 Q And when you have like normal evidence that you take
23 into custody who actually, did y'all have like a Evidence
24 Custodian person?

25 A I am not sure I understand. I have answered that.

1 Q What I am asking you is on typical evidence, whether
2 it be drugs or not, is there an Evidence Custodian that is
3 at the Newberry County Sheriffs Department. If you don't
4 understand that question then ask me to rephrase it. The
5 question is a yes or a no.

6 A Yes.

7 Q Who was that person at that timeframe?

8 A Which timeframe.

9 MR. SCOTT: Objection, Your Honor.

10 THE COURT: He just told you that Jerry Wright was
11 the Chief Evidence Custodian until he retired and now it
12 is Chapman. He spent ten minutes explaining that. Can we
13 excuse the jury until in the morning. Do y'all have any
14 problem with that?

15 MR. LAKE: No, Your Honor.

16 THE COURT: I am growing low, my sugar is dropping or
17 maybe I have had too much sugar from eating a lot of
18 candy. But I don't know, I am not going to make much more
19 this afternoon. I am getting very candid with you.

20 MR. LAKE: Your Honor, I would rather for the Court
21 to take a break for the afternoon.

22 THE COURT: That is why I took a break a moment ago.
23 Let's send the jury home until 9:30 in the morning. I
24 have got a 9:00 o'clock conference call on some civil case
25 that I have been assigned out of Lexington. Does that

1 suit y'all.

2 MR. SCOTT: Yes, sir.

3 THE COURT: Please bring the jury in here for me,
4 please.

5 (Whereupon, the jury came into open court at
6 approximately 3:07 p.m.)

7 THE COURT: I have been dealing with some pretrial
8 matters and they have gotten a little more extensive than
9 I anticipated. I told you to be back at 1:30 and I had to
10 deal with that and a jury verdict from another trial. I
11 am going to excuse y'all until 9:30 in the morning. Okay.
12 So, you can't discuss the case. See you in the morning.

13 (Whereupon, the jury was excused from open court for
14 the day.)

15 THE COURT: Let's take a break and let's see if y'all
16 can find some common ground on what exactly we are arguing
17 over. I have got a firm grasp of it. I understand
18 Detective Bouknight not being here is a problem for
19 everybody. But y'all see what y'all can find out and
20 let's take a couple of minutes.

21 (Whereupon, a short break was taken.)

22 THE COURT: Okay, where are we.

23 MR. LAKE: Your Honor, I think we are where we were
24 prior to trial. Again, I will continue to have
25 conversations regarding--

1 MR. SCOTT: He is asking for a conditional discharge.
2 Back there he said he would maybe tow me into a PWID with
3 probation. We are worlds apart, Judge, I don't see it. I
4 had offered a trafficking second with a minimum which is a
5 five year sentence. That is substantially down from what
6 he is facing should he be convicted. The problem is is
7 his prior record and he has been picked up a couple of
8 times since this charge. I can't possibly do probation.
9 All right, come on up here.

10 (Whereupon, a bench conference was held with the
11 Court and the attorneys.)

12 THE COURT: Let's start in the morning at 9:30.

13 (Whereupon, the trial will continue the next morning
14 at 9:30 a.m.)

15 OCTOBER 31, 2014

16 THE COURT: Where had we left off yesterday?

17 MR. SCOTT: You had just ruled in our favor on all of
18 the pretrial motions.

19 THE COURT: Well, Mr. Lake was telling me just the
20 opposite.

21 MR. LAKE: Well, Your Honor, yesterday I think we had
22 stopped right there at Mr. Dennis' testimony. I actually
23 didn't even finish the question. Today if the Court is
24 satisfied with the testimony, I was actually just going to
25 make an argument regarding that matter.

1 THE COURT: I remember where I interrupted you. It
2 was the Evidence Custodian question, because he described
3 that Bouknight was the narcotics Evidence Custodian. And
4 the entire time, Jerry Wright, until his retirement was
5 the supervising and non-narcotic Evidence Custodian. And
6 upon his retirement, Ben Chapman now is the Evidence
7 Custodian for the Sheriff's Department.

8 MR. LAKE: And, Your Honor, what I was trying to get
9 at and Mr. Dennis is not here. It is like Richland County
10 where you actually not turning it into a supervisor per
11 se, you're actually turning it into like a tech or
12 somebody like that. So that's, I guess I didn't ask that
13 question as good as I could have.

14 THE COURT: All right. Now, as I understand it and I
15 interrupted the question. I thought he had already
16 answered your question as to the Evidence Custodian
17 earlier. I understand the sequence of events that
18 occurred that evening and the follow up after the evidence
19 was taken into possession of the Sheriff's Department.
20 Tell me what further arguments you'd like to make on, what
21 have I got to rule on that you've made? So far we're
22 looking at sufficiency and the probable cause of the
23 search warrant. And I think I ruled in favor of the State
24 on that and we were on the next issue as to the
25 chain-of-custody issue you are asking about. Let's hear

1 you on that.

2 MR. LAKE: Your Honor, and I provided the Court with,
3 you know, a case yesterday I cited. It's actually a case
4 that would, you know, kind of showed you but not only what
5 the standard was for, you know, accepting a proper chain
6 but also shows the things that didn't apply in this
7 particular case. Within the case of State v. Taylor, it
8 cites a case of, I am sorry, it cites the case, the Benton
9 Case. Your Honor, this is where you had an issue of a
10 party that collected some blood. And there they kind of
11 held with, you know, if the identity of the person who is
12 handling the evidence is unknown. The Courts have
13 consistently held that evidence as inadmissible. And if
14 you go through the remaining part of that paragraph, it
15 also goes on to say that although there was testimony of
16 the hospital's customary practice regarding the mailing of
17 the blood, there was no evidence that the technologist who
18 drew the blood had sealed the vials and otherwise taken
19 any precautions against tampering which is really the
20 ultimate litmus test for any type of chain. That's the
21 reason why you need a chain is just to kind of remove any
22 evidence of tampering. And so the record did not disclose
23 who had possession of the package containing the vial of
24 blood for several days and it left the identity of those
25 who handled the vials in a manner in transportation to

1 conjecture. And I think, Your Honor, that's what we have
2 in this particular case. We have a situation where drugs
3 were taken at some point. Initially, we don't know who
4 touched them. We do know that the return lists certain
5 items, specific items actually that were, I guess,
6 inventoried, provided, I guess, to Captain Dennis. And I
7 think it's Captain Dennis' testimony that he provided to
8 -- back then to Investigator Bouknight. At that time, you
9 know, it's Captain Dennis' testimony that it was not
10 sealed. It was just in a regular envelope. We don't know
11 at this particular point who he turned this in to. I know
12 there is testimony that he is the custodial inventory for
13 drugs. But there has been no testimony as to the
14 condition or location of actually where the drugs were
15 actually kept. Is there any type of testimony that would,
16 you know, show that there was in no way that the evidence
17 could have been tampered from the time that it was placed
18 in, on October the 9th up until the 21st when it is
19 actually taken to SLED. Now, Your Honor, also take note
20 that, when those items were placed in the envelope,
21 certain items were placed in there. But, however, by the
22 time that we got to the Form 6, which was I guess, sent
23 along with SLED, there are additional items that were in
24 there. Some additional residue which no one has been able
25 to kind of testify as to where that came from and at what

1 point it got into, I assume, that Best Evidence Kit. We
2 have a straw that was collected that was initially placed
3 -- supposed to have been placed in the envelope according
4 to Captain Dennis' testimony. That is now all of the
5 sudden not included within the Best Evidence. And also
6 we've gone from one razor to two razors now. And so we
7 know at some point that there was testimony that, okay,
8 well, we don't send razors. Well, then we know that there
9 is a point where somebody has gone into that bag and at
10 least removed some items and only sent certain things to
11 SLED to be tested and certain things apparently remained,
12 but remained with who and when and upon what conditions?
13 More importantly, Your Honor, we know that Investigator
14 Bouknight took the items on the 21st and they were tested
15 but the technicians are not even here to testify as to
16 what condition they actually received the bag and whether
17 they were complete.

18 THE COURT: I thought they were going to be here.

19 MR. LAKE: I think the only person that's going to be
20 here is just the chemist that's going to testify. But,
21 Your Honor, even as far as that is concerned, you know,
22 when you look at the evidence sheet that they had even
23 after the testing, there is no evidence of where the drugs
24 went after that. We know that Investigator Bouknight got
25 the drugs back, I guess, sometime after the drugs had

1 been, you know, tested. And then all of the sudden, they
2 are returned to him, but where do they go from there. I
3 have seen nothing. There has been no testimony as to
4 where they were at during this timeframe up until the day
5 that we're here for trial. Now, I know at some point they
6 said that Investigator Chapman took control of it and now
7 he's got to separate it again and inventoried now a little
8 bit better than what they used to. But there is nobody
9 here that's going to testify as to, you know, I guess from
10 that point from when Chapman got involved until, you know,
11 Investigator Bouknight picked up those drugs. Where they
12 were at the entire time and in what condition? Was there
13 any evidence of tampering at any time. All of this is
14 left to conjecture which I think our courts have ruled we
15 can't do in these, in these particular cases. And I don't
16 think the State can show that there has been no evidence
17 of tampering and that they can identify all of the
18 potential parties that may or may not have tested these
19 drugs during this timeframe.

20 THE COURT: All right. I think the State's made a
21 showing that the evidence was lawfully taken into
22 possession of the Sheriff's Department by Detective
23 Bouknight. And, obviously, him being a participant in the
24 handling of the evidence and being the narcotics Evidence
25 Custodian and he's not here, that is an issue for the

1 State to deal with. But I think that's a preliminary -- I
2 mean it's an issue that the State runs that risk at trial
3 as to whether they can sufficiently establish the chain.
4 But part of the case you asked me to read, the Taylor
5 case, there's certainly evidence to establish who handled
6 the evidence and if there's -- I mean it's Detective
7 Bouknight. Detective Bouknight, he carried it to SLED and
8 if SLED, whoever deals with that evidence at SLED, they've
9 got, I think I'm speculating as to what the State can
10 prove or not prove because I hadn't heard that. So I
11 don't think I can rule either way. I mean the State's got
12 an opportunity to prove it but they don't have to prove it
13 at a pretrial motion.

14 MR. LAKE: Your Honor, I do think they have to pass
15 through the preliminary test.

16 THE COURT: Well, I think they passed the preliminary
17 test. That's not the only test. But it's kind of like a
18 motion in limine. You have raised the issue. I think
19 sufficiently if they get past the motion, they can
20 identify who had it, they got a chain showing the list of
21 people who have handled it. And, you know, whether they
22 can sufficiently keep that chain together at trial is
23 going to be the issue. I don't know, I mean speculating
24 right now, I can't. I can't say they can or they can't.
25 I understand your aimed at it.

1 MR. LAKE: Yes, sir.

2 THE COURT: And so respectfully, I'll decline to
3 dismiss on that basis.

4 MR. LAKE: Now, I wasn't asking to dismiss. I was
5 asking to suppress the drugs.

6 THE COURT: Oh, well now I don't think that's, I
7 think they've got to try to establish the chain under the
8 law. And the burden of proof is on the State and if they
9 fail then, the drugs don't come in. If they meet that
10 burden during trial and the drugs come in, then that's
11 what they get.

12 MR. LAKE: Yes, sir.

13 THE COURT: I guess what I'm saying is they've shown
14 me enough they get an opportunity to try to establish the
15 chain and get the drugs into trial. If they fail and
16 you're successful in beating the link so be it. But
17 that's not, we haven't gotten that far yet.

18 MR. LAKE: Yes, sir. Just can I state my objection
19 for the record also?

20 THE COURT: Okay. Yeah, you're protected.

21 MR. LAKE: Your Honor, I want to address the issue of
22 this alleged statement that was made. I think I'm
23 required to have a Jackson v. Denno on this particular
24 matter they're alleging. And, I assume, will try to put
25 this statement into evidence indicating that my client

1 stated, oh, so these are my drugs. I knew there were
2 drugs or something to that affect.

3 THE COURT: Okay. They can do that. All right.
4 While we're doing this, I don't want the jury locked in
5 the room. If they want to come and go and meander and be
6 comfortable, let them be relaxed until I need them. There
7 is no reason to hold them back there and then we get ready
8 for them and oh, we got to run to the bathroom. That's
9 what kept happening to us yesterday. Just as long as they
10 don't come in here, they can stand outside and use their
11 telephone or use the restroom or whatever. If they want
12 to sit back there fine, but don't lock them down in the
13 room, because that's of no benefit for us. Because this
14 may take me 15 minutes to do this.

15 MR. SCOTT: And just so we, is this the last motion?
16 Are there anymore?

17 MR. LAKE: No, I do have just, also just, Your Honor,
18 on the motion in limine just to make sure that they don't
19 try to bring up anything about prior record or anything
20 along those lines. I don't think that would be proper in
21 this particular case to show any type of intent. I do
22 think it's not relevant to this particular case and I do
23 think if the Court did find that it was relevant, I think
24 it's sufficient, would be prejudice to my client.

25 THE COURT: Okay. The prior record is not coming in

1 unless you open the door.

2 MR. SCOTT: I don't see how I could do that.

3 MR. LAKE: Or anything, Your Honor, about any pending
4 charges also.

5 MR. SCOTT: All right. Well, Judge, I'm going to
6 proffer Captain Dennis' testimony for the purpose of
7 Jackson v. Denno.

8 THE COURT: All right. Come forward, Captain Dennis.
9 You were placed under oath yesterday and you're still
10 under oath today.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q Okay. So, Captain Dennis, just to pick up from
14 yesterday, October 8, 2011 when you respond to the ■
15 Little Ranches Road, when you get there has it turned into
16 a drug investigation or is it still a home, a burglary
17 type investigation?

18 A It's still a kind of twofold burglary investigation
19 and then narcotic investigation.

20 Q Okay. So you had already been notified that there
21 was that pill bottle found in the bedroom?

22 A Yes, sir. That is correct.

23 Q All right. And then yesterday you talked about the
24 search warrant being obtained and then searching the home
25 further after the search warrant was obtained. When were

1 you able to speak with Mr. Toaby Trapp?

2 A Probably immediately once getting there. I know Mr.
3 Trapp and, you know, once I was briefed by Sergeant
4 Spreng, Investigator Spreng, I had made contact with Mr.
5 Trapp.

6 Q Where was that?

7 A It started out in the front yard of his mobile home,
8 and then up to the porch and then finally, into the living
9 room.

10 Q Okay. So what you mean you encountered him in the
11 front yard and that's when you began speaking with him?

12 A That's correct. He had already been placed in
13 handcuffs, investigative detention. And so we kind of
14 moved our way into the house, because we knew we were
15 going to be there for a little bit once the search warrant
16 got there. So we moved inside the living room of the
17 trailer.

18 Q Okay. So you're still waiting for the search warrant
19 to arrive at this point?

20 A I believe it had already gotten there about the, I'd
21 say five to six minutes after I arrived. It wasn't long.

22 Q But this is before you began executing the search
23 warrant?

24 A That is correct.

25 Q All right. So he is in custody. Now, did you begin

1 questioning him?

2 A Yes, sir. One of the first things we do is --
3 because I was going to talk to him about evidence being
4 found in the house such as narcotics, he was given his
5 Miranda rights.

6 Q And how do you administer Miranda rights?

7 A Sometimes I do them off the top of my head. Other
8 times I have my card which I carry in my wallet.

9 Q All right. Do you recall, did you read them off the
10 card?

11 A I believe it was probably kind of twofold and
12 starting to read him his Miranda rights, and then making
13 sure that I had the card accessible to make sure I
14 completely, you know, advised him of his Miranda warnings.

15 Q Tell the Court how you advised him on that day, that
16 being October 8, 2011?

17 A He was advised that he had the right to remain
18 silent. That anything you say or did could be used
19 against him in a court of law. That he had the right to
20 an attorney, to have him or her present with him during
21 any type of questioning. He also was advised if he did
22 not have any money for questioning, that the Court would
23 provide an attorney to him without cost to him. I always
24 stop at that point and advise, you know, at some point
25 they could possibly end up paying \$40.00 dollars or

1 whatever later on down the road for an attorney if they so
2 desire to get one. And then the last thing that I advise
3 them is, is that anytime during the questioning if they
4 don't want to answer any more questions, they can say
5 Robert, I don't want to talk to you anymore until I talk
6 with my attorney. And then the final question is, do you
7 understand these rights. And he replied, yes. And then
8 the next statement I asked is, are you willing to talk to
9 me about the drugs that's been found in the house. And he
10 advised an affirmative, shaking his head yes he would talk
11 to me.

12 Q All right. Now, have you known Mr. Trapp prior to
13 this?

14 A Yes.

15 Q And have you spoken with him before?

16 A Yes sir, I have.

17 Q Have you ever had any trouble communicating with him?

18 A No, sir. No, sir. We've always communicated very
19 well together.

20 Q All right. And on this specific occasion, did he
21 appear to have any trouble whatsoever in understanding the
22 rights that you read to him?

23 A No, sir. I think he was, I mean, his appearance, he
24 was upset. He was upset.

25 Q But did he have any trouble understanding your rights

1 or his Miranda rights?

2 A No, sir.

3 Q Did he appear intoxicated?

4 A No, sir.

5 Q Do you know his education level?

6 A No, I do not.

7 Q Okay. But you've never had any trouble communicating
8 with him in the past?

9 A No sir, I have not.

10 Q Okay. And so you said he did agree to speak with you
11 about the drugs?

12 A He did. Yes, he did.

13 Q All right. And what statement did he make to you
14 regarding the drugs?

15 A He made the statement, and I asked him, I said, you
16 know, what about the drugs that we found in your room.

17 And he was like, Man, I forgot about those.

18 And I said, Well, how could you forget about
19 something like that.

20 And he said, well, he said, whenever I called 911 the
21 dispatcher told us, you know, don't touch anything, don't
22 go back in the house, wait for law enforcement.

23 And he said, that's what I did.

24 So we, you know, during that time we just pretty much
25 continued to talk kind of back and forth. And then

1 explained to him the search warrant and why we stopped
2 doing what we were doing investigating the burglary. Then
3 the search warrant was read and given to him and explained
4 what was taken.

5 Q Did he say anything about what type of drugs they
6 were that was in the pill bottle?

7 A He advised that it would be crack.

8 Q This is State's 3. I think yesterday you testified,
9 that's some additional crack that was found on the front
10 of that dresser that the pill bottle was on?

11 A That is correct.

12 Q Okay. Now at this point when you're speaking with
13 Mr. Trapp, had y'all located those drugs?

14 A No.

15 Q Okay. Did you ever have a chance to speak with him
16 about these drugs?

17 A We did talk with him afterwards about those drugs
18 that we'd found. And, you know, he acknowledged the
19 drugs. But we began to talk with him and try to work with
20 him a little bit.

21 Q Okay. That was the sole statement, though. And
22 where was that statement made, was that in the yard or
23 inside of his own home?

24 A That was made inside his home in the living room. He
25 was sitting in a single chair, cushioned chair and I was

1 sitting on the couch.

2 Q Okay. Did you make any threats in order to get that
3 statement?

4 A No, sir. I did not.

5 Q And did you tell him you might be able to help him
6 out if he would admit to the drugs?

7 A No sir, not at that time, no.

8 Q Okay. Thank you, Captain Dennis.

9 THE COURT: Mr. Lake.

10 CROSS-EXAMINATION

11 BY MR. LAKE:

12 Q Captain Dennis, do you know what a report is?

13 A Do I know what a report is?

14 Q Yeah, what is a report?

15 A A report is a incident report documenting the
16 information on the scene of an incident for an
17 investigation.

18 Q And what is the importance of a report?

19 A To document information.

20 Q For what reason?

21 A For recall.

22 Q When did this incident happen?

23 A It happened on October the 9th, 2011.

24 Q And did you prepare a report in this particular case?

25 A No sir, I did not.

1 Q And did you prepare any documents that stated what
2 rights you read Mr. Trapp at the time of this incident?

3 A I did not, no sir.

4 Q And did you provide any statement to Investigator
5 Bouknight that you had talked to Mr. Trapp again and that
6 he had acknowledged somehow the second set of drugs that
7 you found?

8 A Investigator Bouknight was present during the entire
9 talking of Mr. Trapp.

10 Q Is that a memorized, memorialized in his report that
11 you talked to Mr. Trapp again and that he had acknowledged
12 those second set of drugs?

13 A That is not in the, in the first note.

14 Q But you just happened to recall that now, some three
15 years later?

16 A It's not happened now to recall it. That stood in my
17 mind for three years.

18 Q But you never prepared a report saying any of those
19 things?

20 A No, sir. At the time the most important was, what
21 was visibly found that he acknowledged that was on his
22 dresser.

23 Q And isn't it true that y'all did promise him
24 something?

25 A I don't understand what you are saying.

1 Q Was Mr. Trapp arrested that night?

2 A No, Mr. Trapp was not arrested that night due to he
3 wanted to cooperate and help buy drugs from other people.

4 Q Did you put that in a report?

5 A It was placed in there that he was not arrested the
6 night of the incident due to he stated that he wanted to
7 cooperate. And that if he went to jail, many suspects who
8 he would be able to assist with cooperating with law
9 enforcement would find out and it would hinder Trapp's
10 cooperation.

11 Q Did you write that down?

12 A A warrant for Trapp's arrest will be issued at a
13 later time.

14 Q Captain Dennis, did you actually write that?

15 A That was documented by Investigator Nick Bouknight.

16 Q Then the answer to that will be, no?

17 A Did I do that?

18 Q Correct.

19 A No, I did not write that.

20 MR. SCOTT: And, Judge, probably that particular, we
21 don't intend to illicit that at trial. But if the door is
22 opened, then we would probably step through it at that
23 point if Mr. Lake undertook that line of questioning.

24 THE COURT: I would guess he probably would not but
25 that's his decision.

1 MR. LAKE: That will be my decision, Your Honor.

2 Q And so at this particular point, when is he actually
3 arrested?

4 A He was arrested on 11/21, well, a warrant was issued
5 for him on 11/21 of 2011.

6 Q But he actually turned himself in, correct?

7 A That is correct.

8 Q No one actually went out looking for him, did they?

9 A Do what now?

10 Q No one actually went out looking for him on November
11 the 21st or anytime subsequent?

12 A No, sir. He was contacted and he turned himself in.

13 Q He turned himself in when y'all told him. And so
14 even though the warrant was issued, no one still went out
15 there to go looking for him, did they?

16 A The warrant was issued. The warrant was effected by
17 either calling him to turn himself in or if we had to go
18 look for him. Either way, the warrant was issued and
19 served on Mr. Trapp.

20 Q And wasn't Mr. Trapp's son present at the time? Was
21 he out there at the scene?

22 A There was another male out there. But he was out
23 there at the vehicle.

24 Q And at this particular time, Mr. Trapp's son was
25 actually staying with him, correct?

1 A I can't answer that. I know he has a room there.

2 Now, there is a difference between saying someone's

3 staying there or someone lays their head there night after

4 night. So we would need to qualify whether he's full-time

5 staying there or he just comes to lay his head.

6 Q So it would be fair to say Mr. Trapp is out there

7 with cuffs on and is there anybody else out there besides

8 Mr. Trapp and his son?

9 A Just those two.

10 Q Okay.

11 A If that is who that was.

12 Q If that's who that was. Do you have any evidence

13 that it wasn't his son?

14 A No, I do not.

15 MR. LAKE: Beg the Court's indulgence. No further

16 questions, Your Honor.

17 THE COURT: All right.

18 MR. LAKE: We do have a motion to suppress this

19 alleged statement. Your Honor, this statement, there is

20 really no record of this right here. Now, there's

21 something added into this, you know, this statement is

22 allegedly made. You're really talking about, you know,

23 him trying to really piggyback something that, you know,

24 is really hearsay. I mean, this is what it all really

25 kind of stems down from hearsay from what Investigator

1 Bouknight, I mean all of his testimony really essentially
2 is reading the reports off this right there. To say he's
3 not promised anything, Your Honor, I mean is not even
4 believable in this particular case. I mean he's not even
5 arrested and he's allowed, I mean even when the warrant is
6 issued let's say back on -- in November, he's still not
7 called and allowed to turn himself in till sometime in
8 December. So to say that for whatever, you know, whatever
9 communications that they had with him that particular
10 night, if they had these kind of communications, to say
11 that nothing was promised to him, he sure really got a
12 good gift if nothing was promised. Because most people,
13 Your Honor, if drugs are found in their house, they're
14 arrested then, that night. Even if someone cooperates,
15 that cooperation would come later. But to sit there and
16 say, you know, some kind of event occurs and you don't
17 turn yourself in till two months later but there is no
18 promises to you. Your Honor, I think in this particular
19 case for whatever allegation or statement they're trying
20 to allege to him, clearly there's been some promises made
21 to him or assurances made to him that he wouldn't be
22 arrested that particular night, because he wasn't arrested
23 that night. I do think there is some, be some
24 admissibility issues as to whether this statement is free
25 and voluntarily or was it guided from a point of, hey,

1 you've got your son here, you go to jail, what's going to
2 happen to him? I mean that's what you essentially, they
3 know his son is there. I think even the reports mention
4 that his son is there but they don't arrest him.

5 THE COURT: Mr. Scott?

6 MR. SCOTT: Judge, of course, the Court can inquire
7 of Captain Dennis while he's under oath. But my
8 understanding was this statement was given and then he
9 asked, you know, can I cooperate? Can I, can you do
10 anything to help me? This was after the statement was
11 given. I've heard no testimony the son and his presence
12 there, how it, well, I didn't quite follow that argument.
13 I had no understanding of how that affected his statement.

14 THE COURT: It seems to me that the rights were read,
15 a conversation started. There was some familiarity with
16 the parties, Dennis, Mr. Trapp, Bouknight, everyone. The
17 drugs that they were asking about, the Sheriff's
18 Department already knew about it, so tell me about it. I
19 forgot about them. That's the statement we're looking
20 for.

21 MR. SCOTT: Yes, sir.

22 THE COURT: It sounds like a voluntary statement to
23 me. Certainly, there's cross-examination to go in, but
24 this wasn't the first meeting between Mr. Trapp and the
25 Sheriff's Department.

1 MR. SCOTT: No, sir. And at trial, I would not elude
2 to the fact that it was criminal in nature. But Mr.
3 Trapp's a long-time Newberry County resident.

4 THE COURT: Well, you mean in the Newberry Community
5 being a smaller community, a smaller Sheriff's Department,
6 a smaller community of citizens. There's a lot more
7 familiarity out there among people than it is in a larger
8 community such as, you know, maybe in Richland County or
9 Greenville County when there is no familiarity. There
10 would not have been a, we're not going to arrest you
11 tonight. But Mr. Trapp is a life-long resident of
12 Newberry. I mean it's, they just do things a little
13 different than what Mr. Lake's describing. And so I
14 happen to be familiar with it being from Newberry also.
15 It's not the first time I've heard of this in Newberry.

16 MR. SCOTT: I think they're on a first-name basis,
17 Judge.

18 MR. LAKE: Yeah, but that, even that kind of
19 testimony should not be elicited in this particular case
20 in terms of the fact that, you know, this is an
21 investigation, it's a type of drug investigation. We're
22 talking about narcotics. For him to come in there and
23 say, well, I know Mr., you know, I've known Mr. Trapp and
24 a jury could potentially infer that he's known him through
25 some other kind of criminal enterprise or something to

1 that effect. So I think any type of testimony in that
2 realm would be improper.

3 THE COURT: I'll agree. But, you know, being that
4 they can say, it's a small community. I've known Mr.
5 Trapp because I grew up in Newberry and he did, too.
6 That's allowed. But I knew him because he'd been to the
7 Sheriff's Department and interrogated five times is not
8 going to be allowed. So I'm certain Captain Dennis is
9 experienced enough to understand the difference as to what
10 comments he should steer clear of so as not to poison the
11 testimony. But rights are read, the statement was
12 voluntary, it will be allowed.

13 MR. LAKE: And I'd just state my objection for the
14 record.

15 THE COURT: Okay.

16 MR. LAKE: I think that's it right now, Your Honor.

17 THE COURT: All right.

18 MR. LAKE: Oh, Your Honor, there was one additional
19 thing, Your Honor. I think my client did, because I guess
20 because the Court had inquired and he wanted a little more
21 opportunity, he did want me to, I guess, make a request
22 that this matter be continued and held over to another
23 timeframe that will give me an opportunity as his attorney
24 I guess to counsel him a little bit more in this
25 particular case. As I advised the Court, you know, Mr.

1 Trapp has been represented, I guess, from the time of this
2 incident back in 2011 up until, I guess, whenever this
3 Court relieved Mr. Bolt.

4 THE COURT: Yes, about what, four, five, six months
5 ago?

6 MR. LAKE: No. I think he just relieved him in
7 September.

8 MR. SCOTT: In July.

9 MR. LAKE: July.

10 THE COURT: I thought it was in the summertime. Mr.
11 Bolt came to Newberry and it was, we had an informal
12 conference in my chambers is what I remember. Mr. Bolt
13 came up because he closed his practice and had some health
14 issues and what not.

15 MR. LAKE: Yes, sir.

16 THE COURT: And I remember noticing Mr. Bolt was
17 missing the normal amount of hair he normally used to
18 carry.

19 MR. LAKE: And it's just that, I mean from my
20 understanding from him and there may have been an Order.
21 I think the Order wasn't signed until maybe September or
22 something along those lines, I believe. I don't know if
23 the Court has a copy of it or not but that's when he
24 retained me on October the 1st. And so, you know, he
25 wants me to kind of make this motion to continue this

1 matter to give me a little bit more time to make sure that
2 I've done it thoroughly, explained everything to him and
3 things of that sort. So that's my motion.

4 THE COURT: I think this case of the age that it
5 needs to get moved. I understand you're new, but you're
6 experienced. Mr. Trapp is not new to the case. I wish
7 everything could get resolved, the new charges or whatever
8 it is that's out there because I'm not really familiar
9 with what there is out there. And that's not relevant to
10 this trial at all. But, respectfully, I'm going to deny
11 your motion to continue the thing. We're going to move on
12 forward. All right. Y'all want a short break, because I
13 need to step back and get another cup of coffee and we'll
14 start in a few minutes?

15 MR. LAKE: Yes, sir.

16 THE COURT: All right.

17 (Whereupon, a short break was taken.)

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

19 (Whereupon, the jury came into open court at
20 approximately 10:21 a.m.)

21 THE COURT: All right, folks, good morning. My
22 pleasure to have y'all here. Thank y'all for being
23 patient with me yesterday. As y'all heard yesterday, the
24 State of South Carolina has an indictment for trafficking
25 crack cocaine against Toaby Alexander Trapp. Mr. Trapp is

1 in the courtroom. Y'all met him yesterday. He's pled not
2 guilty and by that plea, he's denied everything in the
3 allegations of the indictment. This indictment is just an
4 allegation. It's not proof of anything and it doesn't
5 mean anything other than it's what the State told him and
6 now his lawyer also knows of what to be prepared to come
7 into court to defend himself against. That's all it is.
8 Now, the State has to call witnesses to present the case
9 to you. Mr. Trapp has nothing whatsoever to prove or
10 disprove. He may decide not to call any witnesses. He
11 may not testify. That's his decision and his alone. His
12 and his lawyer can decide that. The State has got to
13 present their case and if that's all you get, then you've
14 got to make a decision based on what you're presented.
15 Now, if an issue comes during the trial and there may be
16 an issue or two and one of the lawyers jumps up and says
17 objection, Judge, hearsay or irrelevance or I've got a
18 matter of law. That's a cue to me that they want to talk
19 a little longer and talk about the rules of evidence or
20 the rules of procedure or something along those lines of
21 which it's my job is to rule on those rules, those issues,
22 those legal issues that come up. Your job is slightly
23 different. Y'all's job is to decide questions of fact. I
24 rule on issues or questions of law, you rule on questions
25 of fact and you resolve questions of fact. The best

1 example I have and this is not a civil case. In a civil
2 case, there's a car accident in the middle of an
3 interchange. The police officer goes to investigate and
4 to talk to both drivers and both drivers says I had the
5 green light and they meet in the middle of the
6 intersection bumper to bumper and make, leave dents in the
7 cars. Well, both of them didn't have the green light and
8 there's a question of fact, who had the green light?
9 That's a simple example of a question of fact that juries
10 get to answer and generally in those cases, I give
11 instructions on well if the party that had the green light
12 was driving safely and the party that had the red light
13 violated the law to stop when they see a red light, then
14 you find in favor of the one with the green light. That
15 kind of thing. That's kind of how this will go. Now,
16 understand this, that if I have to make a fuller record,
17 as y'all know Ms. Holston seated right here, she's my
18 court reporter. Everything I'm saying to you right now
19 and, listen, everything we've talked about when we did the
20 selection process of picking y'all yesterday, she's made a
21 record of and she'll continue to make a record and so we
22 try to keep it very organized. It's questions and answers
23 and no interruptions so she has only one person to
24 transcribe. When people talk over one another, it creates
25 an issue for her so sometimes, we have to slow down. But

1 if there's an issue for me to take up, I generally excuse
2 the jury and let you go to the jury room, take a short
3 break, because I don't need your assistance when I'm
4 hearing those arguments of legal issues, because I don't
5 recognize any of y'all as being lawyers or judges. But I
6 don't really need your help when the lawyers are trying to
7 make a more full legal argument as to why or why not a
8 rule should apply or shouldn't apply. Likewise, once
9 y'all begin resolving or addressing the questions of facts
10 in the jury room, I won't be in there listening to you.
11 It'll just be the twelve jurors. Well, the testimony was
12 this and this and that. Y'all get to resolve it in that
13 fashion. I will give you my instructions on how to do
14 that at the end of the case. For that reason, you're not
15 allowed to discuss the testimony or the facts presented or
16 anything about the case until you hear all the witnesses,
17 all the evidence is introduced and you hear my
18 instructions. So if we take a break, I'm going to say
19 remember, you can't discuss the case because you haven't
20 heard everything. Each witness has a part of the case
21 they want you to consider. Until you have all the parts,
22 you cannot consider it, because it would be unfair to the
23 State or Mr. Trapp for you to make up your mind after the
24 first witness or the second witness. Until you hear
25 everything and get the instructions, it'd just be improper

1 for you to start discussing the case. So if we take a
2 break, talk about anything but the case. Now, I think
3 that's about it. Everything y'all need to decide this
4 case you'll here in the courtroom, so don't do any
5 independent research. If we go to lunch, you can't go on
6 your cell phone and look anything up. If you need a
7 definition for something, that's for me to give you.
8 There's plenty of bad information out there in the
9 Internet and the newspaper. I'll give this example, I was
10 trying a case in Laurens County over a week ago and it was
11 a pretty big case. I read in the newspaper the following
12 day, this is like on Tuesday we started the case and on
13 Wednesday, the paper came out. It was a case I was
14 presiding over. It turns out Judge Addy was presiding
15 over it. Well, how did the newspaper know that when I, it
16 was me and it was the front page of Laurens Advertiser,
17 Judge Addy ruled this, ruled that. It was shocking to me.
18 About six weeks ago The State paper put out there, there
19 was a huge verdict. I can't remember the case. It was a
20 civil case and there was a motion to reconsider that was
21 going to be filed by one of the lawyers before me. I
22 wasn't in Lexington. I didn't try the case. I was
23 accused of being the Judge who was going to consider the
24 motion. So my point is, don't believe everything you
25 read, but don't read anything while we're here. Y'all

1 will get what y'all need to decide this case from these
2 parties and from the Court. All right. All that being
3 said, we'll start with opening introductions, opening
4 statements by both parties. Mr. Taylor Daniel goes first
5 for the State, and then Mr. Dietrich Lake goes second for
6 Mr. Trapp.

7 MR. LAKE: Your Honor, can we approach for one
8 second?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: All right. Ms. Folk, will you place the
14 jury under oath for me?

15 (WHEREUPON, the jury was sworn at 10:21 a.m.)

16 THE COURT: All right. Mr. Daniel?

17 MR. DANIEL: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 MR. DANIEL: Ladies and gentlemen, I apologize if I
21 start coughing or sneezing. My allergies activated
22 because of the weather. It's, you know, 40 degrees in the
23 morning, 80 degrees in the day. It's been a long week.
24 We've already had a trial, one trial. Deputy Solicitor
25 Dale Scott and I just wrapped up a four-day trial

1 yesterday and now today, we summoned you back in to be on
2 a jury for this case. I appreciate you coming in on a
3 Friday. I know it's an inconvenience. You may have
4 children, trick-or-treating, Halloween, but this is going
5 to be a brief case, at least from the State's perspective,
6 three to four witnesses in this case. But just because
7 it's a brief case does not, you know, it's not a trivial
8 matter. It's never a trivial matter when there's a trial,
9 particularly a criminal trial. It's important for all
10 parties concerned. It's important for the State of South
11 Caroline. It's also important, obviously, for Mr. Toaby
12 Trapp. He deserves his day in court. He's getting that.
13 The U.S. Constitution, the Constitution of the State
14 allows people to be tried by a jury of their peers.
15 That's you guys. Newberry County residents, that's why
16 you're on this jury and we didn't pick you by accident, we
17 picked you because we felt like you'd be good jurors from
18 different walks of life, men, women, white, black,
19 different occupations. So just a cross-section of the
20 community is why you're on this jury. Briefly, I'll give
21 you the facts of this case and kind of a roadmap. Keep in
22 mind, I don't know what's going to play out at trial, so I
23 can't be too presumptuous. But the Newberry County
24 Sheriff's Office investigated this case and you have a
25 terrific Sheriff's Office. Robert Dennis is our lead

1 investigator, Captain Robert Dennis. That's why he's
2 sitting at the table with us. But they're involved in
3 this case. The charge against Mr. Toaby Trapp is
4 trafficking in crack cocaine. And trafficking, what that
5 means is it's all weight-based. Ten grams or more of
6 crack cocaine means that's trafficking amounts. Think of
7 this, Sam's club amount, it's bulk, it is bulked out as
8 crack cocaine. It's not buy one bag of chips at a
9 convenience store, it's you buy a six-month supply of
10 chips is essentially trafficking. That's what you got and
11 it's all based on weight. You got to have ten grams or
12 more and in this case, the weight of the crack cocaine
13 found in Mr. Toaby Trapp's house on October 8th of 2011
14 was more than 10 grams. It was twice that. About 21
15 grams of crack cocaine was seized at Mr. Trapp's house on
16 the evening of October 8th or early morning hours of
17 October 9th of 2011. Mr. Trapp resided at [REDACTED] Ranches
18 Drive. That's out in the county. I'm not exactly certain
19 where. I can't describe it, but it is here in Newberry
20 County. Mr. Trapp and how this came about, when I tell
21 you this, you just got to listen, because these things
22 happen. We're all human beings. We make a mistake. Mr.
23 Trapp told on himself. Unwittingly, inadvertently told on
24 himself about having crack cocaine. Because Mr. Trapp
25 arrives homes on the evening on October 8th, comes in his

1 house and notices things are scattered about, ransacked.
2 Sees things on his floor, sees shoeboxes taken out of his
3 closet in his bedroom, the bedroom is ransacked. Sees the
4 backdoor open. The backdoor was closed when Mr. Trapp was
5 home earlier. Now, it's open. It was pried. Now, the
6 shoeboxes in the bath, or excuse me, in the bedroom,
7 \$7,000.00 dollars is missing. Toaby Trapp called 911 and
8 reports my home has been burglarized, you know send the
9 police. The police come. Deputy Brad Epps who's sitting
10 right there is first on the scene to take the initial
11 report or being he's the first responding deputy I should
12 say. Toaby Trapp tells him about what happened and says,
13 you know, \$7,000 cash was taken out of my bedroom along
14 with maybe some jars of change I think and, you know, I'm
15 making a report. And see, Toaby didn't touch anything
16 because he wanted to preserve the crime scene for the
17 police to investigate. So he didn't touch anything. He
18 wanted to make sure the police could investigate properly,
19 perhaps fingerprints, take photos. Brad Epps is just a
20 road deputy at that time. Now, I believe he's in
21 investigations. But he then calls, Deputy Brad Epps calls
22 Robert Spreng, the on-call investigator that night, to
23 come by and process the scene so to speak. So while
24 they're processing the scene, when Investigator Spreng
25 comes out there, that's when they stumbled upon the crack

1 cocaine in a orange pill bottle in Mr. Trapp's bedroom.
2 So then the burglary investigation transforms into a drug
3 investigation all because Mr. Trapp didn't remember to
4 clean up his crack, essentially what happened. Probably
5 more concerned with the \$7,000.00 dollars in cash that was
6 taken is why. And Mr. Trapp later on gives a statement to
7 that effect that it was kind of oops, I was more concerned
8 about reporting a burglary, I forgot to clean my crack
9 cocaine up, forgot to put that away. So that's
10 essentially why this case is here before you today. And
11 Investigator Robert Dennis will talk to you about that,
12 the statement that was made to him. They obtain a search
13 warrant once it becomes a drug investigation to find
14 further drugs and they do. Right underneath that orange
15 pill bottle, they find more crack in two separate plastic
16 baggies. That's seized. I want to talk about how
17 evidence is preserved, the integrity of it just to make
18 sure no one tampers with the evidence. The police don't
19 want anyone tampering with the evidence, obviously,
20 they're the police. They want to preserve this. So we'll
21 talk about the process of how we know that nothing was
22 added or taken away from these drugs. That drugs are then
23 sent to SLED or state law enforcement agency and they
24 analyze drugs. You'll hear testimony from a drug analyst,
25 Lynn Black. She tested the drugs just to make sure that

1 they were indeed crack cocaine and yes, they were. She
2 generated a report and she will testify to that effect.
3 She weighed the drugs. A lab weight of, like I said, 21.3
4 grams is what she is going to testify to in her report.
5 You'll hear that testimony. It's trafficking now. That's
6 twice as much as you need. And so that's the Costco
7 amount of crack cocaine. And all we have to prove is that
8 that crack cocaine was Mr. Toaby Trapp's crack cocaine and
9 he possessed it and he possessed at least 10 grams of it.
10 That's all this case is. So we'll talk about the evidence
11 that was seized. You may see some pictures but that's
12 essentially the case. The statement he makes
13 acknowledging that I forgot to clean up the crack cocaine,
14 I was more concerned about my house being broken into. So
15 that's briefly the facts of his case. Now, I don't know
16 what, Mr. Dietrich Lake represents Toaby Trapp. I don't
17 know if he's going to present a case. He doesn't have to.
18 The burden is solely on the State to prove Mr. Trapp's
19 guilt beyond a reasonable doubt. Mr. Trapp doesn't have
20 to prove it. He does not have to prove one thing and you
21 may say to yourself, you know, a case like this seems
22 pretty open and shut. But in this country, it doesn't
23 matter, you get your day in court and that's why, you
24 know, only in America, that's why that it's kind of good
25 to live in this country because even with these kind of

1 facts, we're still going through the process and that's
2 what matters. You want it to be fair, but you can't
3 ignore the true. So that's why when you go to your jury
4 room, you're going to return a verdict that speaks the
5 truth and the Judge will tell you that. You're the finder
6 of facts. You have to tell us guilt or innocence and
7 that's your job. You have to determine somebody accused
8 of a crime in Newberry County is actually guilty or
9 innocent. But the verdict has to be based on the truth is
10 what we're here for. Why do people -- why are they sworn
11 under oath when they testify, because we want them to
12 speak the truth, we want them to tell the truth, we want
13 things to be accurate, so use your common sense. Don't be
14 fooled by misdirection. I don't know the line of
15 questioning that Dietrich Lake may pursue in this case,
16 but I ask you to pay attention to what makes sense. If
17 you heard these facts outside of this courtroom before you
18 are sworn in as a juror, what would you think? You would
19 think yeah, that's Toaby Trapp's crack. You would think
20 that. So don't let that common sense that you've had out
21 there, don't suspend that. Keep that with you while
22 you're a juror in this case, because that's what it is,
23 it's a common sense approach. And the facts in evidence
24 from the witness stand will bear that out what happened,
25 that that was Mr. Toaby Trapp's crack and he possessed and

1 we'll see it as found in his bedroom. Thank you.

2 THE COURT: Thank you, Mr. Daniel.

3 MR. LAKE: Here's a famous quote, and I want to make
4 sure that I get it right, "That an injustice anywhere is a
5 threat to justice everywhere." And that's what we have in
6 this particular case, an injustice. I know the prosecutor
7 has kind of focused their attention on me. Well, I'm not
8 the focus of the case. I'm not going to misdirect you.
9 I'm not going to try to change anything. As he indicated,
10 the facts and the evidence will speak for themselves. And
11 for eight years, that's what I did. I was a prosecutor.
12 And ladies and gentlemen of the jury, I'm not going to
13 waste your time on a Friday just to be doing it. I'm not.
14 He talked about rights that we have. He's right. We have
15 a right to a jury trial. He has a right to the jury trial
16 because one thing, he says that he is innocent of this
17 particular event. And that's what law enforcement wants
18 you, they want you to believe, oh, let's take a look at
19 this right here. Use your common sense and just listen to
20 what you hear from us and that he should be found guilty.
21 Well, that's not how the law works. What happened was on
22 October 8th, 2011, Mr. Trapp comes back home, because this
23 case starts off as a burglary. He calls law enforcement
24 to come out there and respond. He's there with his son.
25 Investigator, I mean I guess now, Epps arrives at the

1 scene and that's where things go bad and they go horribly
2 wrong for Mr. Trapp. And do you ask him does he know why?
3 He's going to tell you no, he doesn't know why. Because
4 Investigator Spreng comes out there and Investigator
5 Spreng comes out there because you will hear Investigator
6 Epps now tell you that, well, I'm just a responding
7 officer at this particular time. This is a little bit
8 more than I can handle, so now I'm bringing in the
9 investigator and he is solely the investigator, I guess,
10 for the scene. So he comes out there and he takes
11 photographs. And ladies and gentlemen of the jury, I'm
12 going to say one thing, because you're not going to hear
13 from Investigator Spreng who came out there. You're not
14 going to hear from him at all. There's Investigator
15 Bouknight who came out there to the scene. You're not
16 going to hear from him at all either. But thank God, that
17 when Investigator Spreng came out there, that he started
18 taking pictures because if he did not take a picture of
19 the scene before the narcotics people got there, ladies
20 and gentlemen of the jury, you all would never know the
21 truth of what happened. The only thing that you would see
22 is a pill bottle on a dresser and you would automatically
23 think that my guy is guilty, but he's not. Because what
24 you're going to see is photographs. They're not my
25 photographs. They're law enforcement's photographs and

1 they were digital photographs that were taken in order.
2 And you're going to see photographs where you see the
3 entryway to Mr. Trapp's room. And you're going to go in
4 there and you're going to see boxes spread everywhere, all
5 over the floor, because they've ransacked. Whoever robbed
6 this place has ransacked it. And they talk about
7 fingerprints. Ladies and gentlemen of the jury, I
8 challenge them because I didn't get any information of
9 where they did any fingerprints on anything where there
10 was a burglary or whether it was a drug case. They did
11 nothing. But the one thing that was beneficial is that
12 you see those photographs as he's coming into the room and
13 that's where Mr. Trapp gets lucky, and you're going to get
14 a chance to see that but again, they're not my
15 photographs. You're going to see photographs of the area
16 where they allege these drugs were at, because you're
17 going to see the boxes as to the condition of the place
18 where it was located. You're going to see the T.V. and
19 you're going to see the dresser. And you're going to see
20 in that area, and I'm going to call it alleged pill bottle
21 is not there. You will not see it in those photographs.
22 Then somehow later, and I'm waiting to get information
23 because, you know, again two of the people you're not
24 going to hear from. So I want to hear Captain Dennis
25 explain to us how all of the sudden that one pill bottle

1 ended up being there later on because then as he comes in
2 all of the sudden, now there are up-close pictures and so
3 now, oh, now we got drugs here. And based upon that, they
4 claim they going to get a search warrant and then based
5 upon those search warrants, they come back to the scene,
6 oh, we found drugs in here. Oh, he just admits. Oh, I
7 forgot about it. I forgot about the drugs. But where is
8 the statement at? You won't see not one written
9 statement. You won't see no video. The only person that
10 you going to hear from is Investigator Dennis, he's not
11 even going to tell you that he even did a report. For
12 something that happened three years ago -- if this guy has
13 confessed, wouldn't you think you'd write a report saying
14 that he confessed, if you are saying that he confessed to
15 you? That's 101 law enforcement. That's what you do
16 reporting for so that you can memorialize and come back
17 and testify later. But now all of the sudden years later,
18 now it's oh, this is what he confessed to. But again,
19 ladies and gentlemen, that's what I say to you sometimes
20 things are not quite what they appear. And thank God we
21 do live in this system, because he has at least another
22 buffer, another layer of protection and that's you because
23 you're the jury in this particular case. You get an
24 opportunity to hear the facts of the case and determine
25 whether they have met their burden of proof and that is a

1 proof beyond a reasonable doubt. And what that means, you
2 have to be firmly convinced that those drugs were there
3 and the drugs was there before law enforcement got there,
4 because that's what the issue is. And, ladies and
5 gentlemen of the jury, I submit to you when you see these
6 photographs, it's going to be clear that those drugs were
7 not there. But again we'll never know why we're at this
8 particular stage. But one thing that you need to be aware
9 of when it relates to Mr. Trapp, and I think this Judge
10 has talked about it. He's going to instruct you what the
11 law is in this particular matter but there is a
12 presumption of innocence in this particular case. But,
13 you know, more so it's more than just a presumption. Mr.
14 Trapp is innocent of this particular crime. That's why we
15 are here and that's why we're not wasting your time. When
16 they get up here and testify, the one thing that I'm going
17 to do is I'm going to do a couple of things. I'm going to
18 make sure they testify as to what they personally knew,
19 what they personally have knowledge of, because that's
20 what the only thing you're supposed to testify in the
21 first place. They give us Captain Dennis who basically
22 did nothing in this particular case. While the
23 investigator that took the photographs and collected the
24 evidence, we don't hear from him at all. You're going to
25 hear from Investigator Dennis. They are going to try to

1 bring in the person that actually did the testing. We're
2 not going to sit here and deny that it was crack cocaine.
3 What we're saying is that it wasn't his. But they're
4 going to bring that person in. They are going to bring
5 the responding officer to just testify to what it looks
6 like and that's it. And I think they may bring in one
7 other person who wasn't even doing the job back in 2011
8 that has any relevance to this particular case. That's
9 all you are going to hear from, but they want you to
10 convict him and call him a trafficker based upon that.
11 That's what annoys me and that is also scary. But again,
12 that's why we have jury trials in this particular case.
13 So I ask that you all take your role seriously and which I
14 know you will. I appreciate your time. This has been
15 hanging over Mr. Trapp's head, you know, for some time.
16 They've had an opportunity to have their witnesses here,
17 but they're not here. They call the cases, they decide
18 when cases are going to be called. And so they decided
19 that they were going to call this case today, Friday
20 morning. So we're here and we're happy to be here. I
21 just ask that you listen to the facts and pay close
22 attention to those photographs. Those photographs that
23 show when Investigator Spreng gets there and you see --
24 have an opportunity to see that dresser. That is where
25 you need to look for, that particular dresser. And I am

1 telling you that there is no pill bottle. Ladies and
2 gentlemen of the jury, again my name is Dietrich Lake.
3 Even though I don't live here in Newberry anymore, I was
4 born and raised here. My parents are still here and the
5 majority of my family is here. Mr. Trapp is a resident of
6 Newberry County. I still consider this, even though I
7 live down there in the Irmo/Ballentine area, this is still
8 home for me. And so you all, each of you, you are his
9 peers and my peers. So I just ask you take your role
10 seriously and we look forward to this particular day in
11 court. Thank you.

12 THE COURT: Thank you, sir. Call your witness.

13 MR. DANIEL: Your Honor, we call Brad Epps.

14 THE COURT: All right.

15 BRAD EPPS, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DANIEL:

19 Q Deputy Epps, how long have you been employed with the
20 Newberry Sheriff's Office?

21 A Four years and a few months.

22 Q And what is your current position or rank with the
23 Sheriff's Office?

24 A I'm a sergeant/investigator.

25 Q How long have you been an investigator?

1 A Maybe almost a year now.

2 Q Prior to that, what was your rank?

3 A I was just a road deputy.

4 Q Okay. So October 8th of 2011, you would have just
5 been a road deputy?

6 A Yes.

7 Q Okay. Were you on duty October 8th of 2011?

8 A Yes, I was.

9 Q Did you have an occasion to respond to a call located
10 ■ Little Ranches Drive in Newberry?

11 A Yes, I did.

12 Q And that is in the county?

13 A Yes.

14 Q And what was that call in reference to?

15 A It was a burglary.

16 Q And who made -- who was the complaining witness?

17 A Toaby Trapp.

18 Q So you arrive at ■ Little Ranches Road that evening?

19 A Yes.

20 Q About what time?

21 A My arrival time was about 10:19.

22 Q Is that military time, wouldn't that be about 8:00
23 p.m.?

24 A That's 22:19 so that's 10.

25 Q Oh, I thought you said 20:19 or 22:19?

1 A 22:19 is 10:19.

2 Q Okay. So 10:00 p.m., okay, roughly. When you
3 arrived on the scene, what do you observe, who do you meet
4 with?

5 A When I got on the scene, I spoke with Mr. Trapp. He
6 told me that he had came home, went through the front door
7 and noticed some items on the floor and his house had been
8 broken into. He said he had about \$7,000.00 dollars
9 missing and a few other items. And then I looked around
10 and went in the bedroom. The bedroom was ransacked,
11 shoeboxes everywhere, which is where he said he had the
12 \$7,000.00 dollars. So I backed out and called for the
13 on-call investigator which was Investigator Spreng's at
14 the time.

15 Q And let me back up. Mr. Trapp is taking you through
16 the house?

17 A Yes.

18 Q And he reported that, you said \$7,000.00 dollars?

19 A Yes.

20 Q In cash?

21 A Yes.

22 Q And where was that located?

23 A According to Mr. Trapp, it was in a shoebox in his
24 closet.

25 Q In his bedroom closet?

1 A Yes.

2 Q Okay. And he said things were kind of scattered
3 about?

4 A Yes, sir. There was numerous shoeboxes all over the
5 floor.

6 Q Was it just the bedroom that had been ransacked, are
7 any other rooms in disarray?

8 A As far as I can remember, there wasn't any other room
9 that was ransacked, just his bedroom.

10 Q How about signs of forced entry?

11 A The rear door was pried open.

12 Q Pried open?

13 A Yes.

14 THE COURT: Speak up a little bit for me, please.

15 Q What other items did Mr. Trapp report to you that had
16 been taken? You said some other items.

17 A A piggy bank filled with miscellaneous coins, maybe
18 pennies, dimes, quarters, nickels. And a large beer
19 bottle filled with quarters and dollars.

20 Q Did Mr. Trapp indicate, had he moved anything around
21 himself before you got there?

22 A No.

23 Q So Mr. Trapp is reporting that his house was
24 ransacked by some unknown individual?

25 A Yes.

1 Q I'm going to show you a series of photos, Deputy
2 Epps. And you said you did call an investigator?

3 A Yes.

4 Q And who was that investigator?

5 A Investigator Sprengs.

6 Q And where is Investigator Sprengs?

7 A Currently?

8 Q Currently.

9 A As far as I know he's working in Florida somewhere.

10 Q Okay. So he is no longer with the Sheriff's Office?

11 A No longer with the Sheriff's Office.

12 Q When did Investigator Spreng leave the Sheriff's
13 Office?

14 A I believe it's almost two years ago if not two years
15 ago.

16 Q Okay. So he's in Florida right now?

17 A Yes.

18 Q Is he still in law enforcement, do you know?

19 A I have no idea.

20 Q Okay. So what was, so your role was just you were
21 the first responding deputy?

22 A Yes.

23 Q You observe all of these items you said that had been
24 ransacked?

25 A Yes.

1 Q And then you called Investigator Spreng?

2 A Yes.

3 Q At that point is that the extent of your role?

4 A For the most part, yes sir. I mean I photographed
5 the backdoor and that was pretty much my role once
6 Investigator Sprengs got there.

7 Q Okay. You did take some photographs?

8 A Yes, of the backdoor.

9 Q What kind of camera did you have?

10 A A little Canon camera. I don't know the name brand
11 of it.

12 Q Is it like a digital camera?

13 A Yes, it was a digital camera.

14 Q Okay. I know a lot of days people just take pictures
15 with their phone. Did Investigator Spreng, did he take
16 pictures as well?

17 A Yes, he did.

18 Q Okay. Well, I'm going to show you a series of photos
19 that's been marked for ID purposes, State's number 10,
20 just tell me do you recognize that?

21 A That's the rear of the residence where entry was
22 made.

23 Q Okay. So the rear of the backdoor?

24 A Yes.

25 Q And you said that's where entry was made?

1 A Yes.

2 Q Okay. I'm going to show what's been marked as
3 State's number 11. You recognize that?

4 A Yes, sir. That's the pry marks where the door was
5 pried open.

6 Q Okay. It looks like pry marks?

7 A Yes, sir.

8 Q The door was pried open?

9 A Yes.

10 Q Did you suspect a tool or anything had been used?

11 A It could have been anything.

12 Q Okay. State's number 12, you recognize that?

13 A Yes, sir. This is another photograph of the pry
14 marks on the door.

15 Q Okay. State's number 14?

16 A That's the living room.

17 Q Was the living room ransacked?

18 A No, sir.

19 Q Okay. State's number 15, you recognize that?

20 A I don't know what area of the house it's in, but I
21 remember Mr. Trapp telling me that there were CDs on the
22 floor.

23 Q Okay.

24 A I want to say that's the first thing he noticed when
25 he walked in.

1 Q That the CDs were scattered on the floor?

2 A Yes.

3 Q Okay. State's number 16, you recognize that?

4 A More CDs on the floor.

5 Q Okay. State's number 17, what is that?

6 A That's Mr. Trapp's bedroom.

7 Q That's Toaby Trapp's bedroom?

8 A Yes.

9 Q Okay. And that appears to be a lot on the floor
10 there. What is that?

11 A Shoeboxes.

12 Q Okay. Is that where you said shoeboxes were
13 scattered about. Is that where certain things were taken
14 that were in shoeboxes?

15 A Yes, sir. He said the \$7,000.00 dollars was in the
16 shoebox in his closet.

17 Q Okay. State's number 18?

18 A More pictures of the shoeboxes on the floor.

19 Q And then State's number 19?

20 A More pictures of the bedroom with the shoeboxes.

21 Q All right. Did you take these photos?

22 A No sir, I did not.

23 Q But you were, were you present when the photos were
24 being taken?

25 A Yes.

1 MR. DANIEL: Your Honor, I'd offer these exhibits for
2 admission into evidence.

3 THE COURT: Any objection?

4 MR. LAKE: Can I see the photographs? Your Honor,
5 may I approach?

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 Q Do these photographs are, do they represent, I guess,
10 a clear and accurate depiction of what you observed on the
11 night of October 8th, 2011?

12 A Yes.

13 Q Now, you said you had taken some photos yourself?

14 A Yes, of the rear door.

15 Q Did you take any other photos?

16 A No, sir.

17 Q Who would have taken these photos, do you know?

18 A Investigator Sprengs.

19 Q Now, was that the extent of your role in this case?

20 A Once Investigator Sprengs got there, I passed the
21 information along that was given to me. I told him what
22 the bedroom looked like and he went in and started looking
23 around.

24 Q Okay. Any other deputies arrive?

25 A Not at that time.

1 Q Did you discover any drugs in the house?

2 A I did not. Not until Investigator Sprengs got there.

3 Q Did you see -- was Toaby Trapp, was he a suspect in
4 your investigation for anything?

5 A No, sir. His house was broken into. He was a victim
6 of a burglary.

7 Q Okay. At what point did you leave that residence?
8 Did you clear the scene at some point?

9 A I did because we had another call like right down the
10 road at the skating rink.

11 Q Do you recall Investigator Captain Robert Dennis
12 being on the scene?

13 A Yes.

14 Q Do you recall any search warrants being issued?

15 A I don't recall it. No but -- no, I don't.

16 Q And you said you were responding to a call later on?

17 A Yes. Once Investigator Sprengs and I believe Captain
18 Dennis was there and I want to say the narcotics officer
19 was there, too. We had another call down the road at the
20 skating rink and I left and came back once I cleared from
21 that call.

22 Q And why again -- why was a narcotics officer involved
23 in a break-in?

24 A Because once Investigator Sprengs got there, he
25 walked in the bedroom where everything was ransacked,

1 looking around the room and looked on the dresser which I
2 believe was to the right of the door and noticed a large
3 amount of crack in a pill bottle.

4 Q Did you observe this crack in the pill bottle?

5 A Yes, I did.

6 Q Okay. And at that point other -- you said other
7 officers arrived?

8 A I don't know when Investigator Sprengs calls either
9 Captain Dennis or the narcotics officer, Bouknight. I
10 don't know when he called them.

11 Q Okay. But you did clear the scene after that?

12 A Yes.

13 Q And you were not in investigations at that time?

14 A I was not.

15 MR. DANIEL: And, Your Honor, I would offer these
16 into evidence now at this point.

17 THE COURT: Any objection?

18 MR. LAKE: No objection.

19 THE COURT: All right. Proper foundation has been
20 laid, they'll be admitted.

21 (Whereupon, State's Exhibits 10, 11, 12, 14, 15, 16,
22 17, 18 and 19 were admitted into evidence.)

23 MR. DANIEL: No further questions. Please answer any
24 questions Attorney Lake has for you.

25 CROSS-EXAMINATION

1 BY MR. LAKE:

2 Q Investigator Epps, how are you doing today?

3 A I'm all right. How are you doing?

4 Q Just fine. You said you got there about 10:19?

5 A Yes, sir.

6 Q Who was with you when you arrived?

7 A I was by myself.

8 Q And you indicated that I guess -- describe for the
9 jury this trailer once you kind of walked into it?

10 A When you walk up on the porch and you walk in the
11 front door which is the living room. And I don't know how
12 many rooms are on off to the right. After you go through
13 the living room to the left there is a kitchen. And then
14 is the master bedroom which is where Mr. Trapp said his
15 bedroom was.

16 Q And are you the first officer there?

17 A I was.

18 Q And how long was it that you're there actually at the
19 scene before either backup arrives or you call
20 Investigator Spreng?

21 A I couldn't tell you.

22 Q And more than 5 minutes, more than 30 minutes?

23 A I don't know. I couldn't tell you. I don't want to
24 guess and be wrong.

25 Q Other than Investigator Spreng, did anybody else come

1 out there?

2 A Yes.

3 Q What other officers came out there?

4 A Captain Dennis and the narcotics officer, Bouknight.

5 Q And when they -- when you first arrived, describe the
6 encounter between you and Mr. Trapp at this particular
7 time?

8 A He gave me a brief rundown of what he saw when he
9 entered the residence which was CDs on the floor and
10 showed me where everything was in the house, where his
11 bedroom was and told me what he had missing.

12 Q And did he actually physically walk you through the
13 scene?

14 A Yes.

15 Q Okay. And I know you testified earlier he didn't
16 touch anything, is that right?

17 A Prior to me getting there, I don't know. But when I
18 was there, no.

19 Q You never personally observed him touch anything---

20 A I did not.

21 Q ---attempt to move anything, attempt to conceal
22 anything?

23 A I did not.

24 Q And he never said to you, man, I got some drugs over
25 here that I forgot about?

1 A No sir, he didn't.

2 Q That entire time, now did you ever get a statement
3 from him or anything along those lines?

4 A I did not.

5 Q And you -- just a few minutes ago you were shown some
6 photographs that have been admitted into evidence. And I
7 think which is State's exhibit number 15 and 16. Were
8 these the CDs that you're referring to that got displaced?

9 A Yes.

10 Q And these particular CDs, they weren't in Mr. Trapp's
11 bedroom, correct?

12 A I don't think they were. I want to say they were in
13 somewhere close to the kitchen and the living room area.

14 Q Okay. So there was another part of the area that had
15 been disturbed along with prying the door open, correct?

16 A Yes.

17 Q And let me show you some better photographs and what
18 I would mark as Defendant's number 3, Defendant's number
19 2, Defendant's number 4, Defendant's number 6 and
20 Defendant's number 7. Just get you to take a look at
21 these photographs and just kind of let me know whether
22 those, I mean they are almost identical same photographs,
23 but are they in the same condition as how you found the
24 scene when you got there?

25 A Yes, sir. That's how it was when I got there.

1 Q That fairly and accurately depicts that?

2 A Yes.

3 Q And at this particular time, what it fairly and
4 accurately depicts, is this when you are with Mr. Trapp as
5 he is walking you through?

6 A Yes.

7 MR. LAKE: Your Honor, at this time, Defendant's
8 would admit into evidence, Defendant's number 2, 3, 4, 7
9 and 6 into evidence.

10 MR. DANIEL: I'll stipulate, Your Honor, they can
11 come into evidence.

12 THE COURT: All right. They're in.

13 (Whereupon, Defendant's Exhibits 2, 3, 4, 6 and 7
14 were admitted into evidence.)

15 Q Okay. Just for the record, go through each one
16 starting with exhibit number two and describe what you see
17 in each particular photograph.

18 A That's a picture taken from, what looks like the
19 hallway going into Mr. Trapp's bedroom.

20 MR. LAKE: Your Honor, may I stop the witness for
21 just a second. Do you mind if I get him to step down
22 maybe in front of the jury and just kind of illustrate or
23 would you prefer him here?

24 THE COURT: All right.

25 MR. LAKE: I'm not technically savvy, Your Honor, so

1 I'm going to need some assistance. Your Honor, I may just
2 have him to stand up. It's easier for me to do this way
3 or here, I don't want to be leaning over the jurors. I
4 just need you to stand up and speak as loud as possible,
5 okay?

6 DEPUTY EPPS: Okay.

7 Q Using State's exhibit number 2, describe for the jury
8 what you see and get a little bit closer so they can see
9 it also.

10 A This appears to be the hallway leading up to Mr.
11 Trapp's bedroom.

12 Q And can you see some of the items that you were
13 describing?

14 A Yes, shoeboxes.

15 Q And this is how you found it when you first got
16 there, correct?

17 A Yes.

18 Q And just starting off with State's exhibit number --
19 I mean, I'm sorry, Defendant's exhibit number 3, what is
20 this?

21 A Mr. Trapp's bedroom again with the shoeboxes and the
22 drawers being pulled out.

23 Q Again, this is the same condition that it was in at
24 the time that you walked through with him, correct?

25 A Yes.

1 THE COURT: All right. I'm want a sidebar real
2 quick.

3 (Whereupon, a bench conference was held in the
4 presence of the jury but out of the hearing of the
5 jury.)

6 THE COURT: I need to put something on the record,
7 ladies and gentlemen. Y'all step to the jury room. We'll
8 take a short break.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: We will take a break.

12 (Whereupon, a break was taken.)

13 THE COURT: Come to order, please. All right. I
14 expressed a concern I didn't want to trap a witness
15 knowing there's some distinguishing marks on those
16 pictures. Y'all ask questions whatever y'all feel
17 appropriate in cross-examination or on redirect. However
18 y'all want to do that, and I think y'all have studied
19 those pictures more than I have after the sidebar, so do
20 whatever you like.

21 MR. LAKE: All right. Thank you.

22 THE COURT: All right. We ready to continue on?

23 MR. LAKE: Yes, Your Honor.

24 MR. DANIEL: Yes.

25 THE COURT: All right. Bring the jury in please,

1 ma'am.

2 (Whereupon, the jury came into open court at
3 approximately 11:15 a.m.)

4 THE COURT: All right. Mr. Lake, continue on.

5 MR. LAKE: Thank you, Your Honor.

6 CONTINUE CROSS-EXAMINATION

7 BY MR. LAKE:

8 Q I think that, Investigator, I've shown on 2 and 4.
9 I think you've already identified what was in number 4.

10 A 4.

11 Q And I think you've already identified what was in
12 number 3, correct? I think you looked at them
13 chronologically?

14 A I believe I did.

15 Q Okay. Well, just again briefly, just kind of make
16 sure that 3 is in the condition in which you found it when
17 you got to that location?

18 A Yes.

19 Q Okay. And photograph 6, is that the condition that
20 you found it?

21 A Yes.

22 Q Let me show you two other photographs that I didn't
23 show you initially which would be Defendant's exhibit
24 number 7 and 13 and ask you do they fairly and accurately
25 depict what the scene looked like at that particular time?

1 A Yes.

2 MR. LAKE: Your Honor, at this time the Defendant
3 would offer Defendant's exhibit number 7 and 13 into
4 evidence.

5 THE COURT: Any objection?

6 MR. DANIEL: No, sir, Your Honor.

7 THE COURT: All right. They're in, too, also.

8 (WHEREUPON, Defendant's Exhibits 7 and 13 were
9 entered into evidence.)

10 MR. LAKE: Permission to publish to the jury?

11 THE COURT: Sure.

12 Q And at the time that you walked through with Mr.
13 Trapp, did he step -- did he go all the way up in there
14 and step over the boxes, step on any boxes or do anything
15 when he went over there?

16 A No.

17 Q And all of the things that you did that particular
18 night, did you memorialize that in a report?

19 A Yes, sir.

20 Q Did you put all that, everything that you did that
21 night in a report?

22 A Yes.

23 Q Could you explain to the jury---

24 A With the---

25 Q I'm sorry.

1 A The only thing that---

2 Q Make sure you stay over--

3 A Let me read back over it real quick.

4 Q Just let me know when you're ready, okay?

5 A The only thing that's not on here that I can see is
6 where I took the pictures of the backdoor.

7 Q No, I wasn't asking you, I was asking did you do a
8 report?

9 A Yes.

10 Q Okay. And what's the purpose of doing a report?

11 A To tell what happened.

12 Q For purposes of what?

13 A Whoever's calling. I mean to report whatever crime
14 has occurred.

15 Q And so also do they serve the purpose of also
16 allowing you to testify?

17 A Yes.

18 Q And how does that help you when it comes time to
19 testify?

20 A Well---

21 Q How do your reports assist you in testifying?

22 A In being able to recall what I done that, what I did
23 in the, when I arrived on the scene.

24 Q And why is that important for a trial?

25 A It shows everything that was done.

1 Q And will that help you remember a whole lot more
2 about what was said and done by having a report generally?

3 A Yes.

4 Q Does it make it tougher to testify if you don't have
5 those reports if a significant period of time has gone by?

6 A Yes. Well, I mean, there is some stuff that you
7 don't remember also.

8 Q That the report kind of will, refreshing your memory,
9 correct?

10 A Yeah.

11 Q And in this particular report that you did, you
12 indicated that you couldn't enter Trapp's room because of
13 the number of shoeboxes and everything that was on the
14 floor?

15 A Correct.

16 Q And also I know you testified that his room was
17 damaged, but also this report indicates that there was --
18 they had also went into his son's room, correct?

19 A It says that Mr. Trapp said they went in his son's
20 room as well.

21 Q And you personally observed, I guess, the kitchen
22 cabinets were open?

23 A Let's see. Yes.

24 Q And you need to look at your report to remember
25 everything you did, am I right?

1 A Yes.

2 Q If you didn't have that report you wouldn't know that
3 you had saw the kitchen doors open, correct?

4 A Correct.

5 Q You wouldn't have known it indicated that someone
6 else that went into his son's room, correct?

7 A That's correct.

8 Q Because this happened, when did this happen?

9 A 2011.

10 Q Almost three years ago?

11 A Yes, it has been three years.

12 Q And I don't know whether you had answered this
13 question before but at what point do you decide that you
14 need to call in for additional assistance?

15 A Due to the severity of the room. It was, stuff was
16 everywhere.

17 Q And how long, do you recall how long you were out
18 there before Investigator Spreng showed up?

19 A I can't recall.

20 Q It is a significant amount of time or a short period
21 of time?

22 A I can't recall.

23 Q Did you actually personally see Investigator Spreng
24 yourself?

25 A Once he got on the scene, yes sir, I did.

1 Q How did he come to be out there. I know you called,
2 who did you call?

3 A Normally what we do is we call dispatch,
4 communications, and have them to get the on-call to
5 respond to what we have.

6 Q And you are the initial reporting officer, would you
7 have the responsibility, I guess, of kind of gathering
8 reports to know exactly when people are coming and going
9 as it relates to the scene?

10 A Gather a report as in?

11 Q Knowing when additional officers came out there,
12 knowing who came out there and when they came out there?

13 A You mean like another log or something, is that what
14 you are asking?

15 Q Either a supplemental report or log or anything along
16 those lines?

17 A Once the investigator arrived that is when he would
18 take over the scene.

19 Q And what was your role at that particular time, after
20 the investigator arrived and you briefed him in terms of
21 what happened?

22 A To assist him with whatever he needed.

23 Q Did you have to provide him with any assistance or
24 anything along those lines?

25 A I didn't that night, no sir.

1 Q And where were you at when he went back into the
2 home?

3 A I was behind him.

4 Q And where is Mr. Trapp at this particular time?

5 A He was outside.

6 Q And who is out there with him?

7 A The best I can remember I believe his son was there.

8 Q Do you recall how old his son was?

9 A Anywhere between maybe 15 and 18.

10 Q And I think it was your testimony, if I am correct,
11 correction, was there anybody else out there besides the
12 son?

13 A Not that I can recall.

14 Q And when you are walking back into the house with
15 Investigator Spreng, where all do y'all go?

16 A We go throughout the house. I take him to Mr.
17 Trapp's room, he walks through and looks around. And that
18 is when he noticed the crack on the dresser or nightstand.

19 Q And at this particular point where is this crack
20 alleged to be at?

21 A It was either a dresser or nightstand. I am not real
22 sure, it was on a piece of furniture in the bedroom.

23 Q You have no clue where it was at?

24 A What do you mean by where?

25 Q Where in the house?

1 A It was in his bedroom.

2 Q It is your testimony that you were with him as y'all
3 walked through the house and he found this, exactly where
4 did he find it at?

5 A Where in the bedroom I couldn't remember. It has
6 been three years ago.

7 Q That is why you should memorialize those kinds of
8 things? Did you memorialize that in your report that you
9 observed him, Investigator Spreng, find any quantity of
10 drugs?

11 A I did not.

12 Q That is not in your report, is it?

13 A No sir, it is not.

14 Q That is very important, isn't it?

15 A I would agree.

16 Q That is more important than whether the kitchen doors
17 are open, correct?

18 A I would say it is about the same.

19 Q So you equate having kitchen doors open the same as--

20 A -- it is part of what I am looking at.

21 Q Just answer the question. So you equate having
22 kitchen doors open, which you memorialize in this report,
23 versus not putting into this report that I found a whole
24 bunch of crack.

25 A Well, I didn't find it.

1 Q Well, you observed it with him as y'all were working
2 through. But you didn't put it down as important.

3 A It is not in my report.

4 Q And it is not in your report where these actual drugs
5 were found either, were they?

6 A No sir, it is not.

7 Q But that is important too, isn't it. Don't you think
8 that would have allowed the jury to know exactly what you
9 saw at that particular time?

10 A Yes, sir.

11 Q And those photographs, again, show what you look like
12 when you and Mr. Trapp were walking up through there,
13 correct? The photographs that we have already entered
14 into evidence?

15 A Yes.

16 Q And did you ever touch whatever this, well actually,
17 you said you saw it. What did you actually see?

18 A A large quantity of crack in a pill bottle.

19 Q And did you know what that was when you first saw it?

20 A Yes. Well, that's what it appeared to be.

21 Q Okay. And what kind of pill bottle was it?

22 A It was -- I don't remember what color it was. I just
23 know it was a clear pill bottle.

24 Q It's a clear pill bottle?

25 A Yes. Clear as in you can see through it. I don't

1 know what, I don't remember what color it was.

2 Q Okay.

3 A I mean, when I mean clear, I mean you could see
4 through it but as far as if it had a color, I couldn't
5 tell you what color the bottle was.

6 Q Okay. So you couldn't tell me where it was located.
7 You can't tell me whether it's a clear, plastic type or do
8 you know whether it had a name on it?

9 A I can't recall.

10 Q You can't recall that either? Wouldn't that have
11 been important if Mr. Trapp's name was actually on this
12 pill bottle that y'all alleged to have found crack in it?

13 A It would have been, yes sir.

14 Q And that would have been something that needed to be
15 in a report also, correct?

16 A Yes.

17 Q And do you know -- have any personal knowledge as to
18 where that's in anybody's report that this alleged pill
19 bottle had Mr. Trapp's name on it?

20 A Not to my knowledge. I mean, I had to look over the
21 original report to refresh my memory.

22 Q Do you -- did you ever touch that pill bottle?

23 A No.

24 Q Did anyone ever touch it in your possession while it
25 was in your presence?

1 A Not that I can recall.

2 Q Not even Investigator Spreng?

3 A Not that I can recall.

4 Q And you said that you left the scene. How long did
5 you leave the scene?

6 A I couldn't tell you.

7 Q But you ended up coming back?

8 A Yes.

9 Q Why'd you come back?

10 A Because I still, I was still, had to do everything as
11 far as the report.

12 Q Well, what did you do as far as, I guess you would
13 have been the person with the burglary, right?

14 A Yes.

15 Q So did you order anyone out to do any fingerprints?

16 A Did I order anyone to do any fingerprints?

17 Q Yeah, of the door or anything? Did you order anybody
18 to do the fingerprints of the bottle?

19 A No.

20 Q Okay. Did you order anybody to do fingerprints of
21 anything within that house?

22 A No.

23 Q Did you do any DNA swabs of anything that may have
24 been touched---

25 A No.

1 Q ---whether it might have been the pill bottle,
2 whether it might have been a door, whether it'd been
3 anything?

4 A No.

5 Q So exactly what did you do when you came back then?

6 A I stood around.

7 Q You stood around. And while, as you're standing
8 around, where is Mr. Trapp?

9 A I don't know. He may have been inside. He may have
10 been outside. I don't know.

11 Q Would that be important to put in that report where
12 he was at?

13 A He on the scene. I do know that much because there
14 were three other people there.

15 Q Was he in custody at the time you saw him or the next
16 time you saw him?

17 A I don't remember.

18 Q Did he ever confess to you at any point while you
19 were out there, either to you or in your presence that
20 somehow these drugs were his and that he admitted
21 responsibility for it?

22 A Not in my presence, no.

23 Q If you had to kind of -- I'm looking at your report
24 and it indicates that you arrived at 22:19 which is 10:19,
25 but you departed at 2:44 in the morning?

1 A Yes, sir.

2 Q Okay. And is that 2:44 when you left for the first
3 time and then came back?

4 A No, that's when I left for good.

5 Q So you're out there for how many hours, almost five
6 hours or something like that?

7 A That's pretty close.

8 Q Four or five hours? But you don't know where Mr.
9 Trapp was that entire time?

10 A He was on the scene.

11 Q Was Investigator Spreng in your presence that entire
12 time?

13 A No.

14 Q What about Investigator Bouknight, was he in your
15 presence the entire time?

16 A Like I say, because I left.

17 Q What about Captain Dennis?

18 A No sir, he wasn't.

19 Q When did Captain Dennis arrive at the scene?

20 A He got there a little bit after Investigator Sprengs
21 got there.

22 Q And did he take control of the scene or was
23 Investigator Sprengs still in control?

24 A As far as I know, Investigator Sprengs was still in
25 control of the scene, because he was the on-call

1 investigator.

2 Q And what did you observe Captain Dennis do out there?

3 A I don't recall.

4 Q Did you ever at any point see Captain Dennis read Mr.
5 Trapp his Miranda rights?

6 A I can't recall that.

7 Q You can't recall that. So you can't recall any
8 Miranda. Do you recall any conversation between Captain
9 Dennis and Mr. Trapp in your presence?

10 A I can't recall that either. And he may have spoken
11 with him, he may not. I don't remember.

12 Q Do you know where those photographs that you took of
13 the area?

14 A Do I know where they are?

15 Q Yeah, where they are?

16 A Where they are?

17 Q Did you turn them in or turn them over to anyone?

18 A They were attached to the report.

19 Q Which report was that?

20 A This one for the burglary, the report for the
21 burglary.

22 Q Did you ever make any arrests on the burglary?

23 A Did I? No, sir. I wasn't the investigator.

24 Q You wasn't the investigator. Well, you said
25 something about Investigator Sprengs is no longer here?

1 A Yes. He's no longer here.

2 Q And do you know exactly where -- I'm sorry, go ahead.

3 A He's no longer here.

4 Q Do you know when he left?

5 A It's been at least two years or maybe a little under
6 two years.

7 Q A little bit, possibly a little bit under. And this
8 happened back in 2011, correct?

9 A Yes.

10 Q Have you had any communications or conversations with
11 him since he left the Sheriff's Department?

12 A I have not.

13 MR. LAKE: No further questions.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. DANIEL:

17 Q Deputy Epps, why did you respond to ■ Ranches Drive
18 that evening?

19 A For a burglary.

20 Q For a burglary and crack cocaine investigation?

21 A Well, it started out as a burglary. Then once the
22 drugs were discovered, that's when everything else
23 progressed from there.

24 Q Now, when you got there to the scene, you just saw
25 Toaby Trapp and his son, is that correct?

1 A Yes.

2 Q And Toaby Trapp, what did he -- exactly what report
3 did he report?

4 A He told me that his house was broken into. He said
5 he had approximately \$7,000.00 dollars and a few other
6 items missing of monetary value, money-wise.

7 Q So he only told you what items he was missing?

8 A Yes.

9 Q Did he say he if he had any new items that he never
10 had before?

11 A No.

12 Q Did he report that someone had left a pill bottle
13 that contained a white substance?

14 A No.

15 Q All right. And you said the drugs or what you
16 thought appeared to be drugs on -- you said on a piece of
17 furniture?

18 A Yes.

19 Q What kind of furniture did you observe the drugs on?

20 A It was either a dresser or a nightstand.

21 Q All right. So are you using that kind of
22 interchangeably or are you saying--

23 A -- it was a large piece of furniture.

24 Q Okay. I'm going to show you some photos already been
25 admitted to evidence. And where is that?

1 A That is the nightstand to the left of the bed if you
2 are standing beside it.

3 Q The night, is that---

4 A -- it's a nightstand or either a dresser.

5 Q Okay. There is a nightstand and where is the
6 nightstand?

7 A That's either the dresser or the nightstand. I can't
8 really tell for sure. That's either a dresser or a
9 nightstand.

10 Q What's the T.V. on?

11 A It looks like a dresser, just based on the number of
12 drawers that I can see.

13 Q Okay. And you did -- you said you did observe drugs
14 in a pill container, correct?

15 A Yes.

16 Q Were the drugs in that pill container, were they on
17 the same piece of furniture as the T.V. or a different
18 piece of furniture?

19 A I couldn't remember. I do remember it being on a
20 dresser or either a nightstand. I don't remember on what
21 piece of furniture it was on.

22 Q When you first arrived, you said you observed the
23 shoeboxes in Mr. Trapp's bedroom?

24 A Yes.

25 Q Did you go in, did you go into the bedroom any

1 further?

2 A I did not.

3 Q When did you go into the bedroom?

4 A Once Investigator Sprengs got there.

5 Q And who was it that discovered the drugs?

6 A Investigator Sprengs.

7 Q He saw it first? Investigator Spreng saw it first?

8 A Yes.

9 Q And then when did you see it?

10 A When he said, oh, that's crack.

11 Q How, were you standing close by?

12 A Yes. I was behind him but when he said, oh, that's
13 crack. I turned and looked around his shoulder and looked
14 at it.

15 Q And, Deputy Epps, do you recognize this?

16 A Yes.

17 Q What is that?

18 A A pill bottle with what appears to be crack in it.

19 Q And was that in the bedroom?

20 A Yes.

21 Q And you said you were behind Investigator Spreng?

22 A Yes.

23 Q And then you did go to observe the drugs at that
24 point?

25 A Yes.

1 Q And is this what you observed?

2 A Yes.

3 MR. DANIEL: Your Honor, I'd offer Defense number 8
4 for admission into evidence or it's been marked as I think
5 number 8.

6 MR. LAKE: That's State's evidence.

7 MR. DANIEL: Can we mark it as State's?

8 THE COURT: You may. We'll remark it.

9 MR. LAKE: No, it's not.

10 THE COURT: Did you tell me it's Defense 8. Be any
11 objection to it?

12 MR. LAKE: Well, Your Honor, I do not have any
13 objection.

14 THE COURT: 8 is admitted without objection as
15 Defense 8. Ladies and gentlemen of the jury, just so you
16 know, the exhibits get moved State, some are State's and
17 some are Defense. But right now, it's the State's case
18 and they are putting in evidence what's been marked as
19 Defense exhibits.

20 (Whereupon, Defendant's Exhibit 8 was admitted into
21 evidence.)

22 MR. DANIEL: Your Honor, permission to publish
23 Defense 8?

24 THE COURT: And for the record, these do not count as
25 evidence offered by the Defense for the purposes of

1 motions.

2 Q All right. Now, let's describe that again. What are
3 we looking at?

4 A A pill bottle containing what appears to be crack.

5 Q And that pill bottle, do you think that appears to
6 you to be crack?

7 A Yes.

8 Q Have you made cases before or been a part of any
9 cases where you observed crack in a pill bottle?

10 A Yes.

11 Q Did those have people's names on them generally that
12 you found?

13 A Not all the time, no sir.

14 Q Can you get a prescription of crack cocaine?

15 A No sir, you cannot.

16 Q Okay. All right. And I'm going to show you again
17 this picture that we've already published to the jury.
18 Can you see the pill bottle in that picture?

19 A No sir, I cannot.

20 Q Okay. Oh, I apologize, small amount of space. I
21 don't know if the jury saw that previous picture, Your
22 Honor. I am going back, describe again what is in that
23 photo.

24 A A pill container containing what appears to be crack.

25 Q And was there a name on that?

1 A Based on the picture, no.

2 Q All right. And you see that orange pill bottle that
3 you said contained -- contained crack in the previous
4 exhibit, can you see it in this photograph?

5 A No.

6 Q Can you see everything that's on that dresser from
7 that vantage point?

8 A No sir, you cannot.

9 Q What is that right there where my pen's on, what is
10 that?

11 A I don't know.

12 Q What is that?

13 A It looks like a piece of paper.

14 Q Well, that's a piece of paper you think?

15 A That's what it looks like.

16 Q And that's right near that orange pill bottle?

17 A Yes.

18 Q What is that again, my pen, can you tell?

19 A It looks like a sheet of paper just based on the
20 previous picture from this one.

21 Q Okay. But those are two, these two pictures, are
22 they the same camera angle, are these the same shot?

23 A Not the same camera angle, no.

24 Q Is this a closer shot?

25 A Yes.

1 Q Okay. And you worked -- you said in 2011, October
2 2011, you were just a road deputy?

3 A Yes.

4 Q Do you still have to generate reports as a road
5 deputy?

6 A Yes.

7 Q How detailed are those reports supposed to be?

8 A As much as the victim or a complainant tells us.

9 Q But you called Robert Spreng, the investigator on
10 call?

11 A Yes.

12 Q Why'd you call him?

13 A Due to the severity of the room, which everything
14 being tossed around the room was ransacked.

15 Q Okay. But as a road deputy, would you take
16 fingerprints, DNA, things like that?

17 A At that time, no sir.

18 Q Okay. And you said you took photographs, right?

19 A I did.

20 Q Do you recognize this?

21 A Yes, I do.

22 Q What is this?

23 A Photographs that I took of the backdoor.

24 Q So those are the photographs you -- that you took?

25 A Yes.

1 Q Were those all the photographs you took?

2 A Yes.

3 Q So the rest of these photographs we're looking at,
4 you didn't take?

5 A No sir, I did not.

6 Q Who took those?

7 A Investigator Sprengs.

8 Q Did he take a lot of photos, to your knowledge?

9 A Yes, because normally they do the outside, all four
10 corners, back side and the inside.

11 Q Why was he more thorough in taking pictures than you?

12 A Because he knows what he's looking for. He's an
13 investigator.

14 Q Detective, is that another word that's used?

15 A Yes.

16 Q Okay. And why didn't you mention the crack cocaine
17 in your report? Why did you leave that out?

18 A Because I called out the investigator and that was
19 discovered after he was there. And my initial call was
20 for the burglary.

21 Q And at the time who was doing drug investigations?

22 A The narcotics officer.

23 Q Who was that?

24 A Nick Bouknight.

25 Q And where is Nick Bouknight?

1 A Where is he now? He's no longer with us.

2 Q Okay.

3 MR. DANIEL: No further questions.

4 THE COURT: All right. Clarify something. Was the
5 question and I thought early on this address was Little
6 Ranches Road, not Ranches Road, am I correct on that?

7 MR. DANIEL: Yes, sir. I'm sorry.

8 THE COURT: All right.

9 MR. DANIEL: Little Ranches. Yes sir, Your Honor.

10 THE COURT: Little Ranches Road. Okay.

11 MR. DANIEL: I may have just said Ranches. I'm
12 sorry.

13 THE COURT: I thought I knew about where this was.

14 RECROSS-EXAMINATION

15 BY MR. LAKE:

16 Q Deputy Epps, was there anything else that prevented
17 you from requesting that fingerprints be done?

18 A Requested that be done?

19 Q Yes. Have you ever requested fingerprints before?

20 A Have I ever requested?

21 Q That someone did fingerprints.

22 A No sir, I haven't.

23 Q You ever been trained in fingerprints?

24 A Trained?

25 Q Yes, sir.

1 A Not at that time. No sir, I was not.

2 Q But subsequently have you been trained?

3 A Yes.

4 Q And you know the importance of fingerprints
5 sometimes, correct?

6 A I do.

7 Q And why is that?

8 A You may get a hit on a fingerprint based on AFIS.

9 Q For DNA, right?

10 A That's right.

11 Q If a person touches an object like a bottle, either
12 their fingerprint or their DNA could be on there, correct?

13 A Potentially if they weren't wearing gloves or
14 something over their hands.

15 Q And that would -- could give you an idea of the
16 person that potentially at some point, maybe can't tell
17 exactly when, had contact with that particular bottle?

18 A If their DNA or fingerprints are in the system.

19 Q And was that option explored in this particular case
20 or do you have any personal knowledge?

21 A I have no personal knowledge, no I don't.

22 Q Now, I think the prosecutor showed you I think two
23 photographs and let me make sure I'm correct. Are these
24 the two that he showed you?

25 A Yes.

1 Q Okay. And in this particular photograph right here,
2 what's been marked as Defendant's exhibit number 8, you
3 see that pill bottle, correct? Describe that pill bottle.

4 A It's a orange-color, clear with a cap on the top
5 containing a, what appears to be crack.

6 Q Okay. And describe the items that aren't that crack
7 bottle.

8 A An ashtray. There is a sheet of paper behind the
9 pill bottle. Looks like two or three bottles of cologne,
10 maybe four. A container of change and some Alka-Seltzer
11 Plus.

12 Q Okay.

13 A And a DVD player.

14 Q Okay. I guess it'd be this particular photograph
15 right here, correct?

16 A Yes.

17 Q Now, explain to me in Defendant's exhibit number 8
18 where you see that same orange type of pill bottle in
19 front of that piece of white paper?

20 A I don't see it.

21 Q And, but you do see some of the same other items that
22 were in that photograph, correct?

23 A Yes.

24 Q Now, everything is there except for this crack
25 bottle, correct?

1 A Yes.

2 MR. DANIEL: Your Honor, I would object to that being
3 a misleading question, that's all that's in the photo. He
4 asked was that all -- not all in there -- was that all
5 that was in there. I think that's a misleading question.

6 MR. LAKE: Your Honor, the question that I asked him
7 is, did he see that bottle in front of that. And what is
8 the other -- only other objects that he doesn't see in the
9 photograph. And he identified that the pill bottle was
10 the only thing he didn't see in the photograph.

11 THE COURT: I think that's a jury question. The jury
12 could see the photographs and examine them. I don't think
13 it's a fair question to ask a witness what can they see,
14 name everything in it. Just the picture speaks for
15 itself. They can look at it. The jury -- and y'all -- I
16 mean matter of fact, every picture that's been introduced
17 to the jury, y'all don't have to memorize as it's being
18 passed around. Y'all will have it in the jury room, okay,
19 all of these pictures that have been coming in. Y'all
20 will have them all, every angle they've introduced, you
21 get to look at to your heart's content. There's not going
22 to be a pop quiz to try to remember what you saw standing
23 up here, and I just remind you of that.

24 Q And, Investigator Epps, this is for clarification,
25 too. You indicated that, I guess, y'all didn't see it

1 simultaneously, that you, I think your testimony was that
2 you were behind Investigator Spreng at that particular
3 time?

4 A Yes.

5 Q When you heard him make the comment?

6 A Yes.

7 Q So you actually in reality did not see it at the same
8 time that he alleged that he saw it, did you?

9 A No, I did not.

10 MR. LAKE: No further questions.

11 THE COURT: Okay. All right. You may step down now,
12 Investigator. All right. Let's take a short break.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: Let's take a break.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All right. Bring the jury in.

18 (Whereupon, the jury came into open court at
19 approximately 12:30 p.m.)

20 THE COURT: Mr. Scott, call your next witness.

21 MR. SCOTT: Thank you, Your Honor. The State calls
22 Robert Dennis.

23 ROBERT DENNIS, being
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. SCOTT:

2 Q Captain Dennis how long have you been in law
3 enforcement?

4 A I've been in law enforcement since 1991. Started
5 with the City of Newberry, progressed to getting out of
6 law enforcement for about six or seven months doing some
7 construction work. Getting back in law enforcement at the
8 Prosperity Police Department and then finally in '99,
9 continued my career here at Newberry County Sheriff's
10 Office.

11 Q So law enforcement since '91 and then the Sheriff's
12 Department since '99?

13 A That's correct, yes sir.

14 Q So you have 20 years and some change as law
15 enforcement stands?

16 A Yes, sir.

17 Q And you're a captain now, correct?

18 A That's correct.

19 Q In 2011 you were a lieutenant?

20 A I was.

21 Q And did you have an occasion to respond to this home
22 at ■ Little Ranches Road?

23 A I did.

24 Q Do you know who owned that residence or lived there?

25 A I do. The owner of the residence was Toaby Alexander

1 Trapp who is seated to my right next to Mr. Lake.

2 Q Okay. And let's see, that was October 8, 2011 that
3 you responded to that location?

4 A That is correct.

5 Q All right. Tell me how it was that you came to go
6 there?

7 A During that time I was Lieutenant over Investigations
8 and one of my job duties is overseeing the Investigation
9 Unit. I scheduled the investigators that are on call at
10 least once a week out of the month and they would respond
11 to burglaries, larcenies or any other activity that they
12 would need to come out for, deaths or things of that
13 nature. On this particular night, Robert Spreng was the
14 investigator that was on call and he was notified by the
15 road deputy to come out and process a scene for burglary.
16 Once he had gotten there he discovered some, what he told
17 me over the phone was drugs and that he had already
18 contacted Investigator Nick Bouknight who was at the time
19 our Narcotics Investigator to respond. So I felt at that
20 point in time I need to leave my home and go and lend any
21 assistance to Investigator Spreng or Investigator
22 Bouknight.

23 Q Because you would have been a supervisor type role, a
24 supervising agent, you had a higher rank than any of these
25 other officers there, is that correct?

1 A That is correct, yes.

2 Q All right. Well, let me cover a few things before we
3 proceed at what you did next. Spreng, that's S-P-R-E-N-G?
4 That was the agent that responded out there?

5 A Spell it again. I'm sorry.

6 Q Spreng, is it S-P-R-E-N-G?

7 A That's correct, yes.

8 Q Okay.

9 A I was missing the E.

10 Q He goes out there after Bradley Epps, the officer we
11 just heard testify. He was the initial responder, and
12 then he called Spreng to the scene, is that what you just
13 indicated?

14 A That's correct.

15 Q Now, where is Spreng now, Officer Spreng?

16 A Officer Spreng resigned from Newberry Sheriff's
17 Office and moved back to Florida and Puerto Rico. I think
18 he actually lives somewhere in Florida, but his home is
19 Puerto Rico.

20 Q Okay. So approximately when did he leave the
21 Newberry Sheriff's department?

22 A Robert's been gone probably back in the latter --
23 maybe the middle to the latter part of 2012.

24 Q Okay. As far as you know he's in Florida now?

25 A That's correct.

1 Q All right. And then Deputy Bouknight, Nick Bouknight
2 was the narcotics agent at the time. It's been testified
3 to that he arrived on the scene as well at some point.

4 And where is Nick Bouknight now?

5 A (No response.)

6 Q Well, let -- Nick Bouknight passed away, is that
7 correct?

8 A That's correct.

9 Q And he was a deputy that worked with you for years,
10 is that right?

11 A That is correct.

12 Q Okay.

13 A I apologize. Just a minute.

14 Q Okay. Well, we just needed to cover that. That's
15 why he's not here, is that correct?

16 A That is correct.

17 Q Okay. Captain, whenever you get to the scene, you
18 had been briefed on the fact that some quantity of crack
19 has been located?

20 A Yes, sir. I received actually two phone calls. The
21 first phone call was from Investigator Spreng of what he
22 had located and that he had contacted Investigator
23 Bouknight for his assistance. Spreng advised that
24 Investigator Bouknight had told him that he needed to
25 pretty much stop what he was doing until we got a search

1 warrant, because it was, in finding the, what they said
2 was drugs in plain view, we wanted to protect the
3 integrity of the scene as well as the officers and Mr.
4 Trapp. So he pretty much just stopped doing what he was
5 doing until Investigator Bouknight could use what
6 information he gathered from Spreng and go to the
7 magistrate of Newberry County and obtain a search warrant.

8 Q All right. So did you get on the scene before the
9 search warrant had arrived?

10 A I probably arrived maybe five to six minutes prior to
11 Investigator Bouknight arriving on the scene with a search
12 warrant.

13 Q All right. And then were you shown the pill bottle
14 in question?

15 A I was, yes.

16 Q Okay. And where was it?

17 A The pill bottle was located in the -- what I would
18 call the distant room, master bedroom belonging to Toaby
19 Trapp.

20 Q And, well, how did you know that was his bedroom?

21 A That was what was indicated by Spreng as well as
22 Investigator Epps during that conversation with Mr. Trapp.

23 Q Okay.

24 MR. SCOTT: This is State's 7, 8, 9.

25 Q Okay. What are those, Captain?

1 A These are photographs depicting a dresser, the top of
2 the dresser basically. It looks like there is hats,
3 remote control, the pill bottle, cologne, some medicine
4 packets, ashtray. And there are three pictures and each
5 picture is from just a kind of a different vantage point
6 of zooming out then in to what was on the dresser. And
7 that's of State's Exhibit 7, 8 and 9.

8 MR. SCOTT: And, Your Honor, we would offer State's
9 7, 8 and 9 for admission into evidence.

10 THE COURT: Any objection?

11 MR. LAKE: I think at least 8 has been already
12 entered. I know it has.

13 THE COURT: 8 is in.

14 MR. SCOTT: Oh, has it?

15 MR. LAKE: That's the same exact picture, so I don't
16 know why they want to--

17 MR. SCOTT: Okay. Well, I'll use yours. I'll use
18 yours. Where is that one?

19 THE COURT: Defense 8.

20 MR. LAKE: Without objection, Your Honor.

21 THE COURT: Yeah, just let them in, 7, 8, 9 are in
22 even though the State's 8 and Defense 8 may be the same
23 one and one's glossy and one is not. I'll let them in.

24 (WHEREUPON, State's Exhibits 7, 8 and 9 were admitted
25 into evidence.)

1 Q All right. And, Captain Dennis, this is State's
2 number 7. You were just previously describing it. But
3 does that fairly and accurately represent what you
4 personally observed?

5 A Yes, it does.

6 Q And you walked into Mr. Trapp's room and that's what
7 you saw with your own eyes?

8 A Yes, sir.

9 Q Okay. State's number 30, what is this?

10 A This appears to be the pill bottle that is depicted
11 in the photograph of State's number 7.

12 Q All right. After you arrive on the scene, you're
13 shown the pill bottle, what do you do next? Where is Mr.
14 Trapp?

15 A Mr. Trapp had been outside. Then we moved up to the
16 porch and then finally moved inside the living room of his
17 residence. He had already been placed in what we classify
18 as investigative detention. So he had handcuffs on
19 whenever I arrived. Once we got into the living room he
20 was given his Miranda Rights which is a warning that we
21 give whenever we're getting ready to talk to an individual
22 about a particular crime. In this case it would have been
23 the drug charges.

24 Q And did you intend to question him?

25 A I did. Once I read him his Miranda rights, making

1 sure that he understood what I was saying and asking him
2 if he would speak to me he clearly advised he would.

3 Q And kind of all hear about them on T.V., but what are
4 the Miranda rights?

5 A The Miranda rights are a warning given to
6 individuals. It starts off, you have the right to remain
7 silent. Anything you say or do can and will be used
8 against you in a court of law. You have the right to an
9 attorney to have him or her present with you during
10 questioning. If you have no money for lawyer fees, the
11 Court will appoint one to represent you without cost to
12 you. Whenever I tell them that I always throw in, because
13 not everything is free. At some point they may end up
14 having to pay some amount of money for representation even
15 though it could be a public defender. And then my next
16 line is that, at anytime during the questioning you have
17 the right to stop answering questions at any time until
18 you talk with your attorney. And I ask if they understand
19 those rights. Mr. Toaby Trapp advised he did. And then I
20 asked him having those rights in mind, are you willing to
21 talk to me without the presence of an attorney.

22 Understanding that, you know, I'm not threatening you or
23 promising you anything. And he agreed to talk to me
24 without an attorney.

25 Q All right. Did he appear to understand all those

1 rights as you read them to him?

2 A Yes, he did.

3 Q Or as you recounted them to him. Newberry is a
4 fairly small community, would you agree?

5 A It is.

6 Q You've lived here, you grew up in Newberry, right?

7 A That's correct, all my life.

8 Q All right. And was this the first time you got to
9 meet Toaby Trapp?

10 A No, sir. I know Mr. Trapp.

11 Q All right. And y'all communicated before?

12 A Yes, sir.

13 MR. LAKE: Your Honor?

14 Q Have you ever had difficulties communicating with one
15 another?

16 MR. LAKE: Your Honor, we would object to this line
17 of questioning in this particular case. Trying to
18 insinuate that.

19 MR. SCOTT: No, I'll move on. I'll move on.

20 THE COURT: Well, I don't think he's insinuating
21 anything. It's a small community.

22 Q He understood what you were talking with him about?

23 A Yes. Mr. Trapp appeared alert and oriented to where
24 he was at and who I was and what was going on.

25 Q Did he appear intoxicated in any way?

1 A No sir, he did not.

2 Q All right. Did you threaten him in any way?

3 A No sir, I did not.

4 Q All right. And at that time, did you offer him any
5 kind of, I don't know, reward or hope or promise of any
6 kind of hope that you'd be lenient on him if he would talk
7 to you?

8 A No, sir.

9 Q All right. What was the line of questions I guess
10 that you submitted to him?

11 A I guess the one thing that was puzzling to us is, you
12 know, although not taking away that the house was
13 burglarized was the fact that we did find what appeared to
14 be crack cocaine still in the room on the dresser. And I
15 asked him, I was like, you know, what's the deal with
16 this, Toaby. I mean, there's drugs in there. And Mr.
17 Trapp admitted that he if--

18 MR. LAKE: Objection.

19 THE COURT: All right. Hang on a second.

20 MR. LAKE: Your Honor, again, I would like to renew
21 my objection in reference to any statement for the reasons
22 that we asserted in the--

23 THE COURT: Jackson v. Denno hearing.

24 MR. LAKE: ---preliminary type hearing.

25 THE COURT: And your record and objection is

1 protected and we'll hear the response now.

2 Q Okay. You were saying that -- you were confused that
3 he had called you here. And you said, what's going on
4 with the dope. Go on.

5 A He admitted that if it was crack in the medicine
6 bottle that he had pretty much forgot it was in there.
7 And that whenever he called 911 the dispatcher advised him
8 to, you know, don't go any further in the house, don't do
9 anything, don't touch anything, we'll have a deputy
10 responding there to take the report. And that's pretty
11 much all he could offer was is he forgot it was in there.

12 Q Okay. The search warrant, you said that arrived to
13 the home shortly after you got there?

14 A Yes, sir.

15 Q Were you involved with the execution of the search
16 warrant?

17 A I was. I was actually the officer that signed off on
18 the search warrant, what we classify as the return. It is
19 given to me. I log-in the time that I receive it and then
20 the items that we take from that home based off of the
21 information provided to the search warrant.

22 Q Okay. Were you able to find any other items of
23 evidentiary value?

24 A We did. When we began the process of looking not
25 only for additional drugs and evidence of drugs, but also

1 anything that we could use to find who broke into the
2 home. We discovered two bags of white substance on the
3 floor in front of the dresser of where we found the pill
4 bottle on top of the dresser. We had to move some drawers
5 and some clothes to actually get to the floor where we
6 discovered that.

7 Q And but it was directly in front of that dresser in
8 State's number 7?

9 A That is correct.

10 Q I'm going to show you State's number 3, do you
11 recognize that?

12 A Yes, I do. It's State's 3. I am sitting on the bed
13 with a flashlight aiming down at the floor directly in
14 front of the dresser where there are two bags of white
15 substance.

16 MR. SCOTT: The State offers States number 3 for
17 admission into evidence.

18 MR. LAKE: Without objection.

19 THE COURT: And without objection.

20 (WHEREUPON, State's Exhibit 3 was admitted into
21 evidence.)

22 Q All right. That's you who took that?

23 A That's correct, yes sir.

24 Q And this is the same dresser that we just saw in
25 State's number 7?

1 A That is correct.

2 Q And what is it that you're shining your flashlight on
3 down here?

4 A Directly under, under my light which is kind of
5 washing it out because of the flashlight and then the
6 camera flash, there are two white plastic bags. And
7 inside those plastic bags is a white hard substance, kind
8 of a cookie formation. And that's what we normally refer
9 as a cookie of crack.

10 Q Okay. This is State's number 20, you recognize that?

11 A Yes, sir. In State's 20, it is just a closer picture
12 of the crack bag.

13 Q Okay. It's just a closer picture where you're
14 shining your light on in this picture?

15 A That's correct.

16 MR. SCOTT: Your Honor, the State offers number 20
17 for admission into evidence.

18 MR. LAKE: Without objection.

19 THE COURT: 20 is admitted without objection.

20 (WHEREUPON, State's exhibit number 20 was entered
21 into evidence.)

22 Q What is this here?

23 A Just below what that blue item is, is the bag of
24 crack cookie.

25 Q All right. And it was your testimony that was

1 directly in front of that dresser where the pill bottle
2 was?

3 A That is correct.

4 Q I'm reaching into the plastic bag ID'd as State's 30,
5 I'm pulling this out. What is that?

6 A That appears to be one of the bags that was
7 discovered on the floor in front of the dresser.

8 Q Okay. And this is labeled, is that SLED's labeled
9 1.2?

10 A I would say so, yes. With the L11 number and that is
11 how they document.

12 (Whereupon, State's Exhibit 30 was marked for
13 identification only.)

14 Q Okay. Another baggie I'm pulling out of a bag, the
15 larger bag but labeled State's number 30. What is that?

16 A This is another bag and again, it's appearance is
17 different from the night we found it either from
18 deterioration or the way it was made. But it's turned a
19 brown color. But the night that we photographed, it was a
20 white substance.

21 Q And this is, is that SLED number 1.1?

22 A That is correct.

23 Q Okay. In twenty something years, about how many
24 times have you come across crack?

25 A Quite a few times.

1 Q I mean does it come in different colors?

2 A It could depend on how it's made or how long it's
3 had, you know, most of the time you find it it's either in
4 a white to off-white type color. And it can be anywhere
5 from maybe the size of your pinky to what you would have
6 in this type picture or even bigger.

7 Q You can't tell it's crack just by looking at it,
8 though, can you?

9 A No, sir. That's the reason why we rely on SLED.
10 Once we find evidence such as narcotics, we would send
11 down to SLED for it to be analyzed and give us the true
12 potency of the drug.

13 Q Okay. So you saw these bags and this pill bottle.
14 Who would have seized it from the scene and packaged it?

15 MR. LAKE: Objection, Your Honor. I don't think he
16 has any personal knowledge as to who seized these items at
17 the time.

18 THE COURT: Well, he didn't answer the question yet.
19 I mean, he was on the scene.

20 MR. LAKE: And he needs to lay a foundation for it.
21 He has not laid a foundation for that type of evidence.

22 Q Do you have personal knowledge of who would have
23 seized it that day?

24 A The person that would have seized it that day would
25 have been Investigator Nick Bouknight with me documenting

1 as I did on the return for the search warrant.

2 Q And specifically just these three items, the pill
3 bottle and two baggies of what we think is crack. He
4 would have seized these three items?

5 A Yes. He would have seized those items and any other
6 items that would have been associated with the
7 investigation of the narcotics.

8 Q Okay. And he was the lead narcotics officer at the
9 time in 2011?

10 A That is correct.

11 Q And what was the practice as far as seizing
12 narcotics, that being drug evidence? What was the
13 practice at that time as far as evidence and care and
14 custody of those items?

15 A During that time, the narcotics officer was
16 responsible for the collection as well as the storage and
17 then the submission of those drugs to SLED. And then once
18 they came back from SLED, the narcotics officer would pick
19 that up as well as resubmit that into his narcotics
20 evidence locker.

21 Q Okay. So at the time, he kind of had, I guess, a
22 two-part system. Drug evidence was kept over here in one
23 locker and then other evidence was kept elsewhere?

24 A That is correct.

25 Q And Nick, Nick Bouknight at the time was the

1 narcotics agent. So he was responsible for the care and
2 keep, upkeep of the narcotics evidence?

3 A That is correct.

4 Q Okay. And was it policy for him to transport the
5 drug evidence down to SLED for testing?

6 MR. LAKE: Your Honor, I would object again. I mean,
7 this is really speculative-type questioning as to what
8 someone else would have done. We're talking about one
9 specific incident where we're saying this person needs to
10 have done these particular things at this particular time.
11 He's trying to backdoor in--

12 THE COURT: All right. Hang on.

13 MR. LAKE: I think we need to---

14 THE COURT: Hang on. Hang on. All right. Let's
15 take a break. Y'all step to the jury room and go to the
16 bathroom until your food gets here. And then go ahead and
17 eat. I've got a probation matter I need to deal with and
18 I want to hear Mr. Lake a little further on this issue.
19 So y'all can't begin to discuss the case, but step back
20 there. Use the restroom. Make yourself comfortable.
21 Enjoy your lunch, and then we'll get started back as soon
22 as we can.

23 (Whereupon, the jury is excused from open court for a
24 lunch break, lunch was served to the jury in the jury
25 room.)

1 THE COURT: All right. Rephrase that question for
2 me, Mr. Scott. Do that question again. I want to hear
3 that. I think you had a question that was somewhere along
4 the lines of what was the policy of the Sheriff's
5 Department at that time, type leading---

6 MR. SCOTT: We covered that and that was testified to
7 without objection. Then I got to the, you know, it may
8 not be the exact question. But at the time, we covered
9 that Nick would have kept up with his own drug evidence.
10 I asked something to the effect of who would have
11 transported the drug evidence to SLED at that time? This
12 was, the policy has changed since then as far as all
13 narcotics evidence is stored with general evidence now.
14 But at the time, Nick just kind of kept his own stuff.

15 THE COURT: All right. Well, ask that question, what
16 was the policy at that time?

17 Q What was the policy at that time as to the
18 transportation of narcotics evidence to SLED?

19 A At that time, it was the responsibility of the
20 narcotics officer for the labeling and packing of that
21 narcotics in a Best Kit to be submitted to SLED and then
22 transported to SLED.

23 Q Okay.

24 MR. SCOTT: And then it will probably, will be
25 testified to through---

1 THE COURT: I mean, you keep proffering it. I want
2 Mr. Lake to be able to hear it. That's why we got the
3 jury out.

4 MR. SCOTT: Okay. Well, as far as chain type stuff,
5 I think that's as far as I was going to go with that. And
6 then we were going to kind of move into some of the other
7 evidence collected at the scene.

8 THE COURT: And that's what Mr. Lake was wanting to
9 be heard on.

10 MR. LAKE: Yeah, but that is the sole issue in this
11 particular case. You're trying to backdoor evidence in
12 through Captain Dennis. But they'll sit there and admit
13 Nick Bouknight was the sole person that collected it,
14 responsible, maintained, can tell you what happened to
15 these items during all of these different times and in
16 what conditions, things are in all these items. You know,
17 he's the sole, only person that can do that. I mean they
18 are admitting in one sense he's the only person and know
19 specifically what happened in this incident. But yet,
20 they're trying to backdoor information in through Captain
21 Dennis and try to establish a chain-of-custody. The
22 problem they have with that, Your Honor, is not only do
23 you have to establish who would have had it for a period
24 of time, but you got to, someone has to testify as to the
25 condition and show that there is no evidence that there

1 was any tampering or anything along those lines. And the
2 only person that could do that is Investigator Bouknight
3 or if there was an investigator custodial person that he
4 would have turned it into that particular day that could
5 say, okay, this is how it came to me. Nick Bouknight
6 brought it to me and it stays in storage and then when he
7 came and got it back. He picked it up on this particular
8 day. He took it to SLED. You've established the chain.
9 Even if some of those witnesses don't testify and you at
10 least have had someone testify as to the condition of the
11 drugs prior to them getting to SLED.

12 MR. SCOTT: How about this?

13 Q Who else would have had access to the narcotics
14 evidence locker?

15 A At that time, no one, only Nick Bouknight.

16 MR. SCOTT: And, Judge, really that -- he can argue
17 all he wants to the jury that those drugs were tampered
18 with. We don't know what happened those five days they
19 were in the locker room. You know, somebody else could
20 have gone in there and added something or taken something
21 from them. But I think we've done our part in
22 establishing the chain. And then when Lynn gets up there,
23 she'll be able to testify as to who dropped it off and
24 what her chain on her SLED end says. I think it's a
25 question for the jury.

1 MR. LAKE: No. Your Honor, he just made the argument
2 for me. He said if someone could have come in there and
3 done this. Well, that's the sole purpose of why you have
4 these type of hearings so that it doesn't come in, because
5 if someone could have---

6 MR. SCOTT: Make the jury believe that.

7 MR. LAKE: If someone could have come in there and
8 tampered with the drugs. That is the sole reason why you
9 have fungible type evidence and you have
10 chain-of-custodies for that. They have no one. There
11 will be no one could, that can testify as to when Nick
12 Bouknight put it into the locker as to time, what locker
13 he put it into, what condition it was in when he got it,
14 when he actually took it out. Did he take it out on the
15 21st or did he take it out sometime between October the
16 9th and the 21st before he actually took it to SLED. What
17 was the condition?

18 MR. SCOTT: But what's ironic to me---

19 MR. LAKE: I mean, there is nobody there could, there
20 is not one single person that will testify to that. I
21 mean, that is the very reason why fungible type evidence,
22 you need to acknowledge with the persons that have touched
23 it but also to ensure that there has been no evidence of
24 tampering. But his own argument says yes, someone could
25 have came there but that should go to the jury. Well, the

1 law doesn't say that.

2 THE COURT: All right. All right. Enough. I
3 understand your argument. What else were you going to
4 say?

5 MR. SCOTT: Didn't in his opening he said we're not
6 going to contest the fact that it's crack cocaine?

7 MR. LAKE: Saying that it's not crack cocaine. I
8 said we're, I said we're letting it into evidence. We're
9 not saying that. That's a total, that's a totally
10 different argument.

11 MR. SCOTT: Judge, I've got this Brockmeyer case.
12 I've got the U.S. v. Lot and, of course, the Hatcher case.
13 It is the obligation of the prosecution to establish
14 chain-of-custody. This does not mean that everyone who
15 laid hands on the evidence must be called. Gaps in the
16 chain-of-custody normally go to the weight of the evidence
17 rather than it's admissibility. That's what I'm arguing,
18 it goes to the weight. He can make these arguments all he
19 wants to them and if we hadn't proven it beyond a
20 reasonable doubt, then they're going to find him not
21 guilty.

22 MR. LAKE: Your Honor, again, I will take the Court
23 to State v. Carla Taylor which was decided back in 2004.

24 THE COURT: Okay. I want to read that case, when I
25 see if my lunch is here. Didn't y'all have another, I

1 don't remember what form it was. It was some form I saw
2 yesterday.

3 MR. LAKE: 6B or 6, Your Honor.

4 THE COURT: It's something like that. What relevance
5 is that?

6 MR. DANIEL: Your Honor, that indicates the seizure
7 date, October 9th, 2011, and that indicates the day that
8 Officer Bouknight transported it to SLED on the 21st. So
9 you only have that gap of time between the seizure date
10 and the date it was sent to SLED that it was in the
11 custody of Newberry Sheriff's Office prior to being tested
12 at SLED. So and roughly what, a twelve-day period.

13 MR. SCOTT: I think we ID'd that yesterday.

14 MR. DANIEL: But we did recognize that as the
15 document.

16 THE COURT: I'm checking that. I want to read this
17 case and I want to see what the status of my lunch, and I
18 also want to go ahead and do that Department of
19 Corrections matter and get them out of here.

20 MR. LAKE: Yes, sir.

21 THE COURT: So let's stand at ease for this. I want
22 to get those couple of things done while we have the jury
23 eating. So, y'all stand at ease for a minute.

24 (WHEREUPON, a lunch break was taken.)

25 MR. LAKE: I think we have a pending matter. I guess

1 we had made an argument about his testimony. I renew my
2 objections for suppression based upon, from what he can
3 and cannot testify to and along with what the Solicitor
4 indicated while he was addressing the Court, that there
5 was a possibility, yes there is a possibility that someone
6 could have potentially tampered with those items for
7 probably about nine days or so.

8 MR. SCOTT: That was not how I termed it.

9 MR. LAKE: It sounded like that. If I misquoted it I
10 apologize, Your Honor.

11 MR. SCOTT: The purpose of the pretrial, I thought we
12 have kind of covered all of this.

13 THE COURT: All right. I thought and my base of my
14 pretrial ruling was that the return, Captain Dennis'
15 testimony as well as the Form B Rule 6 that Investigator
16 Bouknight filled out showing the evidence which he had
17 custody, possession of. Can we make that an exhibit.

18 MR. SCOTT: Judge, I---

19 THE COURT: I mean, that was my pretrial ruling I
20 thought. I thought we had identified who had the stuff
21 reasonably. I'm reading part of this case. The identity
22 of each person in the chain handling evidence is
23 established, the manner of the handling is reasonably
24 demonstrated.

25 MR. LAKE: Your Honor, if you look at that case that

1 I gave you, it kind of addresses that issue.

2 THE COURT: I mean, what paragraph are you reading
3 from?

4 MR. LAKE: I'm sorry?

5 THE COURT: I'm following you.

6 MR. LAKE: You know where it has the discussion page?
7 I apologize. It's a little bit different than, it is
8 right there at the discussion portion where they start
9 talking about the, where the identity of the person is.

10 THE COURT: Hang on a minute. Okay. I've got you.

11 MR. LAKE: And I think it, that next sentence.

12 THE COURT: All right. And this is discussing the
13 unidentified handlers. But it's been identified by the
14 employee, investigator at the Sheriff's Department that
15 Detective Bouknight was the Evidence Custodian for
16 narcotics at that time. There's this Form B which looks
17 like a business record to me of some type. It's a
18 transmittal. I don't know the control number. If I see
19 Exhibit 30.

20 MR. SCOTT: 30 is the, let's see.

21 THE COURT: This control number at the top of the
22 form indicates it's the max to this scanning B215834 is
23 this scan code. It identifies it, and I think it goes to
24 weight. I think that it's been identified. It's been
25 described as that's the protocol from the Sheriff's Office

1 is a narcotics officer takes into custody and he's
2 custodian.

3 MR. LAKE: Your Honor, but if you look at that Benton
4 case, if you go through the rest of that paragraph which
5 is almost kind of analogous facts right here. It says
6 although there was testimony of the customary practices
7 which, is what Captain Dennis is trying to testify to even
8 though, again, I don't think that we even laid the
9 foundation that he would have that particular knowledge
10 regarding the mailing of the blood. There was no evidence
11 that the technologist who drew the blood and sealed the
12 vials had otherwise taken any precautions against
13 tampering. That's kind of what we have in this particular
14 case. I think from yesterday's preliminary hearing or
15 hearing, pretrial hearing and Investigator Dennis said
16 that he gave it to him in an envelope and that it wasn't
17 sealed and that was the last time essentially that he saw
18 it. And now we have other testimony yesterday that
19 basically says there were some things in terms of some
20 residue that was found that wasn't on the return. There
21 was a straw that was found on the return that didn't
22 somehow make it to the Best Evidence Bag. And then there
23 is also two razor blades versus one razor blade that is
24 identified in the return. So, I mean, it has to be
25 someone that could testify to essentially that in this

1 particular case that, you know, there is no evidence of
2 the testimony. I think it goes on and basically says, it
3 addressed the issue about unrecorded, the record did not
4 disclose who had possession of the package containing the
5 vial of bloods for several days. The only thing that you
6 have in this particular case is that on October the 9th,
7 2014, Investigator Bouknight did a document saying that he
8 put it in the evidence locker or and put it in, I don't
9 even know where he put it at, because there is no
10 testimony as to where he put it.

11 MR. SCOTT: That was testified to by Captain Dennis.

12 MR. LAKE: But Captain Dennis was not present, Your
13 Honor, when he placed it anywhere.

14 MR. SCOTT: It's office policy. It's agency policy.
15 He can testify to that as a supervising agent.

16 MR. LAKE: Your Honor, again, they're trying to
17 backdoor things and basically say we have no clue how it
18 got where it was. We have no clue when it left. We don't
19 know whether Investigator Bouknight took it out on
20 November the 10th and kept it until the 21st and took it
21 in. He could have taken it out on the 19th and took it or
22 he could have did it on the 20th and taken it or the 21st
23 and taken it.

24 THE COURT: Well, this form is a memorandum prepared
25 by the Evidence Custodian who coincidentally was also the

1 narcotics officer. And it appears to be, I want to
2 classify it almost as a business record. But it's a form
3 that describes a control number of the Best Evidence
4 package itself. It describes who it was seized from, how
5 it was received and where it was received, search warrant
6 at ■ Little Ranches. And has a detailed list of the
7 items that are placed within the bag and then it tells
8 when he delivered it to SLED.

9 MR. LAKE: But who's going to testify to that, Your
10 Honor?

11 THE COURT: I think it's self-authenticated.

12 MR. SCOTT: I've got a Supreme Court case right here
13 that calls it a business record.

14 MR. LAKE: Your Honor, that is not a business record.

15 THE COURT: Why isn't it?

16 MR. SCOTT: Look at Brockmeyer. It's a Supreme Court
17 case, a 2013 case.

18 THE COURT: I thought that was the reason that they
19 started using these forms.

20 MR. SCOTT: Why would we have Rule 6? Why would we
21 have the Best Kits if you had to have every single
22 person--

23 THE COURT: Let me see page, where you're talking
24 about the case.

25 MR. DANIEL: Your Honor, and if I may and this also

1 has a place to be notarized and a signature.

2 MR. LAKE: It's not even notarized.

3 MR. SCOTT: That's Brockmeyer. That's a 2013 case
4 and I think it kind of matches up with Hatcher and here's
5 State v. Carter as well.

6 THE COURT: All right. I mean part of the statement
7 signed by Detective Bouknight on 11/21/11. I made
8 delivery of the above-describe substance, four containers,
9 which references the Best Kit to SLED of SLED, in
10 substantially the same condition as when I received it.
11 And his signature. I don't know how that doesn't comply
12 with identifying the person who handled it.

13 MR. LAKE: Your Honor, but that also goes into play
14 of right of confrontation that we get an opportunity to
15 confront the witness about the veracity of that particular
16 document and statement. I mean it's clearly hearsay, that
17 document is, because he's using it for the truth of the
18 matter asserted that, in fact, what's alleged in that
19 document is accurate. Well, then Mr. Bouknight would have
20 to be the person would, again authenticate that that is a
21 record that was kept in the normal course of his business
22 and that's what he would normally do and those kind of
23 things.

24 THE COURT: He's an investigator. I mean, he can
25 testify that, I assume, I mean to his knowledge. He

1 hadn't been asked that question, I don't believe. Proffer
2 some of that if you got it, Mr. Scott. I don't know that
3 you have it.

4 PROFFER TESTIMONY

5 BY MR. SCOTT:

6 Q And, Captain Dennis, you've been with the Sheriff's
7 Department since 1999?

8 A That's correct.

9 Q All right. And in 2011, you were a lieutenant?

10 A That is correct.

11 Q And were you familiar with office policy regarding
12 the care and maintenance of evidence seized from crimes?

13 A Yes.

14 Q Okay. Were you aware of any differences in the
15 treatment of narcotics compared with other sorts of
16 evidence from other non-narcotic crimes?

17 A The non-narcotic crimes were turned into a locker
18 with a evidence form attached to it describing that
19 evidence. And then Chief Wright, who was the Evidence
20 Custodian for evidence other than narcotics at that time
21 would remove it from the locker and put it in a larger
22 storage area for evidence which was maintained under lock
23 and key by him as well as a alarm system that would
24 activate if someone came into that evidence locker/storage
25 area.

1 Q Okay. Let's say you seized a gun from a shooting or
2 something and you needed to go take a look at it one day,
3 what would you have to do to go take a look at that
4 evidence that you had previously seized?

5 A I would schedule with Chief Wright at that time to
6 retrieve that evidence from evidence, the gun from
7 evidence and he would go and get it and then bring it to
8 us or to me.

9 Q Why wouldn't you just go to the evidence locker
10 yourself to go check it out?

11 A Because we maintain the control of evidence through
12 that chain of Chief Wright being the Evidence Custodian.

13 Q Okay. Now, narcotics evidence in 2011, how would
14 that have been handled and how is that different than
15 non-drug related evidence?

16 A During that time, Nick Bouknight was the narcotics
17 officer as well as the narcotics Evidence Custodian. If
18 he made a case, he would take charge of that evidence
19 doing the chain-of-evidence form as well as logging it
20 into his evidence locker area, which also was under
21 lock-and-key, him only having the key as well as an alarm
22 system on that. Both alarm systems were set up into the
23 communications room so if someone went in there without
24 permission the alarm would be activated. Prior to either
25 Chief Wright going into his separate or Investigator

1 Bouknight going into his separate, they would have to
2 notify our dispatch that they were making entry into that
3 room.

4 Q After hours or anytime?

5 A That's anything, 24/7.

6 Q Okay. So if Nick wanted to go check out some of his
7 own drugs, he'd have to inform dispatch and then he would
8 use his own key to go in there and check it out?

9 A That's correct. He would make entry into his storage
10 area evidence locker.

11 Q Anyone else to your knowledge have keys to narcotic
12 evidence at that time?

13 A No. Not at that time, no.

14 Q Okay. And who was responsible for the transportation
15 of the narcotics evidence to SLED for testing?

16 A During that time, the transportation would have been
17 done by Investigator Bouknight. He would have removed any
18 evidence from his evidence locker, prepared it through the
19 Best Kit. And then secured that Best Kit with whatever he
20 was going to be sending down meaning if there were three
21 or four items that arose out of the same event he would
22 normally store those three items in one Best Kit. And
23 those would be listed on that Form, Rule(b) or, excuse me,
24 Form B, Rule 6 and then that would be packaged in what's
25 called an integrity bag and then sealed. And then

1 transported to SLED and then turned over to their evidence
2 log-in.

3 Q How many years did you work with Nick, Nick
4 Bouknight?

5 A Probably a good 10 years.

6 Q Did you ever have a chance to see his handwriting?

7 A Yes, I have.

8 Q How many times?

9 A Multiple times.

10 Q I'm showing you State's number 2. First of all, do
11 you recognize what that is?

12 A Yes, sir. State's number 2 is a copy of Form B, Rule
13 6. Control number listed at the top is B215834. It is
14 certified information that Nick Bouknight has documented
15 in his writing as well as his signature at the bottom
16 right.

17 Q Okay. You say that's his writing. Do you recognize
18 that to be Nick Bouknight's handwriting?

19 A I do recognize that as Nick Bouknight's writing.

20 Q Okay.

21 A All of it.

22 Q And what does it say, who seized it? Who seized the
23 drugs?

24 A It starts off at the top, this is to certify that I,
25 Nick Bouknight, am employed by Newberry County Sheriff's

1 Office. That on 10/9/11, and just prior to that, he had
2 scratched out and put "NB" above it. I can't tell you
3 what was before that date. I seized from Toaby Alexander
4 Trapp pursuant to a search warrant at or near [REDACTED] Little
5 Ranches Road, Newberry, South Carolina 29108 the following
6 substance or containers. Describe substance or container
7 with sufficient particularity to distinguish it: 1)
8 plastic bag containing a quantity of white rock, or white
9 cookie-like substance; 2) plastic bag containing a
10 quantity of a white cookie substance; 3) orange pill
11 bottle containing a quantity of white cookie substance; 4)
12 scale containing a quantity of white residue on it; 5)
13 spoon with a quantity of white residue on it; and 6)
14 quantity of a white residue. On 10/21/11, I made delivery
15 of the above-described substance or containers to SLED, of
16 SLED in substantially the same condition as when I
17 received it. And it is signed Nick Bouknight.

18 MR. SCOTT: Okay. Your Honor, again, I think we've
19 established that Nick was the one who seized it, and then
20 he made delivery on 10/21. It was testified to that he
21 was the narcotics Evidence Custodian at the time. It was
22 further testified to that he was the only one who had keys
23 to that locker. Additionally, it was testified to that
24 there would have had to been permission gained for any --
25 or would have to notify to dispatch anytime he intended on

1 opening up those lockers and going in. I guess I could
2 ask the additional question.

3 Q To your knowledge, do you have any record that
4 dispatch was notified in between? October 9th, 2011 and
5 October 21st, 2011 that these particular drugs were
6 checked out? Do you have personnel knowledge?

7 A Rephrase the question, please.

8 Q All right. You testified that dispatch would have
9 had to have been notified should Nick, I guess, open up
10 the locker and check out any drug evidence?

11 A That's correct.

12 Q All right. To your knowledge, do you have any --
13 well, do you have any knowledge of any records that would
14 indicate that anybody had checked out these drugs, these
15 particular drugs in question in between October 9th, 2011
16 and October 21st, 2011?

17 A I have no knowledge that anyone other than Nick
18 Bouknight would have checked out evidence.

19 Q Okay.

20 MR. SCOTT: Judge, I think that's all the questions
21 we have and the same questions we'd gone over during the
22 prelim or the pretrial.

23 THE COURT: All right.

24 THE COURT: Mr. Lake gets to -- he gets to ask
25 questions if he likes.

CROSS-EXAMINATION

BY MR. LAKE:

Q You testified, I guess, earlier that, you know, I guess between -- from the time that it went from, to SLED that the items would have had to been placed into an integrity bag. Was that your testimony?

A I kind of hear what you're saying, but can you speak up, Mr. Lake?

Q In your testimony you indicated that once the items were collected, at some point they were placed in an integrity bag and then sealed and then delivered to SLED at some point, correct?

A That's correct.

Q Do you have any personal knowledge as to when they were placed into the integrity bag?

A Other than what's documented on the Form B, Rule 6.

Q Do you have any personal knowledge as to the condition of this item before it was placed into the integrity bag?

A No.

Q Do you have any personal knowledge as to whether anyone else could have came into contact with this drug before it's placed into the integrity bag?

A I have no knowledge of anyone other than Investigator Bouknight would have made contact with that drug or

1 evidence.

2 Q Do you have any personal knowledge as -- I know you
3 indicated that it'd have to be taken out of this bag. Did
4 you ever call to confirm whether that even, there is a
5 record of him contacting dispatch on the 21st?

6 A No.

7 Q Did you check?

8 A The only way that I would check would be if they
9 would notify either one of the Evidence Custodian officers
10 that there was a unlawful entry into the evidence storage
11 area.

12 Q And just so I can have some clarifications, how many
13 envelopes did you have when you gave it to Investigator
14 Bouknight?

15 A I don't understand what you're asking.

16 Q You were the only---

17 A ---there are envelopes that were there.

18 Q And I guess I'll rephrase that question and just so I
19 can --when you did the return, there were a number of
20 items, I think about roughly about five items that were
21 taken, correct?

22 A On my return, I have pictures taken by Robert Spreng,
23 two plastic bags with white solid substance found on floor
24 in bedroom in front of dresser, a pill bottle on dresser
25 with white solid substance, a CD case scale, spoon and

1 razor blade with residue and straw. So you would look at
2 seven items outside of the number of pictures that were
3 taken.

4 Q Did the straw make it into the Best Evidence Bag?

5 A I believe I read off everything that would have been
6 itemized on Form B, Rule 6 of what had been itemized in
7 the Best Kit, integrity Best Kit to go to SLED.

8 Q So the answer would be no, correct?

9 A Your question is did the straw go into the Best Kit?

10 Q Correct.

11 A No.

12 Q Okay. But it was with the items, total items that
13 you gave him into that envelope, correct?

14 A It was what was seized from the residence.

15 Q And I guess you indicated, testified earlier that it
16 came into your possession. And then you gave it back to
17 Investigator Bouknight and then the last time that you saw
18 it was when you saw him put it into a car?

19 A Well, it would be in his possession for me to look at
20 and document as I did on the return and for him to
21 maintain the custody and control of it, leaving the scene
22 to his vehicle to his evidence locker and then to SLED.

23 Q Did you ever see him seal the particular items that
24 you gave him?

25 A No.

1 Q Did you ever see him actually put it in a particular
2 locker?

3 A No.

4 Q Did you ever see him take it out of the locker?

5 A No.

6 Q How many lockers did he have that he would
7 potentially use?

8 A And I, I think---

9 Q Is there more than one?

10 A Well, herein lies the issues where the question needs
11 to be kind of directed. We have lockers for all evidence
12 other than narcotic evidence. For narcotic evidence,
13 there was one locker and control that Investigator
14 Bouknight would have had access to if there were cases
15 made by the road deputies and he would get that. However,
16 if Investigator Bouknight was the controlling officer and
17 seizing officer and officer to maintain that evidence,
18 then he would bypass his one locker or drop locker and put
19 it directly into evidence.

20 Q And do we know in this particular case which locker
21 he put it in? Do you have any personal knowledge?

22 A He has one storage locker that he would have gained
23 access to put it in.

24 Q Well, I guess what I'm asking you, are you speaking
25 -- when you say that are you speaking from personal

1 knowledge in this particular case or you specifically
2 trying to refer to some type of common practice?

3 A I am speaking of the common practice and policy of
4 the Newberry County Sheriff's Office at that time for
5 maintaining narcotic evidence.

6 MR. SCOTT: Judge, we got to move on. He's asking
7 the same questions over and over. That was not what was
8 elicited from direct examination. He testifies to office
9 policy at the time.

10 MR. LAKE: Your Honor, I just asked him a question
11 about whether that was office policy.

12 MR. SCOTT: Asked and answer.

13 THE COURT: I thought that was a newer question. I
14 was interested in listening to the answer.

15 MR. LAKE: Again, Your Honor, and I'm not going to, I
16 don't want to keep going over the same, I'm obliged to, of
17 course, because this is my client and you know what he's
18 facing. We still take the position and I take the
19 position that I think the law is clear in this particular
20 case that one, Captain Dennis is not in a position to
21 testify as to what happened that particular date. Now, we
22 learn now that there's two particular lockers and he's
23 testified as to common practice about what Nick may have
24 done and which locker he may have put it into. Now, we
25 are not exactly sure.

1 THE COURT: Here's what I believe I'm confined to is
2 this. If the identity of the person in the chain handling
3 evidence is established and I think that's been done, the
4 manner of handling is reasonably demonstrated and is not
5 as showing of abusive discretion, proof of tampering, bad
6 faith and real motive. I don't believe those have been
7 shown. It's investigation. Drugs were seized. Captain
8 Dennis was on the scene when they were seized. Detective
9 Bouknight took possession of them. He then also following
10 the procedure time filed a Form 6 which references the
11 evidence seized at the scene. It referenced the Best
12 evidence Bag and delivered to SLED. So whichever locker
13 it would be in would be of no consequence, because both of
14 them Detective Bouknight had control of. I thought it was
15 if you didn't know who had it. We know who had it. We
16 just don't have him here.

17 MR. LAKE: No, Your Honor, I have never argued and
18 maybe I wasn't clear. I've never argued that if you could
19 not identify every particular person -- what my argument
20 is essentially is that even if you identified every person
21 that is in the chain, you still have to basically show
22 that there, that someone has to testify that there was no
23 evidence of tampering. Now, what we've got is just one
24 person up here that says I saw the drugs at the initial
25 beginning and then nobody else but the chemist and that is

1 a huge gap in time and tested.

2 THE COURT: Well, I'm going to read the words to you,
3 absent proof of tampering. Not proof of non-tampering,
4 absent proof of tampering. That's the words in the
5 Supreme Court case. Absent proof of tampering. So that
6 doesn't mean the State's got to disprove tampering.

7 MR. LAKE: But that is why, Your Honor, I continue to
8 stress the point that there were items that somehow made
9 their way into the Best Evidence Bag that weren't somehow
10 collected.

11 THE COURT: I think that goes to weight. I agree
12 with you, there is conflicting lists on the return versus
13 the Form 6 of Detective Bouknight. I agree with you they
14 are distinguishable. There's some different items there.
15 There's two razors versus one razor. I agree with your
16 reading of those. I don't think that proves tampering.

17 MR. LAKE: Well, I guess what that does prove, Your
18 Honor, there has been something that occurred between the
19 time that he gave the item to Investigator Bouknight up
20 until the time it is actually testing.

21 THE COURT: All right. But your client is not on
22 trial for those items. They're distinguishable items,
23 the straw and the razor blades and the residue. He's not
24 charged with any of those items in this case. I would
25 probably suppress the State from referencing those.

1 MR. LAKE: Your Honor, I believe those items -- and
2 at least one of them, I think, is mentioned on the drug
3 analysis. I think the additional residue.

4 THE COURT: Well, I understand your argument.

5 MR. LAKE: Yes, sir.

6 THE COURT: I've read Taylor fairly closely. And I
7 think the State barely gets by it, but they get by it and
8 it gives you the opportunity to argue your weight or
9 credibility of the chain but not admissibility. I'm going
10 to allow it. I may be wrong, because it, I mean, I agree
11 it's tenuous. But I think that goes to the weight of the
12 credibility of the chain. All right. And you've made a
13 very good record of it. All right. Bring the jury in,
14 please.

15 (Whereupon, the jury came into open court at
16 approximately 1:54 p.m.)

17 CONTINUE DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Okay. After the initial, the pill bottle, I think we
20 got to where you were executing a search warrant and what
21 did you find in front of the dresser that the pill bottle
22 was on?

23 A Located in front of the dresser on the floor after
24 moving some of the clothes and the boxes and the dresser
25 drawers, we located two plastic bags containing a rock,

1 off-white cookie-like substance.

2 Q Okay. And how many bags did you say?

3 A There were two.

4 Q Okay. And we've talked about those earlier from the
5 two -- these two bags that are in State's number 30?

6 A That is correct.

7 Q Okay. And then who would have collected -- who from
8 your agency would have collected the evidence that day?

9 A Officer/Investigator Nick Bouknight.

10 Q Okay. And he was the narcotics agent at the time?

11 A He had actually two roles. He was the narcotics
12 officer who investigated narcotics activities as well as
13 he was the narcotics officer in control of the evidence.

14 Q Okay. So when drug evidence was seized, who would
15 keep up with it?

16 A Investigator Nick Bouknight.

17 Q And what were the procedures that he would undertake
18 in his duties as the Evidence Custodian of the drug
19 evidence?

20 A Investigator Nick Bouknight had a closet or room that
21 was designated as his evidence room where he secured all
22 the evidence. But he also, we had a single locker that
23 was a drop box that if a road deputy made an arrest,
24 whether it was pills or marijuana or cocaine, they would
25 fill out the proper chain-of-custody form, attach it to

1 whatever they placed it in whether it was a bag, a plastic
2 bag or whatever, and then drop it in that evidence drop
3 box. There was only one person that had access to that
4 drop box and the narcotics evidence room which was Nick
5 Bouknight at that time.

6 Q Okay. So if you wanted to check out some drug
7 evidence to analyze it or to take a look at something that
8 was seized, what would you have to do?

9 A I would have to schedule an appointment. If it was
10 drugs, I would have to make that appointment with Nick
11 Bouknight for him to go into his evidence locker and get
12 the item in question.

13 Q Okay. So it's your testimony that October 8th, 2011,
14 you were in Toaby Trapp's house and you see the pill
15 bottle on the dresser and you see the two bags of white
16 rock-like substance in front of the dresser on the floor
17 and Nick Bouknight seized all three of those items?

18 A Nick Bouknight seized those items and I documented
19 them on the search warrant.

20 Q All right. And do you have personal knowledge of who
21 would have transported those items to SLED for further
22 analysis?

23 A That would have been Investigator Nick Bouknight.
24 That was one of his job functions as the narcotic officer.

25 Q Okay. Now, what is a Form B, Rule 6. What is that?

1 A That is a form that is produced by SLED that they use
2 for what is classified as a kit for transporting the
3 evidence. It has this form in it to where you certified
4 who the officer is that actually collected/seized the
5 evidence and then what type of arrest it was seized from
6 as well as the individual it was seized from. And then it
7 is listed as far as what evidence is going to be sealed in
8 that bag to be transported to SLED for testing.

9 Q Have you ever filled one of these out?

10 A I have, yes sir.

11 Q And now is this something that you do in the ordinary
12 course of your line of work?

13 A If I come in contact with drugs, yes.

14 Q Okay. And what about other -- would you use that for
15 other pieces of evidence like blood?

16 A This particular form we would not, no.

17 Q That's specifically for drugs?

18 A This is dealing with drugs.

19 Q And those are ordinarily filled out in the seizure of
20 drugs when they are transported to SLED?

21 A That is correct.

22 Q And did your office maintain copies of those records?

23 A They do, yes.

24 Q Okay. Let me show you State's number 2. Do you
25 recognize that?

1 A Yes. This is a copy of the Form B, Rule 6. At the
2 very top it has a control number which is B215834. That
3 control number would be the number used for identification
4 of the kit that would be used to send the drugs down to
5 SLED.

6 Q State's number 30, can you see that control number
7 listed anywhere on that package?

8 A On package, and this is, the real clear bag that's
9 holding everything that's on the inside is a heat-sealed
10 bag. The actual bag that I call an integrity bag that is
11 inside is blue and white. It has a control number at the
12 very top that says B215834, SLED's logo and then SLED Drug
13 Analysis Security Envelope. It has the agency, Newberry
14 County, date sealed 10/10/11. The printed name on the
15 envelope -- sealing envelope is Nick Bouknight and then he
16 signs underneath his printed name.

17 Q All right. Now, referring back to State's number 2,
18 this is the control number that is referenced in that
19 form?

20 A That is correct, in the top left-hand corner.

21 Q Okay. So Nick indicate in that form what he did with
22 this piece of evidence?

23 A On this form he indicates, this is to certify that I,
24 Nick Bouknight, am employed by Newberry County Sheriff's
25 Office 10/9, excuse me, and that on 10/9/11, in front of

1 that is scribbled out with his initials. I received from
2 Toaby Alexander Trapp pursuant to search warrant at or
3 near ■ Little Ranches Road, Newberry, South Carolina
4 29108. The following substance or containers. Describe
5 substance or container with sufficient particularity to
6 distinguish it: 1) plastic bag containing a quantity of
7 white cookie-like substance; 2) plastic baggie containing
8 a quantity of white cookie substance; 3) orange pill
9 bottle containing a quantity of white cookie substance; 4)
10 scale containing a quantity of white residue on it; 5)
11 spoon with a quantity of white residue on it; and 6)
12 quantity of white residue. On 10/21/11, I made delivery
13 of the above-described substance or container to SLED of
14 SLED in substantially the same condition as when I
15 received it. And his signature is at the bottom right,
16 Nick Bouknight.

17 Q Okay. So he indicates that he seized the drug
18 evidence and then on the 21st, he delivered it to SLED?

19 A That is correct.

20 Q You said something, what is this, it's another item
21 that's in there?

22 A It's actually a scale but it looks as if it is a CD
23 of Bill Cosby is a Very Funny Fellow, Right.

24 Q But it's your testimony that's actually a scale?

25 A Yes, sir. If you actually open it up like you would

1 open up a CD, it's actually a digital scale.

2 Q Well, you can show us. Would you open that up?

3 A If you don't mind, I'd like to put some gloves on
4 real quick.

5 MR. LAKE: Your Honor, this hasn't even been entered
6 into evidence. And I'm not sure if he's trying to publish
7 this to the jury. I mean, there has not been sufficient
8 chain-of-custody for him to try to publish anything.

9 MR. SCOTT: I can introduce it now. I can attempt to
10 lay some more foundation.

11 THE COURT: All right. Attempt to lay some more
12 foundation. Mr. Lake is probably right on that.

13 Q When was the last time you saw that?

14 A The last time I saw that would have been on the night
15 we were at Mr. Trapp's office on October the 8th, 2011 and
16 early morning of October the 9th.

17 Q And where was that located in the house?

18 A I believe that was located on the counter there in
19 the kitchen.

20 Q And is that how it appeared October the 8th of 2011?

21 A With the exception of some writing that was on it
22 looks like was done by SLED.

23 Q I'm going to show you State's number 26. What is
24 that a picture of?

25 A State's 26 is a picture in the kitchen area looking

1 back toward the living room and there is a kind of a
2 little hutch that sticks out that's going from the kitchen
3 into the living room. And it's like a little recessed
4 calendar area and that is the area in which we located the
5 scale, a spoon and a razor.

6 Q Okay. And likewise State's number 24, is that the
7 same thing, just a different kind of angle?

8 A State's 24 is just a closer shot of State's 26.

9 Q That's what you personally observed with your own
10 eyes October 8th, 2011?

11 A Yes, it is.

12 MR. SCOTT: All right. At this time, Judge, we would
13 offer State's number 24 and 26 for admission into
14 evidence.

15 MR. LAKE: Without objection.

16 THE COURT: Without objection, 24 and 26.

17 (Whereupon, State's exhibit 24 and 26 were admitted
18 into evidence.)

19 Q All right. That item that's, did you notice that it
20 was in those pictures?

21 A That is correct.

22 Q Okay. Is that back there?

23 A The top right, yes sir.

24 Q Okay.

25 A Right there at this -- it's in between that orange

1 and the black in the corner. So, right in the middle.

2 Q Am I pointing directly at it?

3 A That's correct.

4 Q And did your office seize that piece of evidence that
5 day?

6 A It was seized, yes.

7 Q And it's notified in that form that you just read
8 from?

9 A Yes, it is.

10 MR. SCOTT: Your Honor, the State would offer the
11 digital scale for admission into evidence.

12 MR. LAKE: We'd object to that, Your Honor. He
13 hasn't laid the proper foundation for a chain, for that
14 particular item.

15 MR. SCOTT: Yeah. It's non-fungible evidence, Judge,
16 and the foundation has been laid at this point.

17 MR. LAKE: Your Honor, could we?

18 THE COURT: Yeah, you may. Come on up here.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: All right. For the record, the scale
23 will be admitted as State's exhibit 31. 31, because this
24 is non-fungible and that will be the extent of its
25 admission. And it's subject to an objection from Mr. Lake

1 which was done pretrial and pre-admission.

2 (Whereupon, State's exhibit 31 was admitted into
3 evidence.)

4 THE COURT: Hang on, Mr. Scott. I mean, you don't
5 need to mark that. Make sure you've got Mr. Lake's
6 objection as noted on the record as admitted subject to
7 his objection which we've previously made an extensive
8 record of.

9 MR. LAKE: Yes. My objection to the admission to
10 that particular item. A proper foundation hadn't been
11 laid or a chain-of-custody been established for this
12 particular item.

13 THE COURT: All right. Admitted subject to the
14 objection.

15 Q All I want you to do with State's number 31 is you
16 just open it up and show the jury what that is.

17 A Yeah. Like I said it appears to be a CD case but
18 whenever you actually open it up, it is actually a digital
19 scale.

20 Q Okay. That home, what's the address again?

21 A The address that we were at was ■ Little Ranches
22 Road, Newberry County. It's off of Highway 34 out past
23 the skating rink.

24 MR. SCOTT: Okay. Please answer any questions Mr.
25 Lake has for you.

CROSS-EXAMINATION

BY MR. LAKE:

Q Captain Dennis and again, how long have you been captain?

A Since May of 2013.

Q And what are your responsibilities as captain?

A I still oversee and supervise the Investigations Unit, also the Victim's Advocate Program, as well as the COPS program, which is our Community Oriented Policing unit.

Q And how many officers are you over?

A There are nine of them.

Q And do you have your own set of cases?

A Yes, I continue to work cases at the Sheriff's Office as well.

Q Was this your particular case?

A This was assigned -- which part?

Q Were you the assigned investigator on this particular case or did you assign it to someone else?

A I was the assigned investigator for the burglary. Nick Bouknight was the assigned case officer for the trafficking cocaine.

Q And you understand the importance of, I guess, doing reports, don't you?

A Yes, sir.

1 Q What's the importance of doing reports?

2 A It tracks what the victim or the complainant or the
3 subject would actually tell us as to what the crime is, if
4 anything, or it could just be an information report. So
5 it would be a documentation of those individuals for us to
6 look into and further investigation.

7 Q And could you tell the jury about the report you did
8 in this particular case?

9 A On the burglary, I documented that Mr. Trapp--

10 Q Wait.

11 A You asked me to document or talk about my
12 documentations of my case.

13 Q Investigator -- Captain Dennis, what I asked you did
14 you -- maybe I'll rephrase this. Did you prepare your own
15 report in this particular case?

16 A Yes, I prepared my own report in this case.

17 MR. LAKE: Your Honor, may we take a moment?

18 THE COURT: You got a legal matter?

19 MR. LAKE: Yes.

20 THE COURT: Okay. All right. Ladies and gentlemen
21 of the jury, y'all step in the jury room for a few
22 minutes. We got a issue that needs to go on the record
23 and don't begin discussing the case.

24 (Whereupon, the jury was excused from open court.)

25 MR. LAKE: Your Honor, Captain Dennis has just

1 testified that he prepared his own report. I certainly
2 don't have a copy of any kind of report that he has
3 prepared and he's testified before in preliminary type
4 testimony in terms of pretrial testimony. I think at
5 those particular times, he admitted that he did not
6 provide any type of report or anything along those lines
7 and he essentially relied upon Investigator Bouknight's
8 report. Now, he just before this jury testified that he
9 prepared a report.

10 THE COURT: Well, let him finish answering the
11 question. He said, yes. I want to hear his explanation.
12 What about it?

13 CAPTAIN DENNIS: Yes, sir. I prepared a report on
14 case number 11-9319, burglary. My supplemental report was
15 dated 12/21/2011. My officer number is 064, Robert
16 Dennis. Detailed statement of investigation: Trapp
17 called and advised that he had heard Chaplain is the one
18 who broke into his house but there is no evidence to
19 support this. This case is clear until more information
20 comes available.

21 THE COURT: So that's the incident report regarding
22 to burglary.

23 MR. LAKE: Your Honor, he clearly knew what, I mean,
24 he's trying to parse the words.

25 MR. SCOTT: He asked him if he generated a report

1 with, involving this case.

2 THE COURT: You've been very particular with how
3 you've made him answer questions yes or no. And he
4 answered your question. I think you may want to
5 recharacterize your next question. All right. Is that
6 all you want from him because understandable, I know there
7 is two different cases and he was here on the burglary and
8 he participated in and assisted in the narcotics
9 investigation. His primary investigation was on a
10 burglary and he prepared a report. That's not relevant to
11 this trial. It's not going to be admissible. I mean,
12 unless you, if you want it in, you can put it in.

13 MR. LAKE: Well, Your Honor, if that's the case then
14 that it's not admissible, then I would move to strike that
15 answer.

16 THE COURT: Well, you asked him did he prepare a
17 report of his investigation and yes, he did. I don't
18 think it's relevant to this trial and you can't have it
19 both ways.

20 MR. LAKE: Yes, sir.

21 THE COURT: I mean you are not going to, I'm not
22 going to strike an answer. I think he can explain his
23 answer, but you've tried to prevent him from explaining
24 his answers while asking yes or no questions the whole
25 time you've been asking him questions or at least that's

1 my observation.

2 MR. SCOTT: And also I think he can require him to
3 answer yes or no, but then he's got to give him an
4 opportunity to explain.

5 THE COURT: My suggestion would be the report you
6 prepared was just for burglary. Did you prepare a report
7 in regard to the, what we're on trial now. And then he
8 can answer that question. Let's proffer that right now,
9 if you were going to ask him that question.

10 MR. LAKE: I mean, Your Honor, I mean he can clarify
11 that when he testifies that it was just related to a
12 burglary and nothing related to the drugs.

13 THE COURT: Okay. Fair enough. All right. I want
14 to take a short break so.

15 (WHEREUPON, a short break was taken.)

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

17 (Whereupon, the jury came into open court at
18 approximately 2:28 p.m.)

19 THE COURT: All right. Folks, we're ready to
20 continue.

21 MR. LAKE: Thank you.

22 BY MR. LAKE:

23 Q Mr. Dennis, you can finish up your response.

24 A Yes, sir. On the report that you were asking about,
25 there's actually two reports. I actually -- I worked the

1 case that was involving the burglary for which I did a
2 supplemental report closing that report out based on some
3 insufficient evidence to prosecute someone for breaking
4 into Mr. Trapp's residence. So I did generate a report on
5 the burglary.

6 Q So you're an investigator on the, so Spreng was no
7 longer the investigator on the burglary?

8 A What happens, Mr. Lake, is when we're on call,
9 although you're on call, you may not be assigned to
10 investigate that burglary. You come out to investigate,
11 taking pictures or photographing the scene, collecting
12 evidence and different things like that to help discover
13 who did it. So although he played that part that night, I
14 actually started the investigation of the burglary.

15 Q Okay. And as part of the investigation of that
16 burglary, how much fingerprints did you request in this
17 particular case?

18 A There were no fingerprints obtained there at the
19 scene that we could use.

20 Q Did you attempt to obtain any fingerprints?

21 A As far as me no, but I know Investigator Spreng did
22 dust.

23 Q And that's, when did he do that?

24 A While I was there on scene.

25 Q And is that memorialized in either your report or

1 Investigator -- well, actually did Investigator Spreng do
2 a report?

3 A I don't think he did a report, no. No, I do not see
4 one in here.

5 Q And so did he report regarding either the burglary or
6 the drug case for which we're here today, Investigator
7 Spreng that is?

8 A No.

9 Q And the only thing that you gave a report of is
10 really more supplemental just saying the fact that you
11 essentially heard that this person was the person that
12 might have broke into the house, correct?

13 A That was relayed by Mr. Trapp.

14 Q So, Mr. Trapp still reached out to you to try to
15 provide y'all with some information about who robbed his
16 house, correct?

17 A That is correct.

18 Q Even after October 8, 2011?

19 A That is correct. That is one of the things that we
20 try to do is stay in contact with individuals about their
21 cases and ask that they do the same.

22 Q Did y'all ever reach out to him about anything that
23 y'all turned up or ask him any additional questions about
24 that burglary?

25 A None that I remember, no.

1 Q Take any DNA swabs or do anything else regarding
2 that?

3 A No.

4 Q And you were testifying essentially about the
5 necessity for a report when you documented that he called
6 you. But wouldn't it have been just as important for you
7 to document this alleged statement that you attribute to
8 Mr. Trapp?

9 A Although it was not done by my hand, it was
10 documented by Investigator Bouknight who was there with me
11 whenever the Miranda rights were given to him and the
12 statement was made. I would only be duplicating what
13 Investigator Bouknight put down.

14 Q And at any point during this timeframe, did you
15 document that you gave the Miranda?

16 A As I said earlier, it was documented by Nick
17 Bouknight in his supplemental of me doing that. So there
18 was no need for me to duplicate what had already been said
19 and in reviewing his report.

20 Q And so you actually reviewed his report, correct?

21 A Yes, sir.

22 Q Let me just show you some additional pictures just to
23 make sure what's been marked in Defendant's exhibits
24 number 14 and 15 and ask you do you recognize those items
25 again?

1 A In Defendant's 14 and 15, they depict the pictures
2 that I had talked about earlier of the bedroom with some
3 disarray on the floor, as well as the two packets of white
4 plastic bags containing the cookie-like substance. And
5 the only difference between the two is the type of paper
6 it's on.

7 Q And let me show you what's marked as State's exhibit
8 number 13 and ask you do you recognize that?

9 A This is actually Defendant's exhibit 13.

10 Q I'm sorry, 13.

11 A Yes, sir. It's another picture of kind of looking
12 between the bed and dresser in the Defendant's or in Mr.
13 Trapp's room.

14 Q And all of those photos fairly and accurately depict
15 the area that particular night?

16 A Yes, they do.

17 Q What number is that of again?

18 A 13, 14, and 15, Defendant's.

19 MR. LAKE: Your Honor, at this time we'd move those
20 exhibits into evidence.

21 THE COURT: Any objection?

22 MR. SCOTT: No, sir.

23 THE COURT: No objection.

24 MR. LAKE: Okay.

25 THE COURT: 13, 14, 15?

1 MR. LAKE: Correct, Your Honor.

2 THE COURT: They're in without objection.

3 (WHEREUPON, Defendant's exhibit numbers 13, 14 and 15
4 were admitted into evidence.)

5 Q Now, you indicated that you kind of followed with Mr.
6 Bouknight on his reports. Did you ever have any
7 communications with the magistrate that night who provided
8 the search warrant?

9 A No, I did not.

10 Q Did you ever have any communications with
11 Investigator Bouknight before he obtained that search
12 warrant that night?

13 A Not before he had gone to the Judge, no.

14 Q Do you have any personal knowledge yourself about any
15 information that was, I guess, given from Investigator
16 Spreng to Investigator Bouknight that would then be given
17 to Judge Halfacre in this particular case?

18 A Investigator Spreng had called and notified me of the
19 burglary, of the drugs that were found, of notifying
20 Investigator Bouknight of the drugs that were found.
21 Pretty much asking him what should he do next, where
22 Investigator Bouknight instructed him that he was going to
23 go get a search warrant, stop what you're doing, let me
24 get the search warrant then we'll come back and continue.

25 Q Did you have personal knowledge of that or you're

1 reading off what would be Investigator Bouknight's report?

2 A That was what was relayed to me personally by
3 Investigator Spreng.

4 Q But there is no document of that conversation either,
5 is there?

6 A No, that's my recollection of that night.

7 Q Let's go over your recollection again of a few other
8 things. On October the 9th, 2011, you signed off on the
9 return, correct?

10 A That is correct.

11 Q And at that particular time you indicated some
12 photographs that were taken?

13 A That's correct.

14 Q And there were two plastic bags with a white solid
15 substance found on the floor in the bedroom, correct?

16 A That is correct.

17 Q Now, also there was a pill bottle on a dresser with
18 solid substance, correct?

19 A Actually, that is a pill bottle on dresser with white
20 solid substance.

21 Q With white solid substance. And there was a CD case
22 scale?

23 A That's correct.

24 Q And a spoon and a razor blade with residue on it,
25 correct?

1 A Correct.

2 Q And there was a straw?

3 A That's correct.

4 Q And those were the items that you specifically gave
5 to Investigator Bouknight?

6 A Bouknight, yes sir.

7 Q Did you personally observe him pick up any of these
8 items?

9 A He was personally handed those items for, after being
10 documented on the return and then he would secure those.

11 Q Who were they handed to him by?

12 A Do what now?

13 Q Who handed it to him?

14 A Well, he had control of them. But I had to look at
15 them to document them on the return so he would have had
16 control of them.

17 Q I'm guess what I'm asking you is, was each item in
18 these particular photographs as they were found that
19 particular night?

20 A I still don't understand.

21 Q The photographs depicted, you've testified that those
22 photographs depict what it looked like that particular
23 night. And what I'm asking you is, when these drugs are
24 located in a specific spot, do you have personal knowledge
25 or did you observe Investigator Bouknight pick up each one

1 of these items?

2 A Yes. Each of these items were picked up and then
3 transferred for me to look at and document on this report.

4 Q And you saw him do that personally yourself?

5 A Yes, sir.

6 Q Okay. And you know what a evidence log is, correct?

7 A I do.

8 Q And there was one done in this particular case,
9 correct?

10 A That is correct.

11 Q It was done on October the 8th, 2011, right?

12 A That's correct.

13 Q And Investigator Bouknight would have done that,
14 correct?

15 A That's correct.

16 Q And on Investigator Bouknight's report, he indicates
17 there's two razor blades?

18 A Okay.

19 Q And but you indicated in the return that you kind of
20 checked it behind, where did the extra razor blade go to?

21 A The pictures depict a razor blade on the dresser next
22 to the pill bottle which is in number 9 which is a State's
23 exhibit.

24 Q So is the return incorrect? You've indicated there
25 is only one razor blade?

1 A And that's what was given to me from, with the spoon
2 and the razor blade that would have been next to the
3 kitchen counter.

4 Q This right here represents everything that y'all
5 alleged to have collected, right?

6 A Yes.

7 Q And I think the prosecutor in this case was talking
8 to you about a Form B and you also kind of just -- you
9 went over the items specifically. You indicated there was
10 a plastic baggie containing a quantity of a white
11 cookie-like substance with this, what was on the return,
12 correct?

13 A That is correct.

14 Q And you indicated that number 2 was a plastic baggie
15 containing a quantity of a white cookie-like substance
16 which is also indicated on here, correct?

17 A That's correct.

18 Q And also on that Form 6 indicates there's an orange
19 pill bottle containing a quantity of white cookie
20 substance, correct?

21 A That was which number?

22 Q That would be number 3.

23 A 3, yes, yes.

24 Q And that's also identified on your return, correct?

25 A That is correct.

1 Q And number 4 you indicated now there is a scale
2 containing a quantity of a white residue on it, correct?

3 A On Form B, yes.

4 Q And that's also indicated in the return?

5 A The return indicates a CD type scale.

6 Q Then all of the sudden, now there is something new on
7 here that there is a spoon with a quantity of white
8 residue on it, yet it is not on this return.

9 A Yes, it is.

10 Q I'm sorry. It is. I apologize. It's done with the
11 white razor blade residue on it, correct?

12 A That's correct.

13 Q And then number 6, I apologize, is a quantity of a
14 white residue which is separate and distinct from the
15 residue that was on the spoon or alleged on the scale?

16 A That is correct.

17 Q Where did that come from?

18 A I cannot answer that.

19 Q That's not one of the items that you gave
20 Investigator Bouknight according to your return or that he
21 gave you and you returned back to him?

22 A No.

23 Q And you have no clue where this thing was actually
24 even found either, do you?

25 A Do what now?

1 Q This number 6. You have no clue where this quantity
2 of white substance residue, where that even came from, do
3 you?

4 A Not without looking at the SLED report, no.

5 Q And, in fact, the last time you actually saw the
6 items that you gave him which would be the items on this
7 return which was when he left to go, when he left the
8 scene? When is the last -- strike that. Explain to the
9 jury when the last time you saw the evidence in this
10 particular case before this trial?

11 A The last time with seeing the evidence was when we
12 cleared the scene, packaging up everything, putting it in
13 the vehicles and then leaving the scene, would have been
14 the last time.

15 Q And Investigator Bouknight would have been the person
16 that did that, correct?

17 A That is correct.

18 Q And he would not have put it in a sealed enveloped
19 and you didn't observe him put it in a sealed envelope,
20 did you?

21 A And he put it in the envelope.

22 Q I guess what I'm saying is not one of the Best
23 Evidence Kit.

24 A Oh, not in that.

25 Q Where you can actually seal it and make sure that

1 nothing has been added or taken away?

2 A That's right. Actually, I believe the containers
3 that he used to package the stuff is still in the Best
4 Evidence Kit there.

5 Q And after that last time you saw him, again, you
6 didn't see it until trial, correct?

7 A Until today, yes.

8 Q And I know you testified as to practices and things
9 of that sort. But do you have any personal knowledge as
10 to once it left your view what happened to those drugs?

11 A Once it left my view, it would have been relied on
12 Investigator Bouknight to place it in his evidence storage
13 until it would have been checked out to go to SLED for
14 testing.

15 Q And so it would have been relied upon. So you would
16 have expected him to do that, but you never saw him do it
17 or anything along those lines, correct?

18 A No.

19 Q And so other than what you allege that Mr. Trapp said
20 that night, you've had no other further work on that drug
21 case, did you?

22 A No sir, I did not.

23 Q Other than you got a call from Mr. Trapp about the
24 burglary?

25 A About the burglary and dealing with the burglary.

1 Q Did y'all ever at any point, as you're a supervisor,
2 ever attempt to get fingerprints off these particular
3 items?

4 A I did not, no.

5 Q Sir?

6 A I said, I did not, no.

7 Q You did not know what?

8 A N-O.

9 Q Oh, you said no?

10 A I did not, no. N-O.

11 Q Okay. Do you know where that came from? Do you know
12 or have any personal knowledge as to whether anyone at any
13 point has ever done any fingerprints, done any DNA
14 analysis or anything on this particular item?

15 A I would not.

16 Q Okay. And those kind of things are possible in this
17 particular case, because, you know, fingerprints will
18 leave, you know, once you touch a particular item along
19 with DNA, correct?

20 A They could be.

21 Q And in this case right here, there is no identifying
22 markers on this particular type of container?

23 A There is no identifying markers on the container.

24 Q And after it actually leaves, I guess after
25 Investigator Bouknight takes control of the items that you

1 gave him, I know you are testifying as to best practice.

2 But do you have any personal knowledge as to when he may
3 have, I guess, separated things out from, I guess, what
4 was sent to be tested or what wasn't sent to be tested?

5 A No, I would not other than the, what's indicated on
6 the Form B, Rule 6.

7 Q Okay. And because I know there is actually, there
8 were two specific items that, I guess were attached at one
9 point. And you don't have any personal knowledge as to
10 what items went to SLED and what didn't go to SLED?

11 A Yes, sir. With the information that I'm looking at
12 on this packet which has been marked State's Exhibit 30,
13 inside this heat-sealed bag is SLED's Best Kit with the
14 control log and number. On the outside of it is also
15 SLED's label maker that they use to indicate the lab
16 number which references this Best Kit. So I would say
17 what was ever in this kit is what went to SLED. This
18 would have been evidence maintained at the Sheriff's
19 Office which has been marked State's exhibit number 1,
20 based off of the old form now that was used then and then
21 the envelope that was packaged inside.

22 Q And was this the envelope that you gave Investigator
23 Bouknight on that particular night?

24 A Whether I gave it to him or not, that would be one
25 like we use.

1 Q And this particular document, it lists plastic
2 baggies, razor blade and pill bottle as items being
3 contained in this particular envelope?

4 A That is what it says on the new evidence sticker,
5 yes.

6 Q Is there an evidence sticker for this particular bag?

7 A Yes, it is.

8 Q This is it right here?

9 A Yes.

10 Q Where is the thing that has that label right there on
11 it?

12 A What do you mean?

13 Q That right there is a label, are any of these other
14 documents labeled that same way?

15 A No.

16 Q Do you know who would have labeled that?

17 A This new label that is put on this bag is what our
18 new Evidence Custodian officer uses as well as on the SLED
19 bag.

20 Q Were the razor blades sent to, from your own personal
21 knowledge, from what you have looked at, were the razor
22 blades sent to be tested?

23 A No, not according to this, both of the razor blades
24 are in this packet along with, I don't know if that is
25 some type of pipe or what is in there.

1 Q There is a pipe on there also?

2 A I don't know what it is to be honest with you.

3 Q Is that on the Form B?

4 A If it didn't go to SLED it was not put on Form B.

5 Q Is that listed on that particular envelope too, I see
6 you have got it sealed and it is kind of, what is the
7 purpose of having this right here on the item, this tape
8 and everything like that?

9 A That tape would be, once they seal that bag to
10 protect it from either coming open or being tampered with.

11 Q That is the purpose of it, just to make sure, the
12 chain-of-custody really has to do with tampering, correct?

13 A That's correct.

14 Q And do you know who put this particular type of
15 taping on that?

16 A The initials are NB which would be for Nick Bouknight
17 which are his initials and handwriting.

18 Q And was the pill bottle sent to SLED?

19 A On Form B, Rule 6 and in this packet, yes. And also
20 in this packet is the form that Nick would have tore off
21 for his tracking number for that SLED packet which is
22 B215834. And then on the back he has got Trapp written on
23 it and it was in this envelope.

24 Q And so you have got one thing in there and then you
25 have got another set of items, I mean at some point did

1 either Investigator Bouknight or someone, I guess,
2 separate these items into separate envelopes?

3 A I am sure they would have to since we have two
4 separate packets.

5 Q Do you know who did that?

6 A As far as firsthand, no.

7 Q Do you know when it was done?

8 A Other than looking at the evidence form, 10/9/2011.

9 Q Are you speculating as to when that was separated or
10 do you have any personal knowledge yourself?

11 A I am reading what is written on both the packet as
12 well as the evidence form.

13 Q And do you have any personal knowledge as to the
14 condition of the items at the time that they were
15 separated?

16 A No, I do not.

17 Q Do you know who all may have been present at the time
18 these items may have been separated?

19 A No.

20 Q Do you know how long they had been sitting out
21 separated before they were actually placed back together
22 at some point?

23 A No.

24 Q Would it be fair to say that you basically have no
25 other knowledge after you saw Bouknight with it that

1 particular night?

2 A Other than the paper trail of what I have visibly
3 been seeing today, no.

4 Q You yourself created no paper trail yourself,
5 correct?

6 A Although I don't create the paper trail there is a
7 paper trail created so that we can show from one hand to
8 another.

9 Q And this alleged statement that you attributed to Mr.
10 Trapp, did you ever attempt to memorialize that in written
11 form and get him to sign it or anything like that?

12 A No, I did not.

13 Q Did you ever get him to even sign up on a Miranda
14 form where he acknowledged that you read him his rights or
15 that you even had a conversation with him?

16 A No sir, I did not.

17 Q Can you agree that it would be important that if you
18 say that a person confessed that you actually either write
19 a report or at least attempt to get a statement in this
20 particular matter, wouldn't you?

21 A It would depending on the individual.

22 Q Since this trial has started have y'all made any
23 attempts to get any fingerprints on that pill bottle?

24 A Not to my knowledge.

25 Q And I know that you testified that Investigator

1 Spreng, I think you said he was in Puerto Rico or Florida
2 or anything along those lines, is there anything that
3 prevented you all from reaching out to him and having him
4 to come in here and do what you are doing and testify and
5 ask him what happened?

6 A When Mr. Spreng left Newberry Sheriffs Office there
7 was no forwarding address or numbers left to us. Although
8 we know he has family in Florida he also has family in
9 Puerto Rico that he goes back and forth to visit.

10 Q There was nothing that prevented you all from calling
11 this case before he left, was it?

12 A That would be a question for the solicitor's office
13 since they are the ones that schedule the trials and
14 different things that come through the court.

15 Q Has anyone on your behalf or the Solicitor's behalf,
16 do you have any personal knowledge, that anyone ever tried
17 to get Investigator Spreng or anyone else here to testify
18 regarding the facts of this case. I mean, when I say this
19 case, I mean the drug case.

20 A As far as I am aware, I know they contacted me about
21 forwarding information of where he might be as far as a
22 phone number. But as far as the direct contact from Mr.
23 Spreng, no.

24 Q And, again, so we can be clear, he never provided any
25 report that said the same things that you said in

1 reference to, that Mr. Trapp gave a statement to you that
2 those were his drugs?

3 A He did not, no.

4 Q There is no reports from him saying he met you and
5 Mr. Trapp had a conversation at all, is there?

6 A From who?

7 Q Investigator Spreng?

8 A No, he did not document one.

9 Q That is all.

10 REDIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q To your knowledge how many times have you attempted
13 to call this case to trial?

14 MR. LAKE: Objection.

15 THE COURT: That is not relevant, I will not allow
16 that.

17 Q Why wouldn't you fingerprint that medicine bottle?

18 A After the Miranda rights were given to Mr. Trapp,
19 from his own admission stating that was his drugs.

20 Q He admitted that pill bottle was his and the drugs
21 inside of it?

22 A That's correct.

23 Q Was there any need to fingerprint?

24 A Not at that time.

25 Q Thank you.

1 THE COURT: Any recross?

2 MR. LAKE: No, sir.

3 THE COURT: You may step down.

4 MR. SCOTT: The State calls Lynn Black.

5 LYNN BLACK, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SCOTT:

9 Q Ms. Black, where are you employed?

10 A I work for the South Carolina Law Enforcement
11 Division commonly known as SLED in the forensics services
12 laboratory.

13 Q What is your title in the forensics laboratory?

14 A I am a forensic chemist in the drug analysis section.

15 Q What does the term, forensics, describe in your line
16 of work?

17 A Forensics means as applied to the law. And when you
18 put forensics and science means science has applied to the
19 law.

20 Q Okay. Specifically what kind of items do you
21 analyze?

22 A I receive substances that law enforcement personnel
23 bring in and I analyze them to determine whether they are
24 controlled substances or not.

25 Q So you primarily deal with, I guess, narcotics?

1 A I wouldn't classify them all as narcotics, no sir.
2 But substances, powders, plant material, paper, liquids,
3 anything that someone suspects could be a drug.

4 Q So SLED would have a DNA section that would analyze
5 DNA evidence but there is also, I guess, a generic term,
6 but the drugs section to analyze drugs?

7 A Controlled substances, yes sir.

8 Q How long have you worked in that particular capacity?

9 A I have worked for SLED for a little over 6 years but
10 I have been a drug chemist for 14 years. I worked
11 previously at the Georgia Bureau of Investigations in
12 Atlanta for 8 years.

13 Q And where did you get your undergraduate degree?

14 A I have a Bachelor of Science Degree in Chemistry from
15 Kentucky, Wesleyan College. I also have a certificate of
16 medical technology from the University of Louisville and I
17 have a Master of Science Degree in Forensic Science from
18 Marshall University.

19 Q As a drug chemist with SLED are you required to, I
20 guess, get continuing education, continuous training.

21 A It is not a requirement but they do provide for us
22 that we can do that. At least once a year we get the
23 opportunity to go to a class or a conference where we can
24 take some different training classes and things but it is
25 not a requirement, no.

1 Q Do you have any idea approximately how many samples
2 you would test on a monthly basis?

3 A On a monthly basis, probably anywhere from 80 to 100
4 cases I would say. And a case can be one sample or a case
5 could be ten samples. It just depends. So, I know that I
6 sampled approximately, probably about 4,400 cases since I
7 have been at SLED, in the six years that I have been
8 there.

9 Q Have you ever testified in General Sessions court
10 before?

11 A Yes, sir.

12 Q Do you know how many times?

13 A Here in the State of South Caroline I have testified
14 17 times, overall I have testified 117 times.

15 Q And do you know, have you ever been qualified as an
16 expert?

17 A Yes.

18 Q How many times?

19 A All of those times.

20 Q So 117 times in General Sessions court?

21 A Well, in Georgia, they don't call it that. But, you
22 know, in their court system I testified 100 times but here
23 in South Caroline 17.

24 Q Okay. And what were you qualified as an expert in?

25 A Drug chemistry.

1 MR. SCOTT: Your Honor, at this time we would offer
2 Lynn Black as an expert in drug chemistry.

3 THE COURT: Any voir dire?

4 MR. LAKE: No, sir.

5 THE COURT: She is so qualified. Ladies and
6 gentlemen, what that means is that Ms. Black has some
7 expertise in the field of drug chemistry. She is able to
8 offer opinions in addition to factual testimony in that
9 field. You may continue.

10 Q Ms. Black, did you have an occasion to test some
11 evidence submitted to you in a SLED lab number L11-11971?

12 A Yes sir, I did.

13 Q And who was your listed suspect in that case?

14 A Toaby Trapp.

15 Q And when did you receive or when did you test this
16 evidence?

17 A I tested it on October the 25th, 2011.

18 Q We have been talking about, what is a
19 chain-of-custody in regards to drug cases?

20 A The chain-of-custody is a record of who handles
21 evidence, like for SLED we have our own internal
22 chain-of-custody. And what we use is a bar code that is
23 scanned from person to person. Every person has a bar
24 code for themselves as well. So we scan the evidence to
25 us. When I receive evidence and it gets scanned to me and

1 then that generates, in our computer system, a record that
2 that evidence is in my custody and what date and what
3 time. So the chain-of-custody is very important to keep
4 track of where the evidence is and who touches it.

5 Q And are those records kept in the ordinary course of
6 business at SLED as far as drug evidence?

7 A Yes sir, they are.

8 Q You keep a chain-of-custody on all the samples you
9 test?

10 A Yes, sir. All the evidence, excuse me, all the
11 cases.

12 Q Do you have your records of the chain-of-custody in
13 this case?

14 A I do.

15 Q As far as the samples you received in this particular
16 case when did they arrive at SLED?

17 A According to my records they arrived, they were
18 submitted on October 21st, 2011.

19 Q By whom?

20 A This says Investigator Nick Bouknight of the Newberry
21 County Sheriffs Office.

22 Q Would you spell that last name.

23 A B-O-U-K-N-I-G-H-T.

24 Q Ms. Black, do your records indicate when Mr.
25 Bouknight delivered them to SLED?

1 A October 21st, 2011.

2 Q What time?

3 A 10:54.

4 Q Who did he transmit the evidence to?

5 A According to my records, Selena Kinard.

6 Q Who is Selena Kinard?

7 A At that time she was a forensic technician in the
8 log-in department at SLED.

9 Q So, what does somebody in the log-in department do?

10 A They typically receive evidence from law enforcement
11 personnel, they will record, excuse me, they will use
12 whatever paperwork that the submitting agency brings in
13 and type in the information into our computer system,
14 suspect names, incident dates, officers names and what
15 type of evidence it is. And then they will generate what
16 we call a unique crime lab case number which will be
17 associated with that case from then on. And they will
18 also generate that case number in a bar code fashion and
19 place that on the evidence. And then as I said before,
20 that is what we would scan, excuse me, in this case the
21 log-in person would scan that evidence to themselves. So
22 then our records would show that that evidence was in her
23 possession.

24 Q And this bag, State's number 30. Inside of it is
25 another bag, what is this?

1 A That is what we call the Best Kit Bag, the tamper
2 evident bag that comes in a Best Kit that SLED supplies to
3 law enforcement personnel for the submission of drugs.

4 Q Is this how you typically receive the items that you
5 end up testing?

6 A Actually it comes in a manila envelope. The kit
7 itself comes in a manila envelope that has this bag in it
8 and then all the paperwork that the agency would need to
9 submit drug evidence. And typically that is what the
10 log-in person would put the crime lab sticker on. So when
11 I receive it I take this bag out of that envelope and that
12 envelope actually gets destroyed because I put this bag
13 inside another bag. And then on that bag has, I also
14 print out the crime lab case number, bar code and stick it
15 on there.

16 Q Who would have generated that bar code?

17 A That is the Best Kit bar code that is already on
18 there, that comes on that bag and it is also on the
19 envelope, the big manila envelope that that comes in.
20 That is just how the law enforcement agency can keep track
21 of what there evidence is in. That is called the Best
22 number or the control number. I think some people have
23 spoke about that in this trial. But that is just
24 basically, we can look up cases by that number too but
25 generally we use the unique crime lab case number.

1 Q What was the bar code that you said Selena Kinard
2 would have generated?

3 A As I said, it was on the big manila envelope but that
4 is also, it too, just like that, that yellow sticker right
5 here was also on a big manila envelope.

6 Q What does tamper evident mean?

7 A That means if somebody were to try to open up the
8 seal at the top of that bag which is green, it is sticky
9 stuff, that it would be obvious. You know, some of the
10 graphics would be distorted and it would be, it says
11 evident that somebody had tampered with it.

12 Q Do you have any particular policy, as far as when you
13 receive a Best Bag or a Best Kit or whatever you call it,
14 what is your policy, do you observe there has been some
15 tampering involved in that?

16 A If it had been tampered with or it was open we would
17 not keep it, we would send it back to the agency.

18 Q Okay. Did you ultimately test items in this case?

19 A Yes, I did.

20 Q Did that indicate to you that the bag had not been
21 tampered with as far as you could tell when you received
22 it?

23 A That's correct. And I even write on the bag itself
24 that the seal was intact and my initials and the date
25 whenever I open up evidence.

1 Q Okay. Selena Kinard, she received it at 10:54, that
2 is a.m., from Nick Bouknight?

3 A Yes, sir.

4 Q On October 21st, so she gives it all the identifying
5 features that we talked about. And then what does she do,
6 takes it to like an evidence storage bin there?

7 A Yes. After she puts the information in the computer
8 system and then she generates the bar code and she scans
9 it to herself. And at some point she will put it in the
10 evidence vault and then she will scan it to the vault.
11 And I think they will scan it to a particular shelf too so
12 they know exactly where it is in the vault because it is
13 rather large and there is lots of evidence back there.
14 So, she would have done that and I think on our
15 chain-of-custody it says drug evidence intake storage so
16 that is a particular place in the vault.

17 Q And she received it at 10:54, when did she transfer
18 to the evidence vault?

19 A At 10:55.

20 Q So not, certainly don't want to minimize her job.
21 But she kind of takes it from the officers and gives it an
22 identifying feature and then takes it to the storage room?

23 A Correct.

24 Q She doesn't test it or anything?

25 A No, sir. She just transferred it to the vault.

1 Q When is the next time this package moves?

2 A And then on October 25 of 2011 another forensic
3 technician, Patricia Crooks, retrieved it from the drug
4 evidence intake storage area and then she gave it to me.

5 Q According to the chain she just checked it out and
6 transported it to you?

7 A That's correct.

8 Q And did she do any testing or anything with this
9 evidence?

10 A No, sir.

11 Q Where is Selena Kinard now?

12 A I am not sure if she is still living in South
13 Caroline, as far as I know she is. But I have no personal
14 knowledge. She left SLED several years ago.

15 Q She is no longer employed with SLED?

16 A That's correct.

17 Q And Pat Crooks?

18 A She just retired this year earlier and so she is
19 enjoying herself at home.

20 Q Okay. These would have been people who would have
21 transported the drugs from one spot to another, they
22 didn't perform any analysis?

23 A That's correct. They just transport it.

24 Q I want to ask you about specific items that you would
25 have tested. State's number 32. Do you recognize that?

1 A I do.

2 Q And how do you recognize that?

3 A This is a plastic bag that has brownish rock kind of
4 substance in it and it has got, it has a piece of tape on
5 here that has the lab number, L11-11971. And then the
6 item number that is my item number is 1.1 and my initials.
7 So this was item 1.1 in this case.

8 Q Okay. And did you perform any test on that sample?

9 A Yes, I did.

10 Q And did you render, what were the results of item
11 1.1?

12 A This was cocaine base or also known as crack was
13 found and it weighed 10.0 grams.

14 Q And that would have been lab number associated with
15 the case you talked about earlier with the suspect being
16 Toaby Trapp?

17 A That's correct.

18 Q Let me ask you, why is the crack brown. Do you have
19 an explanation for that?

20 A It can change colors because, you know, of how it is
21 made, if it wasn't a very complete reaction when they made
22 it. If this was kept in a hot place or, you know, exposed
23 to extreme temperatures that could cause because the
24 different chemicals that make this up, you know, you just
25 never know. And they could have put in some different

1 cutting agent or something that can cause that. But, yes,
2 because it was not this color when I tested it because I
3 would have noted it on my sheet because generally crack
4 comes in, it can be white, off white. I have seen it this
5 color but usually it is off white or white. But it could
6 be just be from deterioration or just because of the
7 nature of whatever else they put in there.

8 Q But that is a phenomenon you are familiar with?

9 A Yes, sir.

10 MR. SCOTT: Your Honor, State would offer State's 32
11 for admission into evidence.

12 THE COURT: Any objection.

13 MR. LAKE: The Defendant would object. He hasn't
14 laid the proper foundation for the admission of this item.

15 THE COURT: Consistent with my prior analysis and
16 ruling under the Taylor case, I think it should be
17 admitted subject to your objection.

18 MR. LAKE: The only reason I say that, Your Honor,
19 there is an additional witness that has not been called in
20 this particular case. I think that is one of the reasons
21 why, for the objection. Should be part of the chain, I
22 assume.

23 THE COURT: I want to hear you on that. Y'all step
24 in the jury room, don't begin discussing the case.

25 (Whereupon, the jury was excused from open court.)

1 THE COURT: Let me hear you, I think I know where you
2 are going.

3 MR. LAKE: Yes, Your Honor. I mean, there has been
4 no testimony from Investigator Chapman. And she has no
5 knowledge.

6 THE COURT: I think you are right. Some foundation
7 has been laid but not the full foundation.

8 MR. SCOTT: And, Judge, he would not have been in the
9 chain leading up to Lynn Black.

10 THE COURT: He is still in the chain but he hasn't
11 gotten there yet.

12 MR. SCOTT: He would have been in the chain if we are
13 going to bring it to the Court House today ultimately
14 establishing the chain up to Lynn testing it, Ben wasn't
15 going to be in it.

16 THE COURT: She can provide testimony she tested it.

17 MR. SCOTT: Yes, sir. That is fine.

18 MR. LAKE: I don't have an objection to her
19 testifying as what she found was crack. I am saying the
20 admissibility of the actual drugs into evidence. That is
21 what I am objecting to.

22 MR. SCOTT: We have identified it, we have
23 established the chain to the chemist and she is ultimately
24 talking about what her opinion is regarding the sample.
25 It has got to come in if she has already testified to what

1 it is. She has ID'd it, we tracked it all the way to her.

2 MR. LAKE: Investigator Chapman is a link in the
3 chain, Your Honor.

4 MR. SCOTT: Not prior to testing.

5 THE COURT: I think he is right. I think she has to
6 test it, she can testify as testing it but once she sent
7 it back then your chain goes away from her.

8 MR. SCOTT: The point, you said tampering was the
9 basis of the chain-of-custody.

10 MR. LAKE: The chain is all the way up to the trial.

11 MR. SCOTT: Who cares if we tamper with it now. We
12 need to get it to her testing it. This is getting
13 ridiculous at this point. This is just getting ridiculous
14 at this point.

15 THE COURT: Don't you have to have him?

16 MR. LAKE: Yes.

17 MR. SCOTT: He is not in the chain leading up to her.

18 THE COURT: I agree. I agree, she can testify she
19 tested it and what she found.

20 MR. SCOTT: We can have him talk about bringing it
21 here today but I don't see how that, we have had evidence
22 or testimony seizing it there. We have tracked it all the
23 way to the chemist and now she is talking about what it
24 is. We have identified it and Ben will say, yes, I
25 brought it over here in a bag. I mean, that is about all

1 he can say.

2 THE COURT: I think Mr. Lake is right on that one.
3 She can testify exactly like she has. I think he is
4 correct on this part of the chain.

5 MR. SCOTT: I typically introduced the drugs into
6 evidence. But if she is already going to testify to what
7 it is and the jury gets to hear that.

8 THE COURT: I am not going to argue with either of
9 you.

10 MR. SCOTT: I will continue along with this line of
11 questioning and we will have Mr. Chapman here.

12 THE COURT: Let's take a break.

13 (Whereupon, a short break was taken.)

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

15 (Whereupon, the jury came into open court at
16 approximately 3:40 p.m.)

17 CONTINUE DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Ms. Black, let me show you State's number 33. Do you
20 recognize that?

21 A Yes, I do.

22 Q And how are you able to do so?

23 A This is a plastic bag with the white rock like
24 substance in it and it has got a piece of tape on it that
25 has the lab number on it which is L11-11971 and the item

1 number 1.2 and my initials on it.

2 Q Did you find a result regarding that sample?

3 A Yes sir, I did.

4 Q And what was that result?

5 A This is cocaine base also known as crack, was found
6 7.3 grams.

7 Q 1.1 was 10 grams and that item right there, 1.2 is
8 7.3 grams?

9 A Yes, sir.

10 Q All right. Let me show you State's number 34. Do
11 you recognize that?

12 A Yes sir, this is a orange plastic bottle, also kind
13 of a prescription bottle that has got a white rock like
14 substance inside. It has got the lab case number,
15 L11-11971 and hidden by the State's exhibit tag, 1.3 and
16 my initials.

17 Q And did you test the substance inside of that?

18 A Yes, I did.

19 Q And what was your finding?

20 A Cocaine base also known as crack was found, 4.0
21 grams.

22 Q Okay. So those three items we have, what is it,
23 about 21.3 grams, was that your finding of crack?

24 A That's correct.

25 Q How do you weigh these things. Like that, plop them

1 on a scale and you see what number comes up?

2 A No, sir. Generally I will take the substance out of
3 the bag and weigh it. What I do is I have a piece of
4 weighing paper that I will place on the balance and tear
5 it which is also called zeroing out so the weight, the
6 weight and the paper doesn't register. And then I took
7 the substance out, out of the bag, and placed it on that
8 balance and took the measurement from that.

9 Q Okay. So the weight you came up with would clear
10 these plastic bags or this bottle?

11 A That's correct. They were net weight.

12 Q So, what is your opinion as to all three of those
13 items, what they contain?

14 A They were all cocaine base, also known as crack.

15 Q Okay. Would you refer back to your chain-of-custody.
16 After you tested those items what path did they take?

17 A After I tested them and placed them back into or
18 actually placed them into another plastic bag, not the bag
19 that they originally came in which is the Best Kit tamper
20 evident bag but a plastic bag that we call a KPac, I think
21 that is just the manufacturer's name for it. It is just a
22 plastic bag that is able to be heat sealed. So I place it
23 in there and then I print out a bar code sticker and place
24 it on there and heat seal the bag with my initials and the
25 date. And then I think at this time I probably just put

1 it, if I look at the dates here, I have just placed it
2 back in our drug vault. There is a main drug vault at
3 SLED where all evidence is kept. But in my laboratory on
4 the forth floor we have a drug vault that is just for drug
5 evidence. So I placed it in my area in there until
6 November the 2nd of 2011 when I took it back downstairs to
7 log-in and gave it back to Patricia Crooks.

8 Q What was the, do you see the bag that you put it back
9 in?

10 A Yes. This outer bag right here, it is called KPac.
11 I put the sticker on here and it has the case number on
12 it, the lab case number and then my initials and the date
13 that I sealed it which was October the 25th of 2011 is on
14 the bottom. We just opened this up earlier today here.

15 Q I was going to ask you, were you present when we
16 opened this up today?

17 A Yes, I was.

18 Q So you watched this bag being cut into?

19 A Yes, sir.

20 Q And what was its condition before we cut into it?

21 A It was sealed and nothing tampered with.

22 Q And so it would have, I guess, would have been
23 evident had it been broken into after you put it in there
24 but before we broke into it today?

25 A Yes, sir.

1 Q So you said Pat Crooks and then what, returned to
2 Newberry Sheriffs Department?

3 A Yes, eventually it was returned to Newberry County
4 Sheriffs Department on November 30th, 2011.

5 Q And there was Nick Bouknight, Newberry, drugs for
6 return?

7 A Yes, sir.

8 Q Does that mean he picked it up and returned it?

9 A That's correct. Yes, on this chain-of-custody it has
10 a signature that, also with his name.

11 Q Thank you. Please answer any questions Mr. Lake has
12 for you.

13 CROSS-EXAMINATION

14 BY MR. LAKE:

15 Q Ms. Black, your testimony, I mean you readily come in
16 on the tail end, correct, of typically a case?

17 A Correct.

18 Q And so you have no knowledge as to the underlying
19 facts which led up to you eventually testing these items,
20 do you?

21 A No, I do not.

22 Q And you don't know where, where they have been, who
23 had them or who was in custody of them before they make it
24 to SLED, correct?

25 A That's correct.

1 Q I think you said something, you testified about you
2 have seen this right here turn brown before?

3 A Yes, sir.

4 Q Have you seen it turn brown after you examined it or
5 usually before you get to it?

6 A I have seen both.

7 Q How often would you say you have seen that?

8 A A handful of times.

9 Q Under what circumstances do you see that at times,
10 that change from, I guess, what you testified earlier to
11 would be the white or off tan to the, what color would you
12 describe this?

13 A Kind of tan, brown. Yes, it is just kind of
14 deteriorating. It is kind of wet too. It depends how
15 they make it, what else they put in it. If it is exposed
16 to extreme temperatures. All of those can play a part to
17 what happens.

18 Q When you say exposed to extreme temperatures, would
19 this have been before it got to you or after it got to
20 you?

21 A It could be either one, I mean it could have been
22 deteriorating, you know, from the getgo.

23 Q Do you have any personal knowledge in this case
24 whether the process had started to deteriorate?

25 A No, sir.

1 Q But you said if it had of started deteriorating you
2 would have noted that in your records, correct?

3 A If it had been a different color, yes, I would have
4 noted.

5 Q And did you note that at that particular time?

6 A No, sir.

7 Q So any kind of condition that would have affected it
8 would have affected it after it left your custody,
9 correct?

10 A Temperature wise, yes. But, you know, the fact of
11 however it was made and what it was made with or in, that
12 could have happened beforehand.

13 Q And you indicated temperature wise, where did you
14 have it stored, what kind of temperature are you showing
15 it in?

16 A Typically about 70 degrees.

17 Q And is there any type of polices and procedures as to
18 how these particular items should be stored?

19 A I don't believe we have anything specific to, you
20 know, a particular temperature.

21 Q I guess the question is, is there a way to prevent, I
22 guess, erosion or, you know, degrading of any item that
23 you may have found at any given time or tested it at some
24 point?

25 A Just to keep it in a sealed condition and then in a,

1 you know, not an extreme temperature environment. But,
2 you know, we can't control how it is brought in. Officers
3 can keep it in their hot trunks in the summertime or hot
4 buildings. I don't know, we see that a lot.

5 Q And are you familiar with like the Form B Rule 6 that
6 they addressed?

7 A Yes, sir.

8 Q And what are those documents?

9 A The Form B is one of the documents that comes in a
10 Best Kit that we provide, that SLED provides to law
11 enforcement personnel and it is kind of starts the
12 chain-of-custody for us. That is what they submit to us,
13 we don't keep it, we give it back to them but we make a
14 copy of it or, excuse me, we scan it into our computer
15 system. And then we use that information to confirm the
16 person who brought it in and also sometimes the evidence.
17 There is also a request that comes with that that we--

18 Q You can make a request sometimes before they actually
19 bring it in to get this form and fill it out. Is that
20 possible?

21 A I am not sure I understand.

22 Q I guess what I am asking you, this Form B, Rule 6,
23 that is what gets you started. Is this only when they
24 actually physically bring it to that location or are they
25 able to fill this out and then at some point bring it to

1 you? Do you have any personal knowledge?

2 A That form is old now and we have a newer form so I,
3 if I can look at the form maybe I can recall.

4 Q Okay. This is the thing that kicks off when y'all
5 get it and I want to show you that particular document.

6 A As I said, this is the form that comes in the Best
7 Kit and there is also a Form C so if more than one person,
8 like for instance in this case, Nick took this drug and
9 then he gave it to somebody else who took it back to the
10 sheriffs office then he would sign this to them and then
11 they would have to fill out the Form C that would say
12 where they took it. Now we have one form that has got
13 many blanks and stuff, instead of multiple pieces of paper
14 now we have one form where everybody can write it on
15 there. So sometimes it is one piece of paper but like in
16 this case, but other times it is multiple, it can be
17 multiple pieces.

18 Q And in this particular case item 1 was a plastic bag
19 containing a quantity of rock, could be a substance that
20 you tested, correct?

21 A Correct.

22 Q And it was a plastic baggie containing a quantity of
23 white substance that you took, tested, correct?

24 A Correct.

25 Q There is a orange pill bottle containing a quantity

1 of white cookie substance, correct?

2 A Yes, sir.

3 Q And it was a scale and a spoon that contained a white
4 residue type items on both items, correct?

5 A Yes, sir.

6 Q And you tested those, correct?

7 A That's correct.

8 Q And then there is number 6 where it says a quantity
9 of a white residue. Did you test that?

10 A Yes, I did.

11 Q Where is that listed in your report?

12 A That is item 1.6 on my report.

13 Q And your report, you describe item 1.6 as a ziplock
14 bag, containing a rock substance?

15 A Yes, sir.

16 Q You agree a rock substance is different than residue,
17 correct?

18 A Correct but different people have different opinions
19 as to what is residue and what is an actual rock.

20 Q And what is residue?

21 A Residue would be something, say if you had a bag and
22 you could see something is in there but you can't dump it
23 out or something. And you would like need a Qtip or
24 something to wipe it out with or you would have to rinse
25 it out.

1 Q And what is a rock, a rock is what is here, right?

2 A Correct.

3 Q Something that is substantially bigger, correct?

4 A In some cases. In this particular case it wasn't a
5 whole lot but it wasn't up to weight. I did consume it
6 all in my analysis though. So there wasn't anything left,
7 there is nothing left in that evidence bag to show it. It
8 was a very small amount.

9 Q Does that item right there, number 6, does it
10 indicate that it was in a plastic bag?

11 A No, sir.

12 Q So it goes to the question, how does it get to a
13 ziplock bag?

14 A The officer could have placed it in there, it happens
15 a lot. They don't necessarily put exactly what they put
16 in the Best Kit on, either the request or this B form.

17 Q Do you have any knowledge as to whether it was
18 personally placed in here or not?

19 A I do not.

20 Q Is that the best practice for an officer who touched
21 the drugs, especially residue and put it into a bag or
22 anything along those lines?

23 A We would prefer they put it in a bag, yes.

24 Q They would use their hands or something like that?

25 A Well, gloves would be preferable.

1 Q When the drugs come to you you actually prefer to be
2 the one that opens it up, does the testing just to avoid
3 any argument or any accusations that there could be
4 tampering, correct?

5 A I am not quite sure what you are asking.

6 Q What is the basis for you all doing the
7 chain-of-custody?

8 A To keep track of the evidence.

9 Q And also to prevent what?

10 A Tampering.

11 Q Well, tampering is very important, correct?

12 A That's correct.

13 Q Because if you tamper with the drugs you can have,
14 actually manipulate weight, type of drugs or whether there
15 were any drugs at all, correct?

16 A That's correct.

17 Q And you have no knowledge as to what happened with
18 these drugs before they got to you?

19 A No, sir.

20 Q And your testimony is that when you got it it is in a
21 bag but then on the Best Evidence form completed by
22 Investigator Bouknight is no reference to a bag or
23 anything like that, correct?

24 A Not for item 1.6, no.

25 Q And are all these items together or what, are they in

1 one manila envelope or what are they in?

2 A They were in several manila envelopes. The first
3 four items were in a manila envelope. The last two were
4 not.

5 Q Do you have any idea what happened to those drugs,
6 what condition they were in prior to they got into that
7 envelope?

8 A No, sir.

9 Q And you don't know whether they were separated and if
10 so who may have separated them, do you?

11 A No, sir.

12 Q And so you are saying you have got four separate
13 manila envelopes?

14 A Yes, sir.

15 Q And where was item 1.5 and 1.6, were those separate
16 items, were they in separate envelopes or were they not in
17 an envelope?

18 A They were each in a separate ziplock bag.

19 Q A ziplock bag.

20 A Bags.

21 Q Was that bag sealed when it came to you?

22 A It was closed, yes sir.

23 Q Like heat sealed or along those lines?

24 A No, sir. No, sir.

25 Q If anybody wanted to get in that ziplock bag they

1 could open it up and close it, correct?

2 A Yes, sir.

3 Q Aside from the items that you list on this report did
4 you test a straw or anything like that?

5 A No, sir.

6 Q Did you test any type of pipe or anything along those
7 lines?

8 A No, sir.

9 Q Did you test any razor blades or anything like that
10 to see whether they had shown evidence that someone had
11 been cutting or cooking or whatever with those razor
12 blades?

13 A No sir, it was not submitted.

14 Q Do you know where they were at at the time?

15 A No, sir.

16 Q So they never came to you?

17 A I have no knowledge of those items. So, no they did
18 not come to me.

19 Q I guess the reason that I ask you that, on this
20 Newberry County Sheriffs log, it list the items, plastic
21 baggies, razor blades and it says pill bottle. Is there
22 another pill bottle that we haven't discussed?

23 A Not to my knowledge. I tested the one that came in
24 the Best Kit.

25 Q So, was the pill bottle with the razor blade when it

1 came to you?

2 A There were no razor blades, no sir.

3 Q Now, according to this particular report here, they
4 are now together?

5 A I have never seen that package before. I have no
6 knowledge of it, no sir.

7 Q Did they, on the date it was sealed was on October
8 the 10th of 2011? Is it your testimony that it was placed
9 in this particular bag on October 10th of 2011?

10 A That is what the bag, what was written on the bag,
11 yes.

12 Q But you don't know whether that is accurate or not?

13 A I do not.

14 Q Were you aware between, I guess, would be October the
15 9th until what was in this bag on that particular day or
16 any other day, do you know the condition of those drugs or
17 those items at any time from October the 9th until this
18 particular timeframe of October the 10th, the first time
19 it was actually sealed?

20 A No sir, I have no personal knowledge.

21 Q Now, when you say the envelopes that came to you,
22 these were the actual envelopes that you are referring to?

23 A Yes, sir.

24 Q And these envelopes were not sealed?

25 A No sir, they were not.

1 Q So anybody could just open them up at any time?

2 A Yes, sir. Prior to them giving me--

3 Q Prior to them giving you this right here, correct?

4 A Yes, sir.

5 Q That is all I have.

6 MR. SCOTT: Nothing from the State, Your Honor.

7 THE COURT: You may step down. I need to give the
8 jury a break. Don't discuss the case.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 (Whereupon, a short break was taken.)

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

13 (Whereupon, the jury came into open court at
14 approximately 4:05 p.m.)

15 MR. SCOTT: The State calls Ben Chapman.

16 BEN CHAPMAN, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Mr. Chapman, October of 2011 were you with the
21 Sheriffs Department?

22 A Yes.

23 Q What was your duties then?

24 A I was the Evidence Custodian over the, everything but
25 the narcotics.

1 Q What about Jerry Wright, retired Jerry Wright, did
2 you take over for him?

3 A Yes.

4 Q October 8th of 2011 was it you or Jerry Wright who
5 was over the non-narcotic evidence?

6 A The non-narcotic evidence would have been Jerry
7 Wright.

8 Q And what were you doing then?

9 A I was the training officer at that time.

10 Q Who was in charge at that time of the narcotics
11 evidence?

12 A Investigator Bouknight.

13 Q Okay. So he was the Evidence Custodian for all the
14 drug related evidence that was kept at the sheriffs
15 department?

16 A Yes.

17 Q And where did he keep all of the drug evidence?

18 A At that particular time the evidence was kept in a
19 secured building behind the trailers that we were
20 presiding in at the time.

21 Q Outdoor unit storage building?

22 A Yes.

23 Q Was it climate controlled?

24 A It was not.

25 Q You remember Nick passed away?

1 A Yes.

2 Q And what would become of all the evidence that was in
3 the locker?

4 A When Nick passed away, being that I was the Evidence
5 Custodian over the other evidence, I took control over all
6 evidence including the narcotic evidence at that time.

7 Q I am confused. You were a training officer under
8 Jerry, how does that work?

9 A October of 2011 I was the training officer. I became
10 the Evidence Custodian when Jerry left December the 31st
11 of 2012. So, I took over the evidence December of 2012.
12 And I took over the narcotic evidence when Nick passed
13 away in May of 2013.

14 Q Got you, okay. And now the two are the, are
15 narcotics pieces of evidence still kept separately from
16 other, I guess, non-narcotic evidence?

17 A Yes. I am in control of all of the evidence but the
18 narcotic evidence is kept separate from the other
19 evidence.

20 Q It is only like one room though, isn't it?

21 A It is in a room inside a room.

22 Q But before, I guess, in early October, October 8th,
23 2011 you would have had your drug evidence in one unit,
24 storage unit outside back behind the trailers of the old
25 sheriffs department?

1 A Correct.

2 Q And then where would the other stuff be?

3 A It was in a different building.

4 Q Okay.

5 A In the same general area.

6 Q I am sorry, I think I asked you this or you started
7 on it. But when Nick passed who was it that went in and
8 inventoried the evidence he had collected in his evidence
9 locker?

10 A That was me.

11 Q All right. And what did you do with it?

12 A I went in and inventoried it and made sure it was
13 there. And until we moved into the new building and it
14 stayed in that building.

15 Q Do you recognize this piece of evidence right here,
16 it is State's number 30, it has got the various contents
17 in it. Do you recognize that?

18 A I do.

19 Q When was the, I guess, did you bring that to court
20 yesterday?

21 A I did.

22 Q And how did it appear then?

23 A It was sealed, this bag was sealed across here.

24 Q And after the day was over yesterday what did you do
25 with it?

1 A I took it back and logged it back into evidence.

2 Q And then again this morning, did you bring that back
3 over here today?

4 A I did, I checked it back out and delivered it this
5 morning.

6 Q And did it appear that it had been tampered with when
7 you took control of it?

8 A No. The evidence was just as this morning as it was
9 yesterday afternoon.

10 Q And would anybody have had contact with that since
11 Nick passed away and then since you brought it over
12 yesterday?

13 A No, I am the Evidence Custodian. I have someone that
14 helps me with the evidence. But we are the only two that
15 has any access to any of that.

16 Q Were all those substances inside of that in that
17 condition when you checked them out of your evidence
18 locker?

19 A Yes, they looked just as they do today.

20 MR. SCOTT: Judge, at this time I think we are going
21 to again offer State's 33, 34 and 32 for admission into
22 evidence.

23 MR. LAKE: Your Honor, I would object again, I would
24 renew that same objection. There has been testimony from
25 the forensic, I am sorry, the analyst essentially that one

1 of the documents was indicated that the pill bottle was
2 in, she didn't recognize that. Now, how they have somehow
3 put this bottle back into this right here when it was
4 actually contained in that particular form right there
5 where she indicated and testified to essentially that she
6 did now know what it was, had never seen it before. And
7 this thing clearly indicates a plastic baggy, razor blade
8 and pill bottle. Now he is testifying that, this right
9 here, all of this was in this particular bag right here.
10 I don't think, again, that they layed the proper
11 foundation as to who has touched all of these items at
12 various times to the part that we actually get here to the
13 courtroom today. Especially based upon her testimony that
14 she doesn't even recognize this right here at all. And
15 this right here was actually attached to this.

16 MR. SCOTT: The testimony was that that was never
17 sent to SLED for testing. She further did identify this
18 and she noted that I put the sticker over her label, her
19 handwriting.

20 THE COURT: I thought that Captain Dennis says that
21 this bag did not go to SLED and the bag that was fuller
22 went to SLED and he noted that because of the forms that
23 were attached to them.

24 MR. LAKE: The problem with that, Your Honor, is that
25 this bag right here says that contained within this

1 particular bag was the pill bottle. I mean, I
2 specifically asked the chemist that. So, he may have
3 testified to that but, I mean this is their own documents.
4 So it is clearly something that she says she was not
5 familiar with. Again, Your Honor, not been established
6 the proper chain on this particular case as it relates to
7 any of these items and the Defendant would object to the
8 entry of these items.

9 MR. SCOTT: Judge, this was not sent to SLED, we
10 don't intend to introduce this. We are talking about this
11 bag which has been identified by numerous witnesses. This
12 is all we are talking about, this bag right here. This is
13 the one that Mr. Lake continues to talk about and I
14 believe that is the one that he elicited testimony that it
15 had some sort of pipe and some razor blades in it. We are
16 not concerned with this. Furthermore, we would argue it
17 is non-fungible evidence, the chain is not required. This
18 particular, State's number 30 and its contents is what we
19 are trying to elicit testimony.

20 MR. LAKE: Your Honor, can we have a sidebar.

21 THE COURT: Sure.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Please go to the jury room, I have to

1 make a record.

2 (Whereupon, the jury was excused from open court.)

3 THE COURT: Are you going to proffer something?

4 MR. SCOTT: Yes, might as well do that.

5 PROFFER TESTIMONY

6 BY MR. SCOTT:

7 Q Now, State's 30, I am going to handle that first,
8 tell me about, this is on the outside of this bag? And
9 what is that?

10 A This sticker, it is a sticker that I placed on this
11 bag when I transferred this evidence into the new building
12 using our new computer system. So I would have been the
13 one that put this description on it here.

14 Q That would have been after you would have taken over
15 Nick's locker and transferred it to the new building,
16 y'all are in a new office now?

17 A Yes.

18 Q Why is it on the outside of the bag, why wouldn't you
19 put it on the inside of the bag like you did on this one?

20 A I sealed that bag. This bag was sealed when I
21 received it and it was sealed until today, this morning
22 when y'all cut it open.

23 Q Okay. This has been broken into, it has got a bar
24 code on it with the same case number?

25 A That's right.

1 Q Because these were taped together this morning,
2 correct?

3 A Right. I mean I moved the evidence and I matched
4 everything up. I went through everything and when I found
5 this here and that there I labeled them each as different
6 items in our system with these stickers and put them
7 together and put them in a centralized place.

8 Q Because they were seized together and they are part
9 of the same case?

10 A They are part of the same case.

11 Q Now, you wouldn't be able to put this sticker on the
12 inside but for having to torn it open, I guess, right?

13 A Well, I sealed that.

14 Q Where was this prior, was this in the manila
15 envelope?

16 A This sheet, that sheet was wrapped around this. And
17 we needed to get a copy of that. So I took it off and
18 made a copy of it and put it back in the bag, put this in
19 there and sealed it off.

20 Q This is the one question, I guess, is generating all
21 of the confusion. We open this up earlier and a plastic
22 bag and razor blade. You have listed pill bottle here but
23 the pill bottle was in this bag?

24 A This description was based off of what I read here
25 which says, pill bottle. But this evidence form would

1 have been the evidence form originally made for all of
2 this evidence. But SLED and she is gone now. SLED
3 doesn't want this.

4 Q Razor blades and plastic baggies?

5 A That's right unless they intend to get a residue off
6 of it. But all of this, this form originally generated on
7 the 8th and the 9th was the form for everything you have.

8 Q Is there any reason you just didn't go ahead and list
9 all of the items right here?

10 A Well, if you will look, this is the Best Kit and it
11 is coded with the SLED number which is what is here. And
12 there may be more and it would be on my evidence sheet
13 that I brought over yesterday.

14 Q You listed three items?

15 A The sticker only prints one line. So if there is
16 more down here and I am not saying there is, but if there
17 is more down there it would be on the other form.

18 Q As far as these stickers, you are just--

19 A It is an abbreviation.

20 Q Okay.

21 A Of what I got off of here and put on here.

22 Q This pill bottle, when you delivered this to us which
23 bag was it in?

24 A This right here.

25 Q Okay. So, it is just, a labeling type procedure is

1 the way I understand.

2 MR. LAKE: I recall the State coming out of, I have
3 never seen testimony where you ask what the Best Evidence
4 of something is. This is the Best Evidence. I hear them
5 testifying to things that aren't in evidence but the Best
6 Evidence of what is actually in this document is what is
7 on this particular form.

8 MR. SCOTT: He just said it was an abbreviation from
9 the long list of what is in there. These were taken
10 together, these were all taken from the same scene.

11 THE COURT: I specifically remember Captain Dennis
12 holding up the pill bottle in the bigger bag yesterday
13 during the pretrial because they were talking, where is
14 the pill bottle, where is the pill bottle. He said, I
15 will show you, right there. And he pointed at it and I
16 happened to observe it at this angle. And I don't
17 disagree with you. The label on the smaller bag says
18 that. But I remember without question the pill bottle as
19 being in the bigger bag.

20 MR. LAKE: Again, I go back what is the Best Evidence
21 in this particular case. Is the actual documents that
22 have been, could actually state what it is. As I recall,
23 Your Honor, I actually thought they had opened this thing
24 yesterday and not today but I could be incorrect. I think
25 the Best Evidence of this issue is what is on the label.

1 I go right back to the same point again, I hate to keep,
2 they probably heard me say it a thousand times about
3 chain-of-custody and the inconsistencies of the documents,
4 the evidence, the relied upon documents that are
5 inaccurate. I mean, they want to use the hearsay
6 statements when they, when it suits them. But when it
7 doesn't suit them then all of a sudden then just ignore
8 it. Just listen to what the officers testify. I mean,
9 you are talking about me having it both ways. They are
10 trying to have it both ways. And the problem is I have no
11 right or my client has no right to confront any of this.
12 I mean he basically has no right, has not been afforded
13 the right to confront any of the witnesses that this
14 information has come in on. So, I don't think you can
15 have it both ways in terms of saying, okay, these hearsay
16 documents are fine and ignore these other ones. And, so
17 again those documents, those items should not come into
18 evidence. I don't think they have established a proper
19 chain in this particular case. They relied upon hearsay
20 documents.

21 THE COURT: I thought exhibit number 2 which was the
22 Form B, Rule 6 Form, Detective Bouknight listed the pill
23 bottle on that form as what he took to SLED, did he not?
24 I am speaking from memory, I didn't see that form, I
25 thought it did.

1 MR. LAKE: But the problem with that, Your Honor,
2 when you go back to the testimony of the chemist, she says
3 basically Investigator Bouknight has it down as just
4 residue. But then she indicates when it comes to her it
5 is in a baggie, it is listed down there as a baggie in her
6 testimony. And she could not explain how it came to be in
7 that baggie. You are really talking about residue. He
8 distinctly described it as residue. I am not quite sure
9 how you can get residue and then put it into a baggie.
10 And then say, what is the means by which you get that
11 residue.

12 MR. SCOTT: There was a scale seized, there was a
13 spoon or a razor blade. We are not seeking to introduce
14 any of that.

15 THE COURT: I am looking at his inventory of what he
16 took to SLED in control bag 2115, I mean 215834 which is
17 the clear plastic bag's scan number, what I call it,
18 whatever you call that, UPC scanner, control number.
19 1)plastic white baggie, white cookie like substance; 2)
20 plastic baggie with white cookie like substance; that
21 should be 1.1 and 1.2. And 1.3 would be the orange pill
22 bottle containing a quantity of white cookie substance.
23 Then you have got the scale, which I presume number 4 is
24 the CD scale containing residue on it. The scale was
25 introduced but not the residue. Then there is a spoon

1 with residue, not introduced as of yet. And then what you
2 are talking about is a quantity of white residue that she
3 recollects was in a baggie but testing exhausted all the
4 residue.

5 MR. LAKE: There is actually a baggie in there. I
6 mean the point that I make is that the testimony from her
7 was that it was in a baggie as far as she got but his
8 report doesn't say that this was in a baggie. She could
9 not testify to the condition that it was prior to it. But
10 the ones where he had a baggie he specifically stated, now
11 you have got testimony from her in terms of her testimony,
12 the item is a rock and that is a bag. He has described it
13 as a residue, she described it as a rock. And those are
14 clearly two different things, Your Honor, in terms of a
15 rock and residue. There is definitely a distinction
16 between those two in terms how she labeled so. So, where
17 did this extra rock come from.

18 THE COURT: I don't know that she gave any weight for
19 any rock. She had a bag, a bag and a bottle.

20 MR. LAKE: Your Honor, in her report she testified to
21 and provided a weight and she identified the particular--

22 THE COURT: I mean, I am going to grant that motion
23 to suppress that piece. From what I was looking at was
24 State's 32, 33, 34, SLED number 1.1, 1.2 and I don't know
25 what the pill bottle was numbered, 1. what.

1 MR. DANIEL: 1.3, Your Honor.

2 MR. SCOTT: Yes, sir.

3 THE COURT: 1.3, those were the ones that the weight
4 testimony came from.

5 MR. LAKE: She testified, Your Honor, I guess what
6 would be 1.6 and she testified that was a .01 gram. That
7 is important, Your Honor, I don't think you could separate
8 the items in terms of, I know the Court is kind of, can I
9 separate it and keep certain things in and keep certain
10 things out. But if you are talking things that went into
11 the Best Evidence Bag, they all should be the same. And
12 what is on the report should be what is in the documents.
13 I mean, again, they chose to call this case to do it
14 without having the witnesses available. And I hate that
15 Investigator Bouknight is not here. But it puts us in a
16 tough spot as far as, you know, there is just significant
17 issues, Your Honor, with these documents in allowing the
18 witnesses to testify based upon these documents as to the
19 condition of these items. Again, I just, I would ask this
20 Court to exclude all of these items because I don't think
21 there has been a proper foundation. I will tell you one
22 thing, Your Honor. I think if one part of the Best
23 Evidence fails, one item in there fails I think it all
24 fails.

25 THE COURT: Okay. You have been very clear on that.

1 MR. LAKE: Thank you, Your Honor.

2 THE COURT: All right. I think it comes in, I think
3 it is the totality. I think it comes in. I understand
4 your argument, I am very clear on it. I think it comes
5 in. The three pieces, 32, 33, 34, those numbers.

6 MR. SCOTT: 32, 33 and 34.

7 THE COURT: These are SLED evidence numbers 1.1, 1.2
8 and 1.3.

9 MR. SCOTT: Yes, sir.

10 THE COURT: I may have it wrong, you may be right,
11 Mr. Lake.

12 MR. LAKE: Your Honor, my only concern, the Court is
13 aware of what my client is facing. And so, you know, I
14 think the type of issues we have and the penalties that is
15 facing this particular situation and I just again, I would
16 state my objection for the record and I have kind of
17 stated it. I just ask the Court--

18 THE COURT: Certainly you can argue it, I mean argue
19 it but I am going to decline to suppress those three
20 pieces of evidence. But I understand and you made a
21 record on that issue. All right, do y'all want to
22 continue, is the jury ready?

23 MR. SCOTT: Yes, sir.

24 THE COURT: All right, go get them.

25 (Whereupon, the jury came into open court at

1 approximately 4:45 p.m.)

2 THE COURT: All right, Mr. Scott.

3 CONTINUE DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Mr. Chapman, you did testify earlier that this bag
6 and its contents were taken over by you from Investigator
7 Bouknight's locker room when he passed away, is that
8 correct?

9 A That's correct.

10 Q And then have they remained under your care and
11 custody since then?

12 A They have.

13 Q And did you check these out of your evidence locker
14 yesterday morning?

15 A I did.

16 Q And was this bag sealed then?

17 A It was.

18 Q And when you brought it here to the courtroom?

19 A Yes, sir.

20 Q And yesterday afternoon you took it back to your
21 locker?

22 A That's correct.

23 Q And it was still sealed?

24 A Yes, sir.

25 Q And when you brought it over this morning was it

1 still sealed?

2 A Yes.

3 Q In fact, we broke it open today for use in court, it
4 was outside of your presence, were you here when we opened
5 it?

6 A I was not.

7 Q Okay.

8 MR. SCOTT: Your Honor, at this time the State would
9 offer State's 32, 33 and 34 for admission into evidence.

10 THE COURT: Subject to the objection placed on the
11 record by Mr. Lake on behalf of Mr. Trapp, they will be
12 admitted.

13 (Whereupon, State's Exhibits 32, 33 and 34 were
14 admitted into evidence.)

15 Q Thank you, Mr. Chapman, answer any questions Mr. Lake
16 has for you.

17 CROSS-EXAMINATION

18 BY MR. LAKE:

19 Q Mr. Chapman, do you have any knowledge about these
20 items before they ever got into the Best Evidence Bag?

21 A I do not.

22 Q You don't know if they were manipulated, changed or
23 added or anything along those lines prior to getting into
24 a Best Evidence Bag, do you?

25 A No, I do not.

1 Q And you weren't involved in any way at all in this
2 particular case, correct?

3 A No, sir.

4 Q Never went out to the scene?

5 A No, sir.

6 Q Never had any discussions with Investigator
7 Bouknight?

8 A No.

9 Q Do you have any clue, I think it was said there was a
10 room where these items were located. Do you have any idea
11 where in this room that these items were?

12 A When I took custody of them they were in a location
13 as noted on the evidence.

14 Q And this particular form it just says, it really
15 doesn't say where it is at, where are these drugs?

16 A They are in the evidence room.

17 Q Where at in the evidence room?

18 A I don't recall exactly what box they were in or what
19 shelf they were in.

20 Q Are they in a box or are they in a shelf?

21 A Everything is on a shelf in a box.

22 Q Everything is on a shelf in a box. Is it a lockbox?

23 A The building is, I am trying to explain it real
24 quick. You walk in the door it has shelves that go all
25 the way around the wall. And on the shelves are a box

1 indicating the case, what case it is. And I don't recall
2 exactly where in the room it was.

3 Q So, when you are saying box you mean like a cardboard
4 box or something along those lines?

5 A Yes.

6 Q Not like a lockbox or anything along those lines?

7 A No. The room is locked.

8 Q The room is locked but they are not itself in a
9 lockbox?

10 A No.

11 Q And back in 2011 who had keys to that particular
12 building?

13 A Nick Bouknight.

14 Q Was he the only person that could go back to this
15 particular room?

16 A Yes.

17 Q And what restrictions were placed on in terms of
18 going back there to that building?

19 A Nick Bouknight was the Evidence Custodian at that
20 time so he would have been the one who cared for the
21 evidence and signed it in and out and took it to SLED.

22 Q Did he have to get approval to take anything out or
23 go back there or anything along those lines?

24 A No, he was the Evidence Custodian.

25 Q So he didn't have to contact dispatch or anybody like

1 that to get authority to go?

2 A The room was protected by an alarm, he had to contact
3 dispatch when he entered the room because the alarm would
4 go off.

5 Q Would that prevent him from actually going into the
6 room?

7 A No.

8 Q Okay. And this document right here, State's exhibit
9 number 1, what type of document is that?

10 A This is a evidence log-in form we were using at that
11 time.

12 Q And on this particular document, just by looking at
13 that document alone, can you tell where Investigator
14 Bouknight put the items that he had secured from the
15 defendant?

16 A No.

17 Q Can you tell by looking at that document right there
18 what condition those items were in dated on October the
19 9th?

20 A Nothing other than the description.

21 Q Can you tell when he may have taken those drugs out?

22 A No.

23 Q Can you tell when he actually returned the drugs?

24 A Not according to this form, no.

25 Q Can you tell what condition they were in when he

1 turned those items in?

2 A According to this, no.

3 Q And was there any type of technician or anybody that
4 worked back in the area in that timeframe that may have
5 assisted Chief Wright or anyone else or was Nick Bouknight
6 the sole person that had access?

7 A Yes, up until I took control of the narcotic
8 evidence, Nick was the only one.

9 Q So he could have come in and got it at any time, it
10 is not documented on that form, is it?

11 A No.

12 Q And does that document indicate when he took the
13 items from Investigator, I am sorry, Captain Dennis and
14 separated it into several different envelopes?

15 A No.

16 Q Does that document indicate the conditions those
17 items were in when he took them from, I guess when he
18 separated them and put them in an envelope?

19 A No.

20 Q No further questions.

21 THE COURT: Any redirect?

22 MR. SCOTT: No, Your Honor, the State rest.

23 THE COURT: You may step down. Folks, I hate to take
24 you out of the courtroom again but I have take up a couple
25 of motions. Now that the State has rested you have heard

1 all you are going to hear from the State. I will hear a
2 few motions and y'all step in the jury room and I will get
3 you right back in, don't discuss the case.

4 (Whereupon, the jury was excused from open court.)

5 THE COURT: All right, Mr. Lake.

6 MR. LAKE: At this time the Defense would make a
7 motion for directed verdict in this particular case. I
8 don't think there has been no, there has been insufficient
9 information, no substantial evidence to for this case to
10 go back to the jury. There hasn't been any evidence of
11 any type of possession. What you essentially have is an
12 uncorroborated alleged statement of an item that was found
13 in the household. This is after an arrest has occurred.
14 Your Honor, I think at this particular time, again, you
15 are really looking at speculation as to, you know, whether
16 he in fact possessed these particular drugs. Again, you
17 know, if you look at what would be Captain Dennis'
18 testimony. I think the Court has an opportunity, I guess,
19 to weigh that. I know you can argue constructive
20 possession and dominion and control based upon the fact
21 that it was at a place where he resided. The State hasn't
22 even established that he actually owned that particular
23 home, whether he was renting it or that someone else
24 presided in that household with him, they haven't
25 established anything. The only thing that we know is that

1 a burglary has occurred and some items are alleged to be
2 found in that particular room. There is absolutely no
3 testimony essentially to corroborate essentially Captain
4 Dennis' testimony. I think you have to look in the
5 totality in terms of the fact that weighing the
6 credibility of it. Again, I go back to the point that Mr.
7 Trapp wasn't arrested that particular night. They never
8 testified to it, I guess we never introduced that
9 information also. But the Court has heard that proffered
10 testimony and things of that particular sort, consider as
11 it relates to our directed verdict motion. But I do think
12 there is some serious and significant questions as whether
13 that alleged statement was made under duress, under any
14 kind of threat. Most certainly the fact that he was
15 arrested until months later, actually was allowed to turn
16 himself in, you know, appears to be at least at a minimum
17 a promise. So if you take that particular testimony out
18 then what you have got is a mere presence case or you have
19 got an intervening factor of a burglary that occurred at
20 that location. But based upon the insufficient evidence
21 of possession, insufficient evidence of knowledge. I will
22 tell you, Your Honor, some of the testimony I got a little
23 confused on in terms of when Miranda occurred, when it
24 didn't occur. But I thought initially it started when he
25 first got there outside and then the next thing I know it

1 is on the porch and then it was inside the location. Did
2 it occur before or after these items are found and things
3 of that sort which was not clear. So, you know, I think
4 what you really have is just a suspicion of guilt. So,
5 based upon that, Your Honor, I ask for a directed verdict.

6 THE COURT: All right, I understand your argument.
7 But the testimony in light to the State would be the
8 officers are out there on the scene, observe drugs in
9 plain view, get a search warrant, provide Miranda, get an
10 admission. There is constructive possession, perhaps even
11 dominion and control of the bedroom. I think that gets
12 you by directed verdict so respectfully I deny that. Now,
13 any other motions?

14 MR. LAKE: Nothing else.

15 THE COURT: Are you going to put anything up?

16 MR. LAKE: No, sir.

17 THE COURT: I didn't think you would. That would be
18 my guess. Okay. Are y'all ready to go on?

19 MR. SCOTT: Yes, sir.

20 MR. LAKE: Your Honor, give me a minute to grab a few
21 things.

22 THE COURT: Is there anything that y'all want in, I
23 think y'all can stipulate that it is in.

24 (Whereupon, a short break was taken.)

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

1 (Whereupon, the jury came into open court at
2 approximately 5:13 p.m.)

3 THE COURT: Before we start closings I have selected
4 Ms. Hedgepeth to be our foreperson. And she is going to
5 do an excellent job. You don't get paid extra. Trick or
6 treat, you are it. I always select the foreperson. All
7 right. Are you going to open first or waive that?

8 MR. SCOTT: I will just waive it, Judge, and close
9 all together.

10 THE COURT: All right. Mr. Lake.

11 MR. LAKE: Thank you, Judge. Another word for
12 justice is fairness. Fairness isn't a process. You sat
13 there and I want to thank y'all again. This is the last
14 place you want to be and the last place I want to be also.
15 But, I really appreciate you all taking the time to come
16 here and listen to this particular case. As I told you at
17 the beginning, things aren't necessarily all as they
18 appear. And you had an opportunity to listen to very
19 skint, limited evidence. There is really only one person
20 who was there at the scene, Investigator Epps, Captain
21 Dennis. You heard from investigator, now, Captain Dennis
22 regarding what happened on that particular night. Very
23 limited information. And it is unfortunate that
24 Investigator Bouknight is not here. And I am quite sure
25 that all of the investigators, the Judge, prosecutors and

1 everybody including myself wish he was here. But I ask
2 you to set aside all of those things, those personal
3 feelings as to why he is not here and simply look at the
4 facts of the case. We never got the one explanation or
5 the one answer that I would ask someone who was a former
6 prosecutor, I never got the answer to one question that I
7 wanted to hear. And that question is, why would I look at
8 the photograph of number 6 that has the T.V., the
9 Alka-Seltzer thing, you see the white little envelope, you
10 actually see the ashtray. Investigator Spreng, because
11 you heard Officer Epps, he went in and the condition was
12 the same as when I went in there. Because he identified
13 those initial photographs. And when you look at these
14 particular photographs, you will get a chance to look at
15 them. And when you see, you just walk into a room and you
16 are trying to take pictures of everything that is around
17 here, you do not see the pill bottle. And I never got an
18 explanation. The only person that gave it really,
19 Investigator Epps said, I didn't see it. He didn't see it
20 until Investigator Spreng said, oh, I found this. They
21 didn't see it simultaneously. He couldn't even testify to
22 that. And Captain Dennis never said why, like I said, a
23 picture is worth a thousand words. Somebody has got to
24 explain why as in these particular photographs, you see no
25 pill bottle, what would be number 13 also. And remember

1 when we asked Investigator Epps, did he see anything, did
2 he see that same pill bottle in there. No. You don't see
3 it in those particular photographs. Another panned out
4 photograph where you don't see the pill bottle and as you
5 get to exhibit number 8, then all of a sudden it
6 disappears. This is not something that is hard to miss
7 when you are kind of looking into the room. You have got
8 a view looking in and you have got a view looking right
9 here, an upclose picture of it. Where is that little
10 white top, where is that little orange pill bottle that
11 you would expect to see on this particular photograph.
12 Where is it. Why didn't Captain Dennis tell us where it
13 was in these photographs. We never got that explanation.
14 Because something can't be, you know, it is not there one
15 minute and then all of a sudden when you get a little
16 closer it just miraculously appears. Things just don't
17 happen that way. They don't miraculously just show up
18 just because you get closer to it. It is either there or
19 it is not there. And thank God, I wish he was here so I
20 could ask him some questions, Investigator Spreng, and
21 explain to us why the pill bottle is not in these
22 photographs. All of the boxes are still there. You can
23 see that the burglary has already occurred. Every one of
24 these photographs, you can see in this particular area, is
25 an undisturbed area where the burglary has occurred. No

1 one has crossed on it, no one has stepped on these items.
2 It is in the same condition as they saw it when they first
3 got there. And in these photographs you see no pill
4 bottle. They allege that they now have found some crack
5 right here and some crack right here. And think about
6 this right here. They want you to believe that there is
7 crack right here. There has been no testimony as to how
8 these items got here, they just got there accidentally,
9 were they placed down there or anything. They want you to
10 believe that all of these items just kind of landed. They
11 want you to believe that these items appear in a
12 photograph and then somehow it disappeared in a
13 photograph. How can things all of a sudden move. There
14 is an item right here where they allege the drugs are
15 suppose to be at. This is some sort of container at the
16 very spot where they allege that this item is. Now, where
17 is this item at now. That is what happens when you take
18 photographs first. How drugs can be changed. They can be
19 manipulated. You will see again, look at these
20 photographs closely and they appear and they disappear in
21 a photograph without any explanation as to how these got
22 there, alleging my client, alleged that my client somehow
23 confessed, that he somehow remembered that three years
24 later. He remembered reading the Miranda rights. You had
25 an opportunity to hear Deputy Epps. Take away that report

1 from three years ago, nothing. He did not remember
2 anything. The sole purpose of taking a report is so that
3 you can remember three years later what you did, what you
4 saw, who was where, whether someone gave a confession. I
5 have never heard in my entire life, I have been
6 practicing, I have been a prosecutor, I have never in my
7 entire life, when you bring a guy in here, the only
8 witness, the main witness, the supervisor, the person who
9 said that someone has confessed to me and admitted
10 something to us. But there is absolutely not one document
11 from him to verify that. The only document that he has is
12 when my client called and tells them, I think I have got a
13 name. But did he do anything about that, not one single
14 thing, that is the only report. That is because my client
15 said that to him. Don't you think that would be
16 important. Don't you think it would be important to know
17 exactly what rights you advised my client if you are going
18 to allege that he made a statement. We don't have that.
19 Everybody has the same responsibility, same duties, to be
20 held to the same standards, professionalism, the way you
21 do your job. And the way they did their job is
22 despicable. It is embarrassing. To come in here and to
23 have a guy exposed to this right here because one witness,
24 and the very thing they testified, he testified he gave
25 Investigator Bouknight several things. One of the things

1 wasn't an extra quantity of white residue. I asked him
2 specifically, how did it get here. No one that gave an
3 explanation as to why this item or how it actually got
4 here. No one. I asked the chemist, she indicated, it was
5 in a bag. Described it as a rock. And he described it as
6 a residue. He didn't mention anything about a bag. Was
7 it something that he talked about or was it something
8 different, is it something new. They have already added
9 something new. We don't know and they are asking you to
10 come in here and convict him. Your presumption of
11 innocence is like a robe of righteousness. That is how
12 our Supreme Court is describing it. And it actually stays
13 with you and remains with you throughout this entire
14 process. And the only people that can remove that robe
15 are you, the jury. You can't scratch at it, you can't
16 claw at it, it actually has to be removed. You have to be
17 firmly convinced in order to convict him. You have to be
18 firmly convinced that your eyes are playing tricks on you
19 and that somehow that bottle is there but you don't see it
20 in this picture. That is what you need to do to be able
21 to convict him. The bottle is not there. And then
22 suddenly it appears. Now, the State bears the burden this
23 entire time. You know, when you are accused of something,
24 you don't have to prove yourself innocent. That is why
25 the State doesn't require you to do that, the government

1 doesn't require you to do that. Really, someone accuses
2 you of something there is really no other evidence out
3 there, no reports, no nothing. How can you defend
4 yourself. You are stuck. You have to come in here and
5 let the jury listen and hope that you listen to the facts
6 and take into consideration the facts that you didn't hear
7 and from the people that you didn't hear from. Don't be
8 fooled by this, we tried to call this case because it is a
9 Friday. We have been here all day. This case could have
10 been called here any time before Officer Spreng left.
11 They could have taken the time to call Investigator Spreng
12 or track him down. It is amazing how, when he was
13 testifying on direct, Captain Dennis said something, I
14 know he has got a home down there in Florida and he has
15 got family in Puerto Rico. Maybe he knows where he is at.
16 There was no attempt to get him here to testify. Why is
17 he not here. You have got to listen to all of the facts,
18 ladies and gentlemen of the jury, consider all of the
19 evidence. You know, you heard the witnesses testify. I
20 think each one of these witnesses testified. Some
21 questions you have to ask because they involve chain. You
22 remember a chain, what does that mean. A chain is
23 important. It is important especially in fungible type
24 cases. And fungible things are things that can be moved
25 around. You typically find that, you find a lot of times

1 with drugs. And the reason why that is important is
2 because if an item is fungible then the State has to
3 establish a complete chain. And they have to establish a
4 complete chain to show that there is no possibility in the
5 world that these drugs haven't been manipulated. Well,
6 ladies and gentlemen of the jury, here is what we have
7 got. We have got an additional item which no one can
8 explain how it got there. That is scary. That is scary
9 that all of a sudden that evidence can appear and you have
10 no way to defend yourself against it. It is hard. That
11 is why he has to put his hands, put his faith with you all
12 as a jury to see whether they have met their burden. And
13 it is a substantial burden. I submit to you, ladies and
14 gentlemen of the jury, they have not met that particular
15 burden in this particular case. And as you go back there
16 in that jury, examine and scrutinize those photographs,
17 look as hard as you want at those photographs of the area
18 before, while the, you know the scene has been kind of
19 undisturbed. And try as hard as you can to see that pill
20 bottle in front of that white piece of paper that you
21 don't see, we know it is suppose to be in front of. Now,
22 ladies and gentlemen, if you do not find that I think we
23 know what that is evidence of. Now, we are not coming in
24 here saying what burden it is. I am telling you that
25 right now, I am not saying that. They said, oh, no, the

1 drugs are there. That is not what it is, there ain't
2 nothing there. I am saying those drugs were placed there
3 after Deputy Epps got there. By who, I don't know. Well,
4 we know it is not by Mr. Trapp because what did Deputy
5 Epps say. I was with him, he didn't add nothing, he
6 didn't touch nothing, he did nothing. He was with him the
7 entire time until the officers got there. So the only
8 people that can really know what happens after that
9 particular point when you got Investigator Epps and Mr.
10 Trapp together, there are only two people that are there.
11 He said he didn't know. That is Investigator Spreng and
12 Investigator Bouknight. And neither of them are not here.
13 Ladies and gentlemen of the jury, they have not met their
14 burden of showing possession, showing knowledge, showing
15 that he had dominion and control of those particular
16 items. And I ask that you discount that alleged statement
17 that there seems to be no report of. Not only did he not
18 do a report, but Investigator Spreng didn't do a report.
19 And neither one of them did a report that said that Mr.
20 Trapp confessed. Mr. Epps said that, even though he left
21 the scene and all of these other guys maybe came back. He
22 never said that he heard any kind of admission or he never
23 said that Mr. Trapp ever admitted that there is some drugs
24 in there or anything like that. The only person that
25 comes in here and says this is Captain Dennis who says

1 that, oh, Mr. Bouknight said that I said this. I don't
2 know if that is double hearsay or hearsay or what it is.
3 But I know it doesn't smell right, it doesn't pass the
4 smell test as far as I am concerned. How are you going to
5 remember exactly what you said, what you did three years
6 later. Now, what Investigator Epps said, when you look at
7 these photographs. You jurors are the fact finders when
8 you look at these items. He said I couldn't get in the
9 Trapp room due to the shoeboxes being all over the floor.
10 That is what you see right here. The only thing that you
11 also don't see is that pill bottle. Think about that,
12 ladies and gentlemen of the jury, when you go back there
13 to that jury. My time is over, I think I have said all
14 the things that I can say, I think you have heard all the
15 evidence that there is. I think you are going to be able
16 to consider the things that have been presented before
17 you. I ask, don't hold anything that I have done against
18 my client. I will tell you, I think I told you from the
19 very beginning, I will fight for my client. I believe in
20 him. And I am not going to let anybody get up there and
21 testify to things that they don't have any personal
22 knowledge about. I am going to fight hard. The Judge is
23 the final decider of the rules. And I respect that, we
24 all have to respect that. I am going to fight for my
25 client and I have fought for my client this entire day.

1 The fact that I have fought for my client and fought
2 aggressively I ask that you not hold that against him.
3 Because I think the only things that you as a jury should
4 consider is where a person had a personal knowledge, they
5 observe and what they knew and things that are admissible.
6 Again, ladies and gentlemen of the jury, my name is
7 Dietrich Lake. On behalf of my client, Mr. Trapp, I ask
8 that when you return from the jury room that you will find
9 my client not guilty of this particular offense. Thank
10 you.

11 THE COURT: Mr. Scott.

12 MR. SCOTT: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 MR. SCOTT: Ladies and gentlemen of the jury, Madam
16 Forelady, as you heard, October the 8th of 2011 I think we
17 all can agree was a bad day for Toaby Trapp. His house
18 was broke into, \$7,000.00 dollars in cash that he keeps in
19 a shoebox was stolen from him. So he is probably upset
20 about that. If you had \$7,000.00 dollars in cash in your
21 room and somebody broke in and stole it, somebody breaks
22 into your house to steal \$7,000.00 dollars cash you would
23 be upset as well. So he did and probably as most people
24 would do, the best chance you can get to recover your
25 \$7,000.00 dollars in cash money is to call law

1 enforcement. His day got a little bit worse because when
2 law enforcement gets there and they begin looking through
3 the rooms and walking through the mess that was made, it
4 was testified that it was ransacked, comes across that
5 pill bottle. Call in other officers, confronted him about
6 it. Mr. Trapp says, you got me, I forgot it was in there.
7 You got me. It was a bad day. That is what happened. I
8 mean, this trial, it was a three witness trial guys. I
9 had no clue we would have drug it out this far, I really
10 had no clue. But we are through with it now. I am going
11 to be very short. I just want to note a few things. The
12 defense, they tell you it is a prosecutor don't, really go
13 back over the defense, because if anything you are lending
14 some kind of credence to it. But I am not trying to do
15 that, I only bring it up to show really how preposterous
16 it has been. And I don't blame Mr. Lake for fighting for
17 his client. I don't. Every defendant I prosecute I think
18 deserves a robust defense. But that was fairly shameful
19 because what he just did was get in front of you people
20 and try to convince you that two deputies in this county
21 planted evidence on a person. That is what he just
22 insinuated to you all. He would have you believe that
23 these deputies went to a man's house, a man who called
24 them to his house over a burglary call. And before they
25 left the station they grabbed some crack cocaine in a pill

1 bottle and put it in a pocket and they put it on his
2 counter. Then they blamed him for it. It sounds great
3 for a Hollywood movie. But that is basically, he just
4 pulled that out of the air and tried to sell it to you
5 people. And I hope that is not lost on you. I am not
6 going to forget it. And the thing that really was just
7 kind of odd to me as I was trying to convince myself that
8 I was really hearing that. Did they plant the other two
9 bags of crack too that were found in Mr. Trapp's room.
10 What about the scale, did they plant that there too. I
11 mean, this was a really grand conspiracy theory. They all
12 came up with, they are called out to this man's house over
13 a burglary. And there were multiple people in on it. Are
14 we really going to suspend our logic and are we really
15 going, let's don't look at what the evidence is showing
16 here. Let's junk this crazy conclusion over here. Let's
17 believe this. No, because that defies reason and you all
18 aren't going to do that. And what about his own
19 statement. Robert Dennis, law enforcement here in
20 Newberry in your community for over 20 years, familiar
21 with Mr. Trapp, they are both from Newberry, they have
22 known each other years on a firsthand basis. Toaby, what
23 is this about. Honestly I forgot it was there. I wasn't
24 even thinking about it, I am thinking about my house
25 getting broken into, I am thinking about the \$7 grand

1 being missed. I am not thinking about a couple of crack
2 rocks sitting on my dresser in my room. But did Robert
3 Dennis make it up. You know, if you don't have a real
4 good answer for something just throw the kitchen sink in
5 there, just throw whatever you can against that wall and
6 just see what sticks. Because now we have gone from
7 officers who planted it and here is how we are going to
8 explain his statement that Robert Dennis just testified to
9 under oath. He made it up. Because this is the third
10 crooked cop we have got now. We have got Nick Bouknight
11 who has passed on. We have got Robert Spreng who is in
12 Florida. They are the ones that planted the drug
13 evidence. And Robert Dennis comes in, he concocts this
14 statement from Mr. Trapp. This is the defense so far,
15 y'all. That is what you just heard, is it not. He can't
16 remember, he can't remember that. He didn't do a report.
17 What do y'all think we were all shuffling around this
18 whole time, what do you think that Mr. Lake was up here
19 shuffling through. There were reports with this case. It
20 is a documented case. All cases are documented through
21 warrants, there are incident reports, there are
22 supplementals. But, no, we can't trust them either, he
23 made that statement up. The third defense is the chain
24 defense. That was the thing that was dragging us on so
25 long and we had to talk about, well, after Nick took it he

1 put it here and then he took it here and then SLED got it
2 and they moved it here. And we had to go through all of
3 that and it was painful. It was painful for me too. But
4 that was the chain argument that he is talking about that
5 is so important. And we covered it. But what occurred to
6 me that I guess you could bog down in it and you wonder,
7 and they threw the kitchen sink defense at you. I have
8 got to answer this, and this and this and this. And then
9 when we are getting bogged down in the chain Dietrich
10 Lake's own words came to my mind. And he said these words
11 just this morning. And he said these words in his opening
12 statement to you all. We are not going to contest that
13 that was crack cocaine. This is a shotgun approach, this
14 is the kitchen sink defense. Let me see if I can convince
15 them about the planted evidence. If that doesn't work I
16 am going to challenge the chain. It is inconsistent
17 because he is saying it is not my crack. It is crack but
18 I am going to challenge the fact that it has been tampered
19 with and now it is something else. It is completely
20 inconsistent. If you don't have a clear answer just throw
21 the kitchen sink at the jury, confuse them enough for with
22 the writing on the wall you are going to convince at least
23 one or two of them that they don't see what all the
24 evidence shows you. I don't know what your thoughts on
25 drugs are. It is not really that important to me. This

1 is a case, possessing crack cocaine and possessing it, an
2 amount over 10 grams. And the evidence showed and the
3 chemist weighed all of those three samples out, it is 21
4 something grams and a little bit over twice as much as the
5 threshold, the 10 gram threshold. That takes it from
6 being like a possession to a trafficking. Essentially
7 what he is accused of is possessing over 10 grams of crack
8 cocaine. I don't know how you all feel about that. The
9 fact is it is against the law. And the only reason we are
10 here, if you possess more than 10 grams of crack it is
11 against the law. I could sit here and argue to you that
12 is crack, it is led to decay, the downfall of many a life.
13 It is really not why we are here. I am not going to
14 preach to y'all about drugs and whether they are right or
15 wrong. The fact is it is against the law. And if you
16 find that the evidence has shown that Mr. Trapp, I have
17 got nothing personal against Mr. Trapp, okay. My job here
18 is when a crime is committed, law enforcement says a crime
19 is committed and I review the evidence and I have to
20 present it to a jury of his peers from this community and
21 I have got to prove it beyond a reasonable doubt. So the
22 elements that I have got to prove to you that he possessed
23 it. It is on his counter in his bedroom in his house. It
24 is on the floor in his bedroom in his house. That is
25 called constructive possession. He doesn't have to have

1 it in his pocket, in his hands, it is in his control and
2 dominion as in legal terms. Now, when you go in your
3 bedroom and you put your purse on the nightstand at night,
4 it is not on your shoulder but it is in your possession,
5 it is in your control. That is kind of the idea of what
6 constructive possession is. To show a quantity of crack
7 in your bedroom that is constructive possession. We have
8 got that. We have got to show you it is crack cocaine,
9 that is why the chemist was up there talking about it.
10 And then we have got to show that it is more than 10
11 grams. I know she tested it for three samples that we
12 introduced into evidence, 21.3 grams. I say if you find
13 all three of those things and you find that it is proven
14 to you beyond a reasonable doubt, reasonable doubt the
15 Judge is going to tell you leaves you firmly convinced.
16 It doesn't mean you can't have some doubt here or there.
17 It doesn't mean you have to know everything about this
18 case with one-hundred percent certainty. It is just
19 firmly convinced. And you can play the Dietrich Lake game
20 of, why, the picture, look at this, here is the crack here
21 but I can't see it from this angle. You can play that
22 game all you want and if that in your head is enough to
23 make you believe just forget everything else for this
24 case. Just because one of these pictures you can see it
25 and then from this other angle you can't see it. If that

1 is enough for you to kind of focus in on that and discount
2 everything else you have heard then find him not guilty.
3 If the picture trick is enough for you guys, I don't think
4 it is, but if it is enough for you that you are not firmly
5 convinced that he is guilty of that the Judge is going to
6 tell you you have got to find him not guilty. I submit to
7 you you are not going to fall for the picture trick. If
8 you look through all of the pictures you will see things
9 are moved. How do you think the drugs got here today. At
10 some point somebody has got to pick up the evidence, put
11 it in a bag and bring it to court, take it to the evidence
12 locker at the sheriffs department. It is going to have to
13 be moved at some point. His logic is so flawed here.
14 Because he is saying in one of these pictures I can't see
15 it and the other I can. A cop had to pick it up at some
16 point, that is how it got here. I am sorry, I have spoken
17 longer than I thought I would. I ask you to go back
18 there, consider the evidence as a whole and come to the
19 only really logical conclusion you can and that is he is
20 guilty. I mean, I don't see any other way. Let's just,
21 for argument sake, Dietrich Lake theory. Pill bottle,
22 what about the rest of the crack, that is still over 10
23 grams. I may have spoken too much. I see this to be a
24 very clearcut, very easy case to decide. I thank you for
25 your time. I am going to sit down. I ask you to go back

1 there and deliberate and come back with the verdict of
2 guilty. Thank you.

3 THE COURT: All right. Do y'all need a couple of
4 minutes or are you okay. My instructions will take about
5 fifteen minutes.

6 (No response.)

7 THE COURT: Ms. Hedgepeth and members of the jury, I
8 will now instruct you on the law of this case. As I told
9 you earlier, the State of South Caroline has charged Toaby
10 Trapp with the offense of trafficking in crack cocaine.
11 Bear in mind he has pled not guilty and by that plea he
12 has denied all of the allegations in that indictment and
13 that places the burden of proving his guilt upon the
14 State. Mr. Trapp comes into this court clothed with the
15 presumption of innocence. And that presumption stays with
16 him throughout the case and entitles him to a verdict of
17 not guilty unless and until it is dispelled by the
18 evidence satisfying you twelve beyond a reasonable doubt
19 of his guilt of the offense charged. The State must prove
20 each and every element of these charges beyond a
21 reasonable doubt. Now, the same constitution of laws
22 which makes you the finders of fact, which I discussed
23 with you earlier on, makes you the finder of facts on the
24 evidence, makes me the Judge sole and instructor of the
25 law. Y'all as a group must accept the law as correct

1 which I am stating to you now and accept it as I am
2 stating it to you and disregard any belief or
3 understanding or what you may have heard on the street
4 corner or read on the internet or saw on TV. I am
5 instructing you the law of South Caroline and you must
6 accept that law under your oath. If I should make an
7 error in applying the law there is another time and there
8 is another place for that error to be considered and if
9 necessary corrected. But for the matter here before us
10 today you must accept it as I am instructing it.

11 Now, as I told you every criminal prosecution in
12 South Caroline and other states as I am aware, the State
13 has the burden of proof. The defendant, Mr. Trapp, has no
14 burden whatsoever as he comes to court presumed innocent.
15 So, the prosecution must prove their case to the standard
16 called beyond a reasonable doubt before a finding of guilt
17 can occur. So if the State fails to meet that burden then
18 the defendant will be entitled to a verdict of an
19 acquittal or not guilty, which is the same thing.

20 Now, since y'all as a group are the judges of the
21 facts of the case you must evaluate the credibility of the
22 witnesses who have testified. And credibility is
23 believability. You must pass upon their credibility, you
24 can take things that you use every day, particuarly your
25 common sense and your good judgment. But also in passing

1 on the credibility you can take into consideration other
2 things such as the manner and appearance of the witness
3 who testified. Was the witness straightforward or not.
4 Was the witness hesitant in answering. How did the
5 witness come to know the facts to which he or she
6 testified. How was their ability to know these facts. Is
7 there some reason a witness would want to give testimony
8 which would help or hurt one side or the other. In other
9 words, was a witness biased or prejudiced one way or the
10 other. Was the testimony of a witness strengthened or
11 weakened by testimony of other witnesses. You, the jury,
12 may believe as much of one witness or of all the witnesses
13 you deem appropriate. You can believe some of the
14 testimony of a witness and disregard the rest. You can
15 believe one witness over that of the others or just the
16 opposite. The fact that testimony is not controverted
17 does not mean you must accept it as true, as y'all are
18 still gauging the credibility of all the witnesses who
19 have testified and offered facts for your consideration.

20 Now, I told you during the trial there is one, I call
21 it an exception to the rules of evidence. An expert or a
22 witness to testify as to opinions and conclusions and that
23 is an expert witness. One witness was qualified as an
24 expert in this trial and that witness would be one whom by
25 education, experience has become an expert in some art,

1 science or profession. And so that witness could state an
2 opinion as to a relevant or material matter in which the
3 witness claims to be an expert. Now, you can consider the
4 expert opinion received in the case as evidence just like
5 the other evidence. If you decide that the opinion of the
6 expert is not based upon sufficient education and
7 experience or if you conclude that reasons given in
8 support of the opinion are not sound or that the opinion
9 is outweighed by the other evidence you may disregard the
10 expert's opinion. An expert's opinion is just testimony
11 that is to be given no greater weight or less weight than
12 that of lay witnesses. You are not required to accept an
13 expert's opinion even though it is not contradicted.

14 Now, as the sole fact finders you should have
15 listened to the evidence testified to closely. I observed
16 you to do that. Weighing evidence is entirely a mental
17 process. You do not put it on a scale, you put it in your
18 minds eye scale. You must weigh the evidence using these
19 instructions, your good judgment and your common sense.

20 Now, there are generally two types of evidence
21 presented in trials and in this case there were both
22 types. There is direct evidence and there is
23 circumstantial evidence.

24 Direct evidence is testimony of a person who has or
25 asserts a claim to have actual knowledge of a fact such as

1 an eyewitness. Circumstantial evidence on the other hand
2 is proof of a chain of facts and circumstances indicating
3 the existence of another fact. Our law makes no
4 distinction between the weight or value to be given to
5 either direct or circumstantial evidence. Nor is a
6 greater degree of certainty required of direct evidence or
7 circumstantial evidence. You should just weigh all the
8 evidence presented to you in this trial. And after
9 weighing all the evidence if you are not convinced of the
10 guilt of Mr. Trapp beyond a reasonable doubt you must find
11 him not guilty.

12 Now, the term reasonable doubt has been used quite a
13 great deal. Reasonable doubt is simply this. It is the
14 kind of doubt which would cause a reasonable person to
15 hesitate to act. Reasonable doubt may arise from evidence
16 which is in the case or the lack or absence of evidence in
17 this case. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's guilt. It
19 is the kind of doubt which one can assign a reason, if the
20 assignment can be done reasonably, firmly and
21 convincingly.

22 Now, I charge you that the defendant is entitled to
23 every reasonable doubt that may arise in this case. And
24 what that means is, if any of you including the alternate
25 has any doubt about anything during the trial you will be

1 required to resolve that doubt in Mr. Trapp's favor. I
2 also instruct you that the jury will partake, enjoy a full
3 and free discussion on the issue of guilt and not guilt.
4 That does not automatically mean that a reasonable doubt
5 exist. You, the jury, must make the determination of
6 whether or not a reasonable doubt exist as to the guilt of
7 Mr. Trapp. If you find that the State has not met the
8 burden of proof beyond a reasonable doubt then he would be
9 entitled to a verdict of not guilty.

10 Now, specifics of the law regarding his charge are
11 codified, are written in the State code under section
12 44-53-375(c). It is trafficking in crack cocaine. In
13 order to sustain a conviction for that offense, that is
14 written in the indictment, the elements, the State must
15 prove beyond a reasonable doubt that Mr. Trapp knowingly
16 sold, manufactured, cultivated, delivered, purchased,
17 brought into this State, provided financial assistance to
18 or otherwise aided, abetted, attempted or conspired to
19 sell, manufacture, cultivate, deliver, purchase or bring
20 into the State and was knowingly in actual or constructive
21 possession. Knowingly attempt to become in actual or
22 constructive possession of crack cocaine. The State must
23 also prove an additional element beyond a reasonable doubt
24 that the amount of crack cocaine was more than 10 grams
25 but less than 28 grams. To prove possession the State

1 must prove beyond a reasonable doubt that Mr. Trapp had
2 both the power and intent to control, the disposition or
3 use of the crack cocaine. Possession may be either actual
4 or constructive. Actual possession means the crack
5 cocaine was in actual, physical custody of the defendant.
6 Constructive possession means that the defendant had
7 dominion and control or the right to exercise dominion and
8 control of either the crack cocaine itself or the property
9 on which the crack cocaine was found. Mere presence at
10 the scene where the drugs were found is not enough to
11 prove possession. A defendant's knowledge and possession
12 may be inferred when the substance is found on the
13 property under his control. However, this inference is
14 simply an evidentiary fact to be taken into consideration
15 by you along with the other evidence presented to you in
16 this trial.

17 Now, I instruct and I emphasize to you that Mr. Trapp
18 comes into this court presumed innocent. He has the
19 constitutional right to remain silent and he has exercised
20 that right and has not testified. The fact that he did
21 not testify is not a factor to be considered by you in any
22 way in your deliberations and in your consideration of the
23 question of the guilt or innocence of him. It must not be
24 considered by you in any manner whatsoever. A defendant
25 has this constitutional right to remain silent and his

1 assertion of this right must not be considered or even
2 discussed by you in your deliberations. So under your
3 oath you are not to draw any conclusion whatsoever from
4 the fact that he exercised this right and chose to not
5 testify. The fact that he did not testify should not even
6 be discussed in the jury room. The burden of proof is
7 upon the State and you must consider that issue based on
8 what has been presented to you. A defendant is not
9 required to prove his innocence. The burden remains upon
10 the State to prove the guilt of the defendant beyond a
11 reasonable doubt.

12 Now, Ms. Hedgepeth and members of the jury, as y'all
13 retire to begin your deliberations I am going to express
14 the hope each of you will be mindful of the importance of
15 your duty here today. It is late in the afternoon,
16 Halloween night, but you are not called very often to
17 serve as jurors very often. You and I both are acting for
18 this community and for this State. It has been my job to
19 preside over two trials here in this county this week,
20 this being the second one. It is my job to see that the
21 legal issues were ruled upon fairly and justly according
22 to the law as I understand it and to see that Mr. Trapp
23 and the State receives fair and impartial justice. It is
24 your job as jurors to make ceratin that your verdict is
25 just and according to my instructions. Try and suggest

1 how you should decide the case, either way, it would be
2 improper for me to try to influence you in your duty in
3 finding the facts. But I must tell you that I am
4 convinced of whatever verdict y'all do reach will be from
5 the confining your deliberations to the evidence
6 presented, discussing it thoroughly, weighing it fairly
7 and impartially and reaching a unanimous verdict. And I
8 am convinced that y'all will do just that.

9 Now, the indictment will come back in the jury room
10 with you which is what we discussed. All of the evidence
11 which has been introduced will come back in the jury room
12 with you. And I tell you this, that if you need
13 additional instructions on any area of the law which I
14 have gone over write it on a note. Say, Judge, we would
15 like to hear the definition of reasonable doubt once more
16 or can we hear the elements of trafficking in crack
17 cocaine. I will be happy to reinstruct you on any part of
18 the law from which I have done in the last fifteen minutes
19 and I will reinstruct you if need be. Additionally, if
20 you would like to hear any testimony replayed, Ms. Holston
21 has made an audio recording of the testimony. You can say
22 we would like to hear a witness and just tell me who it
23 was. A witness who said such and such, or his name, her
24 name and we will replay that for you here in the
25 courtroom. So, if you have any questions, you need

1 additional instructions or you would like to hear the
2 testimony a second time through, you may get to
3 discussions and say this witness said thus and so. And
4 another juror may say, I thought he said that and so.
5 That is the purpose for your abilities to have the
6 testimony replayed if you so choose. Now, I need to go
7 over my instructions with the lawyers so I am going to
8 send you to the jury room. And so if my instructions were
9 complete and the lawyers are satisfied with my
10 instructions and I hope they are. But if they are not, I
11 may have omitted something. And if I did I will bring you
12 back in here and instruct you on that area. But if I was
13 complete in my instructions I will send you the evidence
14 and the indictment and it is then you can begin your
15 deliberations. All right. Now, once you reach a
16 unanimous verdict notify the bailiff and then I will show
17 you, I will show the indictment, Ms. Folk will show you
18 here where to write your verdict and to sign your name
19 right here when she brings it to you. All right, with
20 that all thirteen step in the jury room. Once
21 deliberations begin I will retrieve the alternate out.
22 Okay.

23 (Whereupon, the jury was excused from open court at
24 approximately 6:09 p.m.)

25 THE COURT: All right, any exceptions to the

1 instructions from the State?

2 MR. SCOTT: No, sir.

3 THE COURT: Mr. Lake, any exceptions?

4 MR. LAKE: No, sir.

5 THE COURT: Look at the evidence and we will take
6 that in to the jury.

7 MR. SCOTT: Judge, about the drugs, we can get some
8 baggies or we can tell them if they need to see it.

9 THE COURT: Let's hold it and if they want to see it
10 send it to them.

11 MR. SCOTT: If somebody will just inform them of
12 that.

13 (Whereupon, the jury started deliberations at
14 approximately 6:14 p.m.)

15 (Whereupon, the alternate was excused from the trial
16 of the case.)

17 THE COURT: I understand we have a verdict. Bring
18 the jury in.

19 (Whereupon, the jury came into open court with the
20 verdict at approximately 7:08 p.m.)

21 THE COURT: All right, Madam Forelay, you have a
22 verdict?

23 Yes.

24 THE COURT: Is it unanimous?

25 Yes.

1 THE COURT: Please hand it to the bailiff. All
2 right, you may publish the verdict, Ms. Folk.

3 Indictment 12-GS-36-267, the State versus Toaby
4 Alexander Trapp indicted for trafficking in crack cocaine,
5 44-53-375(c). The verdict is guilty. Signed Elizabeth A.
6 Hedgepeth, Foreperson. Madam Forelady, ladies and
7 gentlemen, if this is your verdict please indicate by
8 raising your right hand.

9 (Whereupon, all jurors raised their hands.)

10 THE COURT: Any issues for the jury, Mr. Lake?

11 MR. LAKE: No, Your Honor.

12 THE COURT: All right. Folks, we are done and can I
13 speak with y'all briefly in the jury room and thank y'all.

14 (Whereupon, the Court speaks to the jury in the jury
15 room.)

16 (Whereupon, the jury was excused.)

17 THE COURT: Mr. Lake, y'all ready for sentencing?

18 MR. LAKE: Your Honor, we do have some posttrial
19 motions.

20 THE COURT: I am happy to hear from you.

21 MR. LAKE: Your Honor, we ask for a new trial based
22 on the jury's verdict. Your Honor, we renew our motion
23 that there was no substantial circumstantial evidence that
24 which was presented in this particular case. In fact,
25 Your Honor, I would also bring, there was no sufficient

1 chain-of-custody that was established in this particular
2 case. And I think about that, Your Honor, in light of the
3 fact that the testimony was, after the Court allowed the
4 evidence to come in to the record, while the State was in
5 their case and when I got a chance to actually question
6 Investigator Chapman about it then learn now that this has
7 never been in a safe, secure box but just a cardboard box
8 the entire time with no assurances of anything, no
9 testimony by anybody from the State which is required in
10 this particular case to, illustrated that, there was no
11 evidence of tampering. The defendant has no burden in
12 this particular case. They can't shift the burden to the
13 defendant to prove that there wasn't tampering. The State
14 has the burden of proving it all along that there was no
15 tampering throughout this entire process. I think
16 Investigator Chapman's testimony was in direct
17 contradiction to Captain Dennis' testimony about, it was
18 placed in a lockbox. It is either in this lockbox right
19 here, just for the drugs only or this lockbox where it has
20 something related to other cases that were not Bouknight
21 cases. And then we heard the officers, no, there is no
22 lockbox, nothing is secured, just in a plain old card box.
23 And I specifically asked them that, Your Honor. I think
24 my client deserves a new trial based upon the fact that
25 this is testimony that came in after the Court had allowed

1 this, drugs to come in. I don't think there was a
2 sufficient chain-of-custody. I will also point out, Your
3 Honor, you know again, the statement against my client
4 doesn't meet the test that it wasn't done under any form
5 promises or duress or anything along those lines. Again,
6 he was not arrested at that time. Your Honor, I also
7 point out that the Court failed to allow the defendant a
8 hearing on the issue of the search warrant. I think that
9 we presented, you know, preliminary evidence that met the
10 burden to show that there was some falsity to the
11 document. I think some of the testimony to all of the
12 part, through all of the witnesses that testified was that
13 certain things were on certain documents weren't on other
14 documents, certain things were on the search warrant and
15 wasn't on these things. So, I think we have got to
16 establish, you know, a standard for which would allow us
17 to have a hearing in this particular matter. We did not
18 get a hearing in this particular matter. The only hearing
19 that we had was whether Investigator or Captain Dennis was
20 qualified to testify in this particular case. So, again,
21 we renew those motions and we ask that you set aside this
22 verdict, allow my client to, I guess, remain on bond. I
23 am not sure if this is qualified for an appeal bond or
24 anything along those lines. But I think some of the
25 issues in this particular case, Your Honor, really warrant

1 additional scrutiny in light of that additional testimony
2 from Mr. Chapman that now we know this is not a secure box
3 that this item is kept in.

4 THE COURT: I think I remember the testimony
5 regarding the secured area was that it was a drop box, the
6 road deputies drop drugs seized at traffic stops and small
7 things in a drop box for which the narcotics custodian
8 would then retrieve and then put it into evidence, secure
9 area. And that Mr. Chapman described the former area as a
10 room within a room that was locked and only had one key to
11 it. You are calling it a lockbox, I think it was drop box
12 in a secure room with shelves. And that is what I heard
13 and I understood there was only one key, one custodian,
14 one person and that was Bouknight then, now Chapman. I
15 see that distinguishes, consistent with my ruling, I
16 allowed the chain to come in, I allowed the search warrant
17 and I found it to be consistent with what Detective Dennis
18 observed on the scene consistent with the affidavit
19 Bouknight presented to the Magistrate, the search warrant
20 was properly issued, properly executed. And there was a
21 reasonable basis for that search warrant to be issued.
22 And I am not going to disturb the jury verdict. I believe
23 it was a factual dispute, once the admissibility was ruled
24 on it is admissible, it goes to weight. That is my ruling
25 and I am not going to disturb the jury's verdict and set

1 it aside because that would be reversing all of the
2 admissibility and chain rulings that I have made thus far.
3 So, respectfully I decline to grant you a new trial or
4 grant your client a new trial. Anything else?

5 MR. LAKE: Nothing.

6 THE COURT: Solicitor, the prior record of the
7 defendant, is this a true third?

8 MR. DANIEL: Yes sir, Your Honor, I have certified
9 copies of the indictments, sentencing sheets. Have got
10 four prior drug convictions, two of them would constitute
11 just one conviction, they are the same offense dates. But
12 distribution of crack cocaine conviction in '95 in
13 Fairfield County; another distribution of crack cocaine
14 conviction in 1995 out of Fairfield County; the same
15 incident date so that is really just one conviction, I
16 think, is how the Court would interpret that. I will pass
17 this up, Your Honor. We can make that a part of the
18 record as well. And then we have two more convictions.
19 One is a distribution of crack cocaine in 2005 and that is
20 here in Newberry. The offense date on that is February
21 20th, 2004. So there would be a second conviction, I will
22 pass that up to the Court. And then we have a possession
23 with intent to distribute crack cocaine conviction,
24 offense date is February 20th, 2004. That is a PWID
25 conviction, different offense date. What Mr. Trapp was

1 convicted on today would be a true third offense for
2 trafficking crack cocaine. It carries essentially the
3 harshish penalty under the drug code, mandatory/minimum of
4 25 years. I hate to see Mr. Trapp do this kind of time
5 but we tried to work this case out. But, law enforcement,
6 he was picked up in that roundup that was recently
7 conducted in June and he has continued just to be involved
8 in drug activity since that October 8th, 2011 charge
9 originated. So, the case is what it is, Your Honor, it is
10 very simplistic from the State's point of view.

11 THE COURT: Okay. Any challenge to the prior record,
12 Mr. Lake?

13 MR. LAKE: I know, Your Honor, one of the convictions
14 goes beyond the 10 years. So, they have kind of changed
15 the laws, I haven't had a chance to look at that
16 particular portion of it. And I don't know whether the
17 Court would consider something beyond the 10 years
18 requirement as being part of the enhancing penalty. I
19 would just ask the Court, if that is not, if that is a
20 consideration that this Court treats this matter as a true
21 second and only consider the conviction from, I guess,
22 2005. And I think the other one is 1994 which would be
23 almost 20 years ago.

24 MR. DANIEL: The 10 year limitation, that is for
25 DUI's, I know. I am not so sure that same rule applies

1 for drug conviction purposes, enhancement.

2 MR. SCOTT: It doesn't for second and subsequent.

3 MR. DANIEL: Second and subsequent is what I am told,
4 Your Honor.

5 THE COURT: I do know that the sentence on the 2004,
6 both indictments was for distribution second, possession
7 with crack second. All right. That will make this a
8 third. Unfortunately, Mr. Trapp, that really kind of
9 confines the range of the sentence dramatically. It is
10 not my job to write the laws. Anything else you would
11 like to say, Mr. Lake?

12 MR. LAKE: Your Honor, I would ask in this particular
13 case that you sentence my client to the minimum of 25
14 years. That is not something I even want to ask for.

15 THE COURT: I will grant that request, I will give
16 him the minimum of 25 and \$50,000.00 dollars. I think
17 that is mandatory also. And I have checked the box, give
18 him credit for whatever time he served. I am not certain
19 what days he earned but he has earned some so he would be
20 entitled to those.

21 MR. LAKE: Your Honor, I know this is in the Court's
22 discretion and the Court may not be inclined, but would
23 the Court allow him a certain amount of time to kind of
24 get his affairs in order. You are talking about really a
25 significant sentence. He doesn't have any family right

1 here or right now at this particular point. His sister
2 was here. I think he has, any time he has been asked to
3 appear he has appeared. I would just ask the Court, if
4 there is no objection to law enforcement or from the
5 State, that he be allowed just a few days to kind of get
6 his affairs in order and turn himself in. If he doesn't
7 turn himself, of course, he would be facing an additional
8 charge. I know the Court has to look at the sentence and
9 things of that sort in terms of whether he is a flight
10 risk. But, Your Honor, he came into this court every day
11 knowing exactly what he was potentially facing and he has
12 appeared. So, I would respectfully request that this
13 Court consider that and allow him to at least get some of
14 his affairs in order, allow his family members to, you
15 know, interact with him before he actually starts his
16 sentence in this particular case.

17 THE COURT: You know, I have done that in the past
18 when I was new at the Bench. And I don't remember exactly
19 when it was but I quit doing that because someone abused
20 that trust that I allowed them. So, respectfully I can't
21 do that. It is not my practice anymore. And I do note
22 for the record too, on the 2004 indictment he was
23 sentenced on the 28th of June, he was allowed to report on
24 the first of July by Judge Westbrook. But that is no
25 longer my practice, I don't do that, unless law

1 enforcement insists I am not doing that, that is too much
2 risk for me. That will be a Court's exhibit.

3 (Whereupon, Court's Exhibit 1 was marked for
4 identification only.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Caroline on the 30th day of October, 2014.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 April 21, 2015
1920 *s/Joy E. Holston*
21 _____

22 Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25

360
STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TOABY ALEXANDER TRAPP#217717

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TOABY A TRAPP#217717

Address: PERRY CORRECTIONAL INSTITUTION
430 OAKLAWN RD
PELZER SOUTH CAROLINA 29669

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP-36-28 02/56

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Immature Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☒ Reinstatement Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:

Tooby A Trapp

Date:

4/4/18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)

County of NEWBERRY)

TOABY ALEXANDER TRAPP, 217717)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL INSTITUTION
430 OAKLAWN RD PELZER, SOUTH CAROLINA 29669
2. Name and location of Court which imposed sentence NEWBERRY CO GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 126536-0267, TRAFFICKING 10 BUT LESS THAN 28 3rd
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) OCTOBER 31, 2014 25YEARS, 107.150 90 FINE
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C.COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 24, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-002358
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED PAGES, RESERVE RIGHT TO AMEND _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGES _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? TRIAL SENTENCING/APPEAL
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. DIETRICH A. LAKE
1034 BRIARGATE CIRCLE SUITE#201
COLUMBIA, SOUTH CAROLINA 29210
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL/DIRECT APPEAL
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:
VACATE SENTENCE AND CONVICTION REMAND FOR NEW TRIAL AND OR
ENFORCE PLEA OFFER

20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
 County of GREENVILLE)

VERIFICATION

I, TOABY ALEXANDER TRAPP#217717, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tooby A. Trapp

SWORN to and subscribed before me this 4th
 day of April, 2018.

Nancy C. Merchant (L.S.)
 Notary Public

My Commission Expires: 1-23-2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, TOABY ALEXANDER TRAPP #217717, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Toaby A. Trapp ✓
Applicant

SWORN or affirmed to and subscribed before me this

4th day of April, 2018.

Nancy C. Spach
Notary Public

My Commission Expires: 1-23-2023

Dear Clerk Owens,

Would you please stamp-
clock and file my original PCR
application and forward the extra
copy back to me.

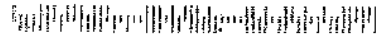
I am thanking you in advance
for your time and efforts in this
matter

FILED
NEWSPRING COUNTY
2018 APR -9 PM 4:01
CLERK OF COURT

Thanks

Toby A. Trapf

WALLY M. IRBY T 11111 440205
P.O. 430 OAKLAWN RD.
Pelzer, S.C. 29669



RECEIVED

APR 04 2018

P.C.I. MAILROOM

CLERK OF COURT
Nancy P. OWENS
P.O. BOX 278
Newberry S.C. 29108

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
	)	
Toaby Alexander Trapp, #217717,	)	Case No.: 2018-CP-36-00156
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for Post-Conviction Relief (“PCR”) filed by Toaby A. Trapp (“Applicant”) on April 9, 2018, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. On November 21, 2011, Applicant was charged with Trafficking Cocaine and was arrested on that charge on December 15, 2011. During the March 2012 term, the Newberry County Grand Jury, indicted Applicant for Trafficking in Crack Cocaine (2012-GS-36-0267).

Applicant was represented by Dietrich A. Lake, Esquire. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor’s Office prosecuted the case. On October 30, 2014, Applicant proceeded to trial before the Honorable Eugene C. Griffith, Jr.

The facts underlying the conviction are as follows: On October 8, 2011, Applicant’s residence, located at ■ Little Ranches Road in Newberry, South Carolina, was burglarized by unknown subject(s). Trial Tr. 134-135. Applicant called 911 to report the burglary and deputies with the Newberry County Sheriff’s Office responded to Applicant’s residence. Trial Tr. 134-135. When

deputies arrived, Applicant told them unknown suspect(s) took \$7,000.00 from a shoebox in his bedroom and some jars of change from other areas of the home. Trial Tr. 135. As deputies were processing the scene, one of the deputies located cocaine inside an orange pill bottle in the Applicant's bedroom. Trial Tr. 135-136. The deputies on scene obtained a search warrant for Applicant's residence and thereafter found two separate plastic baggies of crack cocaine inside the residence. Trial Tr. 135-136. The total weight of the crack cocaine seized from Applicant's residence was 21.3 grams. Trial Tr. 137. The jury found Applicant guilty as indicted. Trial Tr. 350. Judge Griffith sentenced Applicant to imprisonment for twenty-five years and \$50,000 fine with credit for time served. Trial Tr. 356.

Applicant filed a timely notice of appeal. Dietrich A. Lake, Esquire, represented Applicant on appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentence. State v. Toaby Alexander Trapp, Op. No. 5487 (Ct. App. filed May 24, 2017). Applicant filed a subsequent petition for a rehearing, which was denied by the Court of Appeals. The Supreme Court of South Carolina denied Applicant's petition for writ of certiorari on February 1, 2018. The remittitur was returned to the circuit court on February 2, 2018.

Attached to this Return and incorporated by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS RAISED AND RELIEF SOUGHT

In his application for post-conviction relief, Applicant lists "see attached pages" as his answer to questions regarding the grounds and facts that support his application for relief. However, Applicant failed to provide the referenced attachments or any grounds in support of his

application for Post-Conviction Relief.¹

III. MOTION FOR MORE DEFINITE STATEMENT

Respondent hereby moves for a more definite statement. Applicant has failed to set forth any grounds upon which Post-Conviction Relief should be granted. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the Post-Conviction Relief hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specific grounds on which he is seeking Post-Conviction Relief.

IV. REQUEST FOR APPLICANT TO AMEND APPLICATION

WHEREFORE, Respondent requests Applicant, through his counsel, amend his application for Post-Conviction Relief within 30 days. Failure to appropriately amend his application will result in Respondent seeking to dismiss the application for failure to state a claim upon which relief can be granted.

¹ On July 9, 2018, Respondent contacted the Newberry County Clerk's Office who confirmed Applicant did not file any additional pages with his application.

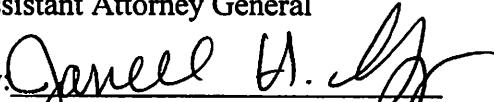
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

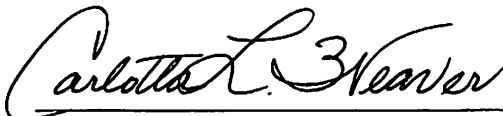
July 10, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	2018-CP-36-00156
TOABY ALEXANDER TRAPP, 217717	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, SC 29171

DATED this the 10th day of July, 2018.


 Carlotta L. Weaver, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	2018-CP-36-00156
Toaby Alexander Trapp, #217717,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 9, 2018, to add the following allegations:

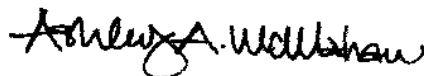
1. Ineffective Assistance of Counsel as to Deitrich Lake:

- a. Failure to elicit testimony about the timing of when the photos were taken to show that the drugs were not there at the time the police first entered the home.
- b. Stating in opening statement that not challenging that the drugs found were crack-cocaine.
- c. Not calling the defendant to testify during the Jackson v. Denno hearing about the manner in which he was given his Miranda warnings while he was handcuffed at his house.
- d. Not objecting to the Solicitor's opening statement when the Solicitor mentioned the weight of the drugs, which were not in evidence yet. See page 134, lines 12-17, page 136, lines 14-16, and page 137, lines 3-4.

2. After-Discovered Evidence and/or Judicial Misconduct: Judge Griffith knocked on the jury room door during deliberations and told the jurors they needed to come to a conclusion. This put pressure and undue influence on a juror to agree with the remaining jurors so they could go home. See attached statement made by Litrona Coleman, Juror 29. Furthermore, S.C. R. Evid. 606(b) allows a juror to offer testimony as to whether any outside influence was improperly brought to bear upon any juror. See also Schumpert v. State, 378 S.C. 62 (2008).

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR, ATTORNEYS, PC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

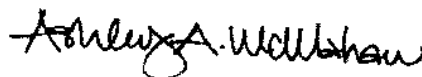
October 6, 2019

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Brianna L. Schill
Assistant Attorney General
briannschill@scag.gov

This 6th Day of October, 2019.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

CASE State v. Traby Trapp
VOLUNTARY STATEMENT

EBS INVESTIGATIONS

LAST NAME <u>Coleman</u>		FIRST NAME <u>Litronda</u>		MIDDLE NAME <u>Mesha</u>	AGE <u>31</u>	D.O.B. [REDACTED]	
M ☐	F ☒	SSN [REDACTED]	STREET ADDRESS [REDACTED]		CITY <u>Newberry</u>	STATE <u>SC</u>	ZIP <u>29108</u>
HOME TELEPHONE [REDACTED]		WORK TELEPHONE [REDACTED]		CELL TELEPHONE [REDACTED]	OCCUPATION <u>pack eggs</u>	EMPLOYER <u>Jsc</u>	
DATE AND TIME OF INTERVIEW <u>9/26/19 3:27 pm</u>				LOCATION OF INTERVIEW [REDACTED]			
INTERVIEWING AGENT <u>E.B. Sacreanoli</u>			TITLE <u>Private Investigator</u>		WITNESS(ES) / OTHERS [REDACTED]		

I Litronda Coleman volunteer the following information of my own free will for whatever purposes it may serve. I can / cannot read and write and have completed 11 years of education.

On the day of the trial for Mr. Trapp I was select to be on the jury. We were on trial for days on Friday we had to deliberate and I disagreed that Mr. Trapp was guilty. We agree the cast out over and over again because I wasn't agreeing with everyone else the judge knocked on the door stating we needed to come to an conclusion. After being pressure to agree I agreed. So we could go home because it was almost 7 o'clock on a Friday night we had been in court for 3 days.

I have read each page of this statement, each page of which bears my signature, and corrections, if any, bear my initials. I certify that the facts contained herein are true and correct this 26th day of September 2019.

Litronda Coleman
 Signature of person giving voluntary statement

EBS
 Witness

McMAHAN & TAYLOR

ATTORNEYS LLP

October 6, 2019

Elizabeth P. Folk
Newberry County Clerk of Court
Attn: PCRs
PO Drawer 10
Newberry, SC 29108

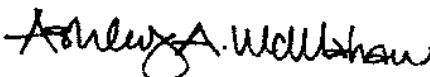
RE: Toaby Alexander Trapp, #217717 v. State of South Carolina
2018-CP-36-00156

Dear Ms. Folk:

Please find enclosed the Amended PCR Application for the above-referenced matter. Kindly clock in this document. Please note, that because this is a PCR matter it cannot be filed online.

Should you have any questions, I can be reached at the number and address listed below.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

cc: Toaby A. Trapp, #217717
AAG Brianna L. Schill (via email)
Dietrich Lake, Esquire (via email)

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

THE COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
2018-CP-36-00156

Toaby Alexander Trapp, #217717,)

Applicant,)

v.)

State of South Carolina.)

SECOND
AMENDED POST-CONVICTION
RELIEF APPLICATION

FILED
NEWBERRY COUNTY
2021 OCT 22 PM 2:07
CLERK OF COURT

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 9, 2018, to add the following allegations:

1. Ineffective Assistance of Counsel as to Deitrich Lake:

- a. Did not ensure client was questioned about his right to testify by the court when Applicant wanted to testify.
- b. Trial counsel did not have adequate time to review and discuss discovery materials with the Applicant.
- c. Trial counsel allowed Lynn Black to testify as to the entire chain of custody.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

Ashley A. McMahon

ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, PC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

October 8, 2021

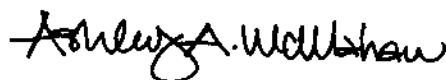
CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Michael J. Neubauer
Assistant Attorney General
michaelneubauer1@scag.gov

Lindsey A. McCallister
Assistant Attorney General
lmccallister@scag.gov

This 8th Day of October, 2021.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

FILED
NEWPORT COUNTY
2021 OCT 12 PM 2:07
CLERK OF COURT

McMAHAN & TAYLOR

ATTORNEYS LLP

October 8, 2021

Elizabeth P. Folk
Newberry County Clerk of Court
Attn: PCRs
PO Drawer 10
Newberry, SC 29108

Re: Toaby Allen Trapp, #217717 v. State of SC
2018-CP-36-00156

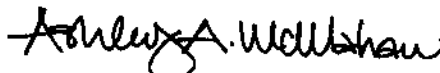
FILED
NEWBERRY COUNTY
2021 OCT 12 PM 2:07
ELIZABETH P. FOLK
CLERK OF COURT

Dear Ms. Folk:

Please find enclosed a Second Amended PCR Application along with one copy.
Kindly file this document and return a clocked copy to me in the enclosed envelope.

Should you have any questions, I can be reached at the number listed below or at
ashley@mcmahantaylor.com

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Toaby Allen Trapp
AAG Michael Neubauer

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT	
	)		
Toaby Trapp, #217717,	)		
Applicant,	)	Case No.: 2018-CP-36-00156	
	)		
v.	)		
	)	AMENDED RETURN	
State of South Carolina,	)	(Counsel Appointed)	
Respondent.	)		
	)		

FILED
 NEWBERRY COUNTY
 CLERK OF COURT
 OCT 29 PM 1:57
 EUGENE C. GRIFFITH JR.

In response to the amended application for post-conviction relief filed by Applicant Darius Stewart on October 6, 2019, Respondent the State of South Carolina makes this return:

I. Procedural History

In March 2012, the Newberry County Grand Jury indicted Applicant for Trafficking Crack Cocaine (2012-GS-36-0267). Applicant was represented by Dietrick A. Lake, Esquire. Deputy Solicitor Dale Scott, and Assistant Solicitor Taylor Daniel, of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 30-31, 2014, Applicant appeared for trial before the Honorable Eugene C. Griffith, Jr., and a jury. Applicant was subsequently convicted of Trafficking Crack Cocaine. Judge Griffith Jr., sentenced Applicant to imprisonment for a term of twenty-five years, Applicant was given credit for time served.

Applicant, through retained counsel, filed a timely notice of appeal. Applicant's appeal was perfected by counsel, by filing an Initial Brief of Applicant on May 19, 2015. In Applicant's brief he raised the following issues:

1. The trial court erred in admitting the drugs into evidence when the Respondent failed to establish a strict chain of custody.
2. The trial court erred in admitting testimonial evidence in violation of the Appellant's Right of Confrontation.

3. The trial court erred when it failed to grant the petitioner a hearing and suppress the evidence pursuant to a defective search warrant.
4. The trial court erred in failing to suppress an inadmissible statement.

On September 18, 2015, the State filed an Initial Brief of Respondent. Following briefing, on December 6, 2016, oral arguments were held. On May 25, 2017, the South Carolina Court of Appeals issued a written opinion affirming Applicant's conviction and sentence. The South Carolina Court of Appeals found the State presented sufficient evidence to reasonably demonstrate a complete chain of custody; the documents used to establish the chain of custody were nontestimonial, therefore they were not subject to the Confrontation Clause; the magistrate judge properly issued a search warrant based on the evidence presented; and, Applicant's statement was knowingly, intelligently, and voluntarily given, and Applicant voluntarily waived his *Miranda*¹ rights. *State v. Tooby Trapp*, 420 S.C. 217, 801 S.E.2d 742 (2017). On June 7, 2017, Applicant, through counsel, filed a Petition for Rehearing. In his Petition, Applicant further elaborated on the four issues contained in his Brief of Appellant to the South Carolina Court of Appeals, and requested the South Carolina Court of Appeals conduct a rehearing in this matter. On June 23, 2017, the South Carolina Court of Appeals, by written order, denied Appellant's petition for rehearing.

On July 21, 2017, Applicant, through counsel, filed a Petition for Writ of Certiorari to the South Carolina Supreme Court raising the same issues Applicant raised in his brief to the South Carolina Court of Appeals. The State filed their Return to Petition for Writ of Certiorari on August 21, 2017, and argued the South Carolina Court of Appeals correctly affirmed Applicant's conviction and sentence. On August 30, 2017, Applicant filed a Reply in Support of Petition for

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Writ of Certiorari. On February 1, 2018, the South Carolina Supreme Court issued an order denying Applicant's Petition for Writ of Certiorari. The Remittitur was issued on February 2, 2018.

II. Facts

On October 8, 2011, Applicant's residence, located at ■ Little Ranches Road in Newberry, South Carolina, was burglarized by unknown subjects. Tr. p. 134, l. 17- p. 135, l. 9. Applicant called 911 to report the burglary and deputies from the Newberry County Sheriff's Office responded to Applicant's residence. Tr. p. 134, l. 17- p. 135, l. 9. When deputies arrives, Applicant told them \$7,000 were taken from a shoebox in his bedroom and some jars of change from other areas of the house were also taken. Tr. p. 135, l. 7-18. As deputies were processing the scene, one deputy located cocaine inside an orange pill bottle in Applicant's bedroom. Tr. p. 135, l. 23- p. 136, l. 4. The deputies obtained a search warrant for Applicant's residence and thereafter found two separate plastic baggies of crack cocaine inside the residence. Tr. p. 135, l. 12- p. 136, l. 3. The total weight of the crack cocaine seized from Applicant's residence was 21.3 grams. Tr. p. 134, l. 14-15; p. 137, l. 3-4.

III. Current Application

Applicant timely commenced this PCR action on April 9, 2018. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Trial Counsel failed to investigate Applicant's assertion that a potential juror intentionally concealed information and the information concealed would have supported a challenge for cause or would have been a material factor in the use of the parties preemptory challenges.
 - b. Counsel failed to challenge, object, and preserve his constitutional confrontation rights and hearsay assertions by and through Detective Dennis. Detective Dennis testified to the alleged reports of Officer Spreng and Investigator Bouknight, both of these officers were unavailable at Applicant's trial.

- c. Trial Counsel failed to investigate and interview the State's witnesses prior to trial. Applicant contends trial counsel did nothing more than meet him for fee payments.
- d. Trial counsel failed to put the State's case through adversarial testing by not having an independent drug analysis performed on the alleged drugs.
- e. Trial Counsel failed to challenge the sufficiency of the chain of custody of the alleged drugs.
- f. Trial Counsel was ineffective for giving Applicant erroneous advice on which he based his decision not to testify. Applicant maintains his decision not to testify was based on Trial Counsel's advice that he would be subjected to cross-examination on his prior criminal conviction record.
- g. Trial Counsel was ineffective for failure to communicate to Applicant the precise terms of a plea deal before going to trial.
- h. Trial Counsel was ineffective for failure to challenge the voluntariness of Applicant's alleged statements/confession in violation of *Miranda v. Arizona*.
- i. Trial Counsel was ineffective for conceding guilt on Applicant's behalf, by conceding to the alleged crack cocaine in his opening argument, without Applicant's knowledge or approval.

Applicant requests relief in the form of "Vacation of sentence and conviction remand for new trial and or enforce plea offer."

On October 8, 2019, Applicant, through Counsel, filed an amended application for post-conviction relief alleging the following grounds for post-conviction relief:

1. Ineffective Assistance of Counsel
 - a. Failure to elicit testimony about the timing of when the photos were taken to show that the drugs were not there at the time the police first entered the home.
 - b. Stating in opening statement that not challenging that the drugs found were crack-cocaine.
 - c. Not calling the defendant to testify during the *Jackson v. Denno* hearing about the manner in which he was given his *Miranda* warnings while he was handcuffed at his home.
 - d. Not objecting to the Solicitor's opening statement when the Solicitor mentioned the weight of the drugs, which were not in evidence yet. See page 134, lines 12-17, page 136, lines 14-16, and page 137, lines 3-4.
2. Newly Discovered Evidence and/or Judicial Misconduct

- a. Judge Griffith knocked on the jury-room door during deliberations and told the jurors they needed to come to a conclusion. This put pressure and undue influence on a juror to agree with the remaining jurors so they could go home. *See* attached statement made by Litronda Coleman, Juror 29². Furthermore, S.C.R.Evid. 606(b) allows a juror to offer testimony as to whether any outside influence was improperly brought to bear upon any juror. *See also Shumpert v. State*, 378 S.C. 62 (2008).

On October 12, 2021, Applicant, through Counsel, filed a second amended application for post-conviction relief alleging Applicant is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:

- a. Counsel did not ensure Applicant was questioned about his right to testify by the court when Applicant wanted to testify.
- b. Trial Counsel did not have adequate time to review and discuss discover materials with the Applicant.
- c. Trial Counsel allowed Lynn Black to testify as to the entire chain of custody.

Attached herewith and incorporated herein are the Newberry County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the appellate records, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the

² Attached to Applicant's amended application for post-conviction relief is a voluntary statement given by Litronda Coleman. In this statement Ms. Coleman alleges she disagreed with Applicant being guilty of Trafficking Crack Cocaine, but Judge Griffith knocked on the door and told the jurors they needed to come to a conclusion. Ms. Coleman claims after being pressured to agree she agreed to convict Applicant.

role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions) (emphasis added). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an

objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation [—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of

reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant

must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Failure to Prepare

Applicant's allegation Counsel did not have adequate time to review and discuss discovery materials with Applicant is without merit.

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that “this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind

that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

Applicant has asserted Counsel did not have time to review discovery with Applicant, however during pre-trial motions, Counsel indicated Applicant was represented by prior counsel from 2011 until July of 2014. Additionally, Counsel represented Applicant from October 1, 2014 until the date of Applicant's trial on October 30-31 2014. Counsel requested a continuance prior to Applicant's trial stating "he wants me to kind of make this motion to continue this matter to give me a little bit more time to make sure that I've done it thoroughly, explained everything to him and things of that sort." Tr. p. 126, l. 24- p. 127, l. 3. Following Counsel's request for a continuance the Court stated "I think this case of the age that it needs to get moved. I understand you're new, but you're experienced. Mr. Trapp is not new to this case." Following these comments, the Court denied Counsel's motion for a continuance. Applicant has failed to show how Counsel was deficient for failing to review discovery with Applicant prior to trial. Additionally, Applicant has not shown he did not have an opportunity to review discovery during three years between Applicant's arrest and Applicant's trial. Therefore Respondent contends this allegation is without merit. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Failure to Ensure Applicant was questioned about his Right to Testify

Applicant's allegation that his counsel was ineffective for failing to ensure Applicant was questioned about his right to testify is without merit. In *Brown v. State*, the South Carolina Supreme Court stated "An on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." *Brown v. State*, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994). The Supreme Court in *Brown* further stated "review of this issue is better left to a post-conviction relief proceeding where the facts surrounding the trial can be fully explored." *Id.* Though the record does not show Applicant was questioned about his right to testify at trial. Respondent contends Applicant voluntarily waived his right to testify. At the start of Applicant's trial, the Court informed the jury "Mr. Trapp has nothing whatsoever to prove or disprove. He may decide not to call any witnesses. He may not testify. That's his decision and his alone. His and his lawyer can decide that." Tr. p. 128, l. 9-12. Following the close of the State's case in chief, and Counsel's motion for a directed verdict, the Court asked Counsel "are you going to put anything up?" to which Counsel responded "No, sir." Tr. p. 320, l. 15-16. Therefore, it can be inferred that Applicant, throughout the course of the trial, decided he would not testify at trial. Finally, during the jury instruction, the Court informed the jury

Now, I instruct and I emphasize to you that Mr. Trapp comes into this court presumed innocent. He has the constitutional right to main silent and he has exercised that right and has not testified. The fact that he did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration of the questions of the guilt or innocence of him. It must not be considered by you in any manner whatsoever. A defendant has this constitutional right to remain silent and his assertions of this right must not be considered or even discussed by you in your deliberations. So under your oath you are not to draw any conclusion whatsoever from the fact that he exercised this right and chose to not testify. The fact the he did not testify should not even be discussed in the jury room.

Tr. p. 345, l. 17- p. 346, l. 6.

It is evident from the instructions given to the jury on October 31, 2014, at the start of Applicant's trial that Applicant was made aware of his right to testify and his right to remain silent. Further, when the Court asked Counsel if Applicant would present a case, and Counsel responded "no" Applicant had voluntarily and intelligently waived his right to testify at trial. Further, the Court ensured Applicant would not have his decision to remain silent used against him during his trial. Therefore, Applicant cannot show he was prejudiced when he was not advised of his right to testify at the close of the State's case in chief. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Allowing Lynn Black to Testify as to the Entire Chain of Custody

Applicant's allegation that Counsel was ineffective for allowing Lynn Black to testify as to the entire chain of custody is without merit. "Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts. *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011) (*Citing United States v. De Larosa*, 450 F.2d 1057, 1068 (3d Cir. 1971)). "It is unnecessary... that the police account for 'every hand-to-hand transfer' of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduced at trial." *Hatcher*, 392 S.C. at 754, 708 S.E.2d at 754 (*Citing State v. Price*, 731 S.W.2d 287, 290 (Mo. Ct. App. 1987)).

At Applicant's trial, Solicitor Dale Scott called Lynn Black to testify regarding the chain of custody of the crack cocaine seized from Applicant's trailer from the time it was delivered to SLED until it was tested by her. Tr. p. 270, l. 18- p. 278, l. 7. Following this testimony, Solicitor Scott sought to move the drugs into evidence. At this point Counsel objected, stating "there is an additional witness that has not been called in this particular case. I think that is one of the reasons why, for the objection. Should be part of the chain, I assume." Tr. p. 278, l. 10-23. Following a discussion of Counsel's objection off the record, the Court determined Lynn Black was able to testify as to the chain of custody from the time SLED received the evidence, through the time she tested the evidence and returned it to the Newberry County Sheriffs Department. However the Court found that the drugs could not be moved into evidence until Solicitor Scott established a chain of custody from the moment SLED returned the drugs to the Newberry County Sheriffs Department, until they were brought to the courthouse for trial. Tr. p. 278, l. 24- p. 281, l. 11. Respondent contends Counsel was not ineffective regarding Lynn Black's testimony regarding the chain of custody. Lynn Black properly demonstrated the condition of the drugs from the moment they were submitted to SLED for testing, until she tested the drugs and they were returned to the Newberry County Sheriffs Department. Additionally, Counsel objected to the introduction of the drugs as evidence due to an incomplete chain of custody. Ultimately Lynn Black did not testify to the entire chain of custody, as Captain Robert Dennis testified to the chain of custody from the time the drugs were seized from Applicant's house until they were submitted to SLED for testing. Counsel successfully prevented the State from moving the drugs into evidence following the testimony of Lynn Black, due to an incomplete chain of custody for the drugs. Therefore, Applicant has failed to establish how Counsel was deficient or how Applicant was prejudiced by Counsel's performance regarding the testimony of Lynn Black. For the above-reasons, Applicant cannot

satisfy *Strickland*, nor show counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Failure to Elicit Testimony about the Timing of when Photos were Taken

Applicant alleges Counsel was ineffective for failing to elicit testimony about the timing of when the photos of Applicant's bedroom were taken. Respondent contends this allegation is without merit. When analyzing counsel's performance, the reviewing court will "strongly presume that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect." *Yarborough*, 540 U.S. at 8 (internal quotation marks omitted); *cf. Higgs v. United States*, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decision a court is not supposed to second guess.") (citing *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003)). Applicant's counsel repeatedly addressed issues with the timing of the photographs during his pretrial motions to suppress the drugs. Though Counsel did not elicit testimony about the timing of when the photographs were taken throughout the course of the trial, Counsel specifically asked Brad Epps about where the drugs were found, and why they did not appear in certain pictures. Tr. p. 168, l. 14- p. 172, l. 3; p. 186, l. 22- p. 188, l. 1. Respondent contends Applicant has failed to demonstrate how Counsel was deficient in his cross-examination of the State's witnesses, or how this alleged deficient performance prejudiced Applicant. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of

trial counsels. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Failure to Call Defendant to Testify During *Jackson v. Denno*³ hearing

Applicant alleges Counsel was ineffective for failing to call Applicant to testify during his pre-trial *Jackson v. Denno* hearing. Respondent contends this allegation is without merit. Under *Jackson v. Denno*, a defendant is entitled to a “reliable determination as to the voluntariness of his [statement] by a tribunal other than the jury charged with deciding his guilt or innocence.” *State v. Miller*, 375 S.C. 370, 381, 652 S.E.2d 444, 450 (Ct. App. 2007) (citing *State v. Fortner*, 266, S.C. 223, 226, 222 S.E.2d 508, 510 (1976)). “A defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to the submission of such statements to the jury.” *State v. Miller*, 375 S.C. at 382, 652 S.E.2d at 450 (citing *State v. Salisbury*, 330 S.C. 250, 271, 498 S.E.2d 655, 666 (Ct. App. 1998)). The trial judge must determine if under the totality of the circumstances a statement was knowingly, intelligibly, and voluntarily made. *State v. Miller*, 375 S.C. at 382, 652 S.E.2d at 450 (citing *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001)). The State bears the burden of showing the statement was voluntary. *State v. Miller*, 375 S.C. at 382, 652 S.E.2d at 450 (citing *State v. Von Dohlen*, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996)); *see also State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 694 (1986) (“In order to secure the admission of a defendant’s statement, the State must affirmatively show the statement was voluntary and taken in compliance

³ *Jackson v. Denno*, 378 U.S. 368 (1964).

with *Miranda*").

In the present case, Counsel requested a *Jackson v. Denno* hearing be conducted prior to the start of Applicant's trial. Tr. p. 109, l. 21- p. 110. During this hearing, Solicitor Scott called Captain Robert Dennis to testify regarding a confession given by Applicant regarding the drugs. During this hearing, Applicant's counsel thoroughly cross examined Captain Dennis regarding the confession Applicant gave, and whether Applicant was promised anything in return for his confession. Tr. p. 117, l. 11- p. 121, l. 17. *Strickland* requires that trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland* at 688-89. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, "[j]udicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689. *Strickland* therefore established the rule that in proving a claim of ineffectiveness, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* A strategic or tactical decision does not have to be articulated by counsel on the record; counsel doesn't to have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. *Wood v. Allen*, 558 U.S. 290, ___, 130 S.Ct. 841, 175 L.Ed.2d 738 (2010). It can be inferred from the record that Counsel had a valid trial strategy when he chose to cross-examine Captain Dennis regarding the alleged confession from Applicant, instead of calling Applicant to testify at the *Jackson v. Denno* hearing. Counsel sought to determine if Applicant was read his *Miranda* rights, and if Captain Dennis thought Applicant understood these rights. Additionally, Counsel questioned Captain Dennis regarding whether Applicant was promised that he would not be arrested if he cooperated and gave police a confession. Counsel asked Captain

Dennis if Applicant was promised anything, and if Applicant offered to cooperate with police and buy drugs as a confidential informant. Captain Dennis would deny Applicant was promised anything, though he does recall Applicant offering to buy drugs as a confidential informant. Tr. p. 118, l. 23- p. 19. Applicant has failed to show how Counsel's performance was deficient in this matter, or how he was prejudiced by Counsel's performance. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Failure to Object to the Solicitor's Opening Statements

Applicant alleges Counsel was constitutionally ineffective for failing to object to the Solicitor's opening statements, when the Solicitor mentioned the weight of the drugs, which were not in evidence yet. Respondent contends this allegations is without merit. "The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented." *Smalls v. State*, 415 S.C. 490, 499, 783 S.E.2d 817, 821 (2016) (*Citing State v. Kornahrens*, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986)). "The Solicitor is permitted in opening statement to outline the facts the State intends to prove." *Id.* "As long as the State introduces evidence to reasonably support the states facts, there is no error." *Id.* Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Smalls*, 415, SC. 490, 499, 783 S.E.2d 817, 821 (*Citing Brown v. State*, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009)).

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation.” *United States v. Nguyen*, 379 F. App’x 177, 181 (3d Cir. 2010); see *Humphries v. Ozmint*, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“It is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under *Strickland*.”

When analyzing counsel’s performance, the reviewing court will “strongly presume that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect.” *Yarborough*, 540 U.S. at 8 (internal quotation marks omitted); cf. *Higgs v. United States*, 711 F. Supp. 2d 479, 515 (D. Md. 2010) (“Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decision a court is not supposed to second guess.”) (citing *Byram v. Ozmint*, 339 F.3d 203, 209 (4th Cir. 2003)).

Though Applicant is correct that Counsel did not object to Solicitor Scott’s reference to the weight of the drugs found in Applicant’s house, Applicant has failed to demonstrate how he was prejudiced by this decision. Throughout the course of the trial, the weight of the drugs were not contested. Additionally, Solicitor Scott questioned Lynn Black of SLED who testified that the drugs weighed 21.3 grams. Tr. p. 281, l. 19- p. 283, l. 11. Though Counsel did not object to Solicitor Scott’s reference to the weight of the drugs found in Applicant’s house, Solicitor Scott properly introduced evidence to support the reference made in his opening statement. Therefore Applicant cannot establish he was prejudiced by Counsel’s failure to object to Solicitor Scott’s opening statement. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsels. Therefore, the State requests an evidentiary hearing to

fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Applicant, in his application for post-conviction relief, has alleged counsel was ineffective for a multitude of reasons. However Applicant has failed to demonstrate how counsel was deficient or how but for counsel’s alleged deficient performance Applicant’s case would have resulted in a different outcome. For the above-reasons, Applicant cannot satisfy *Strickland*, nor show counsel was ineffective. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsels. Therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. Response to Allegations of Newly Discovered Evidence/Judicial Misconduct

Applicant’s allegation that his conviction was the result of judicial misconduct is without merit. Under the Uniform Post-Conviction Procedure Act S.C. Code Ann. §17-27-20 any person who has been convicted of, or sentenced for, a crime may initiate a post-conviction relief action for the following reasons.

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20. An Applicant requesting a new trial based on after-discovered evidence must show that the evidence:

1. Is such as would probably change the result if a new trial was held;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and
5. Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993). Applicant has indicated he received correspondence from Litronda Coleman, a juror during his trial, which stated Judge Griffith entered the jury room and put pressure and undue influence on the jury by requesting they come to a conclusion in this case. This allegation of judicial misconduct is without merit.

Before a Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The credibility of newly discovered evidence is for the trial court to determine. *State v. Porter*, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). It is well established that entering the jury room during deliberations is reversible error for appellate courts. “In death penalty case, trial judge’s entering the jury room during guilt phase of trial, accompanied by counsel from both the State and the defense, to answer a question of the jury was reversible error regardless of the presence of counsel and the absence of prejudice.” *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983). Trial judge’s visit to the jury room during the penalty

phase of trial, without counsel from either the State or defense, was error. *Id.* However, Respondent contends Judge Griffith did not improperly enter the jury room during the jury's deliberations. Though Ms. Coleman has alleged the trial court put pressure and undue influence on the jury, Respondent contends this allegation is without merit. In response to Ms. Coleman's assertion, Respondent has had an opportunity to question ten of the remaining jurors, along with the Bailiff.⁴ In their responses to Respondent's questions, all of the remaining jurors indicated they do not recall Judge Griffith, or anyone else, entering the jury room during the fifty minutes the jury deliberated in this case.⁵ Additionally, Bailiff Georgia Wardlaw indicated she cannot recall a judge ever knocking on the jury room door while the jury was deliberating.⁶ Though the evidence presented by Applicant has been discovered since the trial, and could not have been discovered before trial, Respondent contends the evidence presented by Applicant would not change the result if a new trial was held. Ten of the jurors in Applicant's case have testified that Judge Griffith did not knock on the door to the jury room during deliberations. Additionally, these ten jurors indicated that nobody complained about the verdict after the jury finished deliberating, though one juror indicated at the start of deliberations one male juror, and one female juror were against convicting Applicant but they eventually changed their minds. One juror, Elizabeth Hedgepeth specifically indicated the woman who was opposed to convicting Applicant indicated she did not care and she wanted to go home. Additionally the after-discovered evidence presented by Applicant is not material to the issue of guilt or innocence. The overwhelming majority of the jurors in this case,

⁴ Respondent attempted to question all eleven remaining jurors, however one juror refused to speak with Respondent regarding this matter.

⁵ One Juror, Ralph Howe, indicated Judge Griffith came into the jury room to dismiss the jury after they provided the court with their verdict.

⁶ A copy of the statements from ten of the jurors from Applicant's trial, along with a statement from Bailiff Georgia Wardlaw have been included with this Amended Return.

along with the Bailiff who was stationed outside the jury room door, have refuted the allegations made by Applicant and Litronda Coleman. These jurors indicated they do not remember Judge Griffith entering the jury room during the course of their deliberations, nor do they remember any other juror complaining about the verdict after Applicant was found guilty. Due to the reasons stated above, Applicant has failed to establish any judicial misconduct in this case, and therefore is not entitled to a new trial based on this alleged after-discovered evidence. However, this allegation of judicial misconduct may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and judicial misconduct.

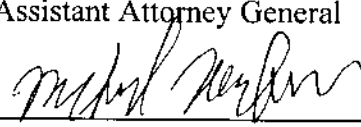
Respectfully submitted,

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Attorney General

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By: 

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October 22, 2021

State of South Carolina)	In the Court of Common Pleas
)	Eighth Judicial Circuit
County of Newberry)	2018-CP-36-00156

Toaby A. Trapp,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

October 26, 2021
 HEARING CONDUCTED REMOTELY
 VIA WEBEX VIDEOCONFERENCE

B E F O R E:

The Honorable R. Kirk Griffin, Judge

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

Ashley A. McMahan, Esquire
 Attorney for Applicant

Michael J. Neubauer, Assistant Attorney General
 Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
 Circuit Court Reporter
 Certified Verbatim Reporter - Master
 Certificate of Merit
 Realtime Verbatim Reporter - Master

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits were offered during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 1:01 p.m.)

THE COURT: Good afternoon, everyone. Are we ready to proceed with the case of *Toaby A. Trapp v. State*, 2018-CP-06-00156 [sic]?

MS. MCMAHAN: Yes, Your Honor, I'm ready.

MR. NEUBAUER: Yes, Your Honor. I'm ready.

(Off the record briefly.)

THE COURT: Okay. Mr. Trapp, can you hear me, sir?

THE APPLICANT: Yes, sir.

THE COURT: All right. If you would raise your right hand for me, please.

THE APPLICANT: (Complied.)

TOABY TRAPP, having been first duly sworn, testified and stated as follows:

THE COURT: All right. Thank you, sir. You can put your hand down.

THE APPLICANT: (Complied.)

THE COURT: Mr. Trapp, as you can see, we are proposing to conduct your PCR hearing via videoconference. Mr. Trapp, do you specifically consent to this hearing being held via videoconference and waive your right to in-person court appearance?

THE APPLICANT: Say that again, sir?

THE COURT: As you can see, we are proposing to

1 conduct your PCR hearing via videoconference.

2 THE APPLICANT: Yes, sir.

3 THE COURT: Ordinarily, if we weren't in -- still in
4 the midst of this pandemic, this hearing would be held in
5 the courtroom with everybody being present in the same
6 room. We are proposing to conduct the hearing via
7 videoconference to allow these matters to be heard but,
8 obviously, not to bring everybody into the same room, given
9 the fact that we are still dealing with COVID-19 pandemic.

10 So the question I have for you is: Do you consent to
11 this hearing being held via videoconference?

12 THE APPLICANT: Yes, sir.

13 THE COURT: All right. And do you likewise
14 specifically consent to any interested party, whether it be
15 your attorney, the attorney general, or any other witness
16 who would participate in this matter likewise appearing via
17 videoconference?

18 THE APPLICANT: Yes, sir.

19 THE COURT: All right. I find that the applicant has
20 made a knowing and intelligent waiver of his right to
21 appear before the Court in person and specifically
22 consented to all parties participating in this matter via
23 videoconference.

24 At this time I'm going to recognize the attorney
25 general, Mr. Neubauer, to give me the procedural history on

1 this case. Mr. Neubauer?

2 MR. NEUBAUER: Thank you, Your Honor. May it please
3 the Court. Today we're here for *Toaby Trapp v. the State*
4 *of South Carolina*, Indictment -- or Case No. 2018-CP-36-
5 00156.

6 In March 2012 the Neubauer -- Newberry County Grand
7 Jury indicted applicant for trafficking cocaine, Indictment
8 No. 2012-GS-36-0267. Applicant was represented by Dietrich
9 Lake, Esq. Deputy Solicitor Dale Scott and Assistant
10 Solicitor Taylor Daniel with the Eighth Circuit Solicitor's
11 Office prosecuted the case.

12 On October 30th and October 31st, 2014, applicant
13 appeared for trial before the Honorable Eugene C. Griffith,
14 Jr., and a jury. Applicant was subsequently convicted of
15 trafficking cocaine, and Judge Griffith sentenced applicant
16 to imprisonment for a term of 25 years. And applicant was
17 given credit for time served.

18 Applicant, through counsel, filed a timely notice of
19 appeal, and applicant's appeal was perfected by filing an
20 initial brief of applicant on May 19th, 2015. In
21 applicant's brief he raised the following issues: Trial
22 court erred in admitting the drugs into evidence when
23 respondent failed to establish a chain of custody; trial
24 court erred in admitting testimonial evidence in violation
25 of appellant's right of confrontation; trial court erred

1 when it failed to grant the petitioner a hearing and
2 suppress the evidence pursuant to defective search warrant;
3 and trial court erred in failing to suppress an
4 inadmissible statement.

5 On September 18th, 2015, the state filed an initial
6 brief of respondent. Following briefing on December 6th,
7 2016, oral arguments were held. And on May 25th, 2017, the
8 South Carolina Court of Appeals issued a written opinion
9 affirming applicant's conviction and sentence.

10 On July 21st applicant, through counsel, filed a
11 petition for a writ of *certiorari* to the South Carolina
12 Supreme Court, raising the same issues applicant raised in
13 his brief to the South Carolina Court of Appeals. On
14 August 30th, 2017 -- sorry; I apologize. On February 1st,
15 2018, the South Carolina Supreme Court issued an order
16 denying applicant's petition for a writ of *certiorari*, and
17 the remittitur was issued February 2nd, 2018.

18 Applicant commenced this postconviction-relief action
19 on April 9, 2018. Applicant asserted he was being held in
20 custody unlawfully for the following reasons: ineffective
21 assistance of counsel, claiming trial counsel failed to
22 investigate applicant's assertion that a potential juror
23 intentionally concealed information and the information
24 concealed would've supported a challenge for cause and
25 would've been a material fact during use of a party's

1 peremptory challenge; counsel failed to challenge, object
2 to, and preserve his constitutional confrontation rights
3 and hearsay -- and hearsay assertions by and through
4 Detective Dennis; Detective Dennis testifies to the alleged
5 reports of Officer Spreng and Investigator Bouknight. Both
6 of these officers were unavailable to -- or at applicant's
7 trial; trial counsel failed to investigate and interview
8 the state's witnesses prior to trial; applicant contends
9 trial counsel did nothing more than meet with him for fee
10 payments; trial counsel failed to put the state's case
11 through adversarial testing by not having an independent
12 drug analysis performed on the alleged drugs; trial counsel
13 failed to challenged the sufficiency of the chain of
14 custody of the alleged drugs; trial counsel was ineffective
15 for giving applicant erroneous advice on which he made a
16 decision not to testify; applicant maintains the decision
17 not to testify was based on trial counsel's advice that he
18 would've been subject to cross-examination on his prior
19 criminal record; trial counsel was ineffective for failure
20 to communicate to applicant the precise terms of a plea
21 deal before going to trial; trial counsel was ineffective
22 for failure to challenge the voluntariness of applicant's
23 alleged statements and confession, in violation of *Miranda*
24 *v. Arizona*; trial -- and trial counsel was ineffective for
25 conceding guilt on applicant's behalf by conceding to the

1 alleged crack cocaine in the opening statement without
2 applicant's knowledge.

3 On October 8th, 2019, applicant, through counsel,
4 filed an amended application for postconviction relief,
5 alleging ineffective assistance of counsel for failure to
6 elicit testimony about the timing of when photos were taken
7 to show that the drugs were not there at the time the
8 police entered the home; stating in his opening statement
9 that they were not challenging that the drugs that were
10 found were actually crack cocaine; not calling the
11 defendant to testify during a *Jackson v. Denno* hearing
12 about the manner in which he was given his *Miranda* warnings
13 while he was handcuffed; and not objecting to the
14 solicitor's opening statement, when the solicitor mentioned
15 the weight of the drugs, which were not in evidence yet;
16 and finally, alleging judicial misconduct, claiming that
17 Judge Griffith knocked -- (audio loss) -- the jury-room
18 door during deliberations and told the jurors they needed
19 to come to a conclusion, alleging this put pressure and
20 undue influence on a juror to agree with the remaining
21 jurors so they could go home. Applicant attached to his
22 amended application a statement made by Litronda Coleman,
23 Juror No. 29 in this case.

24 Finally, on October 12, 2021, applicant filed a second
25 amended application, alleging he is held in custody

1 unlawfully due to ineffective assistance of counsel; that
2 counsel did not ensure applicant was questioned about his
3 right to testify by the Court when applicant wanted to
4 testify; trial counsel did not have adequate time to review
5 the -- review and discuss discovery materials with the
6 applicant; and trial counsel allowed Lynn Black to testify
7 as to the entire chain of custody.

8 THE COURT: All right. Thank you, Mr. Neubauer.

9 Ms. McMahan, I'll be happy for you to call your first
10 witness.

11 MS. MCMAHAN: Yes, Your Honor. We would like to call
12 Mr. Trapp.

13 THE COURT: All right, Mr. Trapp. Your lawyer is going
14 to ask you some questions. I would remind you that you are
15 still under oath.

16 THE APPLICANT: Yes, sir.

17 THE COURT: All right. Ms. McMahan?

18 DIRECT EXAMINATION

19 BY MS. MCMAHAN:

20 Q Mr. Trapp -- Mr. Trapp, did you file this PCR
21 application?

22 A Yes, ma'am.

23 Q And did you hear the allegations that Mr. Neubauer was
24 reading out?

25 A Yes, ma'am.

DIRECT EXAMINATION BY MS. MCMAHAN - TOABY TRAPP 11

1 Q And are those your allegations that you wish you to go
2 forward on today?

3 A Yes, ma'am.

4 Q And do you understand that if this Court grants your
5 PCR application, that they would send you back to get a new
6 trial?

7 A Yes, ma'am. Yes.

8 Q And do you still want to go forward?

9 A Yes.

10 Q And do you still want to go forward? Okay.

11 A Yes.

12 Q So let's start ---

13 (Indistinguishable cross-talk)

14 Q --- first allegation -- I can hear you. Can you ---

15 A Okay.

16 Q --- hear me?

17 A Yes, ma'am. Yes.

18 Q We got you.

19 So the first allegation in your application that you
20 would like to tell the Court today, what -- what is that?

21 A What -- what you talking about, failure to -- about
22 the timing of the -- the photographs were taken? Is that
23 the first one?

24 Q Yes, sir. Tell -- (audio loss) -- yes, sir. Tell the
25 Court about that.

1 THE COURT: Okay. That's ---

2 (Indistinguishable cross-talk)

3 THE COURT: Hold on one second, Mr. Trapp. Mr. Trapp,
4 hold on one second.

5 Ms. McMahan, that's in the -- is that in the second
6 amended application?

7 MS. MCMAHAN: That's in the first amended one. It's
8 the -- the first one. And it's the -- 1(a) ---

9 THE COURT: All right.

10 MS. MCMAHAN: --- in the ---

11 THE COURT: In the ---

12 (Indistinguishable cross-talk)

13 THE COURT: --- interests of streamlining this, Ms.
14 McMahan, I -- I don't think anybody would object to you
15 reciting the ground that he has -- that he has raised and
16 then having him speak about it. So as we go through this
17 process, just, you know ---

18 MS. MCMAHAN: Okay.

19 (Indistinguishable cross-talk)

20 THE COURT: --- identify the ground and then have him
21 testify as to why he feels he received ineffective
22 assistance of counsel, based on the ground that was raised,
23 so -- so we're all on the same page.

24 MS. MCMAHAN: Yes, sir.

25 THE COURT: All right, Mr. Trapp.

1 Q So, Mr. Trapp ---

2 THE COURT: Go ahead.

3 Q --- let's discuss -- let's discuss 1(a), failure to
4 elicit the testimony of the -- the photos. So tell the
5 Court about that issue.

6 A Well, upon with -- the -- they said that during the
7 timing -- timing of the photograph, didn't know when
8 exactly the photograph was taken. I feel that if it -- if
9 we had subpoena for the camera to be in court, that we
10 would have evidence to prove when the timing of the
11 photograph was taken then. I mean, it would've been a
12 little different if we would've had a camera there to show
13 how they claim that the -- the -- the -- the numbers -- the
14 -- the order of the pictures was not -- they don't know
15 when -- what order they come in without the camera being
16 present. I feel if we would've subpoenaed for the camera,
17 it -- it would've showed the difference that when the
18 photograph was taken.

19 Q So ---

20 (Indistinguishable cross-talk)

21 A --- the pill bottle ---

22 Q --- you're saying that ---

23 A --- it -- and it shows that the pill bottle wasn't on
24 the dresser when they claim just was -- they preserved the
25 pill bottle in plain view when they come in for the

1 burglary.

2 Q So had Mr. Lake elicited some testimony about the
3 timing of the photos, it would've shown that the pill
4 bottle wasn't original there; is that what you're saying?

5 A Well, and Mr. Lake had said that during trial that he
6 had e-mailed solicitor for to bring the camera. And then,
7 solicitor claimed that he didn't during trial. But, I
8 mean, I feel if we would've subpoenaed, I mean, it would've
9 been evidence of showing that -- that we had subpoenaed for
10 the camera to -- to be in.

11 Q Okay. Did Mr. Lake raise an issue about that before
12 the trial started about how that -- they didn't bring the
13 camera?

14 A Well, the only thing Mr. Lake said during trial that
15 when the -- when the judge said that by the time frame of
16 the photographs were taken, we don't know -- I mean, and he
17 did said that he had e-mailed the solicitor to bring the
18 camera into court.

19 Q Okay. Anything else you want to tell the Court about
20 that issue?

21 A I feel that if we would've had the camera, that it
22 would've showed that, by the photograph, that the pill
23 bottle wasn't in plain view. I mean, it would never been
24 -- they could've never used that as probable cause for to
25 go get a search warrant, if that what they claimed.

1 Q Okay. Okay. And then, (b) on the amended
2 application, tell us about the opening statement where, I
3 guess, Mr. Lake admitted that the drugs found were crack
4 cocaine.

5 A The opening statement -- the opening statement, that
6 was during the -- during the -- the beginning of the -- of
7 the -- what's them call it -- the -- the opening argument?
8 That what that was?

9 Q Yes, sir. Uh-huh.

10 A I mean, only thing I see on that right there that Mr.
11 Lake ---

12 Q Yes, sir.

13 A --- saying -- he said during -- if -- opening argument
14 that we had tell them that the drugs is crack cocaine.
15 And, I mean, that about -- (audio loss) ---

16 Q So he ---

17 (Indistinguishable cross-talk)

18 A Huh?

19 Q So ---

20 A Ma'am?

21 Q --- are you saying that Mr. Lake essentially admitted
22 that they were drugs in the opening statement from the
23 beginning?

24 A Well, he -- well, basically, if you look at it, if you
25 look into the way it was saying, he just -- he said that we

1 got admit -- we got challenge it that it is crack cocaine,
2 you know.

3 Q Okay. And why was that harmful to your case?

4 A I mean, because one thing, with the -- with the drugs
5 that was being -- for drugs that was this money come into
6 court, it was some mushy-looking, brown-looking stuff that
7 was -- was entered into the evidence. And we don't know
8 what that was. I mean, we don't know if that was crack
9 cocaine or whatever it was. We don't know.

10 Because from the beginning, they had done went into
11 the evidence and took things out of the evidence that they
12 -- (audio loss) -- submitted to the SLED to start with.
13 They had done went into the evidence bag and took things
14 out. So who know what they took out or what they put in.

15 Q When you say they took out some stuff, what are you
16 talking about ?

17 A They say that they had took out -- they -- they --
18 they didn't submit razor blade or -- or either spoon or
19 whatever else it was that they had done took out; say they
20 don't submit it to -- to the SLED for some reason; that
21 they just don't submit it there. I mean, but I'm like this
22 right here: By them saying that they don't submit things,
23 I mean, like Mr. Lake did say during trial, I mean, they
24 don't know what fingerprints or DNA was on it. We don't
25 know who -- who did what with what.

1 Q Okay. So you're saying that the solicitor or the --
2 the sheriff's department did not send some things to SLED
3 for testing?

4 A That they -- they -- they took it out the evidence
5 bag. They went into the evidence bag and took all the
6 stuff out the evidence bag. But when they come back to
7 court with the ---

8 Q Okay.

9 A --- (audio loss) -- in court, they had all that stuff
10 back into the evidence bag that we don't know how they get
11 to put it back into the evidence bag.

12 Q I got you.

13 A So we got into ---

14 Q Okay.

15 A --- court, they had all that back in the evidence bag.

16 Q And Mr. Lake never brought that up during the trial or
17 beforehand during a motion or anything?

18 A Well, I mean, he didn't objected to that.

19 Q Okay. So he didn't -- he didn't make a motion or
20 anything during the trial about that?

21 A Well, he made no motion ---

22 Q If he ---

23 A --- for no ---

24 Q --- didn't object.

25 A --- mistrial or nothing on it. No. Not no mistrial.

1 Q Okay.

2 A If that what you asking ---

3 Q Okay. And 1(c), talking about calling you to testify
4 during a *Jackson v. Denno* and your *Miranda* warnings, tell
5 the Court about that.

6 A When -- when we had went to break -- break -- what --
7 excuse me -- went to break, I had asked Mr. Lake, few time
8 we went to break, let me testify. And -- because couldn't
9 nobody tell the truth about the memorandums and -- and --
10 and the statement thing they had made -- said that I -- I
11 confessed to, couldn't nobody correct that but me if I can
12 get on the stand. But his answer was that right there is
13 that he ain't wanted me to testify because he may cross me
14 up by bringing up my prior record, my prior convictions and
15 all that right there.

16 Q And what -- and what were your prior convictions?

17 A Drug charges -- distribution.

18 Q And what did he tell you what those prior convictions
19 would do? Did he tell you they would come out during your
20 ---

21 A Well, he ---

22 Q --- testimony ---

23 A --- said ---

24 Q --- at all?

25 A He said it'd come out once I testify. It get -- it --

1 it -- it open door for that to come out, that they could
2 bring it up during trial. Excuse me.

3 Q And -- and did he explain to you how that can be used
4 to go towards your credibility?

5 A No, ma'am.

6 Q About -- (audio loss) -- about whether or not the jury
7 would believe you because of -- based on your prior rap
8 sheet and stuff?

9 A No. He just said -- the only thing he said when I
10 asked about letting me testify, that he ain't wanted me to
11 get up there because, I mean, they might cross me up. They
12 would bring up my prior. That basically was all he said on
13 that.

14 Q And by "might cross you up," he was -- he, Mr. Lake,
15 is referring to the solicitor?

16 A Well, and I guess -- I guess because I was new to it
17 -- I mean, my first time it was going through trial. I
18 mean, I didn't know. But I -- I just felt that by me
19 getting on the stand, it would've -- it show another item
20 to the jury that, I mean, they would've seen my side of the
21 story that would've helped my credibility during trial.

22 Q So you felt like, even though you had a couple prior
23 convictions, that had you been able to testify, the jury
24 would've been able to hear your side of the story ---

25 A But ---

1 Q --- and likely ---

2 A --- but -- well, no.

3 Q --- not ---

4 A I -- I ---

5 Q --- convict you?

6 A --- I did understand about them prior convictions, you
7 know, that, you know, they'll look at you a different way.
8 But I just felt that, by me testifying and, I mean, through
9 -- to -- to my ability, to best of my knowledge, everything
10 that went on, that it would've made the jury look at me a
11 little different during my trial.

12 Q Okay. Okay. And then, 1(d) we have (as read): "Not
13 objecting to the solicitor's opening statement when the
14 solicitor mentioned the weight of the drugs, and the drugs
15 weren't in evidence yet." So tell the Court your issue
16 with that.

17 A Well, in all that situation there, I didn't too much
18 study too much on that one right there. So ain't too much
19 I can really say -- say with that. Because I did read back
20 into the transcript, and I seen what about the solicitor
21 did, said something about the weight of the -- of the -- of
22 the drugs that coming in before he got in evidence. But I
23 didn't read too much up on that but -- find out exactly
24 about that right there. So my response on that right
25 there, that I can't even too much explain that on that one.

1 Q Okay. Other than that did you feel like Mr. Lake
2 should've objected to the fact that the solicitor was
3 discussing the weight before they were ever entered into
4 evidence?

5 A Well, and I mean, to -- to my knowledge, I mean -- I
6 mean, I felt, if he could have, I mean, I -- I don't know.
7 I mean, so I can't -- can't really respond to that right
8 there because I really don't know. Because I really didn't
9 look into ---

10 Q Okay.

11 A --- that one right there. I didn't really look into
12 it.

13 Q Okay. And then, on your amended postconviction-relief
14 application, the second one, the one that we just did
15 recently ---

16 A Yes, ma'am.

17 Q --- one of the issues we talked about was, again, you
18 weren't questioned about your right to testify by the Court
19 when you had indicated you wanted to testify. Do you
20 recall the Court asking you any questions about your right
21 to testify?

22 A But they didn't -- they ain't never questioned about
23 did I want to testify, my right to testify or not testify.
24 They ain't never questioned me on that, period. Like I
25 said earlier, I had to talk to Mr. Lake -- Mr. Lake about

1 me testifying in situations here with the prior and things
2 right there that -- right there.

3 And the judge never did -- nobody in court never did
4 say anything to me about, I mean, the right to my -- the
5 right for me to testify or not to testify. And, I mean --
6 and I -- I read up on it that ---

7 Q Okay.

8 A --- I mean, that you had to been up under oath and on
9 record for the -- because can't nobody waive that you want
10 to testify, nobody but you. So, I mean, I didn't waive ---

11 Q Yes, sir.

12 A --- (audio loss) -- I want to testify. I didn't waive
13 that.

14 Q So if the Court had questioned you and asked you,
15 "Hey, would you want to testify?" what would you ---

16 A I would've ---

17 Q --- have said?

18 A --- got on the stand.

19 Q Okay. Even though your attorney told you he didn't
20 think that was a good idea?

21 A Say that again, ma'am?

22 Q You still would've testified, even though Mr. Lake had
23 indicated to you the -- that it was probably ---

24 A Yes. I ---

25 Q --- not a ---

1 A --- would've ---

2 Q --- good idea?

3 A --- testified. Yes. Because I wanted to. I --

4 (audio loss) --

5 Q Okay.

6 A --- testify.

7 Q Okay. And how many times did you say you met with --
8 how many times would you say that you met with Mr. Lake?

9 A Talking about -- about me testifying? I think we went
10 on break when -- when ---

11 Q How many ---

12 A --- when we ---

13 Q --- times would ---

14 A --- went on break ---

15 Q Yeah.

16 A --- about three time, me and him and baby sister, we
17 had went on break. I think I asked him about two or three
18 time about testifying.

19 Q You had -- during the trial or prior to the trial?

20 A I'm talking about during the time that we was taking a
21 break during the trial. Every time we go out for a break

22 ---

23 Q Okay. So how ---

24 A --- it's ---

25 Q How many times prior to trial would you say that you

1 met with Mr. Lake?

2 A We ain't never met. We ain't never met n'an time,
3 beside me when I hired him. We ain't -- we ain't
4 conversate no more until the trial. We ain't never met no
5 more going -- I -- see, Mr. Lake -- see, Mr. Lake was just
6 hired October the 1st. He wasn't my attorney nothing but
7 28 days. They didn't never give him time enough to ---

8 Q Uh-huh.

9 A --- (audio loss) -- to prepare for the trial, I mean,
10 because he -- he -- he was just hired. I had just retained
11 him in October the 1st. And they took the trial to court
12 October the 30th to the 31st.

13 Q So who was your attorney prior to Mr. Lake?

14 A I had Dennis Bolt. And Dennis Bolt ---

15 Q And was ---

16 (Indistinguishable cross-talk)

17 Q --- to represent you?

18 A Ma'am?

19 Q Was he appointed to represent you?

20 A No. He was a paid lawyer -- paid attorney ---

21 (Indistinguishable cross-talk)

22 A See, when I had Mr. Bolt -- when I hired Mr. Bolt in
23 2011 and we had supposed to been having a preliminary
24 hearing in March. But he called me and -- his secretary
25 called me in February; said that it wasn't going be no

1 preliminary hearing. And I ain't never knew nothing about
2 what went on or why they didn't have it.

3 Because I never did have to appear in the court. I
4 ain't never went to court, not one day, until -- till 2014,
5 from 2011. I had never had to appear to court. I had
6 never heard from Mr. Bolt no more or nothing.

7 And so -- and -- and I think it was when they -- they
8 come in July 7 and they had to lock me up. And they -- Mr.
9 Bolt come -- come there to the county jail in July and
10 talked to me. And then in August -- in August he -- he --
11 I think his wife had done pass away during the time that we
12 had never seen each other. And he was feeling kind of bad,
13 and I released him. And that when I hired -- I hired Mr.
14 Lake in October.

15 And so we had never went to court n'an time, not one
16 time ---

17 Q So is ---

18 (Indistinguishable cross-talk)

19 A --- Mr. Lake.

20 Q So is one of your issues ---

21 A Ma'am?

22 Q So is one of your issues also that -- is one of your
23 issues also that you did not get a preliminary hearing?

24 A Yes, ma'am. I mean ---

25 Q Okay.

1 A --- the -- the -- I didn't never had a preliminary
2 hearing. The issue was that -- I read on that the --
3 general-sessions judge, he gave the preliminary hearing
4 during our trial after the pretrial. He had the pretrial
5 first, and then Mr. Lake told the judge during trial that
6 he don't feel that it'll be right to my client for y'all to
7 go on forward with the case when he had -- had never -- he
8 is -- he is entitled to -- to a preliminary hearing. And
9 Griffin [sic] end up giving a preliminary hearing after the
10 pretrial. And so he the one gave probable ---

11 Q And you mean ---

12 A --- I mean, for the trial.

13 Q And you mean Griffith ---

14 A Griffin ---

15 Q --- Judge ---

16 A --- Mr. Griffin.

17 Q --- Eugene Griffith, correct?

18 A Eugene Griffith -- Eugene Griffith.

19 Q Yes. Because we're in front of Judge Griffin right
20 now, who is a different judge, right?

21 A Oh. Oh. Oh, okay. Thank you. I mean, oh, okay. I
22 got ---

23 THE COURT: Yeah. I -- just -- just so the record's
24 clear: I was not the trial judge, and I was not a judge --
25 had not been elected or sworn in as a judge at the time

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1 when this case was tried. There is frequent confusion
2 between members of the bar about my identity versus Judge
3 Griffith's identity. But certainly, I have -- I don't
4 believe I've ever presided over criminal in Eighth Judicial
5 Circuit. So ---

6 THE APPLICANT: But it -- it was Eugene Griffin [sic],
7 Eugene ---

8 THE COURT: Yeah. That's right.

9 THE APPLICANT: Eugene Griffith. My -- my bad. I
10 apologize ---

11 MS. MCMAHAN: Okay.

12 THE APPLICANT: --- for that.

13 THE COURT: That's okay.

14 Q Okay.

15 A It's over ---

16 Q So then, you -- instead of going forward on your trial
17 with Mr. Bolt, you hired Mr. Lake; is that right?

18 A Yes, ma'am. Well, Mr. ---

19 Q Okay.

20 A --- Bolt -- Mr. Bolt ---

21 Q So did ---

22 (Indistinguishable cross-talk)

23 A --- called it -- they never did call the case to go to
24 court when I had Mr. Bolt. They never did call -- I -- I
25 never did have to appear in court, not one day. That was

1 like -- that was like a -- they indicted me -- they say
2 they indicted me in March the 16, 2012 -- say they indicted
3 me then. And -- but I -- I ain't never went to court, not
4 one day. My name wasn't never called up in court about
5 this case.

6 Q So when did you know you were going to trial?

7 A When I -- when I got locked up in July 2014. Then Mr.
8 Bolt come ---

9 (Indistinguishable cross-talk)

10 A And then, when I -- excuse me -- excuse me. And then,
11 when I hired Mr. Lake, I knew that I was going to trial
12 then. Because when I met up with Mr. Lake October the 1st
13 and we pull up the thing on the computer and he was saying:
14 "Your trial is on the docket for this month here." And
15 that was like October 2014.

16 Q Okay. And then, did Mr. Lake ever make a motion to
17 try to get your trial continued so he would have more time?

18 A Well, the -- Mr. Lake did put in a motion during the -
19 - what it say? -- one of the pretrial -- something -- he --
20 he put a -- he asked the judge then: "My client would like
21 for me put in a motion for a continue so that we can get
22 prepared" ---

23 Q Uh-huh.

24 A --- so he can prepare me for trial. Because we had
25 never had no -- nothing to go by on nothing. And so he did

1 ask for it, but Griffith denied it. He told Mr. Lake that
2 he -- he is very experience because he been a prosecutor
3 for years in Lexington and that Trapp was -- ain't new to
4 the case.

5 And so it's -- he said he would deny the continue --
6 continue -- deny the continue because it was over age --
7 the case is over age. And so he denied the continue. And
8 me and Mr. Lake, we ain't never had no time to discuss
9 nothing on the case.

10 Q Did you feel like you had met with Mr. Lake enough to
11 go over with your -- to go over your discovery?

12 A I feel that if we would've had all -- had the
13 discovery in time that we could've went over thing. We
14 would've learned more about the case. Then, we could
15 communicate better about the case. I mean, we ain't had no
16 communication, period, at all. Because they had just gave
17 him ---

18 Q So you don't feel like you had ---

19 (Indistinguishable cross-talk)

20 A Ma'am?

21 Q So you don't feel like you had enough time to sit and
22 talk to Mr. Lake about all the evidence in your case?

23 A No, ma'am, I didn't. Well, we didn't.

24 Q Okay.

25 A We didn't.

1 Q Okay. I got -- so let's move to 1(c). What was the
2 issue with Lynn Black and her testifying?

3 A Ms. -- Ms. Lynn -- Ms. Lynn Black?

4 Q Yes, sir. You -- you said about Ms. Black testifying
5 to the entire chain of custody?

6 A Yes. Because with her ---

7 Q What was the issue ---

8 (Indistinguishable cross-talk)

9 Q --- that?

10 A She -- she testified to the whole chain of custody.
11 She testified to the -- to the evidence when Nick
12 Bouknight, the one that pass away, when he took it from
13 Newberry County to the SLED and he gave it to Ms. Selena --
14 Selena -- the lady at the SLED, but then it went to this
15 other lady -- I done forgot her name anyway. I had it
16 wrote down. But I done forgot her name.

17 It went through her, and then it come to Black -- Ms.
18 Black. Ms. Black testified to everything that -- that come
19 before her. And then she -- she completely changed; said
20 when the evidence had left out of her hand back in December
21 of 2011, and she ain't have a -- she ain't have no more
22 knowledge of the evidence once it left from her to trial.

23 And she testified to the evidence that come in and
24 that -- that -- that, like I said, that mushy-looking brown
25 stuff, what it was, she said that -- when Mr. Lake asked

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1 her during trial that: "Ms. Black, out of your thirty-
2 something years with the SLED, how many time has you seen
3 drugs start deteriorating like do here?"

4 She said: "A handful of time."

5 But I feel that if we could've got a expert analyzer
6 to test the evidence, those -- hold on -- hold on a minute.

7 (Off the record briefly.)

8 THE COURT: Okay. Apparently, we had some ---

9 MS. MCMAHAN: Okay, Mr. ---

10 THE COURT: --- technical ---

11 MS. MCMAHAN: --- Trapp.

12 THE COURT: --- difficulties, but they've been
13 resolved. Go ahead, Mr. -- well, Ms. McMahan, let's kind
14 of take a step back before Mr. Trapp had to step away from
15 the computer. Ask -- ask the last question again, please.

16 Q Your -- did you have a problem with Mr. Lake not
17 objecting to Lynn Black testifying to the entire chain of
18 custody?

19 A Well, I feel that he should've objected to her
20 testifying to what the evidence was, when it'd been out of
21 her knowledge for a few years. But it out her knowledge;
22 she don't know what -- what was what. Because, I mean, the
23 evidence had already been tampered with. It had already
24 been inside the evidence.

25 And so I feel that if we could've got a analyzer to --

1 to test the evidence, that brown, liquid, mushy stuff, we
2 would've had perfect knowledge to what it was. And Ms.
3 Black testified to what it was when she didn't have no
4 knowledge to it.

5 Q Okay. All right. So let's -- let's move on. We've
6 got the items left in your PCR application. And No. 1, you
7 said -- you stated that Mr. Lake was ineffective for
8 denying your right to an impartial jury. Tell the Court
9 about why you're -- feel like Mr. Lake was ineffective
10 regarding the jury.

11 A A jury?

12 Q You stated (as read): "Trial counsel was ineffective
13 for denying applicant's right to an impartial jury." Do
14 you feel that Mr. Lake was okay in his representation of
15 you when it came to pulling the jury?

16 A I -- I thought everything ---

17 Q Or selecting ---

18 A --- was okay ---

19 (Indistinguishable cross-talk)

20 Q --- your jurors?

21 A I thought everything was okay when it come to picking
22 the jurors and all that.

23 Q Okay. We'll move on.

24 MS. MCMAHAN: Your Honor, No. 2 in his application,
25 I'm just going to skip over that one also, in the original

1 application.

2 THE APPLICANT: Number 2?

3 Q Yes, Mr. Trapp. The one -- it says (as read): "Trial
4 counsel failed to challenge and object and preserve your
5 confrontation rights and hearsay assertions." But I
6 believe we've already discussed those, why the amendment
7 that -- amending applications that we've -- that we've
8 already talked about.

9 A That must've been -- that's the one that I -- I
10 amended to you when I first started?

11 Q Yes. This is the one that you attached to your
12 application.

13 A Oh.

14 Q You typed it up.

15 A Anyway, you explain it to me because I ain't got it
16 with me. They rushed me out the dorm. I ain't got it with
17 me. They changed ---

18 Q Okay.

19 A --- the time for the ---

20 (Indistinguishable cross-talk)

21 Q Well, in No. 2 I'm -- we've actually -- of your
22 application that you typed up, we've already actually kind
23 of discussed this issue. So we're just going to skip over
24 this again because we will be repeating the same things.
25 Okay?

1 A Yes.

2 Q So let's talk about No. 3: that he failed to
3 investigate and interview all the witnesses prior to trial.
4 Tell me about that.

5 A Well, the reason why I say he failed to interview to
6 investigate, because, one, I mean, we -- we don't know what
7 went on with nothing with -- with -- with law enforcement,
8 because we ain't never had no evidence of what went on. I
9 mean, who and what, they -- they played part up in -- in --
10 especially when including -- when -- when I called them for
11 a burglary. They changed the burglary into a -- a traffic
12 drugs or some -- I called them for a burglary.

13 Now, I mean, if we would've investigate more into the
14 case, even though I feel that we ain't had enough time. I
15 mean, I'm looking at it both ways. I mean, we didn't ---

16 Q Okay.

17 A --- have enough time.

18 Q And you -- the -- the failure to investigate is more
19 because there were only 28 days between the time you hired
20 him and the time that you guys went to trial, right?

21 A Yes. The reason why I said that right there, because,
22 I mean, 28 days -- we ain't had time enough to go over
23 nothing for the case, nothing, nothing at all.

24 Q Yeah.

25 A We ain't get to discuss nothing about the case. We --

1 we never did have time to meet up with each other.

2 MS. MCMAHAN: Your Honor, also, I believe the number 3
3 on the -- the typed amendments to the application also
4 relate to our second amended application 1(b). And as for
5 No. 4 on the printed application, where trial counsel was
6 ineffective for failure to put the state's case through
7 adversarial testing regarding the drug analysis, etc., I
8 believe we've also touched base on that as well.

9 THE COURT: That -- that ---

10 MS. MCMAHAN: I don't ---

11 (Indistinguishable cross-talk)

12 THE COURT: --- to the -- the ---

13 MS. MCMAHAN: --- additional question ---

14 THE COURT: --- failing to hire an expert for the --
15 to -- to independently test the drugs?

16 THE APPLICANT: Yes.

17 MS. MCMAHAN: Yes, sir.

18 THE COURT: All right.

19 MS. MCMAHAN: I believe we've already touched base on
20 that. So I'm not going to beat a dead horse on that one.

21 THE COURT: Right.

22 MS. MCMAHAN: And -- and No. 5 is, again, alleging the
23 chain of custody regarding Lynn Black. I'm -- again, we've
24 already discussed that one, and so I'm not going to, you
25 know, go over that one again.

1 Number 6 we've already discussed, which was erroneous
2 advice regarding whether or not Mr. Trapp should testify.
3 And I believe Mr. Trapp has already discussed that one,
4 which leads us to No. 8.

5 Q Mr. Trapp, in ---

6 MS. MCMAHAN: I mean, No. 7.

7 Q Mr. Trapp, in No. 7 on your application that you
8 submitted, you talk about a plea deal or offer or anything
9 before you went to trial. What kind of discussions did you
10 have with Mr. Lake prior to trial about any plea ---

11 A When -- when he come ---

12 Q --- deals?

13 A --- in, he told me about a five-year plea. And I
14 turned it down. He -- he -- he discussed that with me. He
15 discussed that.

16 Q Okay. And you did turn it down?

17 A Yes. Because I wasn't guilty of the charge.

18 Q And did you ---

19 (Indistinguishable cross-talk)

20 Q Is that because you wanted to go to trial?

21 A Yes, ma'am.

22 Q Okay. Number 8 was, again -- I think we already
23 talked about this a little bit already. But No. 8, you
24 stated they didn't challenge -- he -- Mr. Lake didn't
25 challenge your statement in violation of *Miranda*. So did

1 you have a *Jackson v. Denno* hearing, or did he already
2 discuss whether or not that your statements given to law
3 enforcement would've come in?

4 A Say that one more time? Say that one more time, Ms.
5 McMahan?

6 Q So No. 7 -- I mean, I'm sorry. Number 8 on your PCR
7 application that you submitted, you discussed that Mr. Lake
8 was ineffective because he didn't challenge the
9 voluntariness of your statement.

10 A That -- that's about when I touched my ---

11 Q You've kind of already ---

12 (Indistinguishable cross-talk)

13 A Yeah. Because I felt that I should've been ---

14 (Indistinguishable cross-talk)

15 Q Say that ---

16 A --- testified -- I feel I should've testified to the
17 *Miranda* -- *Miranda* right, I mean, because when -- when ---

18 Q Uh-huh.

19 A --- when Captain Dennis claimed that he had -- he read
20 me my rights when he know he didn't, because, I mean, he
21 lied on the stand so many time about it. And Mr. Lake had
22 him in -- and I feel that it should've been objected to.

23 Q Okay. And Mr. Lake didn't object to it?

24 A I don't remember no objection being on that.

25 Q Okay. You're not -- you don't know offhand right now

1 if he objected to that or not. But if he did not, you felt
2 like he should've?

3 A Yes, ma'am.

4 Q Okay. So No. 9 on your application, you wrote (as
5 read): ". . . ineffective for conceding guilt in the
6 opening statements." We already kind of talked about that
7 already ---

8 A Yes.

9 Q --- about how Mr. Lake conceded ---

10 (Indistinguishable cross-talk)

11 Q --- crack cocaine, that kind of thing?

12 A Yes.

13 MS. MCMAHAN: And I believe that's it, Your Honor. I
14 think we've discussed every issue.

15 Q But, Mr. Trapp, is there any other issue that you want
16 the Court to know about today that you had with Mr. Lake?

17 A No, ma'am.

18 Q All right. Please answer any questions Mr. Neubauer
19 has for you.

20 A Yes, ma'am.

21 THE COURT: Mr. Neubauer, cross-examination?

22 MR. NEUBAUER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. NEUBAUER:

25 Q Good afternoon, Mr. Trapp. How you doing today?

1 A Good afternoon, Mr. Neubauer. How you doing?

2 Q I'm doing just fine.

3 A Yes, sir.

4 Q Could you -- you've testified that you didn't really
5 have a chance to meet with your attorney in this case. Do
6 you know how many times you guys met during his
7 representation?

8 A How many time I what?

9 Q You met with Mr. Trapp prior to going to trial.

10 A We -- we ain't met n'an times. From the time that I
11 hired, we ain't met no more until trial date.

12 Q You're claiming you never met with him at all?

13 A We ain't never met one day.

14 Q Did you have any phone calls with him?

15 A When -- I remember when I got a phone call from his
16 secretary when they had called me to court one time and
17 they issued a bench warrant on me. And -- and I had called
18 his secretary and told them that they had done put a bench
19 warrant on me. And he -- he called me and told me that the
20 bench warrant had done been lifted. And the next time
21 after that right there, we was in -- and we were going to
22 trial.

23 Q Okay. And did you have -- do you remember discussing
24 any of the discovery in this case at all with Mr. Lake?

25 A We -- we had never had no discovery. I ain't get the

1 discovery till I come to prison.

2 Q Okay. And did you and Mr. Lake ever discuss your
3 right to testify or right to remain silent in this case?

4 A Only thing -- only thing that me and -- me and Mr.
5 Lake discussed, that -- that -- by when I asked him about
6 testifying and he said that he don't want me to get on the
7 stand because he may cross me up because with my prior
8 conviction.

9 Q Okay. And did you agree that you shouldn't testify?

10 A Well, during the time, that was my first time going
11 through a trial. So I think -- I thought it was to the
12 best ability, I mean, during the time, to listen to my
13 attorney, because I didn't know no better.

14 Q So you guys came to a decision prior to trial that you
15 were not going to testify, correct?

16 A Did I say it?

17 Q Did you and Mr. Lake agree that you weren't going to
18 testify at trial?

19 A Well, once he told me that he -- he -- he don't want
20 me to get on the stand, I just left it like there. Because
21 like I say, I -- I was new to a trial; that I ain't know no
22 better. During that time, yeah, I did.

23 Q All right. And you said there was a five-year plea
24 offer that was brought to you by Mr. Lake. Why did you
25 decide to reject that plea offer and go to trial?

1 A Because I wasn't guilty of the charge. If I been
2 guilty of the charge, I would've took the five years. It
3 wasn't that I was scared of doing time, because I done did
4 time before. It just that I wasn't guilty of the charge
5 because I had called them for a burglary. And they changed
6 my burglary that I call them into a trafficking charge.
7 And I know I wasn't guilty of this.

8 Q Now, do you remember, before your trial started, Mr.
9 Lake challenging the drugs through -- through your pretrial
10 motions?

11 A They -- they did a -- they did a -- they -- they did a
12 pretrial thing. And I think everything that he tried to
13 challenge, that the judge denied everything during the
14 pretrial motion.

15 Q But he did challenge the -- he try to suppress the
16 drugs in this case?

17 A I -- I -- I think he -- I think he did try to suppress
18 the drugs in -- in a pretrial.

19 Q And do you remember Officer Dennis being called to
20 testify about the chain of custody?

21 A By who Officer Daniel?

22 Q Officer Dennis, the -- he was Captain Dennis at the
23 time of your trial?

24 A Yes. I remember he -- he testifying. Yes, sir.

25 Q And then, Lynn Black of SCDC, she was also called to

1 testify about the chain of custody. Do you remember that?

2 A Yes, sir.

3 Q And then, do you remember finally them calling Officer
4 Ben Chapman to testify regarding the chain of custody?

5 A Well, he -- he testified to the part about the
6 evidence that -- really, be honest with you, he really
7 ain't played no part in it, because he -- he was new to the
8 -- the change [sic] custody thing. So he was at the end of
9 it; that he really ain't had no knowledge of nothing that
10 was going on in the chain.

11 Because he -- he ain't never played -- be honest with
12 you, Captain Dennis ain't had no part in the change,
13 because he didn't play no part in it. He just was speaking
14 on what Mr. -- Mr. Bauknight would've done. He didn't play
15 no part in the chain. He ain't had nothing to do with
16 evidence. But the judge still allowed him to testify to
17 everything that Nick would've done or how Nick would've
18 done it or how Nick did it.

19 (Indistinguishable cross-talk)

20 Q Remember -- sorry. Didn't mean to cut you off, sir.

21 A You good. You good.

22 Q Oh. Do you remember why Mr. Bauknight wasn't there to
23 testify at your trial?

24 A Mr. Bauknight? He pass away. He -- he killed
25 hissself.

1 Q So they needed somebody else to testify to the chain
2 of custody; is that correct?

3 A But -- well, but it -- it -- it should've been
4 somebody with some knowledge that know what was going on
5 with the chain. He -- they ain't had nobody to testify to
6 the change. They said during trial that Nick was the only
7 that ever had possession of the evidence.

8 So couldn't nobody else testify to the chain. Because
9 they ain't had no knowledge of what was going on with the
10 chain. So the judge still ---

11 Q Did it ---

12 A --- allowed everything to go on with the chain during
13 trial on hearsay. And then, with top it all with every
14 that, we ain't never had a chance to confront none of the
15 accuser against us. Because they ---

16 (Indistinguishable cross-talk)

17 A --- knowledge to it.

18 Q And do you remember Mr. Lake arguing a pretrial motion
19 to that effect, saying that Captain Dennis was being called
20 to testify to something that he might not have personally
21 been involved with or he might not have personal knowledge
22 to?

23 A When -- when Mr. Lake -- he -- he asked the judge
24 about a pretrial -- a pretrial hearing and -- and the judge
25 gave a pretrial hearing.

1 Q Okay. Now ---

2 A I feel -- I felt that when -- when the judge were
3 allowed to give the pretrial hearing, I should've --
4 should've -- I -- I felt that it should've been objected
5 to, because, I mean, I didn't never know -- I read that on
6 some pages that a -- a -- a pretrial hearing had to be
7 conduct by the magistrate judge.

8 Q And just briefly, we'll switch gears here. Do you
9 remember, at the start of your hearing, Judge Griffith, in
10 his opening comments to the jury, saying that you have a
11 right to testify and that decision is up to you?

12 A During -- during the open -- open -- what's it called?
13 But he -- he was -- he was instruct the jury about
14 something that, I mean, I don't remember that part there.

15 I know he ain't never questioned me about the -- the
16 right testify. I mean, it doesn't matter what he
17 questioned somebody else. He's supposed to put me up under
18 oath and put me up on the record and ask me that. But he
19 didn't.

20 Q All right.

21 MR. NEUBAUER: Beg the Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 (Off the record briefly.)

24 MR. NEUBAUER: I have no further questions at this
25 point.

REDIRECT EXAMINATION BY MS. MCMAHAN - TOABY TRAPP

45

1 THE COURT: Ms. McMahan, any redirect?

2 MS. MCMAHAN: Yes, Your Honor, just briefly.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q Mr. Trapp, at -- at some point you talked to one of
6 the jurors, and they indicated to you an issue related to
7 Mr. Griffith; is that correct -- Judge Griffith?

8 A Ma'am? You talking to me?

9 Q Yes, sir.

10 THE COURT: Yes, sir. She's asking -- she's asking
11 you questions on redirect.

12 THE APPLICANT: Oh, okay.

13 A Go ahead. I ain't hear you. I'm sorry.

14 Q So did you ever hear from a juror named Ms. Litronda
15 Coleman?

16 A Yes. When -- when my lawyer -- them got investigator
17 to go investigate her about the judge knocking on the jury-
18 room door. And ---

19 Q Okay. So don't tell us anything she told you. But
20 you did hear about hear?

21 MR. NEUBAUER: Your Honor, I'd object at this point.
22 This is beyond the scope of my cross-examination.

23 THE COURT: Well, it -- it was -- I understand, Mr.
24 Neubauer. But it was included in the application. I mean,
25 I've read this -- this juror's statement. So just in the

1 interests of -- of having all of these allegations raised,
2 I'm -- I'm going to overrule your objection. Like I said,
3 I -- I'm -- I've already read it. I know where Ms. McMahan
4 is going, so ---

5 MR. NEUBAUER: Yes, sir.

6 THE COURT: --- we can -- can cover this ground
7 relatively quickly.

8 MR. NEUBAUER: Yes, Your Honor. Thank you.

9 Q And -- and, Mr. Trapp, without telling us anything Ms.
10 Coleman may have talked to you about, what -- did you ever
11 get a statement from an investigator regarding Ms. Coleman
12 and Judge Griffith knocking on the door?

13 A Yes, ma'am. I got a statement, yes, from -- from my
14 lawyer that the investigator got from Ms. Coleman. Yes,
15 ma'am. I got one.

16 Q Okay. All right. Thank you.

17 MS. MCMAHAN: Judge, I would just ask that you review
18 the statement that's attached to our amended application.

19 THE COURT: I've -- I have reviewed ---

20 MS. MCMAHAN: And I have ---

21 (Indistinguishable cross-talk)

22 THE COURT: --- I will -- when -- when I re-review
23 these matters, I will include that in my -- in my analysis
24 of the issues. So thank you very much, Ms. McMahan.

25 Any further questions for Mr. Trapp?

RECROSS-EXAMINATION BY MR. NEUBAUER - TOABY TRAPP 47

1 MR. NEUBAUER: Could I just briefly recross regarding

2 ---

3 MS. MCMAHAN: None ---

4 MR. NEUBAUER: --- the ---

5 MS. MCMAHAN: --- Your Honor.

6 MR. NEUBAUER: --- issue ---

7 THE COURT: Yes, sir, Mr. Neubauer.

8 MS. MCMAHAN: I'm sorry.

9 MR. NEUBAUER: You're fine.

10 RECROSS-EXAMINATION

11 BY MR. NEUBAUER:

12 Q Mr. Trapp, you said that an investigator looked into
13 Litronda Coleman about her service on the jury. Do you
14 know if that investigator ever spoke with any of the other
15 jurors?

16 A No, sir, I do not know.

17 Q And you don't know if that investigator spoke with the
18 bailiff who would've been stationed outside the jury-room
19 door?

20 A Well, I mean, no, sir. But my -- but my concern with
21 that right there, I mean, I feel that Litronda -- Litronda
22 was on the jury. So, I mean, she was one of the 12 jurors
23 that was on the -- on the -- on the -- on the deliberations
24 that, when she gave this to the -- to the investigator, I
25 feel that her affidavit should speak for itself.

1 Q Thank you.

2 MR. NEUBAUER: I have no further questions at this
3 time regarding this allegation.

4 THE COURT: All right. Thank you, Mr. Neubauer.

5 Ms. McMahan, you may call your next witness.

6 MS. MCMAHAN: Your Honor, the applicant rests.

7 THE COURT: All right. Thank you very much, Ms.

8 McMahan.

9 Mr. Neubauer, you may call your first witness.

10 MR. NEUBAUER: Thank you, Your Honor. The state would
11 call Dietrich Lake.

12 THE COURT: Good afternoon, Mr. Lake. If you could
13 raise your right hand for me, sir.

14 MR. LAKE: (Complied.)

15 DIETRICH LAKE, having been first duly sworn,
16 testified as follows:

17 THE COURT: All right. Just remember to speak up.
18 Answer any questions Mr. Neubauer has for you.

19 MR. LAKE: Thank you.

20 MR. NEUBAUER: Thank you. May it please the Court.

21 DIRECT EXAMINATION

22 BY MR. NEUBAUER:

23 Q Good afternoon, Mr. Lake. How long have you been
24 practicing law at this point?

25 A Probably about 21 years.

1 Q And ---

2 (Indistinguishable cross-talk)

3 Q Twenty years?

4 A Yes, sir.

5 Q Congratulations. How much of that has been criminal
6 law?

7 A Probably majority of it. Part of it as a prosecutor,
8 part of it as doing defense work.

9 Q All right. And you were retained by Mr. Trapp in this
10 matter; is that correct?

11 A I was.

12 Q And do you remember how these charges -- or this
13 charge against Mr. Trapp arose?

14 A By the time he came to me, the charges had been
15 outstanding for a while, I think, back in -- in 2011. So I
16 think, just as he's testified, he -- he came to me sometime
17 the first part of October of -- of 2014. And that's where
18 my involvement -- I kind of became involved.

19 Q All right. Now, he's made a statement today that he
20 never had a preliminary hearing. Did he ever tell you
21 about that or make a complaint about that during your
22 representation?

23 A I don't recall. By that -- by the time that I got
24 involved, the case was already indicted. So at the point
25 he's already lost the right to a preliminary hearing. So

1 that would've been something that he would've addressed
2 with this previous counsel, which would've been Mr. Bolt.

3 Q Okay. And you were appointed in this case around --
4 pardon me. As far as, like, the factual background of how
5 Mr. Trapp ended up being charged with trafficking, do you
6 remember how this charge came about?

7 A Generally.

8 (Indistinguishable cross-talk)

9 A Yes.

10 Q Could you -- could you state the facts regarding the
11 charge?

12 A My understanding that, I guess, this incident happened
13 at his residence at that time. And I think he had reported
14 that a burglary had occurred at his residence. Law
15 enforcement arrives at his -- his residence. They go into
16 the house; they discover evidence of, I guess, a burglary.
17 Then they -- there becomes a issue, I guess, once they get
18 in there. Do they find drugs or not in plain view?

19 At that particular they believe that they founds drugs
20 in plain view. Then another investigator is called out to
21 the scene. They discover the drugs in plain view. They
22 have a search warrant.

23 And after that, they seized those particular drugs
24 that were indicated in plain view. And they also secure
25 some other drugs that were -- I think may have been on the

DIRECT EXAMINATION BY MR. NEUBAUER - DIETRICH LAKE 51

1 floor or something along those lines within the house. So

2 ---

3 Q And do you remember when you received discovery in
4 this case?

5 A It was late. I would probably bet you that it was
6 maybe the Friday before they went to trial and things of
7 that sort.

8 Q Was that the only time that you received discovery in
9 this case? Did it all just come in, in bulk right
10 beforehand?

11 A No. I think I may have gotten some things from them.
12 But they never gave me everything. I think, by the time
13 that Friday arrived, I may have gotten something but it
14 wasn't complete discovery. And so as I think I brought
15 that to the attention of the solicitor that Monday, I
16 guess, the week of trial and again that Wednesday of the
17 week of trial, that, you know, I was missing some items.
18 And that was really kind of the basis of why, you know, I
19 attempted to have this matter continued.

20 Q And did you know if discovery was ever given to his
21 prior counsel beforehand?

22 A I don't think he ever got complete discovery because
23 what he -- I think he may have had some things. But I
24 believe it may have been the same things that I got that
25 Friday. It didn't have anything -- there was -- the most

1 important part of the discovery were the -- the
2 photographs, which was kind of critical. And that wasn't
3 included.

4 And I think they didn't have the photographs maybe of
5 the initial responding officer. I know there was no chain
6 information or anything along those lines. So he may have
7 just had maybe the initial incident report, which is kind
8 of what I had going into, I guess, what would be that trial
9 that next week.

10 Q Did you ever get a file from his previous counsel when
11 you started representing him?

12 A No. I -- I don't think I've ever -- I -- I don't
13 think I ever talked to Mr. Bolt regarding that. I think
14 once I think he -- I think Mr. Bolt, at that time, had been
15 having some health issues, if I remember correctly why --
16 that's why he came to me. Toaby -- I think that's why he
17 got off the case and then Toaby ended up coming to me, Mr.
18 Trapp.

19 And I don't really recall any additional information
20 that he would've had. I think Mr. Bolt gave Mr. Trapp what
21 information that he had. And that's what was given to me
22 initially, which turned out to be the same thing that the
23 -- I think the state gave me initially.

24 Q Okay. And we'll just start going through the
25 allegations from his initial application at this point.

1 Did you -- or did applicant ever raise any issues with
2 potential jurors not responding to questions during *voir*
3 *dire*?

4 A I don't recall that at all as it relates to that
5 particular -- I think the jury was kind of pretty
6 straightforward. I don't recall any specific issues. I do
7 recall having a conversation with him, you know, as we
8 selected jurors. And, you know, I don't recall any juror
9 not answering any specific questions, because I would've
10 brought that up to the -- to the attention of the Court and
11 had the judge have them answer the question.

12 Q And during the course of pretrial and the trial
13 itself, do you remember raising any challenges to possible
14 confrontation rights with Officer Spreng and Investigator
15 Bouknight not being at that trial?

16 A Yeah. I -- I did raise that. You know, I don't know
17 whether I specifically raised it as a *Crawford* issue at the
18 time. I know I raised it as relates to their testimony and
19 the documents that were allowed to kind of come into
20 evidence. Because I thought that it was evidentiary in
21 nature. And so I -- I thought it should've been excluded.

22 So I did raise those issues at the time. But I don't
23 think I ever used the word specifically *Crawford*. And I
24 think maybe that's what the issue may be.

25 Q And you'd -- I believe you referenced the officers not

1 being present and during the state's case-in-chief you
2 questioned why Officer Spreng was not brought in to
3 testify; is that correct?

4 A I -- I know with Mr. Bauknight, I knew he had -- I
5 knew he had passed. I wasn't exactly sure when he died,
6 but I knew he had died. I think with Spreng, I was not
7 aware that he was -- he would not be present or wasn't with
8 them until maybe the day of. And so I may have put it on
9 the record, but I'm not 100 percent sure in terms of
10 inquiring as to where he was. But I know, once I had
11 discovered that he wasn't going to be present, I think
12 that's when I raised a lot of those issues as it relates to
13 Mr. Dennis allowed, you know, to testify as to certain
14 things.

15 Q Okay. And did you feel a need to -- sorry. We'll
16 just -- real quick, do you remember how many times you met
17 with Mr. Trapp prior to this trial?

18 A I thought I met with him at least once. I thought I
19 met with him that Friday before. Because I think there was
20 the issue about, you know, what all they may have had, what
21 they may be missing. I think I might've talked to him. It
22 wasn't an extensive conversation because I didn't have all
23 the discovery at that particular moment.

24 But I do kind of remember meeting with him that week
25 before, that, I want to say, Friday. Because typically, I

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1 will -- if I know there's -- it may be a trial or something
2 along those lines, then I will try to meet with the client
3 before then, just to make sure we're all on the same page
4 and things of that sort. But in this case, I -- I know it
5 would've been the week of. I'm thinking Friday. I just
6 don't think it would've been a -- a lengthy conversation at
7 that point.

8 Q And you made a motion for a continuance on the record
9 at this point, indicating that you'd only been appointed
10 less -- or you'd only been retained less than a month prior
11 to this trial, correct?

12 A Correct.

13 Q And was that -- or that continuance was ultimately
14 denied; is that correct?

15 A Correct.

16 Q Now, during the time that you were retained, did you
17 ever reach out to any of the state's witnesses in this
18 case?

19 A No. At -- like I said, at that point I didn't have --
20 only thing I had were the items that I guess Mr. Bolt had
21 given to him. So I didn't have much in the way of knowing
22 who to talk to and -- and things of that sort. The only
23 thing I was aware, I guess, at that point is that
24 Investigator Bauknight was deceased.

25 I knew there were officers typically involved in the

1 case, so you have their reports and stuff along those
2 lines. So I know I didn't reach out to talk to any
3 particular person.

4 Q Did you feel that meeting with or interviewing any of
5 the witnesses prior to trial would've been helpful?

6 A I don't think necessarily the -- the officers. I
7 would've definitely this -- I guess, once the trial
8 would've started, I probably would've wanted to talk to
9 Investigator Spreng. But the other officers, probably not.
10 Maybe Captain Dennis, just based upon his testimony.

11 But typically, you know, they testify from their
12 reports. So I would've anticipated that they would testify
13 basically on -- on that information.

14 Q And is that what happened in this case, that they just
15 testified mainly -- or Detective Dennis mainly testified
16 from the report -- or compiled by Spreng and Bauknight?

17 A I'm not sure. You know, if you look at the transcript
18 of that record, I mean, I -- it was kind of a
19 confrontational case with -- with Captain Dennis, in terms
20 of his testimony and things that he was testifying to.

21 So, you know, I thought he was testifying to things
22 that, you know, weren't contained in any reports, whether
23 that be his report or Investigator Bauknight's report. So
24 it was -- again, it was one of those issues where it was
25 very confrontational, so ---

1 Q You -- so you'd object -- or you felt that Detective
2 Dennis was testifying outside of his -- outside of the
3 report. Did you object to these throughout the course of
4 the trial?

5 A I did.

6 Q And ultimately, were those objections sustained, or
7 were they overruled?

8 A I think maybe one or two may have been sustained;
9 others may have been overruled, I believe.

10 Q And you -- you extensively challenged the chain of
11 custody in this case; is that correct?

12 A I did. Correct.

13 Q Even through the testimony of Detective Dennis and the
14 SLED officer, Lynn Black?

15 A As I recall, I did.

16 Q And ultimately, you objected to the state moving the
17 drugs into evidence following the testimony of Lynn Black;
18 is that correct?

19 A Yes. The physical drugs. Correct.

20 Q And at that point the state was required to establish
21 a full chain of custody up until the point of trial?

22 A Correct. And -- and we're talking about the -- the
23 specific -- because I think, by that time, they've already
24 testified as to drugs through Ms. Black. But I think the
25 actual physical drugs themselves is where it was an

1 additional requirement that Investigator Chapman come in
2 and testify to that part.

3 Q Yes. And did you feel any need prior to trial to
4 having the drugs analyzed by a independent analyst?

5 A I -- that's not something I have typically done, as
6 someone who, you know, prosecuted and on this side, you
7 know. But, you know, we never saw the drugs initially. I
8 didn't see the drugs until, I guess, Friday, when -- when
9 this case was -- when the officer -- investigator brought
10 it in there. Just in lieu of the kind of condition that it
11 was in, it might've been beneficial at that point to do
12 that.

13 I know I didn't do it at that particular time.
14 Because I just expected it to look the way I anticipated it
15 would look. So -- but that's about it. But I don't
16 typically do that. But that may have should've been done
17 in this particular case, just on the condition of it.

18 Q And regarding the advice you gave Mr. Trapp to
19 testify, do you remember the conversations you had about
20 him testifying?

21 A Probably in the line of that, and if you're talking
22 about testifying at trial versus testifying in a -- in a
23 *Denno* hearing, I know at trial I would've cautioned him and
24 probably recommended that he not testify, based upon the
25 fact that he may open the door to certain things. Because

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1 the biggest issue at that particular moment was whether had
2 made a -- a statement to Captain Dennis at that point.

3 And I thought that I had sufficiently, through, I
4 guess, what would be Deputy Epps, kind of established that,
5 hey, there was really no communication; there was, you know
6 -- they never saw any *Miranda*; never saw any of those kind
7 of things. So I didn't know how much benefit he would get
8 from testifying, when we had already gotten some of that
9 information out through another officer who was at the
10 scene.

11 Q All right. And let's jump to -- as far as the
12 confession that he apparently gave in this case, there was
13 a *Jackson v. Denno* hearing prior to the trial, correct?

14 A Correct.

15 Q And do you recall why you did not call Mr. Trapp to
16 testify during that hearing?

17 A Not specifically. I don't on that particular issue.
18 Because it -- it'd be a separate issue than -- than -- than
19 at trial. I -- we probably would've talked about it, but I
20 don't remember any specific conversations regarding that
21 particular *Denno* hearing.

22 Q And I believe Mr. Trapp's stance is that he didn't
23 voluntarily give a confession. Did you challenge the
24 voluntariness of his confession during that *Jackson v.*
25 *Denno* hearing?

1 A Yes. Not only, you know, I challenged that, but then
2 as to whether actually a statement was even made. Because
3 I think I was able, through some of the testimony --
4 because there was no reporting of it, no witnesses of it;
5 it wasn't documented in any form or fashion and -- and
6 things of that sort.

7 So, you know, we were challenged from the -- you know,
8 not -- not necessarily it was just a -- a nonvoluntary
9 statement, but also the fact that there was no evidence
10 that any statement was ever made. That's kind of how I
11 approached it.

12 Q Okay. And as far as -- there's a allegation that
13 you'd conceded that alleged drugs found were crack cocaine
14 and you did this without his knowledge. Did you guys have
15 a discussion regarding the drugs in this case prior to
16 trial?

17 A We would've talked about it. Do I remember the --
18 recall the specific conversation? No. But I -- from the
19 way we were approaching the -- this particular case is
20 that, you know, those weren't his drugs. Even though he
21 might've been found in the house, those were not his drugs.

22 And so, you know, my whole issue was that I thought if
23 you tried to deny that they were, in fact, drugs, and then
24 the -- you know, it goes to the jury and it -- and you have
25 the expert testify that they're drugs, you just lose

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1 credibility at that particular -- at that particular point.

2 So it was more a strategy as it relates to the issue of
3 whether you're going to challenge it at that particular
4 stage, whether something was drugs versus not.

5 Q Okay. The stance, generally, was that it -- you
6 weren't challenging whether or not they were drugs; you
7 were just ---

8 (Indistinguishable cross-talk)

9 Q --- they were?

10 A Correct. That they were -- that -- whether they were
11 his or not; not so much the fact that they were, in fact,
12 drugs.

13 Q And prior to trial, was -- did you speak with the --
14 Solicitor Scott about a possible plea in this case?

15 A Not before trial. We're talking about maybe that
16 Thursday, when I appeared, when I was advised that they
17 were going to call the case for trial. That's when there
18 were a number of conversations about potentially trying to
19 see whether there's a resolution to this matter or not.

20 But again, you know, we're still -- we're fighting
21 against time. Because the -- the judge is on the bench and
22 he's ready to go. But he's still giving us a chance --
23 chance to talk.

24 So we had conversations. I know he -- I just heard
25 his testimony that he thought it was five. Somehow I

1 thought it was three, in terms of what the last offer was.
2 But I do recall kind of at least trying to speak to those
3 guys about potential resolutions, if we could -- if they,
4 you know, couldn't continue the matter.

5 Q And any plea offer that was given to you, you told Mr.
6 Trapp about, correct?

7 A Correct.

8 Q And did he ultimately decide that he didn't want to
9 take a plea offer in this case?

10 A He always maintained that he was innocent of this
11 particular matter.

12 MR. NEUBAUER: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Off the record briefly.)

15 Q Now, regarding the photos in this case, did you have
16 any issue with those photos that were ultimately
17 introduced?

18 A There are -- there are two sets of photographs. One
19 was done by Epps. And I don't really -- there wasn't an
20 issue with those particular photographs.

21 Now, there was an issue with the photographs that were
22 alleged to have been taken by Investigator Spreng. Because
23 there became an issue as to sequencing, timing, and things
24 of that sort. I do recall -- you know, when I got the
25 photographs, I think I got them that Wednesday night.

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1 And I know Mr. Trapp said something about I e-mailed.
2 That -- I e-mailed them about the sequencing at that
3 particular moment, just to kind of figure out, okay, are
4 these things in order? And then, only when we got to
5 court, I guess, that next day did the -- I guess the
6 state's position changed, in terms of sequencing, time,
7 date, and all those kind of things that were kind of
8 connected to it. So it became an issue that kind of flared
9 up throughout, I guess, pretrial and throughout the trial.

10 Q And did you raise any questions about the sequencing
11 of those photos during pretrial or trial?

12 A Yes. I raised the issues. I know I mentioned that --
13 you know, inquired as to the location of the camera, the
14 digital camera. Of course, Spreng is not there.

15 At the -- I do recall, at some point -- but it
16 would've been after this trial -- sending something to the
17 sheriff's department, requesting a copy of the -- the --
18 that they at least preserve the -- I guess the camera, the
19 sequencing, and things of that sort. Because that was
20 critical to Mr. Trapp's position -- and our position,
21 really -- that when you first came into that room where
22 they alleged the drugs are found, there was no evidence in
23 those -- in those pictures that there were drugs there.
24 So the sequencing was very important at that particular
25 stage.

1 Q And -- and during opening statements, Solicitor Scott
2 ended up referencing the weight of the drugs. Did you feel
3 that that warranted an objection at that point?

4 A No, not at that point. I mean, later on, once we --
5 once it's kind of been liquified and I -- and I found out
6 that it's liquified, then it becomes an issue at that
7 particular moment. But at that stage, it was my
8 understanding -- because again, I hadn't seen the drugs,
9 because they hadn't brought the drugs to us. So I'm
10 assuming it's still in the same condition that it was when
11 they were -- when they were tested.

12 Q And do you recall discussing during -- so you
13 discussed during -- or before trial whether or not Mr.
14 Trapp would testify at trial, correct?

15 A Repeat that question again?

16 Q Prior -- or during pretrial conversations with Mr.
17 Trapp, you talked to him about whether or not you felt he
18 should try -- or testify or whether or not he wanted to
19 testify?

20 A Yeah. We would've done that right around that time
21 frame. I mean, any pretrial, probably at the -- the *Denno*,
22 even though I don't have a specific recollection of it, we
23 would have some kind of conversations about whether he
24 would've testified or not testified.

25 Q Did Mr. Trapp indicate to you that he wanted to

1 testify in this case?

2 A Don't recall specifically. Because I just know that
3 for me, my recommendation is that he would have not
4 testified. I don't specifically recall him asking me to
5 testify or anything along those lines or telling me that he
6 wanted to testify.

7 Could he have done that? Maybe. But I don't recall
8 it.

9 Q And -- and following your -- or your motion for a
10 directed verdict after the state closed their case, did you
11 request that the judge question Mr. Trapp about his right
12 to testify?

13 A Oh, it happened that -- you know, I think with the
14 timing of everything, it just kind of flowed, to be quite
15 honest. So I just -- I actually went back to just kind of
16 look at -- you know, I don't even think we -- the state
17 even rested -- we rested, actually. I'm sorry. I don't
18 even think we rested or anything on those lines. I just
19 remember, at the conclusion of the -- of the -- of the --
20 the state's case, we just kind of almost went into the
21 closings.

22 Q And finally, during jury deliberations, there's an
23 allegation by one of the jurors that Judge Griffin [sic]
24 knocked on the jury-room door and the jurors they needed to
25 come to a conclusion. Do you remember ever hearing

1 anything about that ---

2 (Indistinguishable cross-talk)

3 Q --- trial?

4 A No, I never heard of that at all. I'm familiar with
5 Judge Griffith, so I've never heard that. And I've never
6 know him to do that specifically.

7 Q Have you ever heard of or -- or have you ever heard of
8 Judge Griffin [sic] knocking on the jury-room door at any
9 point during your legal career?

10 A No. I -- like I say, I've known Judge Griffith for a
11 long time. So he's always been a great judge and -- and
12 things of that -- so we -- you know, I mean, this would be
13 -- in this particular case, I don't recall call this -- him
14 ever going to a -- to a door in this particular case or
15 doing anything that I would say is improper or anything
16 along those lines.

17 Q And up until this allegation was raised on October 8,
18 2019, have you ever heard any -- or from anybody that the
19 jury felt pressured and that Judge Griffin knocked on the
20 door and told them to -- or Griffith knocked on the door
21 and told them to come to conclusion?

22 A Not from -- (audio loss) -- not from, you know, any of
23 the jurors or anything along those lines. It seemed like I
24 do, I guess -- this is not this the first time this matter
25 was up for, I guess, a hearing. It -- it -- it seemed like

CROSS-EXAMINATION BY MS. MCMAHAN - DIETRICH LAKE

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1 I recall someone bringing that to my attention.

2 And I think I may have told them the same thing: that
3 I -- I had never heard that before. I never saw it. I
4 never, ever experienced it with Judge Griffith. So no. I
5 didn't necessarily put much weight into that.

6 MR. NEUBAUER: Beg the Court's indulgence for just one
7 second.

8 THE COURT: Yes, sir.

9 (Off the record briefly.)

10 MR. NEUBAUER: I have no further questions at this
11 point.

12 THE COURT: All right. Thank you, Mr. Neubauer.

13 Ms. McMahan, cross-examination?

14 MS. MCMAHAN: Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. MCMAHAN:

17 Q We were alluding to the state of the drugs at the time
18 of the trial, and that was sort of the first time you had
19 seen them. Have you seen drugs kind of deteriorate or
20 liquify before this?

21 A That was the first time I'd ever saw that. That's why
22 I was ---

23 Q Okay.

24 A --- kind of shocked a little bit and questioned the --
25 the -- the chemist about that. I -- I know she testified

1 that she had seen that before. But in all the years that
2 I've kind of prosecuted and done defense work, I had never
3 seen that before.

4 And I think I maybe even used that again to kind of
5 renew again my arguments that there had been some sort of
6 manipulation; that it wasn't the same thing that was tested
7 and the same thing at court. So I think I probably renewed
8 by chain-of-custody argument shortly thereafter her
9 testimony.

10 Q Do you think the liquification may have affected the
11 weight?

12 A Probably weight, and might've affected whether they
13 were, in fact, drugs. Because same thing -- because I had
14 never seen that before. And -- and so it kind of surprised
15 me. Because like I said, I didn't see it until the officer
16 brought it, and the was the last witness. Because I had
17 always challenged, you know, certain things.

18 So when I saw it was the first time that, you know,
19 the -- I guess the -- maybe during the time -- well,
20 actually, it would've been after Lynn Black testified, to
21 be quite honest. So -- and I think Chapman may have been

22 ---

23 Q Okay.

24 A --- the last witness.

25 Q And I believe Mr. Neubauer already alluded to this,

1 the issue with Judge Griffith knocking on the jury-room
2 door. Are you usually in the area of the jury-room door
3 during deliberations?

4 A I mean, no. But this right here, I -- I mean, I
5 remember this case because we didn't try it in the
6 courtroom. We tried it in of the -- it may have been where
7 they do city meetings or something along those lines. So
8 it was really a small area where we even tried this case.
9 Because I remember that the jurors were just sitting on
10 chairs or something like that.

11 So I know I -- of course, I'm not sitting there,
12 listening to what, you know, a judge is doing or anything
13 on those lines. But we're all in kind of close proximity.
14 And they were in another room. But, you know, I probably
15 would've heard a knock on the door or something along those
16 lines. I don't ever recall that specifically happening.

17 Q So you didn't actually try this in the courthouse, the
18 county courthouse?

19 A No. It was tried in -- I -- I think one of the
20 municipal buildings next door to the courthouse. It was a
21 -- I know it was across the street. But I'm not -- maybe
22 like little annex building or something along those lines.
23 I remember that much.

24 Q Was the courthouse undergoing, I mean, renovations or
25 something? Is that why it was tried over there?

1 A I'm not 100 percent sure that they were -- I don't --
2 they had -- they had mold problems with this place at one
3 point. So I don't know if it was mold, asbestos, or
4 remodeling. So I think it might've been a combination of
5 all of the above.

6 Q Okay. And did you see any problems with having it
7 tried in the municipal building?

8 A Physically, probably not. I mean, we were all up
9 close. But, I mean, I've tried cases in small courtrooms.
10 So it was like we hadn't -- I haven't tried a case in small
11 courtroom before.

12 Q Okay. And ---

13 MS. MCMAHAN: Just Court's indulgence, Your Honor.

14 THE COURT: Yes, ma'am.

15 (Off the record briefly.)

16 Q So you don't specifically recall Mr. Trapp telling you
17 he wanted to testify?

18 A No. I don't specifically recall. I mean, I always
19 know with what I do, it's -- it's -- you know -- and again,
20 this is -- we were really on a time crunch with this,
21 because I'm -- again, I'm just getting the discovery and --
22 and at the same time that he's listening. So he was
23 correct that, you know, we didn't have a lot of time to do
24 some of the things that we normally would do.

25 But as it relates to testifying, you know, I will --

1 I'm going to always talk to my client about whether I think
2 they should testify or not testify. And it's -- it's up to
3 him to -- whether he's going to do it or not. But my
4 recommendation, based upon certain factors, I'm going to
5 say: "Hey, it's my recommendation that you don't testify."

6 So I don't recall him saying: "Hey, I want to testify
7 at trial. Hey, I want to testify at the *Denno* hearing."

8 Q And why would you have told Mr. Trapp not to testify?

9 A Well, I know at trial I would've been afraid that he
10 would've opened the door to certain things that probably
11 could've maybe made it easier for a jury to -- to convict
12 him. And it would -- it -- it would've put him in a very
13 tough spot. Because in this particular situation, I think
14 the allegation was that it happened at his house in his
15 bedroom and these items were found there.

16 So from a factual standpoint, he would've had to try
17 to explain things that are hard to say. He would've
18 basically had to say that he believed the officers planted
19 the drugs and things of that sort. And I just think, at
20 that stage, it would've been a little harder for a jury to
21 say: "I -- okay, I believe that kind of thing."

22 So from that standpoint, looking at it practically, I
23 -- you know, it was my recommendation that he didn't
24 testify because I didn't think the jury would believe that,
25 even though the photographs ---

1 (Indistinguishable cross-talk)

2 A --- something differently.

3 Q Okay. And based on his rap sheet, did you think there
4 was a problematic issue maybe with character evidence
5 coming in?

6 A No, not character evidence. It's -- unless he opened
7 the door. That's why I -- I was more concerned about him
8 opening up the door and slipping and saying something that
9 he shouldn't say. Because I think there was an allegation
10 that they were trying to say that he was -- had agreed that
11 he would work for them or something along those lines.
12 That's why they didn't prosecute him initially and things
13 of that sort.

14 Of course, he denied that. And there was no record of
15 that. So, you know, that just became problematic as -- as
16 part of some of other issues with this.

17 MS. MCMAHAN: One moment, please.

18 THE COURT: Yes, ma'am.

19 (Off the record briefly.)

20 Q Tell me about the solicitor's opening, where he's
21 discussing the weight of the evidence in the opening, but
22 the weight wasn't in yet. Did you see a reason to object
23 to that?

24 A No. I -- I -- I -- you know, I've kind of had a
25 practice -- and I don't know if it's because I've practiced

1 for a while. You know, I -- I don't like to object during
2 someone's closing or opening. Because it's not evidence or
3 anything along those lines. So I just kind of had a
4 standard -- unless you've kind of -- unless it's a matter
5 where we had a ruling by the Court that you can't say
6 certain things, I typically, you know, don't like to
7 interrupt someone while they're doing either.

8 And so in this particular case, I think the judge had
9 kind of pretty much at the pretrial all but said the drugs
10 were going to come in. And so again, it was our position
11 and Mr. Trapp's position was that he's not necessarily
12 denying that these were, in fact, drugs. He was denying
13 the fact that these were his drugs; that these drugs had
14 been planted there and things of that sort.

15 Q You ever talk to Mr. Bolt before taking over the case
16 or -- or after you took over the case?

17 A No. I mean, like I said, I got -- I got this case. I
18 filed a -- a motion -- discovery motion and things of that
19 sort. So I -- I never knew anything about this case being
20 on trial roster, anybody being placed on notice. The first
21 time I ever got any potential notice that this case was
22 going to be on the trial roster was ten days out from the
23 date that I think it was going to go onto trial that week.

24 And I just don't recall whether I spoke with Mr. Bolt
25 or not. Because I think he was retired at that particular

1 moment. So I'm not even sure whether he was even available
2 at that particular stage.

3 So it was -- and by the time I got discovery, again,
4 we're kind of late in the game; don't have everything. So
5 I'm just trying to scramble, trying to get this case
6 continued. You know, and -- because had I known, I
7 probably would've -- I probably would've filed -- (audio
8 loss) -- motion or something along those lines for a
9 continuance, as opposed to a verbal one at the time of
10 trial.

11 MS. MCMAHAN: I have nothing further, Your Honor.

12 THE COURT: Any redirect, Mr. Neubauer?

13 MR. NEUBAUER: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. NEUBAUER:

16 Q So you'd just in cross indicated that this wasn't
17 tried at the standard -- or in the courtroom at the
18 Newberry courthouse. Do you remember -- you said you don't
19 particularly remember why. Do you know exactly which
20 building or where this was?

21 A It ---

22 (Indistinguishable cross-talk)

23 A --- across the street. It was across the street. But
24 I'm not exactly sure what that -- the building is. I -- I
25 just know it's across the street. I think that's also

REDIRECT EXAMINATION BY MR. NEUBAUER - DIETRICH LAKE 75

1 where they hold family-court hearings at. But it wasn't in
2 a family-court courtroom. It was -- it was actually, like,
3 in a -- almost like where they have town halls at or
4 something along those lines. So that's kind of what I
5 remember about it.

6 Q And I believe that they have a family-court courthouse
7 separate. Is that where it would've been ---

8 A It would've been ---

9 (Indistinguishable cross-talk)

10 A It would've been in that building where they hold --
11 where they hold family court, but not in the family-court
12 courtroom. Because -- because I think they may have been
13 having family court at that time. But I just -- I know it
14 wasn't in the family courtroom, I don't believe.

15 Q And would you have been able to see where the jury was
16 deliberating -- not see into the room, but where the room
17 that they were deliberating in was?

18 A No. I -- are you asking me where were they at in
19 relation to where the courtroom is -- is located? Is that
20 what you're trying to ask me?

21 Q I was just asking if you could see where the
22 deliberation room was. If you do not remember, that is
23 perfectly ---

24 A I don't recall. I don't recall.

25 Q And as far as the weight of the drugs in -- that were

1 introduced in opening statements, Solicitor Scott said that
2 they were 21.3 grams. He ultimately introduced evidence
3 from Lynn Black of SLED, stating that they were actually
4 21.3 grams; is that correct?

5 A I can't recall that specific testimony. Because I --
6 I think, at one point, I don't know whether he used that
7 language of 21-point-whatever grams. Because I do recall,
8 during the trial, Judge Griffith did suppress some of it, a
9 small amount of it, maybe like 1.6 grams of one thing and
10 maybe something else. So I'm not sure whether he used that
11 specific language again of -- of 21.6 in terms of grams or
12 not at -- at -- at closing or anything on those lines or
13 through her testimony. Because I know it was suppressed
14 maybe at some point through -- during Dr. Black's testimony
15 -- or Ms. Black's testimony.

16 MR. NEUBAUER: And I would just draw the Court's
17 attention to page 281 of the transcript through -- or line
18 19 through page 283, line 11.

19 Q And you -- did you feel that you were prepared to try
20 this case when you took it on?

21 A In -- in -- in light of some of the things that became
22 an issue, I definitely would've wanted more time. The --
23 and it really had more to do with the -- the photographs
24 and the sequencing and things of that sort. Because it
25 was, to me, critical, in terms of making sure that, you

1 know -- whether it was drugs there or not at the time they
2 obtained the search warrant.

3 So in certain parts of it, I was prepared. But it was
4 other things I wasn't prepared for. I wasn't prepared for
5 the -- I guess, the scope of what was allowed, in terms of
6 Mr. -- Captain Dennis's testimony, or the issue as it
7 relates to them not being able to produce the -- the camera
8 or whatever digital mechanism they had to show or elicit
9 the date/time of those photographs.

10 Q And you -- would you say that generally in criminal
11 defense, you always prefer more time to prepare for a case?

12 A I mean, it -- it just depends. I mean, I would have
13 preferred to. And, you know, I -- you know, and maybe I'm
14 crazy, but I expected the courtesy of being able to kind of
15 have all the discovery before going to trial. Even though
16 I was a prosecutor and -- and things of that sort and I
17 prosecuted for a while, you still like to have all the
18 discovery, you know, before the day before trial and things
19 of that sort.

20 And so, I mean, that, to me, would've made the
21 difference of whether this case would've even gone to trial
22 or whether -- I mean, who knows what would've happened, you
23 know, had I had more time. Because I think I had asked
24 them to give me to the next term of court, which is
25 probably like two or three weeks later, to give me an

1 opportunity to kind of get up to speed, have everything.

2 And -- and -- but, of course, that wasn't granted in this
3 particular case.

4 Q So you -- but you did have -- sorry. You did have the
5 discovery in this case prior to the start of trial,
6 correct? You weren't handed stuff in the middle of trial
7 or after trial had already started?

8 A I think I got the incident report, maybe the week
9 before, I think maybe that Friday. Because I think that
10 might've been the same time I -- I -- I recall talking to
11 Mr. Trapp. I think I got the photographs from Deputy Epps
12 maybe that Friday.

13 But the -- the -- the critical thing, in terms of the
14 photographs, the timing and the sequence, I didn't get that
15 till, like, Wednesday night. And I think I printed them
16 Thursday right as I'm getting ready to go to courtroom.
17 Because I had been called that: "Hey, this case is going
18 go trial."

19 So what I was doing is just kind of looking at
20 everything at the same time, trying to organize it, and --
21 and things of that sort.

22 Q But you were not provided any additional discovery
23 after the trial had started that Friday morning, correct?

24 A After -- oh, we talking about after -- when we
25 actually physically started?

REDIRECT EXAMINATION BY MR. NEUBAUER - DIETRICH LAKE 79

1 Q Yeah. You had all of the discovery from the state
2 prior to the actual start of trial on Halloween morning.

3 A I -- I think I did at that particular -- like I say,
4 I'm not 100 percent sure. If I didn't have anything, the
5 only thing that I would've been missing would've just been
6 maybe chain, all the chain, maybe the SLED chain. I think
7 I had the internal stuff from Richland County -- I'm sorry
8 -- Richland County, I'm sorry -- Newberry County Sheriff's
9 Department. And so I can't -- but, you know, I -- I do
10 think I had everything by that time. By the time we
11 started Friday morning, I think we had everything.

12 Q Thank you.

13 MR. NEUBAUER: I have no further questions at this
14 point.

15 THE COURT: Ms. McMahan?

16 MS. MCMAHAN: I have no further questions, Your Honor.

17 THE COURT: All right. Thank you, Mr. Lake.

18 Mr. Neubauer, you may call your next witness.

19 MR. NEUBAUER: Thank you, Your Honor. At this point
20 we'd call Matt Ellis.

21 MR. LAKE: May -- just one quick question: May I be
22 excused, or do -- do I need to stick around a little bit
23 longer?

24 THE COURT: Does any -- anybody foresee any chance
25 that you may need to recall Mr. Lake?

DIRECT EXAMINATION BY MR. NEUBAUER - MATT ELLIS 80

1 MS. MCMAHAN: I'm -- I consent to him being excused.

2 THE COURT: Mr. Neubauer?

3 MR. NEUBAUER: I don't feel that we need to -- or will
4 need to recall Mr. Lake at this point.

5 THE COURT: All right. Mr. Lake, thank you for being
6 here. You are now excused.

7 (Off the record briefly.)

8 THE COURT: All right. Mr. Ellis, if you'd raise your
9 right hand for me, sir.

10 MR. ELLIS: (Complied.)

11 MATT ELLIS, having been first duly sworn,
12 testified as follows:

13 THE COURT: All right. Mr. Neubauer?

14 MR. NEUBAUER: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. NEUBAUER:

17 Q Good afternoon, Mr. Ellis. How you doing today?

18 A Doing well. How about yourself?

19 Q Doing just fine.

20 And where are you currently employed?

21 A The South Carolina Attorney General's Office.

22 Q And what is your role at the attorney general's
23 office?

24 A I'm an investigator in the criminal division.

25 Q And do you recall how you -- or being -- do you recall

1 how you became involved in this matter?

2 A Yes. I was asked by Don Zelenka to assist in a case
3 involving PCR.

4 Q And specifically, what were you asked to do in this
5 case?

6 A I was advised that there was a case where a -- a
7 defendant had received a statement from a prior juror,
8 stating that a judge had knocked a door during
9 deliberations. And I was asked to question all the jurors
10 that were involved in this case.

11 Q And during that -- or during your investigation, you
12 reached out to the potential juror in this -- or the -- not
13 the potential -- the jurors in this case, correct?

14 A Yes, sir, I did. I attempted ---

15 Q And ---

16 A --- attempted to reach out to all of them.

17 Q And how many did you ultimately speak with?

18 A I ultimately spoke with ten jurors or took written
19 statements from ten jurors and one bailiff.

20 Q Yes, sir. And you -- did you come up with a list of
21 questions that you wanted to ask these jurors and the
22 bailiff?

23 A I did.

24 Q And so you -- you said you took written statements
25 from all these jurors. Do you have a copy of those written

1 statements?

2 A I do.

3 MR. NEUBAUER: And, Your Honor, I have provided a copy
4 of the written statements to Ms. McMahan. I also believe
5 they have been included in the court packet for this
6 matter.

7 THE COURT: They were.

8 MR. NEUBAUER: All right.

9 Q If we could just go through, starting at the top of --
10 I believe the first statement I see is from a Bryan Harris.
11 Do you remember ---

12 MS. MCMAHAN: Your Honor, I'm just going to object
13 because, you know, the issue was I had agreed to consent to
14 these statements coming in. And I don't believe we need
15 Mr. Ellis to sit and read through every single statement
16 and what he asked them and what's said. It's already part
17 of the record. And I wasn't given that opportunity to have
18 my investigator come and do the same thing.

19 THE COURT: Well, I mean, I -- I think, since they've
20 been made a part of the packet, they're certainly before
21 the Court. You know, I've -- I've read them and I think --
22 and y'all can correct me if I'm wrong -- I don't think any
23 -- any of the jurors corroborated the statement about Judge
24 Griffith knocking on the door. It's my recollection that
25 one of the jurors stated that one juror disagreed as to Mr.

1 Trapp's guilt but eventually they came around and changed
2 their mind.

3 Like I said, I don't see that it's absolutely
4 necessary for Me. Ellis to -- to read through these. You
5 know, I guess what I'm trying to say is I can read them;
6 they've been provided to me. I can review the statements
7 and make a determination based upon my own review.

8 So I -- I tend to agree with Ms. McMahan that it's
9 probably not necessary for Agent Ellis to -- to read to me
10 things that I can read myself.

11 MR. NEUBAUER: Yes, Your Honor.

12 THE COURT: But they are part -- they are -- are part
13 of the packet, and they will be considered as I review
14 these materials.

15 So sorry to steal your thunder, Mr. Ellis. But I -- I
16 don't think we need you to -- to read those things.

17 Mr. Neubauer, if you have any other questions for Mr.
18 Ellis and certainly, you can ask those.

19 MR. NEUBAUER: Yes, Your Honor. I was merely
20 attempting to move these into evidence in this matter and
21 make sure that they were available to the Court during your
22 consideration of this matter.

23 THE COURT: Well, I mean ---

24 (Indistinguishable cross-talk)

25 THE COURT: --- I think I can review them. They have

1 not been made -- technically have not been made exhibits.
2 So if you want them made a part of the record, you need to
3 send them to -- to the court reporter.

4 I think that's -- is that what you agreed to, Ms.
5 McMahan, that they would be made part of the record?

6 MS. MCMAHAN: Your Honor, they're already part of the
7 record, as they're included in the amended return, as
8 likewise mine, which was included in the amended
9 application.

10 THE COURT: Okay. I just want ---

11 MS. MCMAHAN: So ---

12 THE COURT: --- to make ---

13 MS. MCMAHAN: --- I -- I -- (audio loss) -- they're
14 already part of the record.

15 THE COURT: Okay. So it's -- well, since she has
16 conceded that they're part of the record, Mr. Neubauer,
17 just for purposes of protecting the record, these
18 statements which Mr. Ellis -- or Agent Ellis took, with
19 regard to his investigation of the allegation that there
20 may have been some improper action by the trial judge,
21 those statements are part of the record and will be a part
22 of the record if there is any appeal necessary on
23 determination of postconviction relief.

24 THE COURT: All right. Thank you. I just briefly
25 have a few questions I can ---

1 THE COURT: Okay.

2 MR. NEUBAUER: --- (audio loss) -- if you ---

3 Q Do you -- Mr. Ellis, did you attempt at any point to
4 reach out to Ms. Coleman in this matter for a written
5 statement?

6 A I did.

7 Q And did she answer any of your requests to speak?

8 A No. I was never able to speak with her. No. She --
9 I had no return calls. I left cards at the house, using
10 the same address and phone number that were provided on the
11 statement from, I guess you would say, the private
12 investigator.

13 And I tried other means to locate new addresses and
14 reports at local agencies. And everything reflected back
15 to the address that I was already trying.

16 Q And during the -- during the course of your
17 investigation into this, while speaking with the jurors in
18 this case, did any of them indicate that they remembered
19 Judge Griffin [sic] knocking on the courtroom door -- or on
20 the jury-room door?

21 A (Audio loss) -- believe so. No, sir.

22 MR. NEUBAUER: Beg the Court's indulgence for just one
23 moment.

24 THE COURT: Yes, sir.

25 (Off the record briefly.)

1 MR. NEUBAUER: We have no further questions at this
2 point.

3 THE COURT: Ms. McMahan, any cross?

4 MS. MCMAHAN: Just briefly.

5 THE COURT: Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MS. MCMAHAN:

8 Q Investigator Ellis, at what point did you -- (audio
9 loss) -- working at the attorney general's office?

10 A September of 2012.

11 Q And in coming up with the questions to ask the
12 individuals that you spoke to, who came up with those
13 questions to ask them?

14 A I formulated questions and I -- to -- to be honest,
15 I've never dealt with a issue like this. It's -- this was
16 very new to me. I developed questions, and I ran these
17 questions by my supervisor, who was Don Zelenka, to make
18 sure I wasn't out of scope or out of line with what I was
19 going to ask the jurors. And every one of them ---

20 (Indistinguishable cross-talk)

21 Q I'm sorry. Go on. And every one of them, you made
22 sure what?

23 A I -- I had -- I had them printed out with me. And I
24 went down and I made sure I asked each juror the same
25 question. Obviously, some of them you would skip because

1 of the way they answered questions. But prior to that, I
2 made sure to tell them that I was not here to talk about
3 any kind of deliberations that took place or what they
4 talked about inside the jury room. It was pretty narrow as
5 to what I was going to ask them.

6 Q Okay. And that was my follow-up question: Did you
7 ask them all consistently the same questions?

8 A Yeah. I had ---

9 (Indistinguishable cross-talk)

10 A --- printed out ---

11 (Indistinguishable cross-talk)

12 Q Did you write the statements, or did they write the
13 statement?

14 A I wrote the statements.

15 Q And did they sign it?

16 A Yes.

17 Q Okay.

18 MS. MCMAHAN: I have no further questions, Your Honor,
19 and still, again, concede that these are all already made
20 part of the record.

21 THE COURT: All right. Thank you, ma'am.

22 Mr. Neubauer, any redirect?

23 MR. NEUBAUER: No, Your Honor.

24 THE COURT: All right. Mr. Neubauer, do you have any
25 more witnesses?

1 MR. NEUBAUER: No, Your Honor. The state has no more
2 witnesses ---

3 (Indistinguishable cross-talk)

4 THE COURT: All right, folks. I'm going to take this
5 matter under advisement. And I will make the decision as
6 soon as I can, but certainly, make the decision no later
7 than the Wednesday before Thanksgiving, which is November
8 the 24th. I anticipate that I will be able to decide this
9 matter before then. But that is my absolute "you will have
10 a decision by that date" date. So I'm just giving myself,
11 you know, an ample amount of time to get these matters
12 decided. But I fully expect to -- to get it done before
13 then.

14 So I appreciate everyone's work on this matter.

15 (Whereupon, the proceeding was concluded at 2:49 p.m.)

16 **--- END OF TRANSCRIPT OF RECORD ---**

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter (Retired) for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Newberry County, South Carolina, on the 26th day of October, 2021.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Leland, North Carolina
May 18, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) FOR THE EIGHTH JUDICIAL CIRCUIT

Toaby Trapp, #217717)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

Case No.: 2018-CP-36-00156

ORDER OF DISMISSAL

FILED
NEWBERRY COUNTY
2022 FEB 13 AM 10:23
ELIZABETH P FOLK
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed by Toaby Trapp (“Applicant”) on April 9, 2018. Respondent made its return on or about July 10, 2018. The Court convened an evidentiary hearing into the matter on October 26, 2021, via the WebEx Virtual Courtroom. Applicant was present at the hearing and represented by Ashley A. McMahan, Esq. Michael J. Neubauer, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Dietrick Lake, Esq. (“Counsel”), and Matt Ellis of the South Carolina Attorney General’s Office, also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Newberry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. In March 2012, the Newberry County Grand Jury indicted Applicant for Trafficking Crack Cocaine (2012-GS-36-0267).

Applicant was represented by Dietrick A. Lake, Esquire. Deputy Solicitor Dale Scott, and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case.

On October 30-31, 2014, Applicant appeared for trial before the Honorable Eugene C. Griffith, Jr, and a jury. Applicant was subsequently convicted of Trafficking Crack Cocaine. Judge Griffith Jr., sentenced Applicant to imprisonment for a term of twenty-five years.

Applicant, through retained counsel, filed a timely notice of appeal. Applicant's appeal was perfected by counsel, by filing an Initial Brief of Applicant on May 19, 2015. In Applicant's brief he raised the following issues:

1. The trial court erred in admitting the drugs into evidence when the Respondent failed to establish a strict chain of custody.
2. The trial court erred in admitting testimonial evidence in violation of the Appellant's Right of Confrontation.
3. The trial court erred when it failed to grant the petitioner a hearing and suppress the evidence pursuant to a defective search warrant.
4. The trial court erred in failing to suppress an inadmissible statement.

On September 18, 2015, the State filed an Initial Brief of Respondent. Following briefing, on December 6, 2016, oral arguments were held. On May 25, 2017, the South Carolina Court of Appeals issued a written opinion affirming Applicant's conviction and sentence. The South Carolina Court of Appeals found the State presented sufficient evidence to reasonable demonstrate a complete chain of custody; the documents used to establish the chain of custody were nontestimonial, therefore they were not subject to the Confrontation Clause; the magistrate judge properly issues a search warrant based on the evidence presented; and, Applicant's statement was knowingly, intelligently, and voluntarily given, and Applicant voluntarily waived his *Miranda*¹ rights. *State v. Toaby Trapp*, 420 S.C. 217, 801 S.E.2d 742 (2017). On June 7, 2017, Applicant, through counsel, filed a Petition for Rehearing. In his Petition, Applicant further elaborated on the

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

four issues contained in his Brief of Appellant to the South Carolina Court of Appeals, and requested the South Carolina Court of Appeals conduct a rehearing in this matter. On June 23, 2017, the South Carolina Court of Appeals, by written order, denied Appellant's petition for rehearing.

On July 21, 2017, Applicant, through counsel, filed a Petition for Writ of Certiorari to the South Carolina Supreme Court raising the same issues Applicant raised in his brief to the South Carolina Court of Appeals. The State filed their Return to Petition for Writ of Certiorari on August 21, 2017, and argued the South Carolina Court of Appeals correctly affirmed Applicant's conviction and sentence. On August 30, 2017, Applicant filed a Reply in Support of Petition for Writ of Certiorari. On February 1, 2018, the South Carolina Supreme Court issued an order denying Applicant's Petition for Writ of Certiorari. The Remittitur was issued on February 2, 2018.

II. FACTS

On October 8, 2011, Applicant's residence, located on at ■ Little Ranches Road in Newberry, South Carolina, was burglarized by unknown suspects. Tr. p. 134, l. 17- p. 135, l. 9. Applicant called 911 to report the burglary and deputies from the Newberry County Sheriff's Office responded to Applicant's residence. Tr. p. 134, l. 17- p. 135, l. 9. When deputies arrived, Applicant told them \$7,000 was taken from a shoebox in his bedroom and some jars of change from other areas of the house were also taken. Tr. p. 135, l. 7-18. As deputies were processing the scene, one deputy located a substance which appeared to be crack cocaine inside an orange pill bottle in Applicant's bedroom. Tr. p. 135, l. 23- p. 136, l. 4. Deputies obtained a search warrant for Applicant's residence and thereafter found two separate plastic baggies of crack cocaine inside the residence. Tr. p. 135, l. 12- p. 136, l. 3. The total weight of the crack cocaine seized from Applicant's residence was 21.3 grams. Tr. p. 134, l. 14-15; p. 137, l. 3-4.

III. PRESENT APPLICATION

In his application for post-conviction relief filed on April 9, 2018, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Trial Counsel failed to investigate Applicant's assertion that a potential juror intentionally concealed information and the information concealed would have supported a challenge for cause or would have been a material factor in the use of the parties preemptory challenges.
- b. Trial Counsel failed to challenge, object, and preserve his constitutional confrontation rights and hearsay assertions by and through Detective Dennis. Detective Dennis testified to the alleged reports of Officer Spreng and Investigator Bouknight, both of these officers were unavailable at Applicant's trial.
- c. Trial Counsel failed to investigate and interview the State's witnesses prior to trial. Applicant contends trial counsel did nothing more than meet him for fee payments.
- d. Trial Counsel failed to put the State's case through adversarial testing by not having an independent drug analysis performed on the alleged drugs.
- e. Trial Counsel failed to challenge the sufficiency of the chain of custody of the alleged drugs.
- f. Trial Counsel was ineffective for giving Applicant erroneous advice on which he based his decision not to testify. Applicant maintains his decision not to testify was based on Trial Counsel's advice that he would be subjected to cross-examination on his prior criminal conviction record.
- g. Trial Counsel was ineffective for failure to communicate to Applicant the precise terms of a plea deal before going to trial.
- h. Trial Counsel was ineffective for failure to challenge the voluntariness of Applicant's alleged statements/confession in violation of *Miranda v. Arizona*.
- i. Trial Counsel was ineffective for conceding guilt on Applicant's behalf, by conceding to the alleged crack cocaine in his opening argument, without Applicant's knowledge or approval.

Applicant requests relief in the form of "Vacation of sentence and conviction remand for new trial and or enforce plea offer."

On October 8, 2019, Applicant, through Counsel, filed an amended application for post-conviction relief alleging Applicant is being held in custody unlawfully for the following:

1. Ineffective Assistance of Counsel

- a. Failure to elicit testimony about the timing of when the photos were taken to show that the drugs were not there at the time the police first entered the home.
- b. Stating in opening statement they were not challenging that the drugs found were crack cocaine.
- c. Not calling the defendant to testify during the *Jackson v. Denno* hearing about the manner in which he was given his *Miranda* warnings while he was handcuffed at his home.
- d. Not objecting to the Solicitor's opening statement when the Solicitor mentioned the weight of the drugs, which were not in evidence yet. See page 134, lines 12-17, page 136, lines 14-16, and page 137, lines 3-4.

2. Newly Discovered Evidence and/or Judicial Misconduct

- a. Judge Griffith knocked on the jury-room door during deliberations and told the jurors they needed to come to a conclusion. This put pressure and undue influence on a juror to agree with the remaining jurors so they could go home. See attached statement made by Litronda Coleman, Juror 29². Furthermore, S.C.R.Evid. 606(b) allows a juror to offer testimony as to whether any outside influence was improperly brought to bear upon any juror. See also *Shumpert v. State*, 378 S.C. 62 (2008).

On October 12, 2021, Applicant, through Counsel, filed a second amended application for post-conviction relief alleging Applicant is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Counsel did not ensure Applicant was questioned about his right to testify by the court when Applicant wanted to testify.
- b. Trial Counsel did not have adequate time to review and discuss discovery materials with the Applicant.
- c. Trial Counsel allowed Lynn Black to testify as to the entire chain of custody.

² Attached to Applicant's amended application for post-conviction relief was a voluntary statement given by Litronda Coleman. In this statement Ms. Coleman alleges she disagreed with Applicant being