

VOL I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEX ROBINSON,

APPELLANT

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.
STATE'S EXHIBIT #5 (PHOTO), #6 (PHOTO), #7 (PHOTO), #8 (PHOTO), #9 (PHOTO)
AND #10 (DASH CAM VIDEO)

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY

)

2009-GS-26-03445

THE STATE OF SOUTH
CAROLINA,

)

)

)

Plaintiff,

)

Transcript of Record

)

vs.

)

)

November 7, 8 and 9, 2011

ALEX LORENZO ROBINSON,

)

)

Defendant.

)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Brad C. Richardson, Esquire
Attorney for StateJohn M. Hilliard, III, Esquire
Julia M. Bass, Esquire
Attorneys for DefendantKay H. Richardson, CVR
Circuit Court Reporter

State v. Alex Robinson (November 7, 2011)
PRETRIAL MOTIONS

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1 (NOVEMBER 7, 2011.)

2 MR. RICHARDSON: Your Honor, the case we'll be going
3 forward on is 2009-GS-26-3445. State of South Carolina,
4 County of Horry versus Alex Lorenzo Robinson, True Bill
5 Indictment for trafficking cocaine 100 to 200 grams. Also,
6 2009-GS-26-3446, State of South Carolina, County of Horry
7 versus Alex Lorenzo Robinson, True Bill Indictment, failure to
8 stop for blue light.

9 THE COURT: Who is representing the Defendant for the
10 record, please?

11 MR. HILLIARD: Judge, its John Hilliard and Julia Bass.
12 Ms. Bass stepped out for just second, she could be back
13 momentarily.

14 THE COURT: Well, who's gonna be handling this motion,
15 you or Ms. Bass?

16 MR. HILLIARD: Well, we're both doing it, Judge, but I
17 can start if that's the Court's pleasure.

18 THE COURT: Yes. We're gonna have -- I want to pick this
19 jury prior to lunch if I can.

20 All right. What's your motion?

21 I may have to pick the jury after lunch.

22 Yes, Mr. Hilliard?

23 MR. HILLIARD: Thank you, Your Honor. The initial motion
24 that we would have would be a motion to quash the venire as
25 selected in connection with this case. We were downstairs

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1 MR. HILLIARD: Thank you, Your Honor. It just struck me
2 as I was sitting there that it was odd that it happened and so
3 I thought I would bring it to the Court's attention rather
4 than ---

5 THE COURT: Well, it wasn't odd. You agree with me it
6 was just the way the -- luck of the draw.

7 MR. HILLIARD: Well, maybe I was just feeling unlucky,
8 Judge, maybe that's what it was but ---

9 THE COURT: Well, you will agree it was the luck of the
10 draw?

11 MR. HILLIARD: As to that but if they select that jury
12 and put the leftovers back in, we would have a statistically
13 better chance of getting ---

14 THE COURT: Well, I don't know what they -- I don't know
15 whether they put them back in or not. Do you know that?

16 MR. HILLIARD: Well, I'm certain they won't because the
17 ones selected for our group have already been selected. The
18 thirty-five that are selected for our ---

19 THE COURT: Well, I don't know whether there were any
20 more African/Americans in the second group or not but they
21 were randomly selected and you are not entitled to complain on
22 that basis.

23 What's your next motion?

24 MR. HILLIARD: Thank you, Your Honor. Our next motion,
25 Judge, would be to require the Solicitor to elect between the

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1 charges of trafficking in narcotics which occurred on
2 allegedly on September 25th, 2008 and failure to stop for a
3 blue light which occurred allegedly on September the 30th of
4 2008.

5 THE COURT: Was there any commonality between the two
6 events?

7 MR. HILLIARD: The same person got arrested both times.

8 THE COURT: Anything else involving -- explain it to me,
9 Mr. Richardson.

10 MR. RICHARDSON: Your Honor, on September 25th 2008,
11 officers with the Horry County Narcotics Division executed a
12 search warrant on the -- on Mr. Robinson's address. He was
13 not home at the time ---

14 THE COURT: That date was what?

15 MR. RICHARDSON: September 25th, 2008.

16 MR. HILLIARD: Whether he lives there or not is in
17 question, Judge, but ---

18 MR. RICHARDSON: Light most favorable.

19 THE COURT: September the 8th, 2008 ---

20 MR. RICHARDSON: 25th, Your Honor, 2-5.

21 THE COURT: All right. Go ahead.

22 MR. RICHARDSON: There were three people there. Mr.
23 Robinson was not present at the time. Officers sought an
24 arrest warrant for Mr. Robinson on the trafficking charge.
25 The drugs were found in what is allegedly his bedroom with his

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1 pregnant girlfriend. On September 30th, 2008, Officer Donald
2 got information that the Defendant was gonna be at J. Reuben
3 Long Detention Center trying to bond his girlfriend out on
4 these trafficking charges. He went there for the purpose of
5 serving the arrest warrant for the trafficking cocaine. At
6 that point, the Defendant ran from the officer, the officer
7 initiated the blue lights and sirens and he ran from them,
8 Your Honor, its res gestae. He went to serve the arrest
9 warrant for the trafficking.

10 THE COURT: Why do you need to try them together?

11 MR. RICHARDSON: Your Honor, it was one thing leads to
12 the next. The service of the search warrant and the failure
13 to stop are interlinked by virtue of we were trying to serve
14 that arrest warrant.

15 THE COURT: Well, did the Defendant know why you were
16 trying to arrest him at the time? You say he ran, how did he
17 know why you were there?

18 MR. RICHARDSON: Sir? How did he know how the officer
19 was there?

20 THE COURT: How did he know what the officer's business
21 was?

22 MR. RICHARDSON: Officer Donald said he pulled into the
23 Detention Center, he was monitoring Mr. Robinson in the
24 vehicle they had seen at the -- that same vehicle that Mr.
25 Robinson was in at the jail that he fled in had also been at

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1 the search warrant address, Your Honor.

2 THE COURT: Oh.

3 MR. RICHARDSON: And it's registered to him. So, that
4 links him back to that address.

5 THE COURT: If there's a link there, you're saying to me
6 that the car in which you subsequently found him in and he
7 allegedly fled away was also at the scene ---

8 MR. RICHARDSON: At the time of the search warrant, Your
9 Honor.

10 THE COURT: I would think there a nexus between the two,
11 Mr. -- counsel. If it's the same car, the jury would be
12 entitled to know that the car that he was in at the time of
13 the search warrant was made was also the car at the scene when
14 the drugs were seized.

15 MR. HILLIARD: But ---

16 THE COURT: Yes, sir?

17 MR. HILLIARD: He wasn't at the scene where the search
18 warrant was executed; he wasn't there.

19 THE COURT: The car was there, though.

20 MR. HILLIARD: Well, the car -- and I guess we're taking
21 the prosecutor's word for that at this point but in any event,
22 the car that we're talking about is registered to Mr. Robinson
23 at a different address.

24 THE COURT: I understand that but my concern is if that
25 car was found in his testimony there at the time the arrest --

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1 the drugs were seized and that car was later seen and being
2 driven by this Defendant, there is in my view a sufficient
3 connection for both charges. If you didn't have that
4 connection, I would agree with you but you got it and I will
5 let it -- I will try both at the same time.

6 MR. HILLIARD: Without regard to how much later he may
7 well have been arrested?

8 THE COURT: No, the fact that the same car allegedly
9 driven by him on the second event was at the scene on the
10 first event is sufficient for me to conclude that it is a
11 sufficient connection. That car has got to come in the
12 testimony, got to come in whether he ran or not and when it
13 comes in this other event has got to come in as natural course
14 of events. There's no way they're gonna keep out the identity
15 of that car.

16 MR. HILLIARD: Well, I understand the car would come in,
17 Judge, but the ---

18 THE COURT: Well, didn't they in fact, once that car --
19 they seized the car, his further action if any is entitled to
20 go to the jury.

21 MR. HILLIARD: It would seem to me and I would deposit to
22 the Court, Judge, that it is a whole lot more prejudicial than
23 it is probative for them to be able to say that he was running
24 away from the police at the later event because the two events
25 are certainly not connected. Certainly, he was running away

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1 from the police but what they're actually trying to prove is
2 that he was running away from the police at the second event
3 as opposed to ---

4 THE COURT: What you say about that? Why not let this
5 testimony in that he was in the same car that was seen at the
6 prior event?

7 MR. RICHARDSON: Your Honor, Sergeant Donald now, he
8 spoke with the Defendant after he apprehended -- after he
9 bottomed the car out and then ran and he said why did you run
10 and the Defendant said, Had to try.

11 THE COURT: Sir?

12 MR. RICHARDSON: The Defendant said, Had to try. Now
13 that may not come in due to Jackson v Denno but there is a
14 causal connection. One, he wasn't available to be served with
15 the arrest warrant at the property, he wasn't available to be
16 detained that day. While they searched that property they
17 found mail addressed to him, they found pictures of him ---

18 THE COURT: Why can't you limit it then to -- he's got an
19 issue, why can't you limit it to the fact that you served him
20 in the car that was seen at the scene initially and stop at
21 that.

22 MR. RICHARDSON: We didn't serve -- it'd be dishonest,
23 Your Honor. We didn't serve him in the car, he wrecked the
24 car and took off on foot. It also -- it goes back to the
25 condition he was in he was arrested. The Defendant has had

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1 his hair cut now, he's got long -- he had long dreads ---

2 THE COURT: I'm gonna let it in. If I'm wrong the
3 Supreme Court can tell me so but I think this is a sufficient
4 connection particularly when they got to show under
5 circumstances how they served their arrest warrant. It would
6 confuse the jury for it not to come in.

7 The question though is why try them both. I'm gonna let
8 the testimony come in but why try them both?

9 MR. RICHARDSON: Judicial economy, Your Honor. If we're
10 bringing the testimony in ---

11 THE COURT: No, sir. I'm gonna separate the trial but
12 I'm gonna let the testimony come in.

13 MR. RICHARDSON: You'll let the testimony in that he fled
14 from the police?

15 THE COURT: I will but I'm gonna separate the trial.

16 MR. RICHARDSON: Yes, sir, Your Honor.

17 MS. BASS: Thank you, Your Honor.

18 MR. HILLIARD: Thank you, Your Honor.

19 MR. RICHARDSON: We'll go forward on the trafficking in
20 cocaine, Your Honor.

21 THE COURT: You understand that this one will be tried at
22 a later date but I'm gonna let the testimony in in the
23 connection issue. Okay.

24 MR. HILLIARD: If you'll just hold that ---

25 THE COURT: What?

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1 MR. HILLIARD: I understand what you're saying, Judge.
2 I'm just saying that there would be no reason to tell the jury
3 about that and we do have some issues connected to the search
4 warrant. So, we'll talk about it, I just wanted to ---

5 THE COURT: They're entitled to show under what
6 circumstances they had to show that arrest warrant now, I'm
7 not gonna stop them from showing that. I'm just gonna stop
8 him from trying him for failure to stop for a blue light.

9 MR. HILLIARD: I understand, yes, sir. Thank you, Judge.

10 THE COURT: The testimony as to the event is coming in.

11 MR. HILLIARD: Yes, sir.

12 THE COURT: What -- go ahead. There is a sufficient
13 connection to bring the testimony in. In fairness to the
14 Defendant, I'm gonna severe the failure to stop for a blue
15 light.

16 Any questions?

17 MR. HILLIARD: No, sir, Your Honor. Thank you very much;
18 I appreciate it, Judge.

19 THE COURT: All right. The fact that he was in that car
20 is coming in; the fact that he ran, if he ran and how they
21 served it is coming in.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: All right. Now, what's next?

24 MR. HILLIARD: The search warrant, Judge, there is an
25 issue as the search warrant and if -- do you have the original

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1 search warrant?

2 MR. RICHARDSON: It's typically kept in the Clerk's
3 office but I do have a copy of it here.

4 MR. HILLIARD: Okay. There's an issue regarding the
5 search warrant and the sufficiency of the search warrant and
6 that may prove to be problematic, Judge.

7 THE COURT: Well, what is the issue?

8 MR. HILLIARD: The sufficiency of the probable cause, we
9 believe that there is a falsehood in the search warrant which
10 is a separate issue as well and I think when you look at the
11 search warrant you will see the third issue.

12 THE COURT: Well, give me with specificity your objection
13 to this search warrant and the alleged falsehood that you
14 refer to.

15 MR. HILLIARD: If you take a look at the search warrant,
16 Judge, you'll see that you're the issuing judge; that's the
17 threshold question.

18 THE COURT: That makes me think it's correct.

19 MR. HILLIARD: Well, and that's kind of our problem,
20 Judge, and that's one of the things that ---

21 THE COURT: Where is it that you say this search warrant
22 is insufficient. I would've read it in great detail at the
23 time, though, I don't remember the exact factual situation.

24 MR. HILLIARD: Yes, sir. And the first part is it says
25 -- if you have it in front of you on the affidavit, Judge ---

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1 THE COURT: I got it.

2 MR. HILLIARD: All right, sir. Down at the bottom where
3 it says a confidential and reliable informant, confidential
4 and reliable informant working for the Horry County Police
5 Department, where it says that part...

6 THE COURT: Uh-huh (affirmative response).

7 MR. HILLIARD: That's not true. There was no
8 confidential and reliable informant working for the Horry
9 County Police Department that purchased ---

10 THE COURT: How do you know whether it's true or not?

11 MR. HILLIARD: Well, we've -- we have spent an exhaustive
12 amount of time looking at this and there was ---

13 THE COURT: You want to respond to that, Mr. Richardson?

14 MR. RICHARDSON: Your Honor, it's quite simple. In this
15 case, there's a confidential reliable informant that made
16 contact with one Chris Oliver who has already pled on the
17 case. Chris Oliver on three or four occasions would get in
18 the confidential informant's car and say drive over here to
19 [REDACTED]. He'd say I've got to get out and go over
20 here to [REDACTED] and I'll be back but you part over here because
21 they don't want you parked in the driveway when we're buying
22 dope. So, that -- that Defendant would walk into that
23 address, come back with cocaine and deliver it to the CI. So,
24 yeah, the dope was being purchased from that address. They
25 used a middle man, they used a concierge service to get there,

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1 Your Honor, but the CI, I believe, indicated that the actually
2 witnessed the -- Chris Oliver going into that address and
3 coming back out with the cocaine, so...

4 THE COURT: Well, in issuing the warrant I'm concerned
5 with the facts as alleged in the affidavit, counsel, Mr.
6 Hilliard.

7 MR. HILLIARD: Yes, sir, right. And what they said in
8 the affidavit which they told you, didn't happen.

9 THE COURT: Well, he says the CI was involved in the
10 transaction. I'm gonna accept the warrant as being the
11 correct warrant and the affidavit as being proper. Yes, sir.

12 MR. HILLIARD: Well, Judge, our threshold problem with it
13 is if we have the issuing judge making a determination about
14 the sufficiency of the warrant and as you stated in the
15 beginning, I ---

16 THE COURT: Well, it seems to me if that was an issue,
17 you should've brought it before another judge before this case
18 was set before me for trial. You've known for some months
19 that I was the issuing judge of the arrest warrant and you've
20 known for several weeks that I've been designated as the trial
21 judge here today. If you had some issue about that, you --
22 Judge John, Judge -- there's several judges you could've made
23 that motion before them and you didn't do that.

24 MR. HILLIARD: No question about it, Judge, the reason I
25 didn't do it is I don't get to pick when the case gets called

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1 for trial ---

2 THE COURT: You get to pick -- if you were concerned
3 about me ruling on your motion, having issued the original
4 arrest warrant, you had several opportunities to present that
5 issue to another judge here in Horry County. I'll give you an
6 opportunity -- well, we don't have another criminal judge
7 working, do we?

8 MR. RICHARDSON: Judge Cooper is out at the jail, Your
9 Honor, but I'm aware of no bar by statute or by case law ---

10 THE COURT: Me neither.

11 MR. RICHARDSON: --- that would disallow. There's
12 actually a favorable defense case from the 70's -- I can't
13 remember the name of it.

14 THE COURT: The arrest warrant on its face is appropriate
15 under the circumstances and I respectfully deny your motion.

16 MR. HILLIARD: All right, sir. We haven't -- it would be
17 our position, Judge, that we're required to take some
18 testimony connected to what actually took place in order for
19 it to be heard. And again, my -- and I understand, Judge,
20 that ---

21 THE COURT: I'm going to deny that motion too. Again I
22 say that if you were trying to delay this case knowing that I
23 was the trial judge, you had all of last week to have this
24 issue presented to a neutral judge and didn't do it.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: I'm not going to delay this trial with a jury
2 waiting on a bunch of motions that you could've heard last
3 week on this issue. No, sir. We're going forward today. If
4 you want to bring it up later at a certain date, you can do
5 what you please but I'm not going to take any protracted
6 testimony on this arrest warrant today. Not gonna do that.

7 Yes, Mr. Richardson?

8 MR. RICHARDSON: Your Honor, if you did want to -- a
9 hearing, I've got Sergeant Donald here, it could be a quick
10 motion.

11 THE COURT: Do what?

12 MR. RICHARDSON: I'm making the Court aware if you did
13 want to entertain a motion, I'd be prepared to go forward
14 either now or after lunch either one, Your Honor. I
15 understand your ruling. It's a relatively short search
16 warrant motion, Your Honor.

17 THE COURT: Well, it's gonna delay -- if you had this
18 issue, Mr. Hilliard -- I'm quite surprised at you, Mr.
19 Hilliard.

20 MR. HILLIARD: Well, I understand that ---

21 THE COURT: We've got a jury waiting and all of a sudden
22 you've got all these various motions that could've been
23 resolved earlier if you would've told somebody. How far do
24 you want to go into the arrest warrant issue?

25 MR. HILLIARD: Judge, and I -- let me say if I may,

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1 Judge, and I am concerned that you are concerned.

2 THE COURT: I am concerned.

3 MR. HILLIARD: Well, when I say concerned what I mean by
4 that is I thought about it. I thought about it, I said, well
5 now I know that Judge Cottingham is the judge that -- it
6 didn't occur -- I didn't look at the signature and see your
7 signature, I read the documents that he provided and saw that
8 it was you. I couldn't believe, and this is the truth, I
9 couldn't believe that he was actually gonna call the case in
10 front of you because it was -- it never occurred to me in a
11 million years that a judge who signed the search warrant could
12 make a determination as to the validity of the search warrant.
13 I didn't say anything about it because I didn't actually
14 believe that he was gonna call the case in front of you that
15 was -- I knew that it was out there, I knew that it was on the
16 list and I knew that he said he was gonna call it. I didn't
17 learn of the falsehood ---

18 THE COURT: Why not -- if that's an issue why not let
19 Judge Manning hear this issue and me call the second case up
20 for trial? They want to delay this case and I'm not gonna be
21 a party to that.

22 MR. RICHARDSON: Your Honor, the delay that has ensued on
23 this is due to the Defendant. He's gone through, I believe
24 this is his third attorney. This case is from 2008. This
25 case that we arraigned two months ago, Mr. Hilliard had just

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1 come on the case. Mr. Martin was inquiring about this case;
2 Mr. Truslow had been on the case before; I believe Mr. Galmore
3 had been assigned this case before. We're here today, I'm
4 looking to resolve this.

5 MR. HILLIARD: I'm ready to ---

6 THE COURT: No, I'm gonna do this. If I'm wrong, I'm
7 wrong. I'm going to deny the motion.

8 What's your next motion?

9 MR. HILLIARD: Well, the motion you're denying is to
10 recuse yourself from consideration of the search warrant.

11 THE COURT: Which I decline to do.

12 MS. BASS: And Your Honor, could I just be heard just ---

13 THE COURT: No, ma'am. One lawyer -- I take one lawyer
14 at the time, respectfully.

15 MS. BASS: Thank you, Your Honor.

16 THE COURT: Once he gets through, I'll be glad to hear
17 from you.

18 MS. BASS: Thank you, Your Honor.

19 THE COURT: What's your next motion?

20 MR. HILLIARD: Well, further for the record, Judge, we
21 would point out State vs. Diamond, a February 14th, 1984,
22 South Carolina Supreme Court case, 280 S.C. 296. Our motion
23 is, number one, that there is a falsehood in the search
24 warrant which guaranties us under the U.S. Supreme Court case
25 of whatever the U.S. Supreme Court case is ---

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1 THE COURT: Franklin.

2 MR. HILLIARD: Franklin, that guaranties ---

3 THE COURT: --- entitled to hearing on the issue.

4 Mr. Richardson ---

5 MR. RICHARDSON: Yes, sir, Your Honor.

6 THE COURT: Have you got a witness to testify here on
7 that issue?

8 MR. RICHARDSON: I've got Sergeant Donald here; he was
9 the affiant on the search warrant.

10 THE COURT: Bring him back at two o'clock. I'm gonna
11 break for lunch.

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 THE COURT: Come back at two o'clock. I'm gonna hear
14 that issue. Let the jury go and tell the jury to come back at
15 three o'clock this afternoon, my jury, to report downstairs at
16 three o'clock.

17 MR. HILLIARD: If the record could reflect, Judge, I'm
18 not in any form or fashion trying to delay this trial, I am
19 prepared to go forward, we're here, we're ready, we got our
20 stuff.

21 THE COURT: Well, I'll let the record speak for itself.
22 I still have some great concerns about all of these motions
23 you got at the last minute having never told the Solicitor
24 about them, never told the Court about them, all of which
25 could've been heard last week and that gives me some concern,

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1 Mr. Hilliard.

2 MR. HILLIARD: Yes, sir.

3 THE COURT: I've known you for a number of years but it
4 does give me some concern. We gonna try this case this week
5 if I conclude that that search warrant was appropriate after
6 taking testimony. Not gonna waste two or three days with your
7 taking testimony on that issue but you want to hear from the
8 officer who did it; is that right?

9 MR. HILLIARD: Right. It's not true, Judge, I promise
10 you it's not true.

11 THE COURT: Your Solicitor is telling it is true.

12 MR. HILLIARD: But it's a matter of the way you look at
13 it. I give you that. But what it says in the search warrant
14 is in fact not true. If I'm wrong, you'll know.

15 THE COURT: Be back at two o'clock and we'll decide.

16 MR. HILLIARD: Judge, we need the confidential informant
17 in order to have the hearing.

18 THE COURT: No, sir. I'm gonna talk to the -- who you
19 gonna have, Richardson?

20 MR. RICHARDSON: Sergeant Donald.

21 THE COURT: Sir?

22 MR. RICHARDSON: Sergeant Donald, he was the chief
23 investigating officer.

24 THE COURT: And what issue is he prepared to testify?

25 MR. RICHARDSON: He's willing to testify or he's here to

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1 testify on the affidavit. He's the one who swore out the
2 affidavit, Your Honor. He also did the return.

3 THE COURT: What is his testimony gonna be about the CI?

4 MR. RICHARDSON: He'll state that the CI, he spoke with
5 the CI, he ran the CI, the CI -- he debriefed the CI after
6 each buy.

7 THE COURT: Not gonna require the CI to be here. Be here
8 at two o'clock and we'll see what he says.

9 MR. RICHARDSON: Thank you, Your Honor.

10 MR. HILLIARD: Thank you, Your Honor.

11 THE COURT: We're not gonna have a protracted hearing on
12 that issue; I'm gonna have a limited hearing with his
13 testimony. It's clear to me that you knew this case was for
14 trial and I conclude you're deliberately trying to delay it
15 and I'm not gonna permit you to do it, Mr. Hilliard.

16 MR. HILLIARD: I hear you, Judge. The reason I'm making
17 ---

18 THE COURT: You're not listening though. Be back at two
19 o'clock.

20 MR. HILLIARD: I'll be here.

21 MR. RICHARDSON: Thank you, Your Honor.

22 (Recess.)

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: Good afternoon. Be seated, please.

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1 Mr. Hilliard, I've considered during the lunchtime your
2 position with regards to the affidavit. I've had time to
3 review that issue and obviously as the issuing judge, I
4 concluded that the affidavit was complete and met all the
5 reasons of law to exercise that search warrant. I have no
6 problems with the affidavit itself. With regards to your
7 question as to falsehood, I conclude that I can certainly be
8 impartial on a truth or falsity matter even though I was the
9 issuing judge with regards to the search warrant. The issues
10 are totally different. And I respectfully deny your motion.
11 I decline to recuse myself but I will go forward at this time
12 with appropriate testimony as to the affiant's statement in
13 that affidavit as you have requested. Okay?

14 MR. HILLIARD: Yes, sir. Thank you very much, Your
15 Honor.

16 THE COURT: Now, I want the record to reflect that I've
17 considered your motion to severance and have granted it for
18 several reasons but I will permit any testimony about that
19 issue to go forward but I will not permit any issue to go
20 forward that he's indicted for failure to stop for a blue
21 light. You understand that, Mr. Richardson?

22 MR. RICHARDSON: Yes, sir. I can get into the testimony
23 and the video but ---

24 THE COURT: There's no question about that. That's a part
25 of the arrest.

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1 MR. RICHARDSON: Yes, sir.

2 THE COURT: But the severance is granted.

3 MR. HILLIARD: Thank you, Your Honor.

4 THE COURT: Okay. Now, what other motions do you have
5 pending at this time?

6 MR. HILLIARD: Ms. Bass is going to argue ---

7 THE COURT: Ms. Bass, I hope you understood when I
8 declined that I was following the rule, one lawyer. I didn't
9 mean to be rude to you and I didn't think I was.

10 MS. BASS: Yes, sir. Yes, sir.

11 THE COURT: But I adhere to the rule one lawyer, one
12 issue.

13 MS. BASS: Yes, sir. And the only thing I wanted to put
14 on the record, respectfully, Your Honor, was I had called
15 around to see who the judges were before I got the trial list
16 from Mr. Hilliard ---

17 THE COURT: Uh-huh (affirmative response).

18 MS. BASS: And I had been told that Judge Hyman was gonna
19 here for PCRs; Your Honor had trials; Judge Thomas Cooper,
20 retired, would be here for pleas; that Judge John was hearing
21 a case; and that there were, that there would be at least four
22 judges here and that was my understanding so that if an issue
23 did arise, my understanding was you would just send us to
24 another courtroom. And I apologize for any inconvenience that
25 that may have caused the Court but, Your Honor, some of these

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1 documents I did not receive until Thursday and Friday of this
2 past week.

3 THE COURT: Well, be assured that I'm going to permit
4 y'all a full hearing if it takes all day and tomorrow.

5 MS. BASS: Yes, Your Honor, thank you so much.

6 THE COURT: All right. Now, I want to consider -- you
7 got a spoilage issue motion, too, as I understand it.

8 MR. HILLIARD: Yes, sir, we do, Your Honor.

9 THE COURT: But I want to hear the testimony as to the
10 alleged falsehood of the affiant's statement.

11 MR. RICHARDSON: Thank you, Your Honor. The State would
12 call Sergeant Kent Donald.

13 THE COURT: And he was the affiant as I recall?

14 MR. RICHARDSON: That's correct, Your Honor.

15 THE COURT: All right, sir. Come forward.

16 SERGEANT KENT DONALD, HAVING BEEN
17 SWORN, TESTIFIED AS FOLLOWS:

18 CLERK: State your full name and spell your last name,
19 please.

20 SERGEANT DONALD: Kent Donald, D-O-N-A-L-D.

21 DIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR. RICHARDSON:

22 Q: Sergeant Donald, if you could, tell us a little about
23 your place of employment, how long and in what capacity?

24 A: I'm with the Horry County Police Department.

25 THE COURT: May I have a copy of the search warrant.

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1 MR. RICHARDSON: Yes, sir, Your Honor.

2 Q: Horry County Police Department, how long?

3 A: I've been with the Horry County Police Department
4 thirteen years now.

5 Q: And back in August and September of 2008, what division
6 with the Horry County Police Department was your primary
7 division?

8 A: Special Operations, narcotics and vice section.

9 Q: During the course of your work with narcotics and vice
10 section of the Horry County Police Department, did the
11 Defendant become a -- the residence at [REDACTED]
12 become a target of an investigation?

13 A: It did, sir.

14 Q: Could you tell us how that address became a target?

15 A: I was working a confidential informant who stated that
16 she knew someone that could purchase some drugs and we picked
17 her up. She actually went to the person that was buying the
18 drugs from that residence, went over to [REDACTED] and
19 purchased quantities of cocaine on several different
20 occasions.

21 Q: How many purchases were made prior to the issuance of the
22 search warrant?

23 A: Three.

24 Q: Three purchases. And take us through those purchases;
25 when and how were those made?

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1 A: On the 15th -- if you'll permit me to use my notes?

2 Q: Yes.

3 A: On the 15th of August, 2008, myself and another agent met
4 up with a confidential informant. She stated she would go
5 meet the other person that was going to supply them with the
6 cocaine and that she drove them over to [REDACTED]

7 Q: What is the identity of the other person she picked up?

8 A: Christopher Oliver.

9 Q: Christopher Oliver. Continue, please.

10 A: When she got there, after I debriefed her, Mr. Oliver
11 told her to drop him off away from the residence because the
12 occupants of the house did not want any undue suspicion on
13 their house. So, she was told to park down the road and he
14 would walk to the residence to do whatever he was gonna do
15 which was to purchase cocaine.

16 Q: And that was the first purchase?

17 A: Correct.

18 Q: And the second purchase?

19 A: Second purchase was on August the 22nd, 2008. Again, met
20 with the confidential informant to search -- wired, I gave her
21 \$600 of police buy money. She went and picked Mr. Oliver up
22 and they went again to [REDACTED].

23 Q: And the third purchase?

24 A: The third purchase was on the 12th of September, 2008.

25 Q: Okay, same -- same thing?

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- 1 A: Yes, sir.
- 2 Q: Okay. And in your debriefing of the confidential
3 informant, did she inform you as to whether or not she
4 observed Mr. Oliver enter [REDACTED]?
- 5 A: She did.
- 6 Q: And when he left the car, what did he have?
- 7 A: When he left the car, he had the marked police buy money
8 that she gave him.
- 9 Q: And when he exited [REDACTED], what did he have?
- 10 A: He had a quantity of off-white powder substance that
11 field tested positive for cocaine.
- 12 Q: And that was subsequently turned over to the Horry County
13 Police Department?
- 14 A: It was.
- 15 Q: And so I understand, your confidential informant drives
16 Chris Oliver to [REDACTED]?
- 17 A: Yes, sir.
- 18 Q: Park a little bit down from it?
- 19 A: Yes, sir.
- 20 Q: And then she would see Chris Oliver go to [REDACTED]
21 [REDACTED]?
- 22 A: Yes, sir.
- 23 Q: And return with cocaine?
- 24 A: Yes, sir.
- 25 Q: And she had asked the Defendant to purchase cocaine?

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1 A: Yes.

2 THE COURT: Identify for me Chris Oliver.

3 MR. RICHARDSON: Chris Oliver is the middle man, Your
4 Honor.

5 BY MR. RICHARDSON:

6 Q: So, Chris Oliver was not the confidential informant?

7 A: No, he was not.

8 Q: Did there come a time when you sought a search warrant
9 for that address, [REDACTED]?

10 A: I did.

11 Q: And when was that?

12 A: That was on the 17th of September of 2008.

13 Q: And what did you do to obtain that search warrant?

14 A: Prior to contacting -- well, actually, I contacted Senior
15 Solicitor Donna Elder about the case, let her know that this
16 case had the possibility of going federal and in order for it
17 to go federal, it had to be signed by a Circuit Court Judge.
18 So, we came and saw Judge Cottingham.

19 STATE'S EXHIBIT NUMBER ONE

20 MARKED FOR IDENTIFICATION

21 Q: Let me show you what's been marked as State's One. Can
22 you identify State's One?

23 A: This is a copy of my search warrant.

24 Q: Is it a true and accurate copy of that search warrant?

25 A: Yes, sir.

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1 Q: Any omissions or additions that you can see?

2 A: No, sir.

3 Q: Who prepared this search warrant?

4 A: I did.

5 Q: And the reason for the affiant's belief that the property
6 sought is on the subject premises. I think that's page three
7 of the search warrant. Did you type that as well?

8 A: Yes, sir, I did.

9 Q: Is that the information provided to Judge Cottingham?

10 A: It is the information I provided Judge Cottingham.

11 Q: And if you could, recite for the record that information.

12 A: I am a police officer certified in South Carolina. I am
13 employed by Horry County Police Department for ten years with
14 seven years a detective. I received training in the
15 following: Drug Investigator Level One and Level Two, eighty
16 hours in narcotics -- course, forty hours. I've been involved
17 in other search warrants relating to the seizure of illegal
18 narcotics. I am authorized to make searches and seizures. A
19 confidential reliable informant working for the Horry County
20 Police Department purchased a quantity of off-white powder
21 substance represented as being cocaine and field tested
22 positive for cocaine attributes from the occupants of the
23 house identified as [REDACTED] in Conway, South
24 Carolina. That the informant has been able to make recent
25 continuous purchases of illegal drugs from this residence at

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1 least to the affiant's belief that there's possibly there may
2 be more illegal drugs located at this residence.

3 Q: No doubt about it, from your debriefing of the
4 confidential informant, that's where the drugs were coming
5 from?

6 A: Correct.

7 Q: Just via Chris Oliver?

8 A: Yes.

9 Q: So ostensibly, the confidential informant was just
10 paying the sales clerk?

11 A: Yes.

12 Q: Did you have the opportunity to serve that search
13 warrant?

14 A: I did.

15 Q: When was that?

16 THE COURT: What the -- inquire, what was the totality of
17 Chris Oliver's involvement?

18 Q: What was the totality of Chris Oliver?

19 A: He was charged four counts of trafficking cocaine, sir.

20 Q: Because there was an additional sale on the same day of
21 the search warrant?

22 A: Yes, sir.

23 Q: So Mr. Oliver was not the confidential informant but he
24 was charged with trafficking?

25 A: Yes, he was.

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1 THE COURT: And identify for me the property seized as a
2 result of the search warrant.

3 MR. RICHARDSON: Yes, sir; yes, sir. I was about to get
4 to the return.

5 BY MR. RICHARDSON:

6 Q: When did you serve the search warrant?

7 A: The 25th of September, 2008.

8 Q: And what -- did you seize evidence pursuant to that
9 search warrant?

10 A: Yes, sir, I did.

11 Q: And could you identify it? And that evidence, was it
12 turned over to Horry County Police Department evidence?

13 A: Yes, sir.

14 Q: Can you identify -- did you fill out a return?

15 A: Yes, sir, I did.

16 Q: And could you tell us what property was seized?

17 A: If you have that return for me, I could tell you what --
18 I can tell you ---

19 Q: Well, I'm gonna show you that, too.

20 MR. RICHARDSON: State's Number One for the purposes of
21 this hearing.

22 THE COURT: And identify that object for me on the
23 record.

24 MR. RICHARDSON: That is the search warrant. State's
25 Number One is the search warrant, the copy of the search

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1 warrant that you refer.

2 THE COURT: And Mr. -- defense counsel has a copy. You
3 pay proceed.

4 MS. BASS: That's correct, Your Honor, we do.

5 BY MR. RICHARDSON:

6 Q: Along with the return, correct?

7 A: Yes, sir. I have a high point C9, serial number
8 P1278306 with magazine with eight 9 millimeter rounds, box
9 containing six rounds of Federal Premium rounds, bag of off-
10 white compressed powder, bag of off-white rock-like substance,
11 bag with three blue circular tablets, bag with -- two bags
12 with green leafy substance, two surveillance cameras with
13 monitor, JVC Compaq VHS recorder with blue carrying case,
14 digital scale, box open of clear sandwich bags, black box with
15 marijuana bong, silver box with marijuana bong, medicine
16 bottle with prescription meds issued to Tiffany Smith, DG
17 aspirin bottle with five assorted prescription tablets, Sony
18 Erickson phone, Lexar memory card, Kingston 1 gigabyte memory
19 card, South Carolina driver's licenses and social security
20 number and birth certificate issued to Gil Yakoel, \$310 U.S.
21 currency, marijuana ashtray, skeleton ashtray, digital picture
22 frame, multicolored glass pipe with burned marijuana residue,
23 marijuana roaches, I think it says money ashtray, box,
24 Remington 12 gauge shotgun shells, various paperwork in the
25 name of Alex Robinson with, let's see, with bottle -- water

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1 bottle with hidden compartment and Kenneth Durant South
2 Carolina's driver's license.

3 Q: Okay. All that was found in the residence at [REDACTED]
4 [REDACTED]?

5 A: It was.

6 Q: And the return, when was that signed?

7 A: Return was signed on the 14th of October, 2008.

8 Q: Okay. And that was beyond the typical ten days, correct?

9 A: Yes, it was.

10 Q: Why the delay in getting the return signed?

11 A: I was waiting for the return of Judge Cottingham for his
12 next term of court.

13 Q: And that -- this was still done prior to discovery going
14 out to the Defendant?

15 A: Yes, it was.

16 Q: At any point did you attempt to mislead Judge Cottingham?

17 A: I did not, no.

18 Q: Was there any intention -- did you mislead or leave
19 anything out of that search warrant?

20 A: No.

21 MR. RICHARDSON: Your Honor, I have no further questions.

22 THE COURT: Mr. Hilliard, Ms. Bass?

23 MS. BASS: Your Honor, may it please the Court?

24 CROSS EXAMINATION OF SERGEANT KENT DONALD BY MS. BASS:

25 Q: Is it Sergeant Donald?

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- 1 A: Yes, ma'am.
- 2 Q: I'm Julia Bass. Good afternoon.
- 3 A: Good afternoon.
- 4 Q: I have some questions for you. When you went to see
5 Judge Cottingham, were -- did you go back in chambers or were
6 you in the courtroom?
- 7 A: We were in chambers.
- 8 Q: Okay. So, was there a court reporter back there with
9 you?
- 10 A: His clerk was there.
- 11 Q: Okay. So, his law clerk and Judge Cottingham?
- 12 A: Correct.
- 13 Q: And this is a little over three years ago?
- 14 A: Correct.
- 15 Q: So, you didn't come in the courtroom where there was
16 court reporter taking down what you told Judge Cottingham?
- 17 A: No, ma'am.
- 18 Q: Did Judge Cottingham take notes?
- 19 A: I don't know if he did or not; I can't recall.
- 20 Q: Did you take notes?
- 21 A: No, ma'am.
- 22 Q: And you did not change, alter, as you told the Solicitor,
23 anything that you had the search warrant that you told Judge
24 Cottingham?
- 25 A: No, ma'am.

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1 Q: Okay. You didn't change any of the wording?

2 A: No, ma'am.

3 Q: You didn't change any of the dates?

4 A: No, ma'am.

5 Q: You didn't change any of the names of the people?

6 A: No, ma'am.

7 Q: And you didn't change any addresses?

8 A: No, ma'am.

9 Q: Okay. May I see the search warrant, please? And I'm
10 showing you what -- State's Number One and what you said in
11 your affidavit which, of course, was under oath, correct?

12 A: Yes.

13 Q: Did Judge Cottingham place you under oath?

14 A: Yes, he did.

15 Q: Okay. Did he tell you you had to tell the whole truth so
16 help you God?

17 A: Yes.

18 Q: Did -- certainly, he gave you an opportunity to add or
19 take anything away when you spoke to him, correct?

20 A: Yes.

21 Q: And you didn't change anything whatsoever?

22 A: No, ma'am.

23 Q: Okay. And you stated at the bottom the reason for
24 affiant's belief that the property sought is on the subject
25 premises, you said a confidential and reliable informant

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1 working for the Horry County Police Department purchased a
2 quantity of off-white power substance represented as being
3 cocaine and field testing positive for cocaine attributes from
4 the occupants of the house identified at [REDACTED]

5 [REDACTED] in Conway, South Carolina, correct?

6 A: Yes, ma'am.

7 Q: Okay. And that the informant has been able to make
8 recent continuous purchases of illegal drugs from the
9 residence leads to the affiant's belief that there is a
10 possibility there may be more illegal drugs located at this
11 residence?

12 A: Yes, ma'am.

13 Q: And that is not true, correct?

14 A: Oh, it is true.

15 Q: Okay. Number one, that the informant has been able to
16 make recent continuous purchases of illegal drugs from the
17 residence is completely incorrect. Your CI -- and we would
18 move, Your Honor, at the end of the hearing for the CI's name
19 under State versus Diamond, your CI never once walked up to
20 the door and knocked on the door at [REDACTED],
21 correct?

22 A: Correct.

23 Q: Okay. And as a matter of fact, the person that you had
24 wired was the CI, correct?

25 A: Correct.

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- 1 Q: Okay. You didn't wire the guy going to make the buys but
2 you wired the CI who sat in the car and played music on these
3 tapes and said the F word, right?
- 4 A: Excuse me?
- 5 Q: The person that's saying the F word over and over and
6 over and over and over and singing on these tapes is your CI
7 ---
- 8 A: Correct.
- 9 Q: --- that we've not been given the name of?
- 10 A: Okay.
- 11 Q: Is that correct?
- 12 A: Correct.
- 13 Q: The person that had the wire on that talks about my pants
14 keep falling down, that was the CI, too, right?
- 15 A: Correct.
- 16 Q: Okay. And the CI that keeps talking about her pants
17 falling down that's taped up, she never went in the house,
18 correct?
- 19 A: Correct.
- 20 Q: But you told Judge Cottingham that she had made
21 continuous buys.
- 22 A: She had.
- 23 Q: She didn't buy jack squat, did she?
- 24 A: She did. She bought cocaine through Chris Oliver.
- 25 MS. BASS: Your Honor, at this point, I will finish up

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1 but again we're gonna move under State versus Diamond for the
2 CI's name because the CI would be a witness that we would need
3 to call in our defense.

4 THE COURT: I'll rule on that if I conclude it's
5 necessary. I don't think at this point it complies with State
6 v Diamond because the CI was not a part of this deal but go
7 ahead.

8 MS. BASS: That's my exact point, Your Honor, the CI was
9 not -- I'll wait, Your Honor but ---

10 BY MS. BASS:

11 Q: So, in other words, the person on the wire sat in the car
12 the whole time?

13 A: Yes.

14 Q: The person -- your CI sat in the car the whole time did
15 not go up and go into the door or the house at [REDACTED]

16 [REDACTED]?

17 A: No, ma'am.

18 Q: Did you tell Judge Cottingham, Judge Cottingham, our CI
19 never once walked in the door of that house and didn't see
20 anything because she was sitting in the car listening to music
21 down the street?

22 A: I don't think I did, no.

23 Q: Okay. So, you didn't tell Judge Cottingham that the
24 person making the buys was not your CI, the person making the
25 buys that actually -- the person that went to the door

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1 allegedly is Chris Oliver, correct?

2 A: Correct.

3 Q: The person getting the drugs allegedly is Chris Oliver,
4 correct?

5 A: Correct.

6 Q: The person that -- and Chris is a Defendant whose pled
7 guilty and is in prison in Bishopville, correct?

8 A: I don't know where he is but yes he did plead guilty.

9 Q: Okay. Are you telling the Judge now that Chris Oliver
10 was your CI?

11 A: No.

12 Q: If Chris Oliver was making the buys, did you give him
13 apparent, lawful authority, was he acting as a police agent
14 since he was the one making the buys?

15 A: No, ma'am.

16 Q: So, your CI never got out of the car?

17 A: Correct.

18 Q: According to her information to you, she never got out of
19 the car ---

20 A: Uh-huh (affirmative response).

21 Q: She never walked up to the door?

22 A: No, ma'am.

23 Q: She never went in the house?

24 A: No, ma'am.

25 Q: She never met with any person in the house?

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1 A: No, ma'am.

2 Q: Never met with Mr. Alex Robinson?

3 A: No, ma'am.

4 Q: Chris Oliver never met with Mr. Alex Robinson, either,
5 did he?

6 A: I don't know.

7 Q: And when your CI was parked in driveway, Alex Robinson
8 was nowhere on that property; isn't that correct?

9 A: I don't know.

10 Q: And when you say the informant has been able to make
11 recent continuous purchases of illegal drugs, the person
12 making the --, allegedly making the purchases of the drug is
13 Christopher Oliver, a Defendant who is in prison on these
14 charges.

15 A: No, my CI made purchases of continuous -- of the cocaine
16 from Christopher Oliver from that residence.

17 THE COURT: Talk a little louder for me, Officer, please.

18 A: Yes, sir. My informant purchased cocaine from
19 Christopher Oliver and he went to that residence to buy the
20 cocaine and gave it to my CI.

21 Q: You are not telling this Judge that Chris Oliver is your
22 CI?

23 A: No, he is not my CI.

24 Q: Okay. And the person that went in the house to purchase
25 the drugs on all the occasions that you talked about is Chris

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1 Oliver, the Defendant who is in prison for this charge, not
2 the CI?

3 A: Correct.

4 Q: Okay. And so your CI that you base your search warrant
5 on to Judge Cottingham, you never once told Judge Cottingham
6 she's never handed money to anyone in that house, correct?

7 A: No, I did not tell him that, no.

8 Q: And you didn't tell Judge Cottingham that she never once
9 had been in that house; is that correct?

10 A: No, I did not tell him.

11 Q: And when you told him that you were telling him the
12 truth, you also didn't say anything in this affidavit about
13 what drug buys the CI had made, what reliability there was,
14 you didn't say that the CI has been used in buys in federal
15 court and state court, correct?

16 A: I did not.

17 Q: You didn't say what counties this CI has worked in?

18 A: No.

19 Q: You don't mention anything in your affidavit about any
20 kind of prior experience that would show this CI to be
21 reliable, correct?

22 A: According to you, yes.

23 Q: Okay. And did you tell Judge Cottingham, when you were
24 in there again, honest with him under oath, that these buys
25 weren't made at [REDACTED] because according to

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1 your reports, they were made at [REDACTED]? Did you tell
2 Judge Cottingham that you -- we weren't even talking about the
3 same house?

4 A: [REDACTED], what are you talking about? I don't
5 understand.

6 Q: In your reports that you provided to Mr. Richardson who
7 provided them to us under Brady v Maryland, you say these buys
8 took place on [REDACTED] that's not [REDACTED]
9 [REDACTED], is not?

10 THE COURT: The affidavit says [REDACTED].

11 MS. BASS: Yes, Your Honor. I'm asking him about the
12 reports he turned over to Mr. Richardson that's been turned
13 over to us, he says that the buys ---

14 THE COURT: I know but we're concerned with the contents
15 of the affidavit.

16 MS. BASS: Right, Your Honor, but the -- what he said in
17 his police reports is that these buys took place on [REDACTED]

18 [REDACTED]

19 THE COURT: I know, but I'm concerned with the affidavit.
20 Did he -- did this incident happen at [REDACTED]?

21 MS. BASS: And, Your Honor, he puts in his reports [REDACTED]
22 [REDACTED], that's what I'm trying to find out from him.

23 THE COURT: But he put [REDACTED] in the affidavit
24 before me.

25 MS. BASS: But, Your Honor, if he's telling -- I'm trying

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1 to get an answer from him if they happened at [REDACTED]

2 [REDACTED].

3 THE COURT: You don't need an answer, all you do need is
4 look at the affidavit. He said [REDACTED].

5 MS. BASS: And, Your Honor, his records show [REDACTED].

6 THE COURT: I'm not concerned with the record, I'm
7 concerned with what he swore to before me.

8 MS. BASS: Okay.

9 THE COURT: And that said [REDACTED].

10 MS. BASS: And, Your Honor, I'm just asking him ---

11 THE COURT: You may ask him why he put it in the report
12 if you want to. I'm concerned with what's before me in his
13 affidavit.

14 MS. BASS: Okay.

15 BY MS. BASS:

16 Q: Were you telling the truth when you turned over these
17 documents to Mr. Richardson who turned them over to the
18 Defense for this trial when you said this happened on [REDACTED]
19 [REDACTED] or are you according to Judge Cottingham, did
20 you tell him [REDACTED].

21 A: I told Judge Cottingham it was [REDACTED].

22 Q: Okay. Although you said in your reports it was [REDACTED]
23 [REDACTED]?

24 A: I ---

25 THE COURT: I want to emphasis again now, Ms. Bass, that

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1 I'm concerned with the language in the affidavit that I was
2 confronted with on the occasion that I authorized a search
3 warrant and it's clear [REDACTED]. I don't care what he
4 may've said at some other day; it's what is in this affidavit
5 and its [REDACTED].

6 MS. BASS: Your Honor, I'm asking him that because
7 there's case law I need to present to Your Honor and I need to
8 make sure ---

9 BY MS. BASS:

10 Q: That's your final answer?

11 A: That's my final answer.

12 Q: That you never told Judge Cottingham anything about [REDACTED]

13 [REDACTED]

14 A: No, ma'am.

15 Q: Okay. And you mentioned on that return that there was
16 paperwork in the house of Alex Robinson. Did you tell Judge
17 Cottingham that there was different addresses for Alex
18 Robinson or did you only tell him [REDACTED]?

19 A: I said [REDACTED]. I didn't even mention Alex Robinson
20 in the search warrant.

21 Q: In the -- did you ever mention Alex Robinson to Your
22 Honor?

23 A: No.

24 Q: And when you did the return, you filled out that
25 paperwork, correct?

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1 A: Yes.

2 Q: Why would you not list in that paperwork that in fact you
3 had found paperwork for an Alicia Black as well?

4 A: Who is Alicia Black?

5 Q: The photographs that y'all have of the mail for Alicia
6 Black; why didn't you put that in your return?

7 A: I couldn't tell you.

8 Q: Okay. And when you made your return, you returned it to
9 the Circuit Court instead of to the magistrate, correct?

10 A: Correct.

11 Q: And doesn't the law 17-13-120 say -- in 17-13-140 say
12 that you have to make your return to the magistrate?

13 A: I don't know. I make my return to the Judge that issued
14 it to me, who was Judge Cottingham.

15 Q: So, if the law said return it to the ---

16 THE COURT: Now, wait a minute, he's not a lawyer. You
17 address the law questions to me.

18 MS. BASS: Yes, I'm asking, Your Honor.

19 BY MS. BASS:

20 Q: So, you returned it to Judge Cottingham and not the
21 magistrate?

22 A: Correct.

23 Q: Okay. Just one moment, Your Honor.

24 Now, you didn't tell Judge Cottingham the dates of the
25 purchases, correct, or who allegedly did what on what day.

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1 You didn't have any dates on your search warrant, correct?

2 A: No, I did not.

3 Q: And when you talked with Judge Cottingham, did you tell
4 Judge Cottingham that you patted the person down and wired the
5 person that was sitting the car the whole time on a different
6 road but you never patted down the person that went in the
7 house allegedly buying the drugs?

8 A: Did I say ---

9 THE COURT: You're going beyond the issue of his
10 statement to me in an affidavit. That's some question that
11 you can have at trial but not here.

12 MS. BASS: Well, Your Honor, the only reason we need an
13 answer to that is those last two sentences apply to Chris
14 Oliver, not to the CI. That's was my final question on the
15 ---

16 THE COURT: I'll let you have the final question but
17 we're not going into the trial of the case with him at this
18 time. We're gonna confine it to his truth or falsity in this
19 affidavit.

20 MS. BASS: Thank you, Your Honor.

21 BY MS. BASS:

22 Q: Now, when you spoke with Judge Cottingham, did you ever
23 tell him that you had patted down Mr. Oliver and Mr. Oliver
24 went and made the buys?

25 A: No, I did not.

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1 Q: Okay. So, when you're talking about the patting down the
2 person, that was your CI?

3 A: Correct.

4 Q: No one patted down Mr. Oliver including your CI?

5 A: I don't know if she patted him down or not; I know I
6 didn't.

7 Q: Okay. But she didn't tell you that she did, correct?

8 A: No.

9 Q: Okay. Nothing further, Your Honor. Thank you. Thank
10 you, Sergeant Donald.

11 (REPORTER'S NOTE: Witness leaves the witness stand.)

12 THE COURT: Anything further, Mr. Richardson?

13 MR. RICHARDSON: No, sir, Your Honor.

14 THE COURT: You don't allege -- Mr. Hilliard, is that
15 your testimony?

16 MR. RICHARDSON: That would be my testimony.

17 THE COURT: What's wrong with the affidavit?

18 MS. BASS: What wrong with the affidavit?

19 THE COURT: Yes, what's wrong? He says that a
20 confidential informer told him of this issue that a drug was
21 -- subsequent events allegedly found drugs in the place. All
22 he said was he had reliable information from another source
23 that told him drugs were from this house. Apparently they
24 were. Where has he lied in any way. He may not have been as
25 full in his -- as to what he said, but he said reliable

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1 informant.

2 MS. BASS: Your Honor, first of all, we would move that
3 the evidence be suppressed based on the fact that the search
4 warrant does not have anything indicating that she was
5 reliable.

6 THE COURT: I don't know of any warrant, any proposition
7 of the law that says you've got to set that out with
8 specificity.

9 MS. BASS: I have that for you, Your Honor, State versus
10 Johnson.

11 THE COURT: I know the cases you're talking about but I
12 don't think it says what you say.

13 MS. BASS: Okay. Well, Your Honor, under State versus
14 Johnson, which is 302 S.C. 243 and 395 S.C. 2nd 167, which
15 I'll pass to you and Mr. Richardson, if you'll get that, Mr.
16 Hilliard, State of South Carolina versus Willie Lee Johnson,
17 Chief Justice Toal and the South Carolina Supreme Court said
18 in July 23rd, 1990 that they also quoted Illinois versus
19 Gates, 462 U.S. 238, 239 and 103 S.C. Supreme Court at 23 --
20 32 and this is State versus Johnson. Mr. Hilliard is going to
21 pass up to Your Honor ---

22 THE COURT: I have not read State v Johnson lately but
23 what do you say -- are you saying to me that State v Johnson
24 requires an affiant to go into great detail why he believes
25 the confidential informant?

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1 MS. BASS: Yes, Your Honor. First of all it says without
2 any information concerning the reliability of the informant,
3 "The inferences from the facts which lead to the complaint
4 will be drawn not by a neutral and detached magistrate as the
5 Constitution requires but instead by a police officer engaged
6 in the often competitive enterprise of ferreting out crime. It
7 is the opinion on this Court that the affidavit by itself did
8 not provide the magistrate with sufficient information
9 concerning the informant's reliability upon which he could
10 base a probable cause determination.

11 THE COURT: Well, the facts in the Johnson case are a
12 little different here. We've got this affiant says that from
13 several sources he has found drugs being sold from this house
14 on several occasions. The State v Johnson case as I recall
15 was one single incident. In this case, he's got a
16 confidential informant saying that he sold it on numerous
17 occasions.

18 MS. BASS: Now, according to State versus Crane and State
19 versus Johnson, it says unless it was supplemented by sworn
20 oral testimony the Court has recognized that a warrant
21 affidavit which is insufficient in itself to establish
22 probable cause may be supplemental by the sworn, oral
23 testimony. He testified twice under oath he did not
24 supplement it. So, that's one problem. I have a couple of
25 more to give you, Your Honor.

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1 THE COURT: I would not remember if that occurred three
2 years ago, I'll tell you in all candor.

3 MS. BASS: That's the whole point I ask if there was a
4 record because if there was a record, we could play it.

5 THE COURT: I would not have remembered it anyway.

6 MS. BASS: Well, he said he did not.

7 THE COURT: Well, I conclude that ---

8 MS. BASS: I understand, Your Honor, but I have several
9 cases to give you.

10 THE COURT: I've read them cases, I -- this is not my
11 first rodeo on an affidavit.

12 MS. BASS: I know, Your Honor, but I've got more cases to
13 give you. State versus Diamond ---

14 THE COURT: To save time, pass them up to my law clerk
15 and I'll take a look at them later. How would you respond to
16 this -- we've got time here, Ms. Bass.

17 MS. BASS: Your Honor, my client is looking at twenty-
18 five years.

19 THE COURT: I know but I'm familiar with the cases. I'm
20 tell you that ---

21 MS. BASS: Well, the other two that I'd like for you to
22 review, Your Honor, is State versus Jones where the South
23 Carolina Supreme Court overturned the case because the search
24 warrant had false statements in it.

25 THE COURT: This ---

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1 MS. BASS: Your Honor, also State versus ---

2 THE COURT: I know about that case, too.

3 MS. BASS: --- Missouri, the search warrant ---

4 THE COURT: This affidavit has -- there's no false
5 statement in this affidavit.

6 MS. BASS: Your Honor, the false statements on behalf of
7 our client are, number one, the CI never made a buy. Number
8 two, if he told you ---

9 THE COURT: He didn't say that in his affidavit.

10 MS. BASS: Yes, he did.

11 THE COURT: Well, he said he was -- there's two things,
12 Ms. Bass, the CI on these other occasions was obviously a part
13 of the transaction sitting there in the car. The CI was not
14 involved in this case. This affidavit says reliable
15 informants have told me that there were buys on several
16 occasions. Based on that, he -- we exercised the search
17 warrant and the reliable informant was correct. There was
18 drugs there if the allegations are true. Let me cut this
19 short by -- Would you like to respond? Ms. Bass, I'll be glad
20 for you to put your cases on the record but I'm not gonna sit
21 here and have a review of all the cases that I've read for the
22 last twenty-seven years.

23 MS. BASS: Yes, Your Honor. I respect that but what I
24 want the Court to understand is ---

25 THE COURT: You're relying on State v Johnson, primarily.

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1 MS. BASS: State versus Jones, State versus Missouri,
2 State versus Diamond, State versus Johnson and I have another
3 one if Mr. ---

4 THE COURT: Put it on the record.

5 MS. BASS: But the point, Your Honor, is the search
6 warrant is flawed because he came to you and told you that the
7 CI had done these things. Number one, we don't know that
8 there's any reliability.

9 THE COURT: Well, no, he didn't use that exact language.
10 Let me hear the other side, Ms. Bass. There's two sides to
11 this question and I appreciate your candor and your energy and
12 thank you for it.

13 Yes, sir.

14 MR. RICHARDSON: State v Johnson, that's out; it's a
15 totally different set of circumstance where the person, the
16 confidential reliable informant had gone in the house and saw
17 a large quantity of marijuana, didn't purchase it, it's a
18 purchase case. With regard to Missouri, that's where the
19 officer said, I lied in the extremely wordy affidavit. He
20 said I told the Judge that this person told me something, they
21 didn't tell me something. Your Honor, we -- it's sufficient,
22 the officer stated that the confidential informant purchased
23 drugs from that -- from the occupants of that residence. Yes,
24 there was a middle man. I had a nice clerk wait on me at
25 Walmart yesterday, I don't know her name but when I got home I

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1 could tell you that I bought my batteries for my kids' toys
2 from Walmart. I didn't say I bought it from the clerk and
3 that's basically what ---

4 THE COURT: Given, Ms. Bass, we can argue all day long,
5 I'm familiar generally with the cases that you cited but I
6 just respectfully disagree with your position. This affidavit
7 in my opinion then and now is complete and in accordance with
8 the law regarding search warrants. This affiant to the best
9 of his knowledge told the truth. Now, he may have told it not
10 exactly as you would have it but he said I'm basing it on
11 reliable information that I received that drugs have been sold
12 from this place on several occasions.

13 MS. BASS: And the person that said that, Your Honor, is
14 a person in prison for buying it that was charged with
15 trafficking.

16 THE COURT: They can tell the truth. Just because
17 they're in prison don't mean that he's -- that they can't rely
18 on him. They rely on prisoners all the time.

19 MS. BASS: But he wasn't, Your Honor, that -- he just
20 testified twice that wasn't his CI.

21 Your Honor, we would move on three grounds, number one,
22 that there are patently on the face of this search warrant
23 incorrect information provided to Your Honor.

24 THE COURT: Respectfully rejected. It's not patently
25 information wrong. I dealt with that twice now and I'm not

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1 gonna go there again.

2 MS. BASS: And, Your Honor, also the information is
3 stale. He did not put any dates in there. So since there
4 were no dates, how do we know that they were seventy-two
5 hours, twenty-four hours, there are no dates. We ---

6 THE COURT: I don't think the dates were necessary --
7 don't think the dates were necessary, I reject that.

8 MS. BASS: We also move based on the fact that in his
9 report he said Brown and then when he spoke to Your Honor he
10 said Stoneybrook. That's also a falsehood.

11 THE COURT: The facts remain, one, that the warrant that
12 I signed said [REDACTED] and secondly, that's where the
13 warrant was executed. Now, what he may or may not have said
14 in some prior report doesn't concern me. I'm concerned with
15 the truth and accuracy of what he said on this occasion and he
16 said [REDACTED]. I don't see how you can argue that, Ms.
17 Bass. It clearly says [REDACTED].

18 MS. BASS: It goes to the totality of the circumstances,
19 Your Honor. What he's previously said and whether or not it's
20 a falsehood.

21 THE COURT: He may've thought it was some other address
22 at some other time but before me in sworn testimony he said
23 [REDACTED]. So, you can't argue that he said something else
24 at another date. As the issuing judge, I'm concerned with
25 what he said today or in that instance. So, I respectfully

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1 reject your ---

2 MS. BASS: And at this point, we have absolutely no
3 choice under State versus Diamond but to ask that the CI be
4 produced so she can be cross examined. Here's why. They
5 elicited between the solicitor and ---

6 THE COURT: No, ma'am. I'm not gonna do that either.
7 Diamond doesn't go that far. I'm concerned with the truth or
8 falsity of what this witness said to me on that occasion.

9 MS. BASS: Your Honor, the Diamond case, State versus
10 Diamond ---

11 THE COURT: Yeah, but he was a participant. But the
12 Diamond -- but the CI was not a participant in this particular
13 case, search warrant. You don't allege ---

14 MS. BASS: That's our point, Your Honor. What you just
15 said is exactly what I've been saying. That's the whole
16 point, the CI did not participate, that -- you took the words
17 right out of my mouth. That's why we're asking for
18 suppression.

19 THE COURT: You're not entitled to it. You want to be
20 heard on that, Mr. Richardson? If -- you don't allege that
21 the CI was there at the time of the search warrant, do you?
22 You're not alleging that?

23 MS. BASS: No, Your Honor, I don't know. That's why I
24 want to question her. The other thing is, you just said that
25 he said plenty of people had seen drugs; the only person over

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1 there was ---

2 THE COURT: Mr. Richardson, do you want to -- excuse Ms.
3 -- we need to move on. You want to be heard on this?

4 MR. RICHARDSON: Your Honor, I just think that Humphries
5 nor Diamond really apply in this case. The information was
6 provided that the CI told them what they saw and they executed
7 a search warrant. Certainly, if we're trying to get Mr.
8 Robinson up on the actual sales from those homes, it would
9 apply but in this instance, I don't believe it applies.

10 THE COURT: My concern, Ms. Bass, is whether or not this
11 affiant to the best of his knowledge was telling me the truth
12 on that day. He says he got this from a reliable and
13 confidential informant. Now, if you think that I'm gonna let
14 you call every reliable and confidential informant on the
15 truth and accuracy of his statement, you're mistaken. I
16 conclude that this statement is true. I conclude that it
17 contains sufficient information for me to issue a bench
18 warrant, I mean, a search warrant, which I did. And I
19 respectfully deny your motion to quash the indictment.

20 MS. BASS: Your Honor, we are moving to suppress based on
21 those reasons.

22 THE COURT: I respectfully deny your motion to suppress
23 the search warrant.

24 MS. BASS: And, Your Honor, just one more issue, on State
25 versus Diamond, our Supreme Court said in 1984 that they

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1 reversed and remanded considering the various factors and
2 circumstances surrounding the drug transaction and the
3 testimony given by the police officers, we are ---

4 THE COURT: The drug transaction but the confidential
5 informant was never a party to this search warrant other than
6 providing information as to what had occurred in prior days.

7 MS. BASS: Your Honor, he's saying that he ---

8 THE COURT: Diamond is totally different. Diamond, the
9 CI was a party to it.

10 MS. BASS: Your Honor, he just testified twice for you
11 that ---

12 THE COURT: No, he didn't testify ---

13 MS. BASS: --- that the CI was the one that made they
14 buy.

15 THE COURT: Not a -- not on this occasion as to the
16 search warrant.

17 MS. BASS: Your Honor, he's saying three buys that lead
18 to the search warrant.

19 THE COURT: I know it but we're talking about the search
20 warrant based on the sufficiency of it.

21 MS. BASS: Your Honor, it's the same CI according to him
22 for every case.

23 THE COURT: I know it but the CI is not a part of this
24 transaction. The CI wasn't there when they found allegedly
25 found the drugs, was it?

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1 MS. BASS: I don't know that.

2 THE COURT: Well, I'm not gonna go that far. I think
3 it's sufficient for me to conclude that the affidavit of this
4 affiant was sufficient and the totality of the information
5 provided is sufficient for the search warrant. Now, I don't
6 need any more on this question.

7 MS. BASS: Yes, Your Honor. If you'll please make a note
8 of the record because at this point, I don't see how Mr.
9 Robinson can get a fair trial if I can't cross examine a
10 person that's accusing him of something when he wasn't even
11 there.

12 THE COURT: No, he's not accusing -- he's not accusing
13 him at this time. He was only used a confidential informant,
14 that's a different issue. I've ruled on it and you can take
15 it up with the appellate court. If I'm wrong, they can tell
16 me so. All of us judges have examined State v Diamond ten
17 thousand times and it's not applicable to the issues in this
18 case and I say that most respectfully.

19 MS. BASS: Thank you so much.

20 THE COURT: All right. Come down.

21 Do you want -- for the record, did you want to put your
22 position on the record?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: Ms. Bass has put hers on and she was entitled
25 to it.

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1 MR. RICHARDSON: Yes, sir. I believe that the Court has
2 made the proper ruling in this case and State would be ready
3 to proceed.

4 THE COURT: All right, sir. Come down. Thank you.
5 (REPORTER'S NOTE: Witness leaves the witness stand.)

6 THE COURT: Now, what's the other issue, a spoilage
7 issue, Mr. Hilliard?

8 MR. HILLIARD: Yes, sir, Your Honor, it's destruction ---

9 THE COURT: Ms. Bass, I appreciate your detailed
10 explanation, a detailed presentation.

11 MS. BASS: That's my job, Your Honor.

12 THE COURT: I know and I have no problem ---

13 MS. BASS: Trying to protect my client's rights, Your
14 Honor.

15 THE COURT: Okay.

16 MS. BASS: It's a very serious case.

17 THE COURT: And my job is to rule on it.

18 MS. BASS: Thank you so much.

19 THE COURT: All right.

20 Mr. Hilliard, what you got here?

21 MR. HILLIARD: We have the destruction of evidence and we
22 have a -- I guess we need to call somebody from government to
23 tell us what evidence was destroyed.

24 THE COURT: Well, you're the one that's making the
25 motion. You ought to be able to tell us what your position

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1 is.

2 MR. HILLIARD: The evidence was ---

3 THE COURT: How do you know -- how do you know anything
4 was destroyed if you can't tell me what your position is.

5 MR. HILLIARD: Well, I went, Judge, in order to try to be
6 well prepared in the case and to start early, we -- Ms. Bass
7 and I came over to the M.L. Brown Building evidence place at
8 the invitation and the kindness of the Solicitor and we went
9 there to look at the evidence and when we got there to look at
10 the evidence, it was paltry.

11 THE COURT: It was what?

12 MR. HILLIARD: Paltry, not very much evidence was there.

13 THE COURT: What was your -- paltry?

14 MR. HILLIARD: Paltry.

15 THE COURT: Meaning very little.

16 MR. HILLIARD: Very little, very little.

17 THE COURT: There may've been very little evidence.

18 MR. HILLIARD: Well, that's what I thought. I said,
19 well, where is the evidence, and he said, we destroyed it.

20 So, that's why I think they destroyed it because the Solicitor
21 told me. So, I'm curious, I think there's a gun -- do we have
22 a picture of a gun?

23 THE COURT: Well, let me hear Mr. -- you got to
24 understand, this is my first time with this thing.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: Let me know -- can you tell me what he's
2 talking about?

3 MR. RICHARDSON: Yes, sir, Your Honor.

4 THE COURT: He's alleging a spoilage issue.

5 MR. RICHARDSON: Yes, sir, Your Honor. I can show the
6 most recent -- there was a black box with marijuana bong,
7 along with a silver box with marijuana bong. Both of those
8 were destroyed pursuant to policy. They're drug
9 paraphernalia, they're destroyed if we're not moving forward
10 on a paraphernalia case.

11 THE COURT: What was the paraphernalia?

12 MR. RICHARDSON: Two bongs, Your Honor, pipes ---

13 THE COURT: What?

14 MR. RICHARDSON: Pipes used to smoke marijuana.

15 THE COURT: Okay. That doesn't bother me.

16 MR. RICHARDSON: There was a medicine bottle with
17 assorted prescription tablets; that was returned to owner.
18 There's a Sony Ericsson cell phone, returned to owner. South
19 Carolina Driver's License, South Carolina -- social security
20 number and birth certificate issued to Gil Yakoel; that was
21 returned to owner. Marijuana ashtray and skeleton ashtray,
22 destroyed. Multi-colored glass pipe with burned marijuana
23 residue, destroyed; monkey ashtray, destroyed. Various
24 paperwork in the name of Alex Robinson; that was destroyed.

25 THE COURT: In the name of who?

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1 MR. RICHARDSON: The Defendant, Your Honor.

2 THE COURT: Okay.

3 MR. RICHARDSON: That paperwork, that ---

4 THE COURT: What kind of paperwork?

5 MR. RICHARDSON: It was just various paperwork, bills and

6 ---

7 MR. HILLIARD: Judge, I have some photographs of it, Your
8 Honor.

9 THE COURT: Let me hear the full presentation and then
10 I'll hear from you.

11 MR. HILLIARD: He's testifying and he's not sworn and
12 he's not a witness.

13 THE COURT: No, I'm just asking -- he's not testifying.
14 I'm gonna ask him what his position is.

15 MR. HILLIARD: All right, sir.

16 MR. RICHARDSON: Yes, sir, Your Honor. In speaking with
17 ---

18 THE COURT: I'm trying to get a handle on what your
19 position is and then we'll go from there.

20 MR. HILLIARD: Okay, Judge.

21 MR. RICHARDSON: Yes, sir. The paperwork, in speaking
22 with Agent Donald and Agent Hardee, it was paperwork that had
23 the name of Alex Robinson on it.

24 THE COURT: Had the name of who?

25 MR. RICHARDSON: The Defendant, Alex Robinson.

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1 THE COURT: Okay. What kind of paperwork again?

2 MR. RICHARDSON: We have some -- just some junk mail
3 stuff, Your Honor, it would appear. They just listed it as
4 various paperwork.

5 THE COURT: Was any of it inculpatory or exculpatory?

6 MR. RICHARDSON: It would be inculpatory; it was
7 paperwork that was found there. In this instance, Your Honor,
8 this -- the easiest way to explain it is there were ---

9 THE COURT: Why would you destroy inculpatory paperwork?

10 MR. RICHARDSON: Your Honor, it was in error it was
11 destroyed. There was one person that was charged in the case.
12 They made separate charges. Drugs were found in the bedroom
13 where they -- the Defendant's half-brother, I believe it was,
14 and his girlfriend were found, there was a small amount of
15 crack cocaine there. Those two individuals were charged with
16 that drugs and the other bedroom is where the larger amount of
17 cocaine was found where the Defendant's girlfriend was.

18 The girlfriend of Mr. Durant, she -- due to the
19 resolution of her charges, dismissal notice was sent to the
20 county and they read that as that the case was resolved.

21 THE COURT: Who is Durant?

22 MR. RICHARDSON: Durant has already pled on his charges,
23 Your Honor.

24 THE COURT: You understand again that I -- I'm not
25 familiar with all of these names.

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1 MR. RICHARDSON: Yes, sir. Yes, sir. Your Honor, if I
2 may approach.

3 THE COURT: Well, tell me, let's be on the record now, I
4 don't want to be at the bench with what we're talking about.

5 MR. RICHARDSON: Yes, sir, Your Honor. It's -- due to a
6 letter of dismissal of one of the defendants, it was read as
7 the case was dismissed.

8 THE COURT: Well, what -- were any pictures destroyed?

9 MR. RICHARDSON: No, sir. I have all the photographs
10 that were taken that day; I've turned over all those.

11 THE COURT: What are you saying was destroyed, other than
12 the paraphernalia, he's not concerned with that, what were you
13 concerned with, Mr. Hilliard?

14 MR. HILLIARD: Well, Judge, what I'd like to have is a
15 witness to tell me what was destroyed.

16 THE COURT: Well, I will if you've got one. Do you got
17 one?

18 MR. HILLIARD: Somebody destroyed it.

19 THE COURT: I understand, I'm gonna let you have it.

20 MR. HILLIARD: Thank you, Judge.

21 THE COURT: You got a witness.

22 MR. RICHARDSON: Sergeant Donald will take the stand.

23 THE COURT: Now, I need -- I want to know with
24 specificity what if anything was destroyed and why.

25 MR. RICHARDSON: Your Honor, I'd have to call somebody

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1 from evidence on that.

2 THE COURT: Well, we knew this morning this was coming
3 up.

4 MR. RICHARDSON: We can address ---

5 THE COURT: You knew this morning this was coming up.

6 MR. RICHARDSON: Your Honor, I figured we could address
7 this in this manner, what evidence was taken, there was
8 nothing exculpatory that was taken. All the paperwork had the
9 Defendant's name on it.

10 THE COURT: Well, maybe he can tell what the totality was
11 taken and then it won't make any difference.

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 THE COURT: Mr. Hilliard, in fairness to him though, is
14 entitled to know if anything exculpatory was destroyed.

15 MR. RICHARDSON: Yes, sir, Your Honor.

16 THE COURT: All right. Let's go forward. If he can tell
17 us the totality of whatever was taken, Mr. Hilliard, that may
18 answer our questions.

19 MR. HILLIARD: What -- Judge, and I appreciate the
20 opportunity to ask him the questions and I certainly ---

21 THE COURT: Well, let's get -- I want to find out what
22 was taken first and then we can find out what's left; doesn't
23 that make sense?

24 MR. HILLIARD: Well, sort of, but let's get into and see
25 where we go.

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1 THE COURT: Well, Thank you.

2 MR. HILLIARD: Thank you. Thank you, Judge.

3 DIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR. HILLIARD:

4 Q: You didn't take everything that was taken out of the
5 house, did you?

6 A: Excuse me?

7 Q: I said, You did not take everything that was taken out of
8 the house?

9 A: That question does not make any sense to me. Did I take
10 everything that was taken out of the house?

11 Q: Right. There were things that were taken out of the
12 house when the search warrant was executed.

13 A: Okay.

14 Q: True?

15 A: Correct.

16 Q: There were a number of people who were there who were
17 doing the search?

18 A: Correct.

19 Q: There were a number of people who were there doing the
20 search who took things out of the house?

21 A: No, I took everything out of the house.

22 Q: All right. So what you're telling me is that everything
23 that was taken out of the house was taken by you?

24 A: Correct. I'm the case agent so I had it all consolidated
25 in one area and took it out of the house and put it in the van

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1 and we went back to the office.

2 Q: Consolidated ---

3 THE COURT: I want to know with specificity what issues
4 that you say were destroyed that would be of help to the
5 Defendant.

6 MR. HILLIARD: Until I know what was destroyed, I won't
7 be able to know the answer to that question.

8 THE COURT: Well, I have him go at if he knows -- if he
9 knows what was taken and we know what's left, we'll know
10 what's destroyed. Does he know what was taken fully?

11 MR. HILLIARD: I don't know. I guess we'll get to that.

12 BY MR. HILLIARD:

13 Q: Do you know everything that was taken out of the house?

14 A: Not off the top of my head, no.

15 Q: So, did you do the ---

16 THE COURT: Have you got that?

17 MR. RICHARDSON: I'm gonna have this marked for the
18 record, Your Honor.

19 THE COURT: I'm curious, why didn't you have the evidence
20 man who destroyed the stuff here?

21 MR. RICHARDSON: Your Honor, I've got her -- I've the
22 agent calling her right now.

23 THE COURT: Well, you ought've known to be here. We knew
24 we were ---

25 MR. RICHARDSON: Your Honor, this is matters of

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1 inculpatory nature not exculpatory.

2 THE COURT: I know but he's entitled to know what, Mr.

3 Richardson ---

4 MR. RICHARDSON: He spoke with the evidence custodian two
5 weeks ago.

6 THE COURT: I know but he wants to be on the record and
7 he's entitled to that.

8 MR. RICHARDSON: I'm getting her here.

9 THE COURT: That's why we're having this hearing, he
10 didn't like what he heard from the evidence custodian.

11 I would like to get on with this since I've got a jury
12 waiting down there. Is there any part of this issue that can
13 be heard later or during a recess at some time?

14 MR. RICHARDSON: Your Honor, certainly, whenever Ms.
15 Rabon gets here, we can hear that portion during recess with
16 regard to any paperwork that was destroyed would be the
17 State's position.

18 MR. HILLIARD: The thing that happened, Judge, connected
19 to all of this is that we got there, they had a little bit of
20 evidence which was some drugs, they had some pictures, some of
21 which are out of focus, and they had a bunch of stuff and they
22 said they had destroyed the evidence. The notion that the
23 prosecutor and I like him and I'm not saying anything bad
24 about the prosecutor but the notion that the prosecutor can
25 come into court and make a decision about whether a piece of

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1 evidence which has been destroyed is inculpatory or
2 exculpatory is ---

3 THE COURT: What if it doesn't have any nexus to the
4 trial in question. The marijuana paraphernalia, of course,
5 has no nexus to this case, does it?

6 MR. HILLIARD: Well, my client wasn't at the house. When
7 they executed this search warrant, he wasn't there.

8 THE COURT: Well, then why are you interested in what
9 they took away then?

10 MR. HILLIARD: Well, that's what they're saying is that
11 there's a whole lot of stuff at the house that shows that he
12 was connected to the house and we're saying there's stuff in
13 the house that says that he's not connected to the house.

14 THE COURT: Like what?

15 MR. HILLIARD: But they ---

16 THE COURT: Can you tell us what so that he can ask him
17 questions, was this taken and destroyed?

18 MR. HILLIARD: I don't ---

19 THE COURT: We need to know what, what things that you
20 say were inculpatory that -- or exculpatory that was
21 destroyed. Can you say -- ask was this item destroyed.

22 BY MR. HILLIARD:

23 Q: You took a lot of mail away from the house; is that
24 correct?

25 A: I took some mail from the house, correct. I don't know

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1 how much but I took some mail, yes.

2 Q: And there were names on that mail other than Alex
3 Robinson, correct?

4 A: There probably was.

5 Q: And there are -- there were names on that mail that were
6 not Alex Robinson and part of your connection, the way that
7 you connected Alex Robinson to this case, your investigation
8 was in fact that he had mail at the house, right?

9 A: Yes, and other things, too.

10 Q: All right, sir. So, the fact that you connected him to
11 the house because there was mail at the house that belonged to
12 him, it would be exculpatory if there was mail at the house
13 that belonged to other people that did not live at the house;
14 is that correct? That would be exculpatory, right?

15 A: Yes.

16 Q: All right, sir. So, exculpatory mail was taken from ---

17 THE COURT: All right, Mr. Richardson, was there any mail
18 addressed to other people destroyed or do you have it?

19 MR. RICHARDSON: Your Honor, if I could present ---

20 THE COURT: I'm just trying to save some time here.

21 MR. RICHARDSON: Yes, sir, Your Honor.

22 STATE'S EXHIBIT NUMBER TWO

23 MARKED FOR IDENTIFICATION

24 CROSS EXAMINATION OF SERGEANT KENT DONALD BY MR. RICHARDSON:

25 Q: I'm gonna show you what's been marked as State's Number

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1 Two for the purpose of this hearing. Do recognize State's
2 Number Two?

3 A: I do.

4 Q: What is State's Number Two?

5 A: It is an evidence record.

6 Q: And does that contain the information regarding the
7 evidence that you turned in on this case?

8 A: Yes.

9 Q: And you took this evidence and turned it in?

10 A: Yes, sir.

11 Q: Okay. And with regard to any kind of paperwork, is there
12 any kind of notation on State's Number Two?

13 A: Got -- where it says destroyed, various ---

14 Q: No, no, just -- is there any paperwork listed on here
15 that you took?

16 A: Oh, yes.

17 Q: And how did you entitle it?

18 A: Various paperwork in the name of Alex Robinson, Kenneth
19 Durant, South Carolina Driver's License.

20 STATE'S EXHIBITS NUMBERS THREE AND FOUR

21 MARKED FOR IDENTIFICATION.

22 Q: Okay. And how about on State's Number Three and Four, do
23 you recognize those items?

24 A: Yes.

25 Q: And what do those items appear to be?

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1 A: Again, these are items that were taken from the house
2 during the search warrant.

3 Q: On either States Number Two -- I'm sorry, Three or Four,
4 any paperwork listed there?

5 A: No, sir.

6 Q: So, at no point do you elicit you brought in paperwork in
7 anyone else's name?

8 A: No, sir.

9 MR. RICHARDSON: Your Honor, I'm trying to get these
10 marked, these are photographs of mail from the residence and
11 I've got Ms. Rabon on the way, she is ---

12 THE COURT: I do want her to testify ---

13 MR. RICHARDSON: She is coming, Your Honor.

14 THE COURT: --- as to exactly what she destroyed to
15 satisfy -- and this is an appropriate inquire by Defense
16 counsel

17 MR. RICHARDSON: Thank you, Your Honor.

18 STATE'S EXHIBITS FIVE THROUGH NINE

19 MARKED FOR IDENTIFICATION.

20 BY MR. RICHARDSON

21 Q: State's Five through Nine, can you take a look at those?

22 A: These are photographs that I took at the scene.

23 Q: And what are those -- what's depicted in those
24 photographs?

25 A: In State's Exhibit Six, I've got mail addressed to Alex

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- 1 Robinson from Holiday Inn Express and some other paperwork. I
2 believe this is gonna be the same as State's Exhibit Seven is
3 gonna be the same photograph, I tried to take a close-up shot
4 of it which is out of focus. State's Exhibit Eight is going
5 to be -- that's gonna be a VISA bill address to Alex Robinson,
6 I believe -- I can't tell what this one is. And State's
7 Exhibit Nine a photograph of another -- it's got a digital
8 scale, paraphernalia, things of that nature.
- 9 Q: And the address for Mr. Robinson appears to be ---
- 10 A: That says Dunn Shortcut.
- 11 Q: Dunn Shortcut Road.
- 12 A: Yes.
- 13 Q: But it was found at [REDACTED]
- 14 A: It was.
- 15 Q: And there's also a piece of mail here, it looks like a
16 letter, on State's Number Five. Does it seem to say Dear
17 Alicia; is that correct?
- 18 A: Yes, it's says Dear Alicia.
- 19 Q: Okay. So, there is a piece of mail that belongs to
20 somebody else there?
- 21 A: Yes.
- 22 Q: And you weren't trying to say nobody else lived at that
23 address?
- 24 A: No.
- 25 Q: There's no doubt about it you did find paperwork in the

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1 name of Alex Robinson?

2 A: Yes, sir.

3 THE COURT: Where is that paperwork?

4 MR. RICHARDSON: That is the paperwork we're discussing,
5 Your Honor, that's been destroyed. They didn't list it with
6 specificity and, of course, I have no objection to a
7 spoliation charge.

8 THE COURT: His issue is that the -- his issues are that
9 some other people were living there because the mail was
10 addressed there and he can raise that on cross examination.

11 MR. RICHARDSON: Certainly, Your Honor.

12 MR. HILLIARD: I guess we still have the issue of the --
13 well, let me ask this question, Judge, if I could.

14 REDIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR. HILLIARD:

15 Q: State's Exhibit Number Six, did you collect that
16 evidence?

17 A: I don't recall if I did or not.

18 Q: All right, sir. So, on State's Exhibit Number Six, you
19 don't know whether you got that evidence or not?

20 A: No, sir, I do not.

21 Q: All right.

22 THE COURT: What is that evidence? What does it depict?

23 MR. HILLIARD: It depicts a crowd of envelopes in a
24 drawer which would be where envelopes would be collected.

25 BY MR. HILLIARD:

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1 Q: And State's Exhibit Number Seven ---

2 THE COURT: Blank envelopes wouldn't be necessarily
3 significant one way or the other, would it?

4 MR. HILLIARD: Yes, sir, that would be our position that
5 in fact they would be significant.

6 THE COURT: Blank envelopes?

7 MR. HILLIARD: I'm sorry. Blank, I didn't hear that
8 part, Judge. They are not -- I'll show you, Judge, State's
9 Exhibit Number Six, those are not blank envelopes.

10 THE COURT: I thought I heard you say blank, I'm sorry.

11 MR. HILLIARD: I'm sorry. I misspoke, Judge.

12 BY MR. HILLIARD:

13 Q: State's Exhibit Number Seven, do you recall whether you
14 collected that?

15 A: No, sir, I do not recall.

16 THE COURT: Well, these pictures speak to other
17 individuals, so that's not gonna be a big issue.

18 Q: And you don't recall whether you collected State's
19 Exhibit Number Seven or not?

20 A: I don't recall.

21 Q: All right, sir. And then State's Exhibit Number Eight.

22 A: I don't recall if I collected that either

23 Q: Do you recall if you collected anything from State's
24 Exhibit Number Five?

25 A: Don't recall.

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1 Q: Don't know; all right, sir. And State's Exhibit Number
2 Nine, you don't know whether you collected anything about
3 that?

4 A: I'm thinking I probably would've collected the scale, the
5 sandwich bags, yes.

6 Q: But ---

7 THE COURT: Won't these pictures stand for whatever was
8 taken -- won't these pictures stand for themselves?

9 MR. HILLIARD: Judge, we can talk about that in a minute
10 but it's -- if I could just ask him a few more questions ---

11 THE COURT: Go ahead.

12 MR. HILLIARD: --- connected to that.

13 THE COURT: You understand now one more time, we gonna
14 try this case this week.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: I'm not gonna delay it.

17 MR. HILLIARD: No, sir.

18 THE COURT: So, take all the time you want but this case
19 is gonna be tried by me this week.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: You go ahead.

22 MR. HILLIARD: Well, that's what I'm doing, Judge, is
23 trying the case.

24 THE COURT: All right. Go ahead. We don't want to try
25 the case now, Mr. Hilliard.

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1 MR. HILLIARD: No, sir, but ---

2 THE COURT: Get to the question that you want, you want
3 to know what was destroyed.

4 BY MR. HILLIARD:

5 Q: You don't know what was destroyed, do you?

6 A: No, sir, I don't.

7 MR. HILLIARD: He doesn't know what was destroyed.

8 THE COURT: I understand but he's showed you those
9 pictures that ---

10 MR. HILLIARD: He doesn't know whether he collected those
11 -- what's depicted in those pictures or not.

12 THE COURT: Who took the pictures; do you know that?

13 A: I took the pictures, Your Honor.

14 THE COURT: If you took -- where were you when you took
15 the pictures?

16 A: At [REDACTED].

17 THE COURT: Does that answer your question, Mr. Hilliard?
18 He took the pictures at that address.

19 MR. HILLIARD: Well, I understood that the pictures were
20 taken during the search. Our position is that they collected
21 those envelopes and that those envelopes are exculpatory, that
22 those envelopes contain addresses for my client which were ---

23 THE COURT: Are these pictures, who -- who all is
24 contained in these pictures?

25 MR. HILLIARD: Well, you can't tell. That's kind of the

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1 problem, Judge, if you ---

2 THE COURT: Well, I can tell one of them, I saw the
3 Defendant's name was one of them, I believe I saw that.

4 MR. HILLIARD: At a different address, living at a
5 different address.

6 THE COURT: Well, you got the pictures to show that
7 during the trial of the case.

8 MR. HILLIARD: Right, but it's a handful of them, it's
9 not just one; it's a handful of them, they had them, they
10 destroyed them.

11 THE COURT: Well, we'll find out why.

12 MR. HILLIARD: Well, I know why. The question that we
13 don't know is what and I ---

14 THE COURT: You know the question why they destroyed it,
15 how about telling me.

16 MR. HILLIARD: All right, sir. They destroyed it -- what
17 happened was there were three people in this house. They
18 busted in the door, they went inside, they found two people in
19 the front bedroom with a gun, a bag of money and a bag of
20 dope. They found one girl in the back bedroom and apparently
21 there was a bag of dope back there; I'm not sure where, I
22 can't figure that out yet but somebody will tell us at some
23 point. They arrested those three individuals. They decided
24 that the pregnant girl in the back bedroom was my client's
25 girlfriend and because they decided it was his girlfriend,

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1 they arrested him and that's it. So, he's under arrest
2 because his pregnant girlfriend was found near some dope ---

3 THE COURT: I accept that that is your position.

4 MR. HILLIARD: Well, I'm certain if Brad were telling it,
5 it'd be different ---

6 THE COURT: I expect there's another factual scenario
7 there.

8 MR. HILLIARD: Right, but any event, they collected the
9 gun, they collected ---

10 THE COURT: To save some time, can't you agree that and
11 the Solicitor agree that there were addresses found with other
12 people's name on it to save some time?

13 MR. RICHARDSON: Your Honor, I'll agree that Mr.
14 Robinson, the address on those letters is [REDACTED],
15 which over here in Conway, wasn't [REDACTED].

16 THE COURT: But I still want the ---

17 MR. RICHARDSON: And I fully understand that ---

18 THE COURT: But I still want your witness to come and
19 tell us what was destroyed.

20 MR. RICHARDSON: She's on her way, Your Honor.

21 THE COURT: I don't see the letters as a big issue when
22 he's prepared to say to you that the -- that address contained
23 letters addressed to other people.

24 MR. HILLIARD: But there's a lot of letters in there. We
25 don't know -- here's our problem is this is whole drawer full.

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1 I think they took the whole drawer full and they destroyed
2 them because they thought about other -- and I'm not saying
3 they destroyed them on purpose, that's not me saying that at
4 all, but the law says and there's a couple of cases we've got
5 over there, that says that if the destruction of the evidence
6 creates a problem, creates a situation where we can't present
7 our case, then the case needs to be dismissed.

8 THE COURT: I don't think it does simply because they're
9 prepared to admit that at that residence, there were a number
10 of envelopes addressed to other people. That ought to solve
11 your -- that's all you would have if you had the envelopes in
12 front of you.

13 MR. HILLIARD: But we don't know what else is in here.

14 THE COURT: Well, no, you're concerned with how many were
15 addressed to other people. How many numbers you want to --
16 you want to let him consent to? What difference does it make?
17 Could it be five, ten, twenty? They're prepared to concede
18 that there were other envelopes addressed to other people
19 other than this defendant and that's all you trying to prove
20 and it's not gonna take an hour for you to prove it, they've
21 admitted it as to that. Now, there may be something else that
22 was, you agree with that?

23 MR. RICHARDSON: I agree with that, Your Honor, and I
24 think the proper remedy is a charge on spoliation.

25 THE COURT: I still want to know why -- I still want to

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1 know why she destroyed them but with your admission as to that
2 fact, that -- that's not an issue now. Where is she? I'm
3 surprised ---

4 MR. RICHARDSON: She's on her way, Your Honor.

5 THE COURT: Why didn't you have her here. You knew at
6 twelve o'clock today that this ---

7 MR. RICHARDSON: Your Honor, because I thought that we
8 could stipulate to something like this. It's mail that we had
9 photographs of. It's not the first time we've gone to trial
10 and we don't have the actual evidence anymore, we have
11 photographs.

12 THE COURT: You don't have what?

13 MR. RICHARDSON: That we don't -- we said we would
14 address this and, Your Honor, I'm prepared to move forward
15 with the case without this information. We do have one
16 witness we want to get into today but the paperwork, I mean,
17 we've addressed this now. I talked to Mr. Hilliard about a
18 week and a half ago.

19 THE COURT: You must not have. He acts like he doesn't
20 know anything about anything all of a sudden.

21 MR. HILLIARD: Why -- let me just talk about that a
22 little bit. I wanted to get somebody on the witness stand
23 under oath talking about what evidence they had. What I've
24 got is an individual on the witness stand who was responsible,
25 who told me under oath, he is responsible for every piece of

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1 evidence that walked out the house and he doesn't know what
2 they got. Now, if the evidence ---

3 THE COURT: That's not an accurate statement, Mr.
4 Hilliard.

5 MR. HILLIARD: He doesn't -- he can't tell me whether he
6 got anything in my hand, which is ---

7 THE COURT: Why don't you look at the return on the
8 search warrant and it'll tell you.

9 MR. RICHARDSON: Your Honor ---

10 THE COURT: What you need to do and I'm surprised, you
11 knew you had the spoilage issue, why didn't you have this
12 witness?

13 MR. RICHARDSON: Your Honor, the Defense knows what
14 motions they have. They can call witnesses as well. This is
15 something that -- I got an email late Friday, they want to
16 talk about it.

17 THE COURT: Spoilage issue is for you to decide.

18 MR. RICHARDSON: Yes, sir, Your Honor, and they can
19 certainly get a charge on spoliation.

20 THE COURT: When I keep the jury down for an hour, do you
21 want me to blame it on you or him or both of you?

22 MR. RICHARDSON: I'll take the heat on that, Your Honor,
23 that I was responding to the Defendant's motion but ---

24 THE COURT: Other than finding out exactly what was
25 destroyed, what other motions do you got, Mr. Hilliard?

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1 MR. HILLIARD: I got carried away, Judge, let me think a
2 second. We want to look at the NCICs on the jury so that we
3 would have the same information as the prosecutor when we were
4 going through the selection process.

5 THE COURT: Do you even have that information?

6 MR. RICHARDSON: I have that information; we cannot
7 release that information, Your Honor, except for law
8 enforcement purposes.

9 THE COURT: I think that's true, Mr. Hilliard.

10 MR. RICHARDSON: This comes up every time during ---

11 THE COURT: It does and it's confidential. I put a man
12 in jail recently for releasing it without permission. You've
13 heard that motion before.

14 MR. HILLIARD: Yes, sir, I ---

15 THE COURT: And it's been denied.

16 MR. HILLIARD: Yes, sir. I've never won it, Judge.

17 THE COURT: Well, you're not gonna win it today, let's --
18 what's your next one. I don't mean to say that you won't win
19 the next motion but we'll hear it.

20 MR. HILLIARD: Thank you, Judge. Judge, while we're
21 waiting on that person, if we could -- if I could just put
22 these cases -- where did the cases go. I just wanted to run
23 through these cases.

24 THE COURT: On what issues? Why didn't you just list
25 them on a sheet of paper and put them in the ---

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SERGEANT KENT DONALD - REDIRECT BY MR. HILLIARD

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1 MR. HILLIARD: We did that. We did it three different
2 ways but it's State versus Moses, State versus Singleton ---

3 THE COURT: Put them in the record as Court's Exhibit.

4 MR. HILLIARD: State versus Missouri, Jones ---

5 THE COURT: Just put them in the record, I don't want to
6 hear them all.

7 MR. HILLIARD: --- Mizzell and Heath. We'll make them a
8 Court's Exhibit. They can all be one exhibit if that's okay
9 with the Court Reporter.

10 COURT'S EXHIBIT NUMBER ONE

11 MARKED FOR IDENTIFICATION.

12 THE COURT: And these are your exhibits as to this issue
13 as to the insufficiency of the search warrant.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: I understand. And it's proper that you do
16 that. I may read them if we get a chance to refresh my
17 memory.

18 MR. RICHARDSON: Your Honor, can this witness step down
19 from the stand.

20 THE COURT: Yes. And thank you so much. I apologize ---

21 SERGEANT DONALD: No problem, sir.

22 (REPORTER'S NOTE: Witness leaves the witness stand.)

23 THE COURT: Mr. Hilliard and you and Ms. Bass have water
24 and all over there? Ms. Bass, you got any water?

25 MS. BASS: Yes, sir. Thank you.

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1 THE COURT: If you need anything, let me know.

2 MS. BASS: Yes, sir. Your Honor, I'm just trying to see
3 if Mr. Hilliard passed up all my cases that I made notes on
4 for Your Honor and if so, I'd like to have those for Your
5 Honor to review at anytime you get a moment.

6 THE COURT: On what cases -- on what issue?

7 MS. BASS: Well, you know, all my good search warrant
8 stuff and the reliability of the CI and all that good stuff.

9 THE COURT: I'm not gonna change my ruling on that.

10 MS. BASS: Well, I want to make sure you -- we have them
11 in the record.

12 THE COURT: I've read most of those cases, that issue has
13 been before me countless times.

14 MS. BASS: Okay. I'm just trying to preserve the record
15 for my client, Your Honor.

16 THE COURT: I understand but I'm telling you I know what
17 they say.

18 MS. BASS: Okay, Your Honor. Thank you.

19 MR. RICHARDSON: Your Honor, we're prepared to go
20 forward. Ms. Rabon is here.

21 THE COURT: All right. Thank you.

22 MR. RICHARDSON: The State would call Lori Rabon.

23 THE COURT: You didn't bring any records with you at all?

24 MR. RICHARDSON: She's got the same records, Your Honor,
25 that ---

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LORI RABON - DIRECT BY MR. RICHARDSON

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1 THE COURT: Okay.

2 LORI RABON, HAVING BEEN SWORN,

3 TESTIFIED AS FOLLOWS:

4 CLERK: State your full name and spell your last name.

5 MS. RABON: Lori Rabon, R-A-B-O-N.

6 DIRECT EXAMINATION OF LORI RABON BY MR. RICHARDSON:

7 Q: Ms. Rabon, could you please tell us where you're employed
8 and in what capacity?

9 A: Horry County Police Department, Property and Evidence
10 Supervisor.

11 Q: And in your capacity as Property and Evidence Supervisor,
12 you're basically in charge of the clerks there?

13 A: Right.

14 Q: You and I have spoken about this case State v Alex
15 Robinson previously, correct?

16 A: Correct.

17 Q: I'm gonna show you what's been previously admitted as
18 State's Number Two and draw your attention -- and it is an
19 Evidence Log. Drawing your attention to Item Number 22,
20 various paperwork in the name of Alex Robinson, could you tell
21 you tell us what if anything happened to that?

22 A: The paperwork was destroyed upon disposition of the co-
23 defendants.

24 Q: And that was simple error, correct?

25 THE COURT: What did she say about what, the co-

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LORI RABON - DIRECT BY MR. RICHARDSON

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1 defendants?

2 MR. RICHARDSON: One of the cod-defendants was disposed
3 of, Your Honor, and they got a disposition letter.

4 A: Uh-huh (affirmative response), the ---

5 MR. RICHARDSON: Whenever they have a disposition letter
6 saying that co-defendant, one of the people that got charged
7 ---

8 THE COURT: That's fine. Go ahead.

9 A: When the co-defendants were -- the co-defendants were
10 disposed upon the receipt from the Solicitor's office the
11 paperwork, Item Number 22 was destroyed.

12 BY MR. RICHARDSON

13 Q: In other words, at that point, you didn't realize there
14 was still -- there was yet unresolved cases pertaining to this
15 case?

16 A: Exactly.

17 Q: And that was due to the case numbering system that was in
18 effect in 2008?

19 A: That's correct.

20 Q: All right. So, as I understand your testimony, that
21 paperwork was destroyed in error?

22 A: That's correct.

23 Q: You don't have any recollection to what the paperwork
24 was?

25 A: I don't.

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LORI RABON - DIRECT BY MR. RICHARDSON

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1 Q: You just know Item Number 2 was destroyed under the
2 normal course of ---

3 THE COURT: Can you describe Item Number 2 as to what it
4 was?

5 MR. RICHARDSON: Your Honor, it's been described on Item
6 22 as various paperwork in the name of Alex Robinson, that is
7 how it's described.

8 THE COURT: Alex Robinson is ---

9 MR. RICHARDSON: Is the Defendant, Your Honor.

10 THE COURT: Well, that's not -- he would know what paper
11 -- it's his paperwork, so he would know what that is.

12 BY MR. RICHARDSON:

13 Q: And there's nothing malicious about the destruction?

14 A: No, there's not.

15 THE COURT: How about -- you keep talking about pictures,
16 any pictures?

17 MR. RICHARDSON: There were no photographs destroyed, I
18 don't believe, Your Honor. We have photographs of some of
19 that paperwork.

20 BY MR. RICHARDSON:

21 Q: Let's go through.

22 THE COURT: Well ---

23 MR. RICHARDSON: I can go through this, just trying ---

24 THE COURT: I want to hear ---

25 Q: With regard to Item Number 8 and 9, black box with

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LORI RABON - DIRECT BY MR. RICHARDSON

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1 marijuana bong and silver box with marijuana bong, those are
2 marked as destroyed.

3 A: That's correct. We have an agreement with the
4 Solicitor's office that paraphernalia is destroyed upon entry
5 into evidence. We don't retain it.

6 Q: We photograph it, correct?

7 A: Exactly.

8 Q: With regard to 16 and 17, marijuana ashtray and skeleton
9 ashtray on State's Number Four, they're marked as destroyed
10 along with multicolored glass pipe with residue, 18; and
11 monkey ashtray, 20.

12 A: Those also paraphernalia. We would've destroyed that
13 also.

14 Q: State's Number Two, Number 23, water bottle with hidden
15 compartment.

16 A: That too is paraphernalia.

17 Q: Okay. And the items returned to owner; those are just
18 given back to the owner?

19 A: Yes, they were.

20 Q: And that is the extent of your involvement?

21 A: Yes, it is.

22 Q: As it pertains to Mr. Robinson?

23 A: Yes, it is.

24 THE COURT: Do you have any questions, Mr. Hilliard?

25 MR. HILLIARD: Is he finished?

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LORI RABON - CROSS BY MR. HILLIARD

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1 THE COURT: I'm not sure.

2 MR. RICHARDSON: I'm through, Your Honor.

3 MR. HILLIARD: Thank you, Judge.

4 CROSS EXAMINATION OF LORI RABON BY MR. HILLIARD:

5 Q: Hi.

6 A: Hi.

7 Q: You're the evidence custodian for Horry County at this
8 point in time; is that correct?

9 A: That is correct.

10 Q: So, when you say that was the extent of your involvement
11 with Alex Robinson, you really sort of have some other things
12 to do with his case, right?

13 A: I'm the supervisor in charge in the clerks that actually
14 are the evidence custodians. So, whoever signed in and out of
15 the evidence is the chain witnesses; is that your question?

16 Q: I guess. So, you're not in the chain of custody?

17 A: No.

18 Q: You never had care, custody, control of any of this
19 evidence?

20 A: No, I -- my name is not on the paperwork.

21 Q: So, the people who actually had the care, custody and
22 control of the evidence work for you?

23 A: Exactly.

24 Q: Okay. You were the person responsible for destroying
25 evidence or not?

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LORI RABON - CROSS BY MR. HILLIARD

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1 A: Yes.

2 Q: So, the destruction and return of evidence is your
3 responsibility?

4 A: Exactly.

5 Q: All right. And the Horry County Police Department
6 Evidence Record, which has been marked as State's Exhibit
7 Number Three, Four and Two, starts with Item Number 1 and goes
8 to Item Number 25 and is this all the evidence that was
9 collected in this case that was your responsibility?

10 A: I don't have the case file with me but it appears that 1
11 through 25 would be the ending evidence. Detective Donald has
12 at the bottom 21 through 25 and I don't see any additional
13 numbers.

14 Q: All right. So, as far as you know it is; is that
15 correct?

16 A: Yes, sir.

17 Q: The medicine bottle with assorted prescription tablets as
18 to Number 10, says RTO are those your initials?

19 A: No, that's not my initials.

20 Q: Wonder whose initials those are or -- I'm sorry, not your
21 initials, but is that your handwriting?

22 A: We normally use that as a code for return to owner.

23 Q: Right. But do you know who had written that on there?

24 A: That's my handwriting.

25 Q: Okay. I'm sorry. I'm misquestioned you. So, it is your

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LORI RABON - CROSS BY MR. HILLIARD

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1 handwriting, RTO means you returned it to the owner.

2 A: Right, right.

3 Q: Do you know who that was?

4 A: There is some additional paperwork that would've had the
5 signature on it.

6 Q: The phone ---

7 THE COURT: Mr. Hilliard ---

8 MR. HILLIARD: Yes, sir.

9 THE COURT: --- again, I've got a jury waiting. The
10 spoilage of a prescription bottle, how does that got anything
11 to do with any issue in this case?

12 MR. HILLIARD: I'm sorry, Your Honor, I'll move on.

13 THE COURT: Well, you're wasting time.

14 MR. HILLIARD: I'll move along, Your Honor.

15 THE COURT: Please do. I've got plenty of time but we've
16 got a jury been waiting down there for a half-hour and you're
17 talking about a prescription bottle.

18 MR. HILLIARD: Yes, sir, Your Honor.

19 BY MR. HILLIARD:

20 Q: Number 22, various paperwork in the name of Alex
21 Robinson, destroyed, that's your handwriting for it was
22 destroyed?

23 A: Yes.

24 Q: Do you remember how many pieces it was?

25 A: No, I don't. We're not required to count it when we

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LORI RABON - CROSS BY MR. HILLIARD

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1 destroy it. It's maintained in a box of evidence that's
2 labeled with the barcode and we're not required to count how
3 many pieces come in.

4 Q: Okay. And when you say it's labeled in a box with a
5 barcode, would you have done anything with it to determine
6 what was actually in the box or would you have gone by what
7 was on the barcode?

8 A: No, we physically have to open it up and verify what's in
9 the actual box.

10 Q: And did you do that in this case?

11 A: Yes.

12 Q: Do you have any independent recollection of what was in
13 the box?

14 A: Not other than the photographs that are in the case file.

15 THE COURT: Let me ask you this: Obviously, some matters
16 were disposed of or destroyed, was this conduct in the normal
17 course of business?

18 A: Yes, it is. When we ---

19 THE COURT: So, there's nothing unusual about it?

20 A: No, sir, there's not.

21 THE COURT: You didn't get -- the prosecution didn't tell
22 you what to destroy?

23 A: No, they did not.

24 THE COURT: No officer involved told you what to destroy?

25 A: No, they did not. We ---

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LORI RABON - CROSS BY MR. HILLIARD

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1 THE COURT: You're certifying under oath that what you
2 destroyed was in the normal course of business?

3 A: Yes, sir, I am.

4 THE COURT: All right..

5 BY MR. HILLIARD:

6 Q: And as to the -- you say there was a photograph of what
7 was destroyed, could you look at these photographs real quick
8 and just see if the photograph is in there of what was
9 destroyed?

10 A: There was a photograph of some paperwork, it was mail-
11 type paperwork.

12 Q: One more question, so the ones that you pointed out were
13 State's Exhibit Number Six; is that correct?

14 A: Yes, sir.

15 Q: State's Exhibit Number Eight, is that correct?

16 A: Yes, sir.

17 Q: State's Exhibit Number Seven, is that correct?

18 A: Yes, sir.

19 Q: And did you look at every piece of the mail to be certain
20 that Alex Robinson's name was on it or did you...

21 A: No, I did not. It's contained in a box that has a case
22 number on it and the case number corresponds to the
23 disposition that we get from the Solicitor's office.
24 Unknowingly, there was another co-defendant and it was
25 destroyed but we most certainly don't look through the

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LORI RABON - CROSS BY MR. HILLIARD

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1 paperwork, that's, that's the job of the investigator.

2 Q: Do you remember how big the box was?

3 A: Not right off the top of my head. We receive
4 dispositions monthly.

5 THE COURT: You apparently want to show that by virtue of
6 this paperwork, some of which were addressed to other
7 individuals, other individuals received mail at that premises.

8 MR. HILLIARD: Yes, sir.

9 THE COURT: They're prepared to concede that and you're
10 wasting thirty minutes talking about what they gonna concede
11 to, why? They gonna concede that issue and you can argue it
12 to the jury all day long. I don't understand why you continue
13 to proceed.

14 MR. HILLIARD: I'm trying to get to a spot where I can
15 understand what they know about it. I don't have any way to
16 know what happened. I understand ---

17 THE COURT: Well, everybody else in this courtroom
18 understands it, I don't understand why you don't but I think
19 you've addressed this issue sufficiently now, Mr. Hilliard,
20 unless you've got some other question about it. I mean, it's
21 clear that mail was received there by other people and they're
22 willing to concede it.

23 MR. HILLIARD: Yes, sir.

24 THE COURT: So, I don't know why you keep harassing her
25 about the thing.

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1 MR. HILLIARD: Well, it would certainly not be in my
2 nature to harass, her, Judge.

3 THE COURT: Ordinarily not but you're getting there
4 because you keep on with it.

5 MR. HILLIARD: Hopefully she and you will forgive me for
6 that.

7 THE COURT: Well, I will, I don't know whether she will
8 or not; she can speak for herself, but move on now.

9 MR. HILLIARD: Yes, sir.

10 THE COURT: Just get on with it.

11 MR. HILLIARD: I will.

12 BY MR. HILLIARD:

13 Q: There's no gun on here. There's no gun on this list.

14 A: Okay.

15 Q: Right?

16 A: No.

17 Q: But there was a gun destroyed? Is that right?

18 A: I don't see a gun listed on the paperwork for this case
19 number.

20 Q: Do you know whether a gun was destroyed or not?

21 A: No, I don't see where a gun was ever turned into evidence
22 for this case number.

23 Q: That's all I have. Thank you, ma'am.

24 THE COURT: All right, sir.

25 Come down.

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1 THE COURT: Do you have any other witnesses?

2 MR. RICHARDSON: No, sir, Your Honor.

3 THE COURT: You got any witnesses? Mr. Hilliard, I'll be
4 glad to ---

5 MR. HILLIARD: No, sir. Your Honor.

6 THE COURT: I'll be glad to hear you on this issue
7 briefly.

8 MR. HILLIARD: Well, there was a gun and the gun was
9 destroyed, that was the gun that I was telling you about that
10 was in the front room with the two individuals who got
11 arrested. We would submit to the Court that the gun would be
12 exculpatory in that our position in the case is that they
13 arrested the people at the scene who were engaged in
14 trafficking in cocaine.

15 THE COURT: You may -- certainly may inquire about that
16 gun on the cross examination.

17 MR. HILLIARD: Yes, sir.

18 THE COURT: I -- let me say, I have listened very
19 carefully to this and I don't see anything that was destroyed
20 by prosecutor misconduct and based on what I'm hearing was
21 destroyed, I don't see how that prejudices the Defendant in
22 any way. If you have some question about what was destroyed
23 was not presented, you can cross examine them on that
24 including the gun but I under no circumstances do I conclude
25 there's prosecutor misconduct here.

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1 MR. HILLIARD: No, sir.

2 THE COURT: It's within the normal course of business and
3 I don't see any significant evidentiary matter that was
4 destroyed, do you? Can you ---

5 MR. HILLIARD: The challenge that is presented to us is
6 -- and I agree, Judge, I am not suggesting that there is
7 prosecutorial misconduct in this and I'm certainly not
8 suggesting that there is anything that this young lady has
9 done that was wrong or out of the course of business ---

10 THE COURT: What are you suggesting?

11 MR. HILLIARD: I am suggesting that in the absence of our
12 ability to know what they took, we don't know whether it's
13 exculpatory or not.

14 THE COURT: She's told you as best she understands it,
15 she's told you.

16 MR. HILLIARD: Well, I -- and I know it's as best she
17 understands it but ---

18 THE COURT: Well, you know, you could make that argument
19 in every case with evidence, well what else did you take, well
20 this is what we took, well we don't know what else you took;
21 you could go on and on with that. The evidence is sufficient
22 here for you to discern what was taken. The evidence is
23 clearly here to show there was no prosecutor misconduct and
24 the evidence certainly suggests that they destroyed nothing
25 that would be of help or hurt to this defendant. So, let's

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LORI RABON - CROSS BY MR. HILLIARD

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1 move on with your next motion that you have.

2 Come down and you may be excused.

3 A: Thank you.

4 MR. HILLIARD: We'd like to have her available at a
5 future time, perhaps, Judge, if we get to that point but I
6 didn't figure she was leaving town anyway.

7 THE COURT: Okay.

8 MR. HILLIARD: And thank you, ma'am, for coming.

9 (REPORTER'S NOTE: The witness leaves the witness stand.)

10 As to the law, Judge ---

11 THE COURT: I'm not agreeing that she is or is not an
12 admissible witness at the trial.

13 MR. HILLIARD: Oh, I understand, yes, sir.

14 THE COURT: All right. Go ahead.

15 MR. HILLIARD: If she's not admissible then we don't get
16 to call her.

17 If I could just ---

18 THE COURT: I do want the record to reflect one more time
19 that there -- this Defendant was arraigned some time ago, you
20 were notified several months ago that this trial was set for
21 today and you waited till the jury was impaneled downstairs to
22 start making these motions having four juror -- judges
23 available last week to hear every one of them and that quite
24 frankly concerns me but go ahead. Let me hear your next
25 motion.

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1 MR. HILLIARD: Yes, sir, Your Honor.

2 Section 17-13-140 indicates that in the case of a warrant
3 which is issued by a judge or a court of record, it shall be
4 returnable to a magistrate having jurisdiction of the area
5 where the property is located or the person to be searched is
6 found. And that is a requirement pursuant to the statute
7 which gives magistrate orders for the judges of record.

8 THE COURT: I'm familiar with the statute. What's your
9 point, please?

10 MR. HILLIARD: The point is that the return was not done
11 to the magistrate as it is indicated in the statute.

12 THE COURT: The return was made to the issuing judge
13 which was me.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: And that complies with that statute because a
16 circuit judge has concurrent jurisdiction. I was the issuing
17 judge, it was returned to me and clearly complies with the
18 statute.

19 MR. HILLIARD: Yes, sir. Thank you, Your Honor.

20 THE COURT: Okay, sir. All right. Anything further?

21 MR. RICHARDSON: Nothing from the State, Your Honor.

22 THE COURT: How about it?

23 MR. HILLIARD: No, sir, Your Honor.

24 THE COURT: You want to take a short break for a few
25 minutes while I bring the jury up.

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1 jury? What say the State?

2 MR. RICHARDSON: No, sir, Your Honor.

3 THE COURT: What say Defense?

4 MR. HILLIARD: None other than as previous ruled by the
5 Court, Your Honor.

6 THE COURT: Yes, the jury will stand as selected.

7 Ladies and gentlemen, for those who were not selected,
8 I'm gonna excuse you for the day and respectfully ask that you
9 call in after 6 o'clock tonight. There will be several other
10 cases scheduled for trial, I have one more scheduled after
11 this one and the civil court judge would have some too. So,
12 call in after 6 o'clock tonight for further instructions. You
13 are excused for the day and thank you so much.

14 (REPORTER'S NOTE: Remaining jury panel excused.)

15 THE COURT: All right, sir. Are we now -- since we've
16 got such a late start, now, I'm prepared to work till probably
17 6 o'clock tonight. We'll have opening statements. You got
18 your first witness ready?

19 MR. RICHARDSON: Yes, sir, I do, Your Honor. He's
20 present, accounted for and ready to go. We've got the video
21 set up for the video tape in the patrol car.

22 THE COURT: Well, since we were delayed, I want to go
23 ahead and work till 6 o'clock tonight.

24 MR. HILLIARD: Well ---

25 THE COURT: Yes, sir?

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JURY SELECTION

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1 MR. HILLIARD: Well, Judge, he has said that he wants a
2 video from the patrol car ---

3 THE COURT: Wants what?

4 MR. HILLIARD: He has indicated that he's gonna talk
5 about a video from a patrol car.

6 THE COURT: Yes.

7 MR. HILLIARD: And I've looked at the video from the
8 patrol car and the video consists of a patrol car going very
9 fast down a empty road.

10 THE COURT: I assume he can tie it in.

11 MR. RICHARDSON: If you want to see the video ---

12 THE COURT: No, he's seen the video. I'm not gonna ---

13 MR. HILLIARD: I've seen the video, yes, sir.

14 THE COURT: What point are you making?

15 MR. HILLIARD: The point that I'm making is that it is a
16 video of a person riding down the road very fast and at the
17 end running into our client.

18 THE COURT: Well, let me hear the testimony and then I'll
19 hear the relevance of it at the time. Again, I don't know a
20 thing about this case. I'll hear the testimony. If it's
21 relevant, we'll show it; if it's not, we won't.

22 MR. HILLIARD: Well, the problem with that, Judge, is
23 that by the time the jury has seen the testimony, then we'll
24 be stuck.

25 THE COURT: Tell me -- what is it Mr. Richardson?

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JURY SELECTION

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1 MR. RICHARDSON: Your Honor, as was discussed in the
2 motions early this morning, I can't prosecute him on failure
3 to stop at this time but I can get into the testimony.

4 THE COURT: I understand that and I clearly said that was
5 coming in.

6 MR. RICHARDSON: And this is the video of the officer, he
7 can -- responds to the failure to stop.

8 THE COURT: It's coming in. I told you at the time, I'm
9 not -- we're gonna do what I said we gonna do with the other
10 charge, but I'm gonna let any testimony involving that arrest
11 come in. You couldn't have misunderstood that.

12 MR. HILLIARD: Yes, sir. I understand what you're
13 saying, Judge, and I understand that ---

14 THE COURT: Well, I assume the officer will tell us what
15 it means, but it's coming in. Anything further?

16 Bring the jury in and let's go.

17 MR. RICHARDSON: Your Honor, if I could have one moment.

18 THE COURT: One moment, what is it.

19 MR. RICHARDSON: Restroom break very quickly.

20 THE COURT: Why didn't you go awhile ago?

21 MR. RICHARDSON: I did go while ago.

22 THE COURT: All right. Go ahead.

23 Gentlemen, we're inconveniencing this jury now. We got
24 to move on with this case.

25 (RECESS.)

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JURY SELECTION

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*****OFF THE RECORD*****

(On the Record.)

THE COURT: All right. You ready?

MR. RICHARDSON: Yes, sir.

MR. HILLIARD: Judge, as I understand what has occurred connected to this and just so that we can get to this point, the Court is not allowing the prosecutor to try the Defendant for ---

THE COURT: Clearly, I said that three times.

MR. HILLIARD: Thank you. And -- but the first witness that he is gonna call is involved in what ends up in a high speed chase and ---

THE COURT: We're gonna let that in. I clearly told you anything incident to an arrest is coming in. He's not gonna mention that we're gonna try him for failure to stop for a blue light unless you ask them that question. I clearly said that.

MR. HILLIARD: Right. I understand that part with the -- I understand the nature of the arrest is gonna come in but the police car racing down the road is not part of the arrest. I don't even know if this is the officer that did the arrest.

THE COURT: What you say Richardson?

MR. RICHARDSON: Your Honor, this officer tries to trap the Defendant in the car that was down at the search warrant address, the Defendant bails from the car, this officer ---

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JURY SELECTION

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1 THE COURT: I'm gonna let him in -- you're protected for
2 the record but I clearly said anything incident to that arrest
3 is coming in including a high speed chase.

4 MR. HILLIARD: All right, sir.

5 THE COURT: Clearly, he's entitled to show that.

6 Bring the jury in.

7 Madame Clerk ---

8 MR. HILLIARD: Thank you, Your Honor.

9 THE COURT: Swear the jury. Gentlemen, let's have short
10 opening statements. I'll give you all the time you want at
11 the closing. We're not gonna have closing statements in an
12 opening statement.

13 MS. BASS: Your Honor, we just want the record to show

14 ---

15 THE COURT: Ma'am?

16 MS. BASS: We want the record to show that he is going to
17 start off the trial on a -- testimony from a case you
18 prohibited him from trying. This jury is gonna think they're
19 trying a failure to stop.

20 THE COURT: How do I know what he's gonna testify to; I
21 hadn't heard him testify.

22 MS. BASS: Your Honor, he's gonna play the failure to
23 stop tape.

24 THE COURT: The jury clearly knows that he's being tried
25 for trafficking in cocaine, period, I told them that.

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1 MS. BASS: And we just move at this point, Your Honor,
2 that this is far more prejudicial than it could ever be
3 probative.

4 THE COURT: No, ma'am. I told you at the start, I've
5 helped you all I'm gonna help you by severing the trial. He
6 -- the State is entitled to -- for the jury to know the
7 circumstances of the arrest.

8 MS. BASS: This is the arrest for the failure to stop,
9 Your Honor, not for the trafficking in cocaine.

10 THE COURT: No, ma'am. You know, you've got a bad habit
11 of arguing with me after I rule and I'm not gonna permit that
12 now. When I rule -- I respect your positions but you've got
13 to respect mine when I rule.

14 Bring the jury in.

15 And I say that respectfully.

16 Let's have short opening statements and I'll give you all
17 the time you want with closing.

18 MR. RICHARDSON: Yes, sir, Your Honor.

19 THE COURT: Okay.

20 (REPORTER'S NOTE: The jury returns to the courtroom.)

21 THE COURT: Ms. Galbraith -- let Ms. Galbraith assume the
22 foreman's chair, please.

23 Madame Bailiff...

24 BAILIFF: Okay.

25 THE COURT: Ms. Galbraith, I've appointed you as

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1 foreperson of the jury and you will sit in that chair at all
2 times. The two alternates will always occupy your chairs.
3 The rest of you may sit as you choose.

4 Madame Forman, you will be the -- handle the deliberation
5 in the courtroom and be the jury spokesman -- you will handle
6 the deliberations in the jury room and be the spokesman in the
7 courtroom. I at all times will keep you fully advised of your
8 duties.

9 Swear the jury, please.

10 CLERK: Please stand and raise your right hand.

11 (REPORTER'S NOTE: Whereupon, the jury sworn by clerk.)

12 THE COURT: Ladies and gentlemen of the jury, recognizing
13 that for many of you this may be the first opportunity that
14 you have had to serve as a juror, particularly in a criminal
15 case. Let me tell you how we proceed kind of as guideline to
16 help you follow the procedures. This Defendant is charged
17 upon this indictment trafficking in cocaine to which he
18 specifically pleads not guilty. Now, this indictment and the
19 allegations it contains is in no sense any evidence against
20 this Defendant. Evidence, if any, comes from this witness
21 stand under oath and from such documents as may be introduced.

22 We will proceed by Mr. Richardson, representing the
23 State, who has the burden of proof making for you a short
24 opening statement simply as a guideline to help you follow the
25 introduction of evidence. Following that, counsel for the

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1 Defense will make a short opening statement to you as to their
2 position. After that, we will have the testimony of various
3 witnesses and following that we will have summation of counsel
4 for the State and the Defense where they will argue at length
5 as to their relative positions. At the conclusion of their
6 summation, I will charge you the law of the case and you as
7 finders of the facts will take the facts as you find them to
8 be and apply it to the law of the case and thereafter reach a
9 verdict.

10 Now, there are several things you must know and I've
11 mentioned before but it's important, a defendant doesn't have
12 to prove a thing, this defendant or any defendant. The State
13 has the burden of proving him guilty if they can by evidence
14 to your satisfaction and they must prove that unanimously to
15 all twelve of you beyond a reasonable doubt. Now, in finding
16 the facts, you will of course, have the opportunity to observe
17 various witnesses and look at various matters that are
18 introduced into the trial of this case. I tell you that from
19 this moment on, there is nobody in this wide world that can
20 tell you twelve what the facts are. You and you twelve alone
21 are the sole and only finders of the facts.

22 You say to me how do we define the facts. Well, I tell
23 you that you and you alone are the sole and only judges of the
24 credibility meaning every witness who testifies. You can
25 believe all of what a witness says or none. You may if you

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1 choose, believe one witness against that of many or the other
2 way around. We tell jurors that you bring your life's
3 experiences and your common sense into a courtroom when you
4 judge credibility and believability. All of you and all of us
5 have certain things that we use when somebody tells us
6 something. We say, is this the truth, do they know what
7 they're talking about, do they have some reason to suggest
8 they want to tell me one thing or another otherwise is it
9 bias. You may certain things that you use in judging
10 credibility and believability. I say to you that you are the
11 sole finders of the facts and you are the sole only judges of
12 the credibility.

13 You may have your opening statements. I want a short
14 opening statement, we'll give you all the time you need at
15 closing.

16 MR. RICHARDSON: Thank you, Your Honor. Folks, just the
17 other day I was helping my four-year-old out with his homework
18 and he's four, so it wasn't algebra, it wasn't calculus, it
19 was connect the dot, you know, one of those sheets with a
20 bunch of numbers on it and as you go from one to two to three
21 to four, slowly a picture comes into focus, in this case it
22 was Sponge Bob. But as I helped him out with that it dawned
23 on me, it's lot like what I do for a living because that's my
24 job, folks. I take evidence and the evidence are those bits
25 of information that you look to see the connections and it's

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1 my job to show you those connections, how they come together
2 and coalesce, how they form a picture. And in this case,
3 that's what I'm gonna do; I'm gonna show you those points, I'm
4 gonna show you those points, I'm gonna show you the evidence
5 as it comes together and forms one picture and it's a big
6 blinking arrow, boom, boom, boom; that defendant is guilty of
7 trafficking cocaine greater than 100 grams, less the 200 grams
8 right here in Horry County.

9 You're gonna hear that back on September 25th, 2008
10 agents with the Horry County Narcotics Division served a
11 lawful search warrant on a residence, [REDACTED]
12 and when they hit that house, they're gonna tell you they,
13 bang, hit the door and they went in. They went in one bedroom
14 and they found the Defendant's half brother, Mr. Durant and
15 Mr. Durant's girlfriend and then the other end of the house,
16 they found the Defendant's pregnant girlfriend, five or six
17 months pregnant at the time. Now, the Defendant wasn't at
18 home so how do we prove it was his house. You'll hear
19 testimony that the power was in his name, you're gonna hear
20 testimony about paperwork there that was found in his name,
21 you're gonna hear a multitude of evidence that's gonna lead
22 you to one conclusion, the Defendant stayed at that residence,
23 the Defendant's girlfriend was there pregnant with his baby
24 and finally you're gonna hear from her and she's gonna tell
25 you, that's his house and the dope that was found in his

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1 closet in a male pair of pants that would fit him is dope.
2 You'll hear testimony it was over a 100 grams and you'll hear
3 testimony that whenever the officers went to serve that arrest
4 warrant for the Defendant, he fled. You'll see a video of
5 that. So, folks, these points of light that all add up, bam,
6 bam, bam, it comes together. And like I said, the dots will
7 be connected. And just as sure as my son knew before he got
8 done, it was gonna be Sponge Bob, before we reach the end of
9 the case and show you all the evidence, you'll see the
10 picture, you'll know the Defendant is guilty because we'll
11 prove it. Thank you.

12 THE COURT: For the Defense? Ms. Bass?

13 MS. BASS: May it please the Court, Your Honor.

14 Ladies and gentlemen of the jury, this is Alex Robinson.
15 Alex Robinson is not guilty of trafficking in cocaine. Alex
16 Robinson is not guilty of anything that he's been charged with
17 in this case. The person that has the burden of proof in this
18 case is Brad Richardson on behalf of the State. Now, that
19 burden of proof hasn't changed since John Hilliard was deputy
20 solicitor down in Georgetown and that burden of proof hasn't
21 changed since I worked in the solicitor's office here and in
22 the solicitor's office in the upstate. He has the burden of
23 proof beyond a reasonable doubt. He has to prove to you that
24 Alex Robinson was trafficking in cocaine into this county,
25 which he didn't.

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1 Now, I'll be short, as the Judge told me a couple of
2 times I've got to be short but the burden of proof in this
3 case is on the Defense. And if any of you have a problem with
4 the fact that Alex Robinson sits here right now an innocent
5 man, we need to let the judge know so we can move the
6 alternates in because Alex Robinson is not guilty.

7 When we talk about that Brad Richardson and the State has
8 the burden of proof, what that means is you will take all the
9 evidence, any testimony, cross examination, any pictures that
10 you see, the law that Judge Cottingham gives you and you'll
11 put that all together to see what has happened in this case.

12 Now, I'm gonna be very brief because I know you all have
13 had to wait but you haven't heard anything about strippers
14 yet, you haven't heard anything about strippers doing drugs
15 yet, you haven't heard anything yet about the people that were
16 in the house that were arrested that are awaiting trial and
17 you've not heard anything in this case yet about the fact of
18 all the people that have already pled guilty to that search
19 warrant. The person asking for a trial in this case is Alex
20 Robinson and the reason Alex Robinson is asking for a trial in
21 this case is one reason, Alex Robinson is not guilty. That is
22 why he's asking for a trial.

23 And a lot of times people don't understand what it means
24 to have a jury of your peers. The perfect jury of peers would
25 be same age, same race, same education background, same parts

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1 of the country. That's what a jury of your peers is. But in
2 this case, you have taken an oath and you've been sworn in as
3 jurors, you must review this evidence the same as if it's
4 President Clinton, President Bush, President George Herbert
5 Walker Bush, Ms. Oprah Winfrey, Ms. Ellen DeGeneres is sitting
6 at this table. As you go through the evidence, he is entitled
7 to every single bit of attention that you have.

8 On September 25th of '08, over three years ago, there was
9 a search warrant, okay. That's what you're gonna hear. Find
10 out what house, who did what, who was caught in the house,
11 what evidence they were caught -- not Alex Robinson -- who has
12 already been found with drugs, who pled guilty when the police
13 stopped them, caught them with drugs, charged certain people,
14 didn't charge other people. Some have already pled guilty and
15 the only person asking for a trial, like I said a couple
16 minutes ago is Alex Robinson. And in this particular case, I
17 notice Mr. Richardson didn't tell you anything about destroyed
18 evidence. You're gonna hear about destroyed evidence. You're
19 gonna hear ---

20 THE COURT: In fairness to Mr. Richardson, that's an
21 unfair comment because I specially asked him to keep his
22 comments short and I'm asking you do the same thing. Proceed.

23 MS. BASS: Your Honor, we need to approach the bench.

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of the jury but out of hearing of the jury.)

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1 MS. BASS: I'm gonna ask that you pay him all the time
2 and attention that you would anyone else in the case and as
3 you listen to the people that take the witness stand or what
4 they're telling you -- what they're telling you, is it
5 believable, is it non-believable. Is it trustworthy, is the
6 person that's testifying, have they been promised a deal, are
7 they charged on the same case as Mr. Robinson, are they trying
8 to work out a deal, have they had charges dismissed. Those
9 are the things that I'm gonna ask you to look at in this
10 particular case. I can't rush through -- this is a very, very
11 serious case for my client, Mr. Robinson. His family is here
12 and as you can see his family is here, friends of the family
13 are here to support him. We ask that you give him every bit of
14 attention that you can. It shouldn't be a terribly long trial
15 and I know it's twenty till 5:00 and you all have been waiting
16 quite a while and you've already been brought back to the
17 courthouse one time and then brought up here for the second
18 time but nevertheless, we ask that you play close attention to
19 the evidence, pay attention to any evidence that's been
20 destroyed, to the people that were in the home, to the people
21 that have pled guilty, to the people that are trying to work
22 out deals and then also pay close attention to what he's
23 charged with and all the smoke and mirrors that they're trying
24 to get you to look at instead of trying the case that's before
25 you. And I thank you for the time and the attention that

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CORPORAL SCOTT CALDERWOOD - DIRECT BY MR. RICHARDSON

1 you've shown to me in those couple of minutes that I've been
2 talking. Thank you so much.

3 THE COURT: Thank you, Ms. Bass.

4 Mr. Richardson, you may call your first witness.

5 MR. RICHARDSON: Thank you, Your Honor. The State would
6 call Corporal Scott Calderwood, Horry County Police
7 Department.

8 CORPORAL SCOTT CALDERWOOD, HAVING
9 BEEN SWORN, TESTIFIED AS FOLLOWS:

10 CLERK: State your full name and spell your last name.

11 MR. CALDERWOOD: My name is Scott Calderwood, C-A-L-D-E-
12 R-W-O-O-D.

13 DIRECT EXAMINATION OF CORPORAL SCOTT CALDERWOOD BY MR.
14 RICHARDSON:

15 Q: Corporal Calderwood, thank you for being here today.
16 You're actually on vacation, aren't you?

17 A: Yes, sir.

18 Q: Could you please tell us where you're employed, how long
19 and in what capacity?

20 A: I'm employed with the Horry County Police Department. I
21 am now a corporal with the Department and I've been with the
22 Department since 2006.

23 Q: So you were -- you were working with Horry County back in
24 September of 2008?

25 A: Yes, sir.

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1 Q: As a patrol -- you're a patrol officer?

2 A: At that time, I was, yes.

3 Q: As a patrol officer with the Horry County Police
4 Department, what were your duties?

5 A: My duties were answering calls for assistance, taking
6 reports, doing traffic, assisting other officers in other
7 areas. At that time, I was working the Conway area.

8 Q: Do you recall -- you were employed back September 30th,
9 2008?

10 A: Yes, sir.

11 Q: And you patrolled Central District, I guess, Conway?

12 A: Yes, it's now Central District.

13 Q: In the course of your duties as patrol officer in the
14 Central District, here around Conway, did you have the
15 opportunity to on September 30, 2008 to come into contact --
16 or to be contacted by Sergeant Donald, now Sergeant Donald?

17 A: Yes. We radioed -- now Sergeant Donald radioed for
18 assistance at the time.

19 Q: And what type of assistance was needed?

20 MR. HILLIARD: Objection, hearsay.

21 THE COURT: What's the -- rephrase your question.

22 BY MR. RICHARDSON:

23 Q: Did you go to that assistance?

24 A: I attempted to, yes.

25 Q: And for what purpose were you going to that assistance?

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1 A: He had requested an officer ---

2 MR. HILLIARD: Objection.

3 THE COURT: No, sir. He's entitled to say for what
4 purpose he did whatever he did. Go ahead.

5 A: He had requested an officer to come to J. Reuben Long
6 where he had ---

7 MR. HILLIARD: Objection to the -- he's requested an
8 officer and he's telling them what he said.

9 THE COURT: I am permitting him to testify as to the
10 basis for his further action and only that.

11 MR. HILLIARD: Yes, sir.

12 THE COURT: Not to the truth of the matter asserted just
13 for his further action. Go ahead.

14 BY MR. RICHARDSON:

15 Q: Let's just limit it to -- did there come a time when you
16 engaged in some type of pursuit?

17 A: Yes, sir. I had attempted to get into or in front of a
18 vehicle that would not stop for Sergeant Donald.

19 Q: And did you have a description of that type of vehicle?

20 A: At the time, yes, we did. It was given to us over the
21 radio.

22 Q: Okay. That vehicle, you said you went to assist in the
23 stopping of that vehicle?

24 A: Yes, sir.

25 Q: Where did you go to?

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1 A: I ended up on Highway 501 West on the other side of
2 Conway at Willard Road.

3 Q: Help us out. Some of us may not be familiar with Conway,
4 the outlying portions of Conway. Where is Willard Road
5 located?

6 A: If you are on 501 and you pass Walmart, leaving town
7 heading towards Aynor, it's probably about a mile just past
8 the Walmart, Willard Road would be on your right-hand side.
9 There was a car dealership and a small convenience store at
10 that road.

11 Q: That's Hardee's Auto ---

12 A: Hardee's Auto Sale.

13 Q: So, when you get down to Willard Road and 501, what
14 actions if any do you take?

15 A: We had -- I had been told that the vehicle was in ---

16 MR. HILLIARD: Objection to what he got told.

17 THE COURT: No, sir. Now, that is a -- can you rephrase
18 your question?

19 BY MR. RICHARDSON:

20 Q: Were you looking for a particular type of vehicle?

21 A: Yes.

22 Q: What actions did you take once you got there?

23 A: I blocked the westbound lane of Highway 501 to prevent
24 any vehicles from going up Highway 501. A vehicle that I
25 could see probably about a quarter or mile, up Willard Road

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1 heading towards my direction was traveling at a high rate of
2 speed towards me.

3 Q: Now, as you get to that intersection, Willard Road and
4 501, did -- did you have any kind of recording equipment in
5 the car?

6 A: Yes, I had a camera.

7 Q: And was that turned on?

8 A: Yes.

9 Q: And did it record your going to the scene and what
10 evidence?

11 A: Yes. It recorded me traveling from Cultra Road onto
12 Highway 501 right there at the Walmart turning west on 501,
13 passing Four Mile Road and coming up to Willard Road and
14 stopping at the intersection of Willard Road and Highway 501.

15 Q: And did you do anything with traffic with regard to
16 traffic on 501?

17 A: I had angled my vehicle in both lanes to attempt to
18 prevent vehicles from passing me.

19 Q: So, you were trying to prevent a wreck?

20 A: Yes.

21 Q: So, you got traffic stopped correct?

22 A: Yes, I did.

23 Q: And you can see down Willard Road and you see a vehicle
24 coming?

25 A: Yes.

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- 1 Q: Can you tell what kind of condition the vehicle is in?
- 2 A: Not at that distance, I could not. However, we did have
- 3 -- we did have an officer set up near -- I saw that vehicle.
- 4 Q: And as you're sitting at the intersection, tell us what
- 5 you observe as the vehicle approaches.
- 6 A: As the vehicle -- as the vehicle approaches, it continued
- 7 at a high rate of speed. As it got closer to me, I had
- 8 actually backed up in case it made a turn onto Highway 501 or
- 9 attempted to cross Highway 501.
- 10 Q: Okay. So, you backed up a little bit.
- 11 A: Uh-huh (affirmative response).
- 12 Q: Do you ever see the vehicle enter Highway 501?
- 13 A: Yes, I saw the -- I watched the vehicle as it entered the
- 14 intersection of Willard Road and Highway 501 cross the
- 15 westbound lane into the median which the median was a small
- 16 ditch, crashing into the median and ending up on the eastbound
- 17 lane.
- 18 Q: What happened after it crashes over in that median?
- 19 A: As the vehicle entered into the intersection, I drove my
- 20 vehicle to attempt to block the driver from exiting the
- 21 vehicle. I positioned my vehicle with my bumper near their
- 22 rear driver-side door.
- 23 Q: And what was the purpose of that?
- 24 A: To attempt to keep him from fleeing.
- 25 Q: Now, were you successful in keeping him from fleeing?

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1 A: No.

2 Q: What happened?

3 A: As I stopped my vehicle, the driver-side door opened.

4 The Defendant exited the vehicle from the driver side, jumped
5 onto the hood of my vehicle, ran westbound on the eastbound
6 lane along with the passenger into a soybean field, which I
7 pursued on foot.

8 Q: Okay. This Defendant hopped out the driver's side?

9 A: Yes, sir.

10 Q: And you pursued them?

11 A: Yes, sir.

12 Q: Did you have any assistance?

13 A: Assistance was coming to me. At the time, by the time I
14 had them handcuffed on the soybean field, I was alone.
15 Assistance arrived shortly later to escort them out of the
16 field.

17 Q: You indicated previously that this interaction was
18 recorded on video?

19 A: Yes.

20 Q: I'm going to show you what's been previously marked for
21 identification as State's Number Ten. Do you see -- do you
22 recognize State's Number Ten?

23 A: Yes, I do.

24 Q: And what do you recognize State's Number Ten as being?

25 A: That is a CD that was recorded with my video from my

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1 vehicle?

2 Q: And is it a true and accurate depiction of what occurred
3 on September 30th, 2008?

4 A: Yes, from my vehicle?

5 Q: From the vantage point of your patrol car?

6 A: Yes, sir.

7 MR. RICHARDSON: Your Honor, the State would seek to
8 introduce State's Number Ten into evidence.

9 THE COURT: You may do so.

10 MR. RICHARDSON: And publish it.

11 MR. HILLIARD: Over our objection, Your Honor.

12 THE COURT: I understand.

13 MR. HILLIARD: Yes, sir, thank you.

14 THE COURT: You have viewed this video, though, the
15 record will reflect ---

16 MR. HILLIARD: Yes, sir, I have seen it.

17 THE COURT: I note your objection.

18 MR. HILLIARD: Thank you, Your Honor.

19 STATE'S EXHIBIT NUMBER TEN

20 ADMITTED INTO THE RECORD.

21 THE COURT: You don't have a big screen to show it on?

22 MR. RICHARDSON: Can you drop the screen?

23 (REPORTER'S NOTE: Video is played in the presence of the
24 jury.)

25 BY MR. RICHARDSON:

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- 1 Q: This is Highway 501 now, correct?
- 2 A: Yes, 501 West. We just came off of Cultra Road right at
3 the Walmart.
- 4 Q: Corporal Calderwood, do you recall the make and model of
5 that car?
- 6 A: No, sir.
- 7 Q: You have trouble recollecting?
- 8 A: Yes, sir.
- 9 Q: Did you put that in your report?
- 10 A: No, sir, I did not.
- 11 Q: What about a tag number?
- 12 A: No, sir; I did not have that in the report.
- 13 Q: And at this point, that's where you describe the ---
14 MR. HILLIARD: Objection to the leading.
- 15 Q: We saw you run off, what was going on at this point?
- 16 A: At this point, I had detained and placed handcuffs on
17 both the Defendant and the passenger and was waiting for
18 assistance from other officers to bring them out of the field.
- 19 Q: And to whom did you hand the defendant off to?
- 20 A: There as -- I believe my patrol sergeant as well as
21 another officer.
- 22 Q: Can you see Sergeant Donald come on the scene?
- 23 A: Yes, sir. Sergeant Donald was in plain clothes.
- 24 Q: And did he assist in taking custody of the Defendant?
- 25 A: Yes, as they were brought out, Sergeant Donald took

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1 custody of the Defendant.

2 Q: And that's the extent of your involvement in this case,
3 Corporal?

4 A: Yes, sir, it is.

5 Q: Corporal Calderwood, thank you for your assistance. If
6 you will, answer any questions the Defense may have.

7 Mr. Hilliard, do you need anything with the video?

8 MR. HILLIARD: No.

9 Your Honor, based on the testimony we would renew our
10 objection to the admissibility of this testimony.

11 THE COURT: My opinion would stand as previously given.

12 MR. HILLIARD: Thank you, Your Honor.

13 THE COURT: And my ruling thereabout.

14 CROSS EXAMINATION OF CORPORAL SCOTT CALDERWOOD BY MR.

15 HILLIARD:

16 Q: When did you find this video?

17 A: That night.

18 Q: I say when did you find it? You took it that night,
19 right?

20 A: Uh-huh (affirmative response).

21 Q: When did you find it?

22 A: We've always had it.

23 Q: You've always had it

24 A: Uh-huh (affirmative response).

25 Q: Do you recall when you turned it over to the prosecutor?

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1 A: No, I do not.

2 Q: But you've always had it?

3 A: I've always had some form of the video, yes.

4 Q: All right. And there was never a car in front of you
5 when you were driving fast down the road, isn't that true?
6 You weren't chasing anybody?

7 A: No.

8 Q: You were going fast to get somewhere?

9 A: Yes.

10 Q: And there's no video of anybody chasing anybody, right?

11 A: No, not that I know of.

12 Q: And this is -- the things that you're talking about
13 happened on September the 30th of 2008, right?

14 A: Yes.

15 Q: There were two people in that car, right?

16 A: Yes.

17 Q: And when they ran off into the soybean field, you caught
18 both of them?

19 A: Yes.

20 Q: By yourself?

21 A: Yes.

22 Q: Thank you very much.

23 MR. RICHARDSON: No further questions, Your Honor. I'd
24 ask that this -- that Corporal Calderwood be excused to return
25 to his vacation.

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1 THE COURT: All right, sir.

2 (REPORTER'S NOTE: The witness leaves the witness stand.)

3 THE COURT: Call your next witness.

4 MR. RICHARDSON: Your Honor, any witnesses we would get
5 into at this point ---

6 THE COURT: Sir?

7 MR. RICHARDSON: Any witness we would get into at this
8 point would be quite lengthy.

9 THE COURT: Yes, sir, but I want to get into it.

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: I told you that earlier.

12 MR. RICHARDSON: Yes, sir, the State calls Sergeant Kent
13 Donald.

14 SERGEANT KENT DONALD, HAVING
15 BEEN SWORN, TESTIFIED AS FOLLOWS:

16 CLERK: State your full name and spell your last name.

17 MR. DONALD: Kent Donald, D-O-N-A-L-D.

18 DIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR. RICHARDSON:

19 Q: Sergeant, good afternoon.

20 A: Good afternoon.

21 Q: Could you tell us a little bit about your place of
22 employment, how long and in what capacity?

23 A: With the Horry County Police Department. I've been there
24 since 1996. I am currently Sergeant of the C Squad and South
25 Precinct at the beach.

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1 Q: How about back in September of 2008, with what division
2 were you associated with?

3 A: Special Operations, Narcotics and Vice Section. I was a
4 senior detective.

5 Q: Educate us a little bit, what is the purpose of the
6 Special Operations Division, Narcotics?

7 A: Special Operation Division has various departments. We
8 have SWAT, bloodhounds, things of that nature. With Narcotics
9 and Vice Section, I was responsible for pretty much looking
10 for people that were dealing drugs, selling drugs, buying
11 drugs, managing confidential informants, acting in an
12 undercover capacity selling drugs myself or purchasing drugs.

13 Q: Now, at that point in history, September 2008, how long
14 have you been involved with narcotics investigations?

15 A: At that time, about seven years.

16 Q: And during the course of your work, did you become
17 acquainted with the Defendant?

18 A: Yes, sir.

19 Q: In what way?

20 A: We execute a search warrant at [REDACTED].

21 Q: Okay. And [REDACTED], where is it -- what
22 county is that located in?

23 A: That is located in Horry County.

24 Q: Once again, where is it located here in Horry County?

25 A: I'm sorry. It's in Conway, just behind the Skipper's

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- 1 Auto Body Shop going towards the beach, the Coca Cola plant,
2 just go down that road off of [REDACTED].
3 Q: So, as you're coming to Conway from the beach, it's on
4 the left-hand side?
5 A: Yes, it is.
6 Q: Now, so that address [REDACTED] it became a target of the
7 investigation?
8 A: Yes, sir.
9 Q: And as it became a target of your investigation, what
10 steps did you take, what did you do?
11 A: What I did is I contacted the power company which at the
12 time was Horry Electric. Got a subpoena to find out whose
13 name the power was under. At that time, it came back to Alex
14 Robinson.
15 Q: And after that, did there come a time when you got a
16 search warrant?
17 A: I did.
18 Q: When was that?
19 A: I got a search warrant on November the 17th, 2008.
20 Q: November?
21 A: Excuse me, September. I'm sorry.
22 Q: September 17th, 2008.
23 A: Yes.
24 Q: When did you serve that search warrant?
25 A: On September the 20 -- excuse me, the 25th, excuse me,

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1 September the 25th, 2008.

2 Q: So, you got it on the 17th and served it on the 25th?

3 A: Yes, sir.

4 Q: What was the purpose of the delay?

5 A: I had to do an ops plan for officer safety issues to
6 figure out who was gonna be available that day to do the
7 search warrant.

8 Q: And the -- what type of home was [REDACTED]?

9 A: This is a single wide mobile home in a mobile home park
10 in [REDACTED] Mobile Home Park.

11 Q: Covered Oaks. And it's [REDACTED]. How is it
12 situation with regard to [REDACTED]?

13 A: It's sits perpendicular. It pretty much Ts-up to the
14 road.

15 Q: So, as the road runs across, it comes up and down?

16 A: Yes, sir.

17 Q: Now, prior to entering that mobile home, did you know how
18 many rooms were in the mobile home?

19 A: No, sir. I did not know at the time. A single-wide
20 mobile home normally has maybe two to three rooms.

21 Q: And were you aware of how the rooms were situated or any
22 of the living arrangements were situated?

23 A: Most of the time, there's a short side to a mobile home
24 and a long side. So, just how the trailer was situated, you
25 would find one or the other.

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1 Q: And after the execution of that search warrant, I assume
2 you're pretty well acquainted with the layout of that mobile
3 home.

4 A: Yes, sir.

5 Q: And did there come a time when you designated certain
6 rooms of the house with certain titles?

7 A: Yes, sir..

8 Q: As we stand here before the jury, what name -- the room
9 furthest from the road, what name did you give that?

10 A: Furthest from the road, it would be -- I'd call it the
11 master bedroom.

12 Q: And closest to the road, what did you call that?

13 A: The back bedroom.

14 Q: How about in the middle, what was in there?

15 A: Clothes, I guess.

16 Q: Middle of the mobile home?

17 A: Oh, you're talking about middle of the -- oh, living
18 room, dining room, kitchen?

19 Q: Just one simple living area?

20 A: Yes, sir.

21 Q: Now, as y'all entered the mobile home, tell us how that
22 went down?

23 A: We arrived on scene, all the agents just stacked up at
24 the door, we gave a loud knock notifying that the Horry County
25 Police was there for a search warrant. Entered the residence

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- 1 -- we use a ram to enter the residence because the door was
2 locked. At that time, the agents flowed into the building,
3 some broke to the right and some broke to the left, I broke to
4 the left.
- 5 Q: Now you said you knocked and announced?
- 6 A: Yes, sir.
- 7 Q: How quick was that?
- 8 A: We knocked on the door, gave them -- well, maybe ten,
9 fifteen seconds to come to the door, no answer, we entered the
10 residence.
- 11 Q: Just, bam, through the door?
- 12 A: It's several loud knocks; it's not just one knock, it's
13 several loud knocks to let them know that the police are
14 there, we're yelling Horry County Police, search warrant.
- 15 Q: And you got no response?
- 16 A: Got no response.
- 17 Q: Now, this mobile home, I assume there was a set of steps
18 going up to the door?
- 19 A: Yes, sir.
- 20 Q: And you said y'all were stacked up, right?
- 21 A: Yes, sir.
- 22 Q: Y'all were kind of bunched up together?
- 23 A: We were.
- 24 Q: Now, you said some went right, some went left, where did
25 you go?

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1 A: I went to the left which was the master bedroom.

2 Q: Okay. So, y'all entered the door and you come back to
3 this master bedroom?

4 A: Correct.

5 Q: Now, when you get into the master bedroom, what if
6 anything did you find?

7 A: Find two people laying in bed in the master bedroom.

8 Q: Okay. And do you remember who those two people were?

9 A: One was a Kenneth Durant, black male, and a white female
10 by the name of Tiffany Smith.

11 Q: And Mr. Durant, could you describe him for us?

12 A: Again, black male, medium haircut probably about five-
13 ten, five-eleven, about 240, 250 pounds, dark skin.

14 Q: Contrast with the Defendant, taller or shorter?

15 A: He was shorter and wider.

16 Q: And wider, okay. So, the Defendant is thinner than him?

17 A: Correct.

18 MR. RICHARDSON: Let me see if I can have this marked.

19 THE COURT: Identify what you're marking so I can make
20 sure it's ---

21 MR. RICHARDSON: Marking a photograph, Your Honor. I'll
22 show it to the Defense counsel. I'll show it to Defendant
23 counsel. I'll be State's Number Eleven for identification.

24 MS. BASS: No objection, Your Honor.

25 THE COURT: All right. Thank you, ma'am.

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STATE'S EXHIBIT NUMBER ELEVEN

MARKED FOR IDENTIFICATION.

BY MR. RICHARDSON:

Q: Let me show you State's Number Eleven, Sergeant Donald.
Do you recognize that?

A: Yes, sir. This is a photograph of Kenneth Durant.

Q: And no doubt about it, that's Kenneth Durant.

A: Correct.

Q: In this photograph, where is he situated?

A: He's situated in the living room/kitchen area.

MR. RICHARDSON: Your Honor, the State would seek to
introduce Number Eleven into evidence.

THE COURT: In each instance, Defendant counsel has seen
these photographs?

MR. RICHARDSON: Yes, sir, Your Honor.

THE COURT: That's fine.

MS. BASS: No objection.

THE COURT: Thank you, ma'am.

MS. BASS: That's Number Eleven, right?

MR. RICHARDSON: That's correct.

STATE'S EXHIBIT NUMBER ELEVEN

ADMITTED INTO EVIDENCE.

BY MR. RICHARDSON:

Q: Y'all were in this back bedroom, that's where you
searched, correct?

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- 1 A: The master bedroom, correct.
- 2 Q: Master bedroom which is in the far left of the house?
- 3 A: Far left, yes.
- 4 Q: And you said Mr. Durant and Ms. Smith are in there?
- 5 A: Yes, sir.
- 6 Q: Standing up, lying down?
- 7 A: They were in bed. We executed a search warrant early in
- 8 the morning, so they were still in the bed.
- 9 Q: Now, let's go through -- I assume you searched the room
- 10 A: Yes, sir.
- 11 Q: Do you recall what you found in Mr. Durant's room?
- 12 A: There was a blue Eastport book bag that contained another
- 13 clear plastic bag that contained seven small baggies or white
- 14 powder substance that I believed to be cocaine that
- 15 subsequently field tested positive for cocaine and also a
- 16 highpoint 9 millimeter handgun.
- 17 Q: Allow me to show you what's been previously marked for
- 18 identification, States Twelve and Thirteen.
- 19 MS. BASS: No objections, Your Honor.
- 20 THE COURT: Yes, sir.
- 21 STATE'S EXHIBITS TWELVE AND THIRTEEN
- 22 ADMITTED INTO EVIDENCE.
- 23 BY MR. RICHARDSON:
- 24 Q: Could you take a look at State's Twelve and Thirteen and
- 25 tell me if you recognize those?

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1 A: Yes, sir. This is a picture of the blue Eastport book
2 bag with an off-white powder substance inside of it and then
3 State's Thirteen is a scale with the plastic bags of off-white
4 powder substance.

5 Q: And that's what was found in Mr. Durant's bedroom,
6 correct?

7 A: Yes, sir.

8 MR. RICHARDSON: Your Honor, if I could publish these to
9 the jury at this point? Publish, Your Honor?

10 THE COURT: Yes, sir.

11 Ladies and gentlemen, these matters that I introduce into
12 evidence will be with you during your deliberations but from
13 time to time they may publish as they do now in the course of
14 the trial but I tell you that all of these items will be with
15 you in the jury room.

16 BY MR. RICHARDSON:

17 Q: Sergeant Donald, so as I understand it, the master
18 bedroom for jury panel is -- the master bedroom is back over
19 here, correct?

20 A: Yes, sir, correct.

21 Q: Furthest away?

22 A: Yes, sir.

23 Q: And in that room is where you found Mr. Durant and his
24 girlfriend?

25 A: Yes, sir.

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- 1 Q: And a small amount of cocaine?
- 2 A: Yes, sir.
- 3 Q: And a handgun?
- 4 A: Yes, sir.
- 5 Q: The handgun loaded?
- 6 A: Yes, sir.
- 7 Q: And all that was in the book bag in Mr. Durant's bedroom?
- 8 A: Yes, sir.
- 9 Q: Did you find any kind of video monitors or anything in
- 10 his bedroom?
- 11 A: In his bedroom, no, sir.
- 12 Q: Let's move back through the house then, you said it went
- 13 back bedroom, then kitchen -- or master bedroom?
- 14 A: Yes, sir.
- 15 Q: Then kitchen/living area, correct?
- 16 A: Yes, sir.
- 17 Q: The kitchen/living area, what did you do with Ms. Smith
- 18 and Mr. Durant?
- 19 A: We brought them out of the bedroom and before we brought
- 20 them out of there, we cleared the living room/kitchen area to
- 21 make sure that there was no evidence or weapons that harm us
- 22 or harm themselves or evidence that they might be able to
- 23 destroy. And then we sat them in that area as we cleared that
- 24 bedroom.
- 25 Q: And what's the purpose of sitting them in this living

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- 1 room?
- 2 A: Well, that we have eyes on them with other officers and
3 officer safety. We just want to make sure that officers don't
4 get hurt and destruction of evidence does not occur.
- 5 Q: Okay. So, you have Mr. Durant and Ms. Smith in the
6 kitchen now?
- 7 A: Yes, sir.
- 8 Q: And they're detained by law enforcement?
- 9 A: Yes, sir.
- 10 Q: And that's the picture we saw of Mr. Durant? There we
11 go.
- 12 A: Yes, sir.
- 13 Q: Now, you had searched the master bedroom and you seem to
14 indicate that there were other officers there?
- 15 A: Yes, sir.
- 16 Q: Do you remember about how many officers there were?
- 17 A: I want to say probably about eight to ten officers, maybe
18 a little bit more.
- 19 Q: To your knowledge, was anybody else found in the house?
- 20 A: Yes, sir.
- 21 Q: Who was that?
- 22 A: Gil Yakoel.
- 23 Q: And had you been previously -- were you previously
24 acquainted with Ms. Yakoel?
- 25 A: Yes, sir, I was.

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1 Q: In what way?

2 A: She had been arrested for other charges as far as drugs,
3 I want to say about a month prior to us going to that
4 residence at [REDACTED].

5 Q: And did you know anything about her relationship to Mr.
6 Robinson?

7 A: Yes, sir, I did.

8 Q: And do you know what the status of that was?

9 A: At the time, they were boyfriend and girlfriend ---

10 MS. BASS: Your Honor, I'm gonna object to that. Only
11 the couple could testify to that.

12 THE COURT: Pardon me?

13 MS. BASS: He's testifying as to what their relationship
14 was.

15 THE COURT: I heard him.

16 MS. BASS: I object to that, Your Honor, because he
17 doesn't know if they're boyfriend or girlfriend.

18 THE COURT: Well, I'll let the jury decide whether he
19 knows or not. The question is appropriate though. I can't
20 tell you whether he knows or not but you can ask him why he
21 knows at your time.

22 MS. BASS: Okay. Thank you, Your Honor.

23 THE COURT: I'll let you cross examine him on that issue
24 but thank you.

25 Proceed, Mr. Richardson.

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1 MR. RICHARDSON: Thank you, Your Honor.

2 BY MR. RICHARDSON:

3 Q: Now, what was done with Ms. Yakoel?

4 A: She was brought out of the back bedroom.

5 Q: And the back bedroom is the one closest to the road?

6 A: Yes, sir.

7 Q: Okay. So, you brought her out into the kitchen, correct?

8 A: Yes, sir.

9 Q: You detained her?

10 A: Yes, sir.

11 Q: Everybody around the table?

12 A: Yes, sir.

13 Q: Let's go back in the kitchen/living room area, what if
14 anything did you find there?

15 A: There was a monitor there that was hooked up to a
16 surveillance camera that was pointed out towards the street.

17 Q: Okay. So, there was a monitor, a video monitor?

18 A: Yes, sir.

19 Q: And how about anything else?

20 A: Also, there was a large toolbox with pullout drawers that
21 had quite a bit of correspondence addressed to various people
22 there to include Alex Robinson.

23 Q: Now, that large toolbox, same one that appears behind Mr.
24 Durant here on State's Number Eleven?

25 A: Yes, sir, that would be it.

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1 Q: And you talked about a monitor, let me show you what's
2 been marked as State's Number Seventeen and Eighteen --
3 previously marked for identification Seventeen and Eighteen.
4 See if you recognize those photographs.

5 A: Yes, sir. Seventeen is the monitor which is depicting
6 the camera pointing outside and this is a photograph I tried
7 to take of the monitor showing outside what it was recording.

8 Q: And that's showing what?

9 A: That would be showing the street, [REDACTED].

10 Q: Okay. So, it faces out away from this bedroom?

11 A: Yes.

12 Q: Toward [REDACTED]?

13 A: Yes.

14 MR. RICHARDSON: Permission to publish -- or I'd move
15 those into evidence, Your Honor.

16 THE COURT: Yes, sir.

17 MS. BASS: No objection, Your Honor.

18 THE COURT: Thank you.

19 STATE'S EXHIBIT NUMBERS SEVENTEEN AND EIGHTEEN

20 ADMITTED INTO EVIDENCE.

21 BY MR. RICHARDSON:

22 Q: You also indicated you found a toolbox, correct?

23 A: Yes, sir.

24 Q: And you indicated there were some items in the toolbox,
25 correct?

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1 A: Yes, sir.

2 Q: Let me show you what has been marked for identification
3 purposes as State's Fourteen, Fifteen, Five, Six, Seven and
4 Eight.

5 MS. BASS: No objection, Your Honor.

6 Q: Can you identify these photographs, Sergeant Donald?

7 A: Yes, sir. These would be the photographs that I took --
8 excuse me -- State's Exhibit Fourteen is a photograph of
9 Remington Game Load in the toolbox.

10 Q: Are these all photographs, do they fairly and accurately
11 depict the toolbox as you found it that day on September 25th,
12 2008?

13 A: Yes, sir.

14 MR. RICHARDSON: Your Honor, I'd seek to move these items
15 into evidence.

16 THE COURT: Sir?

17 MR. RICHARDSON: I'd seek to move these into evidence and
18 publish them to the jury as Sergeant Donald ---

19 THE COURT: Without objection?

20 MS. BASS: No objection, Your Honor.

21 STATE'S EXHIBITS FIVE, SIX, SEVEN, EIGHT

22 FOURTEEN AND FIFTEEN ADMITTED INTO EVIDENCE.

23 BY MR. RICHARDSON:

24 Q: Okay. Now, if you could just show the jury as you
25 describe it.

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1 A: Okay. Again, that's the photograph of Remington shells
2 that I found in the toolbox.

3 Q: And that is shotgun shells, right?

4 A: Shotgun shells, yes. In State's Fifteen, again, another
5 photograph of actual shotgun shells laying loose in the
6 toolbox.

7 Q: That's on State's Fifteen.

8 A: This one, State's Number Five, this shows -- actually,
9 this is a drawer that has the name Alicia on it, just some
10 correspondence from the house and that is not the toolbox ---

11 Q: Okay. So, that is not the toolbox?

12 A: No, it's not the toolbox.

13 Q: All right. Let's put that one over here. That is
14 State's Number Five.

15 A: Number Six in the toolbox and it has correspondence
16 addressed to Alex Robinson and this one says -- I think it
17 says 411 Dunn Shortcut Road but again that was addressed to
18 him.

19 Q: And it's found at [REDACTED]?

20 A: [REDACTED]. State's Exhibit Seven, again it
21 has Alex Robinson. This photograph was fairly blurry but you
22 can just make out what says Alex Robinson and shows Dunn
23 Shortcut Road again, which was also found at [REDACTED].
24 And State's Exhibit Eight, another blurry photo that I took of
25 a Visa statement.

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1 Q: And you're not a photographer by trade?

2 A: No, sir, I am not.

3 Q: Okay. I don't think anybody is going to be hiring you
4 for wedding photos. Now, all those -- that was found in that
5 kitchen/living room area, correct?

6 A: Yes, sir.

7 Q: In that big red toolbox?

8 A: Yes, sir.

9 Q: Let me show you what's been marked as State's Sixteen and
10 Nine and see if you recognize these.

11 A: State's Exhibit Number Nine shows a electronic digital
12 scale, Arm & Hammer baking soda and a bag of sandwich bags
13 sitting on a shelf.

14 Q: And where were these found?

15 A: Those would be found in the living room area.

16 MR. RICHARDSON: Okay. State would seek to introduce
17 Nine and Sixteen into evidence, Your Honor.

18 MS. BASS: No objection, Your Honor.

19 THE COURT: Without objection.

20 MR. RICHARDSON: And publish.

21 STATES EXHIBITS NUMBER NINE AND SIXTEEN

22 ADMITTED INTO EVIDENCE.

23 BY MR. RICHARDSON:

24 Q: Now, on State's Number Nine, we see baking soda and
25 what's this white thing here?

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- 1 A: That would be a digital scale.
- 2 Q: And what -- you said bags?
- 3 A: Plastic sandwich bags.
- 4 Q: Now, in your experience as a narcotics agent, any
5 significance to these?
- 6 A: Yes, sir. The digital scales would be used to weigh out
7 their product, whatever they're selling, and they would
8 typically bag up their product in the sandwich bags whether it
9 be the whole bag or just a corner of it, depending on how much
10 they were selling or the person was purchasing.
- 11 Q: And Sixteen is the open scale with the bags?
- 12 A: Open scale with the bags, correct.
- 13 MR. RICHARDSON: I'm just gonna go ahead and have all
14 these marked.
- 15 BY MR. RICHARDSON:
- 16 Q: Now the mail that we saw in those photographs, did you
17 attempt to take it into evidence?
- 18 A: Yes, sir. I took some of it. I didn't take all of it
19 but I took some of it, yes.
- 20 Q: And why not take all?
- 21 A: It's not feasible. I don't really need all that mail.
- 22 Q: And what did you do with that mail once you obtained it?
- 23 A: The mail I did take, I turned into evidence just like I
24 did with the rest of the property that was seized from the
25 house.

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1 Q: Was it a big stack, small stack?

2 A: I can't recall -- I'm gonna say it was small, I didn't
3 take everything in there because that toolbox, the drawers
4 were pretty deep and there was a lot of mail there.

5 Q: So, to your recollection there was a lot of mail
6 addressed to Mr. Robinson?

7 A: Yes, sir, there was a lot of mail addressed to Mr.
8 Robinson and like I said some other people too.

9 Q: And you just took some photographs?

10 A: Correct.

11 Q: And there was some mail addressed to other people?

12 A: Yes, sir.

13 MR. RICHARDSON: What number is that Twenty-one?

14 COURT REPORTER: Twenty-seven.

15 BY MR. RICHARDSON:

16 Q: I'm going to show you State's Number Twenty-seven before
17 we go any further. Do you recognize State's Twenty-seven?

18 A: Yes, sir. That would be the monitor that was hooked up
19 to the surveillance camera.

20 Q: And that was found in the living room?

21 A: Yes, sir.

22 Q: Didn't want to just have a picture in that instance.

23 STATE'S EXHIBIT NUMBER TWENTY-SEVEN

24 ADMITTED INTO EVIDENCE

25 Q: In a search warrant case, what procedure is typically

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1 used with regard to searching rooms?

2 A: Since I was a case agent, I figured out who was gonna be
3 there and then I assigned them duties. Me being the case
4 agent, I contact the persons that are detained or under arrest
5 and inform them what's going on, all right, we're executing a
6 search warrant in your residence, this is why we're in your
7 house and while I'm doing that the other agents are executing
8 the search warrant as far as searching, looking for evidence.

9 Q: Okay. So, basically, you're the quarterback and you're
10 sending people in?

11 A: Yes, sir.

12 Q: Now, I take it you don't actually physically search every
13 room by yourself?

14 A: No, sir.

15 Q: And you designate certain people to go to certain areas?

16 A: Yes, sir.

17 Q: The bedroom where Ms. Yakoel was found ---

18 A: Yes, sir.

19 Q: --- closest to [REDACTED].

20 A: Yes, sir.

21 Q: Who was tasked with searching that room?

22 A: Agent Ashley Hardee.

23 Q: Okay. And with regard to any evidence that Mr. Hardee,
24 that Agent Hardee would've found in the room, what was he
25 supposed to do if he found evidence?

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1 A: If he found anything he would contact me, I would stop
2 what I was doing with the persons that were in custody. I
3 would go photograph the evidence and then take custody of it
4 myself.

5 Q: So, you personally searched Durant's bedroom?

6 A: Yes, sir. I assisted in that, yes.

7 Q: But the back bedroom, the one closest to the road where
8 Gil Yakoel was found ---

9 A: Yes, sir.

10 Q: --- the Defendant's girlfriend?

11 A: Yes, sir.

12 Q: You were called to that room?

13 A: Yes, sir.

14 Q: And did Agent Hardee ever alert you to any evidence that
15 was found in that back bedroom?

16 A: Yes, sir.

17 Q: Tell us about that?

18 A: He stated while pulling ---

19 MS. BASS: Objection to what he said, Your Honor.

20 THE COURT: Pardon me?

21 MS. BASS: I'm objecting to him telling what another
22 officer told him.

23 THE COURT: That would be hearsay.

24 MS. BASS: Thank you, Your Honor.

25 THE COURT: Sustain the objection.

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1 BY MR. RICHARDSON:

2 Q: Did there come a time when you went to the back bedroom.

3 A: Yes, sir. I went to the back bedroom and found a plastic
4 bag that contained a large quantity of off-white powder
5 substance believed to be cocaine, that also contained crack
6 cocaine, three blue pills that we believed to be Ecstasy and
7 another two bags of green leafy substance believed to be
8 marijuana laying on the floor.

9 Q: Who, if anyone, directed your attention to that evidence?

10 A: That would be Detective Ashley Hardee.

11 Q: And is that normal procedure?

12 A: Yes.

13 Q: So, as I understand it, normal procedure would be one of
14 you guys searching the room, finding something and says, hey,
15 Kent, come this way?

16 A: Yes, sir.

17 Q: And you go and you document it?

18 A: Yes, sir.

19 Q: Let's look at State's Number Twenty-two, Twenty-one,
20 Nineteen and Twenty. For the record again, that's Twenty,
21 Nineteen, Twenty-one and Twenty-two. If you could look at
22 those and tell us if you recognize those.

23 THE COURT: You've seen these photographs, counsel?

24 MR. HILLIARD: Yes, sir, Your Honor. I'm sorry.

25 MR. RICHARDSON: I apologize, Your Honor.

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1 A: This is depicting a bag of green leafy substance ---

2 Q: First of all, let's get it into evidence.

3 A: Oh, sorry.

4 Q: Do you recognize these photographs?

5 A: I do.

6 Q: And how do you recognize them?

7 A: These would be the photographs that I took.

8 Q: And do they fairly and accurately depict the areas as you
9 saw them that day?

10 A: Yes, sir, they do.

11 MR. RICHARDSON: State would move those items into
12 evidence, Your Honor. Once again, Twenty-two, Twenty-one,
13 Nineteen and Twenty.

14 THE COURT: You may do so. Do you desire to publish at
15 this time?

16 MR. RICHARDSON: That's correct, Your Honor.

17 THE COURT: You may do so.

18 MS. BASS: No objection, Your Honor. The only thing is
19 when he talks about it, can you get him to refer to the number
20 because I can't see for the podium and I can't see the number
21 that far away.

22 STATE'S EXHIBIT NUMBERS NINETEEN, TWENTY,
23 TWENTY-ONE AND TWENTY-TWO ADMITTED INTO EVIDENCE.

24 THE COURT: Can you address her concern?

25 MR. RICHARDSON: Yes, sir, Your Honor.

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1 THE COURT: Okay.

2 BY MR. RICHARDSON:

3 Q: State's Number Twenty, what do we see here?

4 A: State's Number Twenty, that would be a large -- or a bag
5 of green leafy substance believed to be marijuana laying next
6 to a pair of -- it appears to be male pants. I think it's
7 Enyce pants, black in color jeans.

8 Q: Enyce, that's a brand?

9 A: Yes, sir.

10 Q: And how about -- where was this picture taken, what room?

11 A: That was in the back bedroom with Gil Yakoel.

12 Q: Okay. So, the back bedroom, the one closest to

13 [REDACTED]

14 A: Yes, sir.

15 Q: And State's Number Nineteen.

16 A: Nineteen, this would be a photograph of a clear plastic
17 bag with a quantity of off-white powder substance believed to
18 be cocaine, again, next to a pair of looks to be black jeans
19 with red striping on it, like male pants.

20 Q: And where was that found?

21 A: In the back bedroom.

22 Q: The back bedroom?

23 A: Yes, closest to [REDACTED].

24 Q: In the closet area?

25 A: Yes, sir.

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1 Q: State's Twenty-one?

2 A: Again, this is a closer photo of the green leafy
3 substance believed to be marijuana that was found in the
4 closet area in the back bedroom closest to [REDACTED].

5 Q: And finally, State's Twenty-two.

6 A: This is a close up photograph of the off-white powder
7 substance, off-white rocklike substance believed to be crack
8 cocaine and the three blue tablets believed to be marijuana,
9 excuse me, MDMA/Ecstasy.

10 Q: And those are the items you found in the back bedroom.

11 A: Yes, sir.

12 Q: Some of the items. I believe we're almost done with the
13 photographs. And Your Honor, I've presented these to the
14 Defense.

15 THE COURT: The record will so reflect, thank you.

16 Q: Twenty-four and Twenty-three if you could tell me if you
17 recognize those items.

18 A: I do.

19 Q: And how do you recognize those items?

20 A: These would be the photographs that I took of the outside
21 of the house facing [REDACTED].

22 Q: Okay. So, this window faces [REDACTED]?

23 A: Yes, it does.

24 Q: And so this is the window to the back bedroom?

25 A: Yes.

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1 Q: And how about the next one, State's Twenty-four.

2 A: State's Twenty-four is a close-up view of the
3 surveillance camera that is inside the window facing

4 [REDACTED]

5 MR. RICHARDSON: And Your Honor, I would seek to put
6 those into evidence, Twenty-four and Twenty-three.

7 THE COURT: You may do so and ---

8 MS. BASS: No objection.

9 THE COURT: --- may publish.

10 STATE'S EXHIBIT NUMBERS TWENTY-THREE AND TWENTY-FOUR

11 ADMITTED INTO EVIDENCE.

12 BY MR. RICHARDSON:

13 Q: So, this video camera, were you able to tell where it fed
14 to?

15 A: It was feeding to the monitor that was in the living
16 room.

17 Q: Okay. That monitor was in the living room and not Mr.
18 Durant's room?

19 A: No, it was not.

20 Q: So, that -- the feeds from those cameras went to that
21 monitor?

22 A: Yes, sir.

23 Q: And that window, that was to the room where Ms. Yakoel
24 was found?

25 A: Yes, sir.

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1 Q: Was there any paperwork in that room?

2 A: There was some paperwork again that had -- that was
3 addressed to Mr. Robinson and there was some photographs of
4 Mr. Robinson on the wall and men's clothing that were in
5 there.

6 Q: Okay. And we were talking about the size difference
7 between Mr. Durant and the Defendant.

8 A: Yes.

9 Q: How about Ms. Yakoel and the Defendant? Big size
10 disparity?

11 A: Yes. She's probably five-five.

12 Q: Tiny thing?

13 A: Yeah.

14 Q: Now, in State's, I believe it was Twenty-three, we see a
15 car?

16 A: Yes, sir.

17 Q: Can you tell us anything about that car?

18 A: That vehicle when I ran the tag came back registered to
19 Alex Robinson. If you'll permit me to look in my notes, South
20 Carolina tag [REDACTED], registered to Alex Robinson.

21 Q: What type of car was it?

22 A: That would be a black Hyundai, I think it's Elantra.

23 Q: And now the suspected narcotics that you found, the
24 suspected narcotics you found, that's what we saw in the
25 photographs, correct?

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1 A: Yes, sir.

2 Q: What did you do with those?

3 A: I took those back to the office and did a field test kit
4 which is just to give me a base line as far as what the drugs
5 are. I field tested and they came back positive for the
6 presence of cocaine attributes and also for MDMA/Ecstasy. I
7 did a field weight on it and I placed it on the scales that I
8 have in my office, again, that's just a field weight, it's not
9 exact, it just helps me so I know what to charge the people
10 with.

11 Q: For the purpose of weighing any substance would be for a
12 charging decision?

13 A: Yes, sir.

14 Q: Now, once you were directed to that evidence in the room
15 by Agent Hardee, the back bedroom ---

16 A: Yes, sir.

17 Q: What did -- you took the drugs into custody at that
18 point?

19 A: Yes, sir.

20 Q: Did it ever leave you from the time you took it into
21 custody till you got back to the precinct?

22 A: No, sir. It was right next to me.

23 Q: And when you went back to weigh it -- Your Honor, these
24 have been shown to the Defense -- Twenty-five and Twenty-six.
25 Could you tell us -- are you familiar with State's Twenty-five

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1 and Twenty-six?

2 A: Yes, sir, I am. Twenty-five ---

3 Q: Hold on. I got to get them into evidence, first.

4 A: I'm sorry.

5 Q: State's Twenty-five and Twenty-six, how are you familiar
6 with them?

7 A: These are photographs that I took in my office back at
8 the Horry County Police Department.

9 Q: And that's y'all weighing the drugs?

10 A: Yes, sir.

11 Q: And the drugs that's contained in those pictures -- and
12 Your Honor, I'd seek to move these into evidence at this time.

13 MS. BASS: No objection, Your Honor.

14 THE COURT: Without objection. Thank you, ma'am.

15 STATE'S EXHIBITS TWENTY-FIVE AND TWENTY-SIX

16 ADMITTED INTO EVIDENCE.

17 BY MR. RICHARDSON:

18 Q: These are the drugs you picked up in the back bedroom?

19 A: Yes, sir. This would be the off-white powder substance
20 that field tested positive for cocaine.

21 Q: Those were found on top of a pair of male pants?

22 A: Yes, sir.

23 Q: And you took into your possession?

24 A: Yes, sir.

25 Q: And your presumptive weight on it?

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1 A: 111 grams.

2 Q: 111 grams. Let's jump back a little bit ---

3 Those can go in together (To Court Reporter)..

4 I'm going to show you what has been collectively marked
5 as State's Number Twenty-eight. Do you recognize these items?

6 A: Yes, sir, I do.

7 Q: And what are these two items?

8 A: These are surveillance cameras that were taken from the
9 residence [REDACTED].

10 Q: One of those cameras being the one that was in the
11 window?

12 A: Yes, sir. I believe it was this grey one right here.

13 Q: Do you remember the location of the other camera?

14 A: Not offhand, I do not.

15 MR. RICHARDSON: Move that into evidence, Your Honor,
16 State's Number Twenty-eight.

17 MS. BASS: No objection.

18 THE COURT: Thank you. Without objection.

19 STATE'S EXHIBIT NUMBER TWENTY-EIGHT

20 ADMITTED INTO EVIDENCE

21 BY MR. RICHARDSON:

22 Q: Now, once you get the suspected drugs back to -- let's
23 back up one more time. You said previously that you found
24 some drugs in Mr. Durant's bedroom?

25 A: Yes, sir.

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- 1 Q: Do you remember how much it was?
- 2 A: Approximately 7.4 grams of cocaine.
- 3 Q: And that was based off of your weight that you got back
- 4 at the precinct too?
- 5 A: Yes, sir.
- 6 Q: Seven little packs?
- 7 A: Yes, sir.
- 8 Q: All bagged up?
- 9 A: Yes, sir.
- 10 Q: And was Mr. Durant charged with those drugs?
- 11 A: Yes, he was.
- 12 Q: How about Ms. Smith?
- 13 A: Yes, she was.
- 14 Q: Now, in this bedroom where Gil Yakoel was found and
- 15 pictures of the Defendant. Who was charged with the dope in
- 16 that room?
- 17 A: Ms. Yakoel and Mr. Robinson.
- 18 Q: And there was some of his mail in there?
- 19 A: Yes, sir.
- 20 Q: Pictures and his pregnant girlfriend?
- 21 A: Yes, sir.
- 22 Q: Once you got back to the precinct and you took those
- 23 photographs we saw, what did you do with the drugs?
- 24 A: The drugs that need to be analyzed by the chemist, I
- 25 placed in what is called a BEST kit. That is an envelope that

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1 has a tamper-resistant seal on it and what I do is I put my
2 initials, my name on there, I sign it, put the case number,
3 what it is exactly that I'm placing into the bag, what the
4 chemist is gonna be analyzing, I seal it up and again that
5 seal is tamper-resistant so -- and it shows that if anyone
6 tries to open it, the red lines will -- it will be evident
7 that someone is trying to tamper with it and trying to gain
8 access to those drugs. After it is placed in that bag, I take
9 the evidence and place it in the drug drop box.

10 Q: Okay. The drug drop box, where is that located?

11 A: That is located in the police department; it's actually
12 right across the hallway from our office. It's a secure area
13 of the police department where I have no access to -- the only
14 thing I can do is drop the evidence in and if I need to take
15 anything out, I must get the evidence custodians to hand it to
16 me physically.

17 Q: So, it's kind of like dropping something in the mailbox?

18 A: Correct.

19 Q: Let me show you what we're about to get marked, I'm
20 guessing, State's Twenty-nine.

21 MS. BASS: No objection.

22 THE COURT: Thank you, ma'am. Without objection.

23 STATE'S EXHBIIT NUMBER TWENTY-NINE

24 ADMITTED INTO EVIDENCE

25 BY MR. RICHARDSON:

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1 Q: Let me show you what's been marked at State's Twenty-
2 nine, do you recognize this item?

3 A: Yes, sir.

4 Q: And what do you recognize State's Twenty-nine to be?

5 A: That would be the County drug -- that's a security
6 envelope or commonly -- more commonly known as a BEST evidence
7 Kit.

8 Q: And it pertains to what case?

9 A: The case that Mr. Robinson and Ms. Yakoel have been
10 charged with trafficking cocaine.

11 Q: Now, States Number Twenty-nine, how can you be sure it
12 belongs to this case?

13 A: Well, it's got my name on it. It's got the case number
14 and it's dated on 9/25/2008 and that's when we executed the
15 search warrant.

16 Q: And whose handwriting is that?

17 A: That is my handwriting.

18 Q: So, you wrote this on 9/25/2008?

19 A: Yes, sir.

20 Q: And do you remember when you dropped this off, you said
21 you indicated that you dropped it off in the drop box?

22 A: Yes, sir. It was sometime that morning after we got
23 back.

24 Q: And so as I understand it, your testimony is that it
25 would appear that State's Twenty-nine is all the drugs found

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1 in or suspected drugs at this point found in the back bedroom?

2 A: The only thing that's not in there would be the
3 marijuana.

4 MR. RICHARDSON: Subject to completing the foundation,
5 Your Honor, the State would seek to introduce.

6 STATE'S EXHIBIT NUMBER TWENTY-NINE

7 MARKED FOR IDENTIFICATION.

8 BY MR. RICHARDSON:

9 Q: What did you do with the suspected drugs you found in Mr.
10 Durant's bedroom?

11 A: I placed that in BEST evidence kit, also and did the same
12 thing, put it in a bag, initialed it, put the case number,
13 dropped it in a drug box.

14 Q: Okay. So, that was a separate BEST kit?

15 A: Correct.

16 Q: You told us earlier that you found a gun in Mr. Durant's
17 bedroom?

18 A: Yes, sir.

19 Q: What did you do with that gun?

20 A: That gun was seized due to asset forfeiture laws. If
21 it's in close proximity to drugs, we seize that weapon.

22 Q: Okay. And it was turned over?

23 A: It was turned over to the State and I don't know what
24 happened to it after that.

25 Q: Okay. So, it was seized because of close proximity of

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- 1 drugs in Mr. Durant's room?
- 2 A: Yes, sir.
- 3 Q: Now, we saw a bunch of shotgun shells?
- 4 A: Yes, sir.
- 5 Q: And y'all searched the entire house, correct?
- 6 A: Yes, sir.
- 7 Q: You ever find a shotgun?
- 8 A: No, sir.
- 9 Q: Okay. Shotgun shells don't fit in a 9 millimeter?
- 10 A: No, sir.
- 11 Q: Okay. But so you have shotgun shells but no shotgun?
- 12 A: Yes, sir.
- 13 Q: Now, we see in the BEST kit, State's Twenty-nine, we see
- 14 everything together. The white powdery substance in there,
- 15 was that all in its own little bag; is that we see in State's
- 16 Twenty-five?
- 17 A: Yes, sir.
- 18 Q: So, it wasn't all bundled together when you found it but
- 19 it was all the same general area?
- 20 A: The crack cocaine -- excuse me -- the suspected crack
- 21 cocaine, suspected Ecstasy and the suspected cocaine were in a
- 22 bag together. They were separated but they were in that one
- 23 back together and then I took them out to weigh them and then
- 24 placed them in the evidence kit.
- 25 Q: So, each one of them was individually in a bag but

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- 1 altogether in one big bag?
- 2 A: Yes, sir.
- 3 Q: And that was -- when you went in it was on top of a pair
- 4 of male pants?
- 5 A: Yes, sir.
- 6 Q: Now, you dropped that evidence off right after you
- 7 weighed it and put it in the BEST kit, correct?
- 8 A: Yes, sir.
- 9 Q: Horry County Police Department evidence?
- 10 A: Yes, sir.
- 11 Q: And to your mind, no doubt about it, those are your
- 12 initials and everything on the BEST kit?
- 13 A: Yes, sir.
- 14 Q: Pertaining to this search warrant, were any arrests made
- 15 that day?
- 16 A: Yes, sir.
- 17 Q: And who was arrested that day?
- 18 A: Kevin Durant -- excuse me -- not Kevin Durant -- Mr.
- 19 Durant, Ms. Smith and Ms. Yakoel.
- 20 Q: And Mr. Durant, Kenneth Durant ---
- 21 A: Yes.
- 22 Q: --- what were they charged with?
- 23 A: They were charged with possession with intent to
- 24 distribute cocaine?
- 25 Q: That's due to the weight found in their bedroom?

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- 1 A: Yes, sir.
- 2 Q: And Ms. Yakoel, what was she charged with?
- 3 A: Charged with trafficking cocaine.
- 4 Q: And what happened to her?
- 5 A: She went to J. Reuben Long.
- 6 Q: Did you have any other warrants that went unserved that
- 7 day?
- 8 A: Unserved that day, yeah, I went and spoke to -- I believe
- 9 it was Judge Butler and got warrants for Mr. Robinson for
- 10 trafficking cocaine.
- 11 Q: But he wasn't there that day?
- 12 A: He was not there that day.
- 13 Q: The car that was registered to him was there that day?
- 14 A: Yes, it was.
- 15 Q: And there's mail to him there that day?
- 16 A: Yes, sir.
- 17 Q: And pictures of him in the house that day?
- 18 A: Yes, sir.
- 19 Q: And his pregnant girlfriend was there that day?
- 20 A: Yes, sir.
- 21 Q: But he was gone?
- 22 A: He was gone.
- 23 Q: Did you ever get a chance to serve that arrest warrant on
- 24 Mr. -- on the Defendant?
- 25 A: Yes, sir.

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1 Q: Tell us about that.

2 A: On the 30th of September, 2008, I received a phone call
3 from the jail stating that ---

4 MS. BASS: Objection to the hearsay from the jail.

5 THE COURT: I will permit this conversation only as to
6 his further action and not again to the truth of the matter
7 asserted.

8 MS. BASS: Just ---

9 THE COURT: I'll permit it only as to what his further
10 action is.

11 MR. RICHARDSON: Yes, sir, Your Honor.

12 A: That Mr. Robinson was at the jail paying money to bond
13 his girlfriend out.

14 BY MR. RICHARDSON:

15 Q: And upon getting that information, what if any action did
16 you take?

17 A: I left my house, went to the police department and picked
18 up the arrest warrants that I had for the Defendant for the
19 trafficking charges and proceeded to the jail.

20 Q: And how far was the Horry County Police Department from
21 the jail?

22 A: About three miles.

23 Q: About three miles?

24 A: About three miles.

25 Q: Okay. So, you were called ---

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1 A: Yes.

2 Q: And what type of vehicle were you in?

3 A: I was in an unmarked police vehicle, it was an Impala SS
4 with tinted windows.

5 Q: And were you in uniform or ---

6 A: No, at the time, working narcotics, we don't wear
7 uniforms, we wear plain clothes.

8 Q: All right. This unmarked Impala, is it distinctive, does
9 it stand out?

10 A: It's grey ---

11 MS. BASS: Your Honor, I'm gonna object to the leading at
12 this point.

13 THE COURT: The question -- ask him what ---

14 Q: Anything that distinguishes this Impala?

15 A: It looks like a normal vehicle, I mean, like I say, it's
16 just grey with tinted windows but you have a lot of tinted
17 windows in vehicles here.

18 Q: So, you're out at J. Reuben Long because you get word the
19 Defendant is going to be out there?

20 A: Yes, sir.

21 Q: And you have the warrants in your hand?

22 A: I do.

23 Q: What happens when you get to J. Reuben?

24 A: I get to J. Reuben Long and the Defendant and another, at
25 the time unknown male, were sitting in the vehicle facing

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1 away. There are four areas that you can park in J. Reuben
2 Long. When I pulled in, I pulled in closest to the -- not
3 closest to where the police officers park their vehicles. The
4 Defendant, his vehicle was facing away from the building, the
5 front of vehicle heading to the -- the -- I guess the sidewalk
6 area standing -- he's sitting in the vehicle in the driver's
7 seat talking to another male standing outside.

8 Q: What if any action did you take at this point?

9 A: When I pulled up, the Defendant saw me and he immediately
10 put the vehicle in reverse and as opposed to me getting out
11 and trying to affect the arrest then, I waited in the vehicle.
12 For officer safety, I didn't want to get hurt just in case
13 something bad wrong.

14 Q: How long were you there before -- you said the Defendant
15 saw you?

16 A: Yes, sir.

17 Q: How did he see you?

18 A: Like I said ---

19 MS. BASS: Your Honor, I'm going to object to what the
20 Defendant saw. Only he knows what he saw. I object to that.

21 Q: What observations did you make?

22 A: When -- as I was pulling in, again, he was facing with
23 the window down facing towards the roadway as I drove past and
24 he looked at me and as I drove by, he just immediately, like I
25 said, put the vehicle in reverse as I pulled into the parking

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1 spot.
2 Q: So, no doubt about it, he looked at you?
3 A: He saw me, yes.
4 Q: Okay. To your knowledge, is the Defendant blind?
5 A: No, not to my knowledge.
6 MS. BASS: Your Honor, move to strike a comment like
7 that.
8 Q: That he would see, correct?
9 THE COURT: No, sir. I sustain that. That's not --
10 that's an improper question. Sustained.
11 BY MR. RICHARDSON:
12 Q: It appeared that he saw you, correct?
13 A: Yes, sir.
14 Q: And you said he put the car in reverse at that point?
15 A: Yes, sir.
16 Q: Now, help us understand, how close is your car to the
17 Defendant's car at this point?
18 A: We're -- my car is here, his car is over here, probably
19 cattycornered, so maybe thirty or forty feet away, just enough
20 space where people can back out or pull out and then go their
21 way.
22 Q: Kind of like the taillight -- taillight to headlight?
23 A: Taillight to Taillight.
24 Q: Okay. So, back end towards -- or back to back?
25 A: Yes, sir.

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- 1 Q: What kind of car was he in?
- 2 A: He was in that Hyundai Elantra, that black Hyundai
- 3 Elantra.
- 4 Q: So that same Hyundai Elantra, same tag ---
- 5 A: Yes, sir.
- 6 Q: --- that you saw at the mobile home when you served the
- 7 search warrant?
- 8 A: Yes, sir.
- 9 Q: Right outside that bedroom where his girlfriend was
- 10 found?
- 11 A: Yes, sir.
- 12 Q: Registered to him?
- 13 A: Yes, sir.
- 14 Q: And he's driving that?
- 15 A: Yes, sir.
- 16 Q: Now, he leaves, correct?
- 17 A: Yes, sir.
- 18 Q: Where do he go?
- 19 A: He backs up, he drives towards the front of the building
- 20 to meet with a older female. I see a package go from the
- 21 passenger to the female. They drive off, drive around the
- 22 parking lot of the jail and then exit the parking lot.
- 23 Q: And help us understand, I don't think too many people
- 24 have been out to J. Reuben.
- 25 A: Right.

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1 Q: This is the old building?

2 A: Yes, sir. This is the old building.

3 Q: So, that the main entrance for the public is right off
4 the parking lot?

5 A: Yes, sir.

6 Q: Kind of corner to ---

7 A: Corner to the right.

8 Q: And you're saying a female came out and took the package
9 from that car?

10 A: Yes.

11 MS. BASS: Your Honor, I'm gonna have to object to the
12 leading.

13 MR. RICHARDSON: I'm asking to make sure I get it
14 correct, Your Honor, he's already testified that ---

15 THE COURT: You know the rules as well as I do.

16 MR. RICHARDSON: Yes, sir. And I'm trying to get through
17 this, Your Honor.

18 THE COURT: I understand.

19 BY MR. RICHARDSON:

20 Q: Now, after you said you saw the passenger hand an
21 envelope of for a package off ---

22 A: Yes, sir.

23 Q: What happens next?

24 A: The Defendant drives away, he circles the parking lot
25 fairly slow, circles the parking lot. At that time, I put my

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- 1 vehicle in reverse to follow him out. He gets to the exit of
2 the jail and then makes a left onto J. Reuben Long Boulevard,
3 I think something like that, and I'm behind them at this time
4 and I flipped on my blue light to signal for him to stop,
5 perform a traffic stop.
- 6 Q: And what was the purpose of you wanting him to stop?
- 7 A: I was going to arrest him for the warrants that I
8 had.
- 9 Q: The warrants you had in hand?
- 10 A: Yes.
- 11 Q: Now, you hit your blue lights?
- 12 A: Yes, sir.
- 13 Q: What happens when you hit those?
- 14 A: When I flipped my blue lights down, he immediately
15 accelerated in attempt to evade me.
- 16 Q: Okay. Well, what did you do?
- 17 A: I then turned on my siren and then immediately notified
18 dispatch that I was in pursuit of a subject that I had
19 warrants on, felony warrants. I was in an unmarked vehicle so
20 I needed a marked patrol car to assist me with the stopping of
21 the vehicle.
- 22 Q: So, that's the information you relayed to dispatch?
- 23 A: Correct.
- 24 Q: Is that the information you heard dispatch relay?
- 25 A: Yes.

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1 Q: And tell us about your traveling.

2 A: If you'll allow me to -- I can tell you exactly where we
3 rode. I activated my blue lights on J. Reuben Long Drive.
4 Pursued the Hyundai being operated by Robinson on Harris
5 Shortcut Road to Highway ---

6 MS. BASS: Your Honor, objection to him reading ---

7 THE COURT: He's just -- he's not leading, he's
8 testifying.

9 MS. BASS: Reading, Your Honor, he's reading his ---

10 MR. RICHARDSON: We need a moment to ---

11 THE COURT: He's entitled to refresh his memory if he
12 wishes to.

13 MS. BASS: Objection stated for the record, Your Honor.

14 THE COURT: Sure, he's entitled to read his own notes.

15 BY MR. RICHARDSON:

16 Q: Sergeant, if you would take a moment to refresh your
17 recollection if you're having difficulty and then testify,
18 please.

19 A: All right. He turned on Harris Shortcut Road, turned
20 onto 319, followed that all the way up to another road, made a
21 right on that road, got to Willard Road and made a left and
22 that's where he was stopped-sticked by another officer.

23 Q: Stop stick, what's that?

24 A: Those are pursuit ending devices. We use those to pretty
25 much to slow the pursuit down. People who are going high

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1 rates of speeds when the person drives over the stop sticks
2 which has quills inside. The quills go inside the tires, the
3 air slowly deflates slowing the pursuit down.

4 Q: And did he stop after he ran over those stop sticks?

5 A: No, sir. He continued on to Highway 501.

6 Q: Did -- now, did you ever see him stop the vehicle?

7 A: Did I see him stop the vehicle? No, sir. I got -- when
8 I got up to the scene, he was already out of the vehicle in
9 the soybean field.

10 Q: And that was the video we saw earlier?

11 A: Yes, sir.

12 Q: Now, after that collision, that wreck, we saw and heard
13 testimony about Officer Calderwood or Corporal Calderwood
14 going after him. When is the next time you came in contact
15 with the Defendant?

16 A: When they were bringing the Defendant and his passenger
17 out of the soybean field.

18 Q: And at any point did you take custody of the Defendant?

19 A: I did.

20 Q: And did you search him?

21 A: Yes, sir.

22 MS. BASS: Your Honor, this is going to be an objection
23 as to -- as to what we previously discussed with Your Honor.

24 THE COURT: I understand but I will permit it.

25 MR. RICHARDSON: Your Honor, if we could approach on this

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1 matter very briefly.

2 THE COURT: Has he not seen this previously?

3 MR. RICHARDSON: Saw it two weeks ago, Your Honor.

4 THE COURT: Sir?

5 MR. RICHARDSON: He saw it two weeks ago.

6 THE COURT: So that everyone will know, given the time,
7 when you conclude your direct we will recess for the evening
8 and have cross examination first thing in the morning.

9 MR. RICHARDSON: Yes, sir. We're on the final question
10 actually.

11 THE COURT: The jury has been here very patiently and I

12 ---

13 MR. RICHARDSON: And I appreciate it, Your Honor. I
14 appreciate their patience.

15 MR. HILLIARD: Not that we don't appreciate it also,
16 Judge.

17 THE COURT: Sir?

18 MR. HILLIARD: I say not that we don't appreciate their
19 patience also. We're glad that ---

20 THE COURT: Oh, I understand that. Nobody indicates that
21 you don't. I'm trying to accommodate you too.

22 MR. HILLIARD: Thank you, Judge.

23 MS. BASS: Your Honor, may we approach?

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of the jury but out of hearing of the jury.)

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1 BY MR. RICHARDSON:

2 Q: Did you take a wallet from the Defendant?

3 A: Yes, sir, I did.

4 Q: Let me show you what has been put in State's Number
5 Thirty.

6 A: Yes, sir. This appears to be the wallet that I took off
7 of the Defendant.

8 Q: Let me show you a piece of paper I've pulled out of
9 State's Number Thirty. That appears to be Defendant's wallet?

10 MS. BASS: Your ---

11 THE COURT: Pardon me?

12 MS. BASS: Your Honor, we're gonna object to anything
13 coming in from this wallet based on our previous argument.

14 THE COURT: No, sir. I will let that in and let the jury
15 give such weight as they think it's entitled to. I'm not sure
16 why you're introducing it but you'll have to explain it at
17 some point in time.

18 MS. BASS: Thank you, Your Honor.

19 THE COURT: I am permitting it as a document found in the
20 Defendant's presence. If the jury doesn't believe that,
21 that's fine, they're finders of the facts. What implication
22 the document has or not has is for the jury.

23 MR. RICHARDSON: For the record, Your Honor, I'm putting
24 State's Thirty in for identification purposes only.

25 THE COURT: Yeah.

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1 MR. RICHARDSON: And Thirty-one will be in -- we'll be
2 seeking to put that into evidence.

3 STATE'S EXHIBIT NUMBER THIRTY

4 MARKED FOR IDENTIFICATION

5 BY MR. RICHARDSON:

6 Q: Let me show you an item I removed from -- and you said no
7 doubt about it, that's the Defendant's wallet?

8 A: Yes, sir.

9 Q: Let me show you an item I took from that wallet.

10 Your Honor, I'd seek to move State's Thirty-one into
11 evidence.

12 THE COURT: All right, without objection?

13 MS. BASS: With our objection to both, Thirty and Thirty-
14 one.

15 THE COURT: With your objection.

16 MS. BASS: Thank you, Your Honor.

17 MR. RICHARDSON: And publish it to the jury.

18 STATE'S EXHIBIT NUMBER THIRTY-ONE

19 ADMITTED INTO EVIDENCE

20 BY MR. RICHARDSON:

21 Q: Can you just tell me what's written that or what -- first
22 of all, what is State's Number Thirty-one?

23 A: It is a BB&T account, checking deposit slip and ---

24 Q: Whose name appears on that account?

25 A: Alex Robinson.

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1 Q: And what address is given on that?

2 A: [REDACTED].

3 Q: And when is that dated?

4 A: The 6th of January 2008.

5 Q: Okay. So, just earlier in the year before this search
6 warrant?

7 A: Yes, sir.

8 THE COURT: You may publish if you care to.

9 MR. RICHARDSON: And, Your Honor, I'm sufficient with
10 Sergeant Donald's recitation on there.

11 THE COURT: All right, sir.

12 BY MR. RICHARDSON:

13 Q: So, once -- you arrested him on the 30th of September,
14 correct?

15 A: Yes, sir.

16 Q: And served him with these warrants?

17 A: Yes, sir.

18 Q: And that was the extent of your involvement in this case?

19 A: Yes, sir.

20 Q: Sergeant, thank you for your patience and thank you for
21 your time.

22 Your Honor, that would be all the questions I have for
23 him, Judge.

24 THE COURT: All right, sir. Given the time, I'll permit
25 your cross examination now if you desire but if you would

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1 prefer to wait till 9:30 in the morning, I'll be glad to
2 accommodate you, Mr. Hilliard.

3 MS. BASS: It's gonna be me, Your Honor, and it's gonna
4 take quite a long time so ---

5 THE COURT: 9:30 in the morning.

6 MS. BASS: That sounds good, thank you, Your Honor.

7 THE COURT: All right. I have several instructions for
8 the jury. The first, since we don't have daylight saving time,
9 anymore, it's 6 o'clock and it's dark outside. Your wonderful
10 bailiff, Dana, has made arrangements to have all of you
11 escorted to your transportation when I release you.

12 Now, there are several things I need to remind you of.
13 One, you must not discuss this case with anyone nor permit
14 anyone to discuss it with you. You must not make any
15 independent inquiry of any kind. I don't see the press here
16 so I don't expect anything to be in the paper. There's one
17 other important thing, Madame Foreman, that you and your jury
18 need to know. You must not discuss this case even among
19 yourselves until I have given you the case for your
20 deliberation and the reason is reasonably obvious, it may be
21 the last witness that convinces you one way or the other, you
22 would not have heard the final summation of lawyers, you would
23 not have heard my instructions in the law. And consequently
24 under our rules, we say that you must not discuss this case in
25 the jury room, do not -- you can discuss anything else you'd

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1 like, Madame Foreman, it's your responsibility to see that
2 there is no discussion in the jury room about any issue.
3 There's another thing, sometimes and I can regularly
4 understand this, three or four jurors going to the car might
5 discuss some issue in the case and that's improper for this
6 reason. Whatever your verdict is, be it not guilty or guilty
7 it must be the unanimous verdict of all twelve. And if
8 several of you are discussing some issue in the case you are
9 depriving your fellow jurors of that process or thought
10 process and they're entitled to that. So it is extremely
11 important that you don't discuss the case not even among
12 yourselves. And obviously it would be improper for anybody to
13 discuss it with you or you to discuss it with somebody else.
14 Now, having been married for fifty-five years, I know your
15 spouses will want to know what's going on but under your oath,
16 you must not discuss the case with them and please do not do
17 that.

18 Any further instructions requested by the State?

19 MR. RICHARDSON: Not for the jury, Your Honor.

20 MR. HILLIARD: None, Your Honor. Thank you.

21 THE COURT: All right. In the morning, we'll have -- I
22 want some ham biscuits for this jury in the morning. We're
23 gonna start promptly at 9:30. Be here a few minutes early and
24 I'll have some donuts or ham biscuits and coffee waiting on
25 you. Come to your jury room, not to the courtroom. See you

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1 in the morning promptly at 9:30.

2 (REPORTER'S NOTE: The jury is excused for the day.)

3 THE COURT: Thank you.

4 MR. HILLIARD: Thank you, Judge.

5 *****OFF THE RECORD*****

6 (On the Record.)

7 THE COURT: Yes, ma'am.

8 MS. BASS: Yes, Your Honor, I just want to put on the
9 record that what we approached Your Honor during the closing
10 -- during the opening statement when I was given the
11 opportunity to talk to the jury and when I asked to approach
12 after Your Honor stopped my opening statement, we came around
13 and what I said to you was I objected to you stopping me when
14 I was in front of the jury, that I objected to the comment
15 that you made to the jury ---

16 THE COURT: No, ma'am, I did not stop you. I just said
17 your comment was improper referring to what he didn't say when
18 I had told him to keep it short. That -- I didn't object to
19 you I said it was improper.

20 MS. BASS: Your Honor, I was talking about destroyed
21 evidence when you stopped me.

22 THE COURT: What?

23 MS. BASS: I was talking about destroyed evidence when
24 you stopped me not about anything with Mr. Richardson.

25 THE COURT: I conclude that at the time that that was

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1 properly in your closing and not in opening statements.

2 MS. BASS: And Your Honor I also asked for a mistrial
3 which you denied.

4 THE COURT: I never heard you ask for a mistrial.

5 MS. BASS: I told you I wanted to ask for a mistrial
6 since we took a break while we were standing right there.

7 THE COURT: Well, if you're asking for a mistrial, I deny
8 it.

9 MS. BASS: Okay. And then also I objected to the fact
10 that you said in front of the jury that I needed to follow the
11 rules when I'd been up there like two minutes and forty-five
12 seconds in an opening statement in a trafficking cocaine case.

13 THE COURT: No, ma'am. I say now and I say again, your
14 comment as to the Solicitor's conduct was improper and that's
15 what I said at the time and still think so.

16 MS. BASS: Your Honor, I didn't say anything about his
17 ---

18 THE COURT: Yes, you did. You said the Solicitor
19 should've told you this, that and other. Richardson, tell me
20 exactly what you remember.

21 MR. RICHARDSON: I recall her saying you didn't hear the
22 Solicitor bring up the fact about destroyed evidence, I don't
23 think you'll hear him say it -- something to that effect, Your
24 Honor.

25 THE COURT: Well, sure, that's a matter for summation and

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1 evidence.

2 MS. BASS: Thank you so much, Your Honor; I just wanted
3 to have that on the record.

4 THE COURT: I'm glad to hear what you say but do not
5 misquote what I said otherwise we're gonna stop and read the
6 whole record back to you.

7 MS. BASS: Yes, sir. I don't have a problem with that.

8 THE COURT: Thank you. But I do when you misquote me.

9 MR. RICHARDSON: Your Honor, with regard to the
10 Defendant's bond status, at this point, the State would ask
11 that he be remitted to the custody of the Sheriff's Department
12 since the trial has started.

13 THE COURT: I do and the bond falls as the rule requires,
14 sure.

15 MR. RICHARDSON: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. HILLIARD: Judge, he's been under bond ---

18 THE COURT: I know, sir, but this is a serious case; his
19 is going to be in jail tonight under the rules, period. You
20 know the rules Mr. Former Solicitor better than I do. Thank
21 you. All right. See you at 9:30 in the morning.

22 MR. RICHARDSON: Thank you, Your Honor.

23 MS. BASS: Thank you so much.

24 MR. HILLIARD: Thank you, Your Honor.

25 (RECESS.)

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*****OFF THE RECORD*****

(On the Record.)

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THE COURT: Are we ready to proceed?

MR. RICHARDSON: Yes, Your Honor.

MR. HILLIARD: Yes, sir, Your Honor.

THE COURT: You indicated that you had a matter you need
to put on the record outside the presence of the jury?

MR. RICHARDSON: Yes, sir, Your Honor. On behalf of the
State there's been some statements made with regard to
discovery just being delivered this past Friday and this past
week.

MR. HILLIARD: I'm sorry, Judge, the Defendant is not
present and when I said we were ready ---

THE COURT: Okay. Well, let's wait.

MR. HILLIARD: --- I made a mistake.

(REPORTER'S NOTE: Defendant enters courtroom.)

THE COURT: Yes, sir.

MR. RICHARDSON: Your Honor, as I stated, previously in
this case there's been some statements made with regard to
discovery just being turned over late last week, there was an
item, a video, the failure to stop video that we saw
yesterday, the traffic video we saw yesterday, that was
actually acquired by the State -- it wasn't mentioned in
discovery or in our reports but upon investigation found there

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1 was a video, I got that, emailed it to Mr. Hilliard and Ms.
2 Bass as quickly as I could, reduced it to a format where I
3 could email it to them so we didn't have to wait on the mail.
4 Other than that, there was a file that they requested on a
5 possible witness. There was a -- they requested a separate
6 case file on one on Ms. Gil Yakoel, she had been previously
7 arrested in August, August the 20th, I believe it was, 2008.
8 They requested that file for -- that it might have some
9 exculpatory material. I reviewed the file, I reduced it by
10 copying is and I sent that file out last week by U.S. Mail.
11 They contacted me on Friday and stated they had not received
12 it yet. I had my secretary actually fax a copy over on Friday
13 afternoon and that was what was turned over. The discovery in
14 this actual case was turned over two months ago, typically
15 discovery follows the Defendant but when Mr. Hilliard came on,
16 we arraigned the Defendant about two months ago. I brought
17 Mr. Hilliard downstairs and we made a copy of ---

18 THE COURT: This was two months ago?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Do you agree with that, Mr. Hilliard?

21 MR. HILLIARD: So far as it goes, Judge, I got a little
22 bit to add to it but that's ---

23 THE COURT: All right. Well, you kept saying the
24 discovery on Friday which would indicated that's the first
25 time you got discovery; that's not true, is it? He says two

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1 months ago; is it or is it not?

2 MR. HILLIARD: Discovery is a big word. I don't believe
3 that the record will reflect that I said we got discovery last
4 Friday.

5 THE COURT: I thought that you did. You didn't say it in
6 front of the jury but anyway -- what is your position about
7 discovery now? I want the record fully understood here.

8 MR. HILLIARD: Thank you, Your Honor. Judge, when I came
9 into the case, and ---

10 THE COURT: No, let's get on with it. Don't want a long
11 conversation, tell me what discovery you say you -- just tell
12 me what your discovery issue is, please.

13 MR. HILLIARD: Well, I don't have a discovery issue other
14 than to say that there was a video that was played on
15 yesterday that was told to me two weeks ago did not exist that
16 I got on Friday.

17 THE COURT: Okay. You saw it Friday?

18 MR. HILLIARD: Yes, sir.

19 THE COURT: All right. That's fine.

20 MR. HILLIARD: That happened.

21 THE COURT: All right.

22 MR. HILLIARD: And I got today, a few minutes ago, a
23 proffer agreement dated September 22nd, signed October 3rd
24 that is a proffer agreement connected to the testimony of a
25 witness who I anticipate will testify today and I specifically

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1 asked on last week, whatever day it was and I don't recollect
2 whether there was any plea agreements in connection with this
3 -- in connection with this ---

4 THE COURT: What is the proffer agreement?

5 MR. RICHARDSON: Your Honor, the proffer agreement is
6 that she testify truthfully in court and her statement will
7 not be used against her for her prosecution. That has nothing
8 to do with that. It's if she testifies, I don't have ---

9 THE COURT: That's not a discovery issue?

10 MR. RICHARDSON: No, sir.

11 THE COURT: It's not -- you're not saying to me that this
12 is the first time you understood that a possible codefendant
13 would testify in this case, is it? Is that what you're saying
14 to me?

15 MR. HILLIARD: Well, I -- I knew it because I've been
16 doing this for a long time. I did not know it because the
17 prosecutor told me.

18 THE COURT: Well, you know it now and you got it before
19 she testified so there's no prejudice to you.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: Let's talk about any other discoveries that
22 you received as late as Friday. He said -- the problem I'm
23 having, counsel, is he's saying he gave you basically
24 everything he had two months ago. Now, did -- all I'm asking,
25 did he or did not?

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1 MR. HILLIARD: He gave me basically everything he had two
2 months ago.

3 THE COURT: All right.

4 MR. HILLIARD: I didn't know that the evidence had been
5 destroyed until two weeks ago.

6 THE COURT: That's fine.

7 MR. HILLIARD: I didn't know that ---

8 THE COURT: But what else have you not received?

9 MR. HILLIARD: This we have today, the video ---

10 THE COURT: Well, the proffer agreement ---

11 MR. HILLIARD: All right. Nothing other than what we've
12 talked about.

13 THE COURT: The proffer agreement was presented to you
14 prior to that person's alleged testimony and there's no
15 prejudice there; you've got it, you understand what it is.

16 MR. HILLIARD: Yes, sir. And we got Ms. Yakoel's file on
17 Friday.

18 THE COURT: Sir?

19 MR. HILLIARD: We got Ms. Yakoel's file on Friday, that
20 is the witness that I anticipate will testify today.

21 THE COURT: All right, sir. All right. Now, I want the
22 record to reflect that you waited till 6 o'clock last night to
23 ask that we try and bring in Oliver who serves in the state
24 penitentiary. We are making every effort to get him here
25 though you made that request even after most people in the

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1 state penitentiary had gone home for dinner. I'm going to
2 make every effort to get him here. If I can't get him here,
3 we'll deal with it on the record but I want the record to
4 reflect that -- Solicitor, you have called?

5 MR. RICHARDSON: Yes, sir. I called last night and spoke
6 with one of the captains at Lee Correctional and got a fax
7 number for ---

8 THE COURT: And you're continuing to make that effort
9 this morning?

10 MR. RICHARDSON: Yes, sir. That -- the request actually
11 got faxed to Warden D.J. Padula's fax line.

12 THE COURT: You knew of this -- as a former solicitor,
13 you know that they usually need three days. Why didn't you
14 ask for it last Friday, Mr. Hilliard?

15 MR. HILLIARD: Judge, we were -- you know, part of the
16 thing about getting stuff when you get it, that is getting the
17 file of Ms. Yakoel when I get it, getting the video when we
18 get it and getting the proffer agreement when I get it -- and
19 I recognize that that is a practice as a trial lawyer to give
20 the other side stuff at a particular time. I understand that
21 but when I'm doing one thing, I can't be doing something else.

22 THE COURT: Yes, sir. But you knew and have known for a
23 month that -- of this witness and it was improper in my view
24 for you to wait till 6 o'clock last night to ask for an order.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: We'll get on the record if that becomes
2 necessary but my purpose at this moment, I want the record to
3 reflect that the solicitor in this court is making every
4 effort to get him here if we can.

5 MR. HILLIARD: Yes, sir.

6 THE COURT: If we can't get him here, I'll let you
7 proffer what he would've testified to and we're gonna move on.

8 MR. HILLIARD: Thank you, Your Honor. The other thing
9 that Ms. Bass reminded me of and I forgot, we did work
10 connected to Judge Culbertson's office and we were -- we were
11 attempting to have this order signed on Friday and it was, I
12 guess, a circumstance where we were unable to make a
13 coordinated effort to have that happen.

14 THE COURT: Well, why didn't you give it to me yesterday
15 morning when we started at 9:30?

16 MR. HILLIARD: Well, Judge, we were downstairs -- part of
17 this Judge is that I recognize that the solicitor calls the
18 case in front of whatever judge he wants to. He certainly
19 knows that Your Honor was the judge that signed the search
20 warrant ---

21 THE COURT: I don't need to hear all that, John, I got a
22 jury waiting but ---

23 MR. HILLIARD: In any event, I was downstairs looking at
24 the jury and then we came up and tried the case.

25 THE COURT: Okay but surely you had an opportunity

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1 between 9:30 yesterday morning and 6 o'clock last night to
2 give us a better opportunity to get him here. All right.

3 MR. HILLIARD: Thank you, Judge.

4 THE COURT: Okay. Now, the first order of business,
5 Madame Clerk.

6 CLERK: Sir?

7 THE COURT: We have a report from the doctor. Where is
8 that doctor's statement? And read it for me for the record.

9 LAW CLERK: It's from the South Strand Interns, P.A. for
10 Catherine Bergeron, Please excuse from jury duty today and the
11 rest of this week, something, medical reasons, please call
12 number above.

13 THE COURT: Solicitor, I have a doctor's statement asking
14 that this juror be excused for medical reasons.

15 MR. RICHARDSON: Your Honor, I have no problem with
16 excusing this juror.

17 THE COURT: How about you, Mr. Hilliard?

18 MR. HILLIARD: No, sir, Judge, if there is a legitimate
19 doctor's statement, which I ---

20 THE COURT: This appears to be legitimate and making it a
21 part of the record.

22 Now, put the two alternates in an appropriate capsule and
23 either Mr. Hilliard or Ms. Bass come forward and draw one of
24 them.

25 MR. HILLIARD: I'd suggested your law clerk, Your Honor,

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1 but ---

2 THE COURT: Well, no, I want you to do it.

3 MR. HILLIARD: Yes, sir. Now, what do I do with it.

4 THE COURT: Hand it to me.

5 MR. HILLIARD: Yes, sir.

6 LAW CLERK: Michael Dumas.

7 THE COURT: Who?

8 LAW CLERK: Michael Dumas.

9 THE COURT: Okay. Madame Clerk.

10 CLERK: Sir?

11 THE COURT: I mean the Bailiff.

12 DEPUTY: Sir?

13 THE COURT: Please let the jury know that one juror has
14 been excused and that juror Michael Dumas will now take the
15 place of that juror and sit with the juror and not with the
16 alternate.

17 DEPUTY: Yes, sir.

18 THE COURT: And tell them I'll be calling them out very
19 shortly.

20 COURT'S EXHIBITS TWO AND THREE

21 MARKED FOR IDENTIFICATION.

22 THE COURT: Yesterday you asked for a mistrial, I want to
23 be on the record, but did not ask for a curative instruction.
24 I am going to give such a curative instruction.

25 MS. BASS: Thank you, Your Honor.

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1 MR. RICHARDSON: Your Honor, you want Sergeant Donald to

2 ---

3 THE COURT: Pardon me?

4 MR. RICHARDSON: You want Sergeant Donald to go back to
5 the stand that way he's up for cross examination?

6 THE COURT: After I -- after I give the curative
7 instruction.

8 MR. RICHARDSON: Yes, sir, Your Honor.

9 THE COURT: All right. Bring the jury in.

10 Dana, have the new juror take the juror seat and not the
11 alternate's.

12 BAILIFF: Okay, I will. We've done told him.

13 (REPORTER'S NOTE: Jury returns to the courtroom.)

14 THE COURT: Good morning, ladies and gentlemen. I trust
15 that the ham biscuits ordered for you were satisfactory to
16 everybody this morning.

17 We ask that you be back promptly at 9:30 and it's about
18 ten till 10:00. We were delayed this morning because Juror
19 Number 32 has become ill and I have a statement from the
20 doctor. I require -- when I learned of that, I required a
21 medical statement that she was in fact sick and needed to be
22 excused. I do that for the record to make sure that everybody
23 understands with the doctor's statement that she is unable to
24 continue by and with the consent of the State and of the
25 Defense, we have drawn one of the two alternate jurors at

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1 random who will now occupy that juror's place.

2 Ladies and gentlemen, in our procedure, we have an
3 opening statement wherein counsel for the State and the
4 Defense gives you a short statement as to what their position
5 is regarding the presentation of the State's case and of the
6 Defense. At the conclusion of all the testimony, our rules
7 require a lengthy summation if desired so that the attorneys
8 for the State and the Defense can go into a lengthy
9 explanation as to what they say the evidence thinks. On
10 yesterday, counsel for the Defense was getting ready to elicit
11 what the State had not shown to you in his opening statement.
12 At that time I stopped her used unfortunately the word unfair
13 which was not a responsible comment by me and I asked that you
14 ignore this. My intent was and is to say to that attorney
15 that the proper way to go into that issue was at summation and
16 not in opening statement after all of the evidence had been
17 presented. So, I would not ever suggest to you that that
18 attorney was being unfair. It was not my intention to use
19 that word. My intention was just to call to her attention to
20 go into that issue if she thought necessary at summation
21 rather than in opening statement. So, please accept this
22 curative statement as a statement by me that I certainly
23 didn't mean to infer in any way that she was unfair. Thank
24 you.

25 You may now have the witness resume the witness stand, he

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1 is still under oath and you will have your cross examination.

2 (REPORTER'S NOTE: Sergeant Donald retakes witness stand.)

3 MR. HILLIARD: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Mr. Witness, I'll remind you, sir, that you
6 are under oath.

7 SERGEANT DONALD: Yes, sir.

8 CROSS EXAMINATION OF SERGEANT KENT DONALD BY MS. BASS:

9 Q: Good morning, Sergeant Donald.

10 A: Good morning.

11 Q: I'm Julia Bass; we met yesterday afternoon.

12 A: Yes, sir. Yes, ma'am, excuse me.

13 Q: Okay. You're not in any way implying to this jury that
14 Alex Robinson bought any drugs from you in this case; is that
15 correct?

16 A: No, ma'am.

17 Q: And you're not implying to this jury that Alex Robinson
18 sold any drugs in this case?

19 A: No, ma'am.

20 Q: And you're not implying that Alex Robinson asked you to
21 use your unmarked police vehicle to transport drugs or
22 anything?

23 A: Say that again?

24 Q: You're not implying to this jury that Alex Robinson asked
25 you to transport drugs or anything like that, correct?

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- 1 A: No, ma'am, no.
- 2 Q: Okay. You told the solicitor that you had come up -- you
- 3 and the solicitor talked about names that you had come up with
- 4 for different rooms in the house, correct?
- 5 A: Yes, ma'am.
- 6 Q: On September 25th of 2008 no question when you went to
- 7 serve the search warrant it was early in the morning?
- 8 A: Yes, ma'am.
- 9 Q: And the reason for serving a search warrant early in the
- 10 morning is that the safest time for the police, correct?
- 11 A: Pretty much most of the times people are there asleep.
- 12 Q: People are there and they're asleep?
- 13 A: Yes, ma'am.
- 14 Q: Okay. And you wake people up while they're asleep and
- 15 you're able to catch everybody exactly where they are?
- 16 A: For the most part, yes, ma'am.
- 17 Q: Okay. And no question about it on September the 25th of
- 18 '08 when you walked into the bedroom after breaking down the
- 19 door, in the bedroom with Kenneth Durant and -- was Tiffany
- 20 Nicole Smith?
- 21 A: Yes, ma'am.
- 22 Q: Alex Robinson was not in the bedroom with Tiffany Nicole
- 23 Smith or Kenneth Durant, correct?
- 24 A: No, ma'am.
- 25 Q: Alex Robinson was not in the kitchen or in the bathroom?

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1 A: No, ma'am.

2 Q: Alex Robinson was not in the bedroom with Gil Yakoel?

3 A: No, ma'am.

4 Q: He wasn't in any of the closets?

5 A: No, ma'am.

6 Q: He wasn't on the front stoop?

7 A: No, ma'am.

8 Q: He wasn't anywhere on the property?

9 A: No, ma'am.

10 Q: Okay. He wasn't in that middle bedroom that's kind of
11 like a storage room?

12 A: No, ma'am.

13 Q: Okay. Alex Robinson was nowhere on the property on
14 September 25th of '08 when y'all busted in the door?

15 A: No, ma'am.

16 Q: Okay. And the car that the solicitor talked about that
17 was parked in the yard, he was not sitting in that car?

18 A: No, ma'am, he was not.

19 Q: Okay. And on State's Number Five, I'll get you to look
20 at that, please. That pill bottle is not his and he was
21 standing nowhere near that drawer?

22 A: No, ma'am, he was not.

23 Q: Thank you. And that's State's Number Five.

24 And on State's Number Twenty-six and State's Number Twenty-
25 five, these pictures are not from the search warrant,

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- 1 correct, these were taken at Horry County Police Department?
- 2 A: The pictures were taken at the Horry County Police
3 Department.
- 4 Q: Okay. And so the scales and this table and this baggie
5 and the floor and the boxes, that is not [REDACTED];
6 that's the Horry County Police Department?
- 7 A: Yes, ma'am.
- 8 Q: Okay. And this is something -- these are scales that
9 y'all use at the Horry County Police Department?
- 10 A: Yes, ma'am.
- 11 Q: They belong to Horry County Police Department?
- 12 A: Yes, ma'am.
- 13 Q: Thank you. And State's Number Fifteen which is the
14 toolbox?
- 15 A: Yes, ma'am.
- 16 Q: Okay. If you could have a look at that picture, the
17 toolbox in State's Number Fourteen -- did I give you the right
18 number on that?
- 19 A: That's Fifteen.
- 20 Q: Fifteen, Fourteen -- Alex Robinson was not in the house
21 and was nowhere near those toolboxes; is that correct?
- 22 A: The one toolbox, no, ma'am; he was not.
- 23 Q: Okay. But that's one picture of two -- two pictures of
24 one toolbox, right?
- 25 A: Yes, ma'am.

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1 Q: Thank you so much. And the picture of -- Number
2 Thirteen, isn't it correct that that is not at the house on
3 [REDACTED] either, that is the Horry County Police
4 Department?

5 A: Yes, ma'am.

6 Q: Okay. So, the cellophane, the scales, the table and the
7 little pieces of crack, that is what y'all took apart --
8 that's the scale -- all of that belongs to other than the
9 material belongs to Horry County Police Department, correct?

10 A: The cellophane bag was -- contained the small ---

11 THE COURT: You're gonna have to talk a little louder.
12 I'm afraid the jury can't hear you.

13 A: I'm sorry. The cellophane bag contained the small
14 packages.

15 THE COURT: Thank you.

16 Q: Okay. But this is Horry County Police Department?

17 A: That scale, correct.

18 Q: Yes, sir. And that's Number Thirteen, correct?

19 A: Yes.

20 Q: Okay. And State's Number Twelve -- bless you -- State's
21 Number Twelve, who was in the room where the book bag, the gun
22 and those drugs were found?

23 A: Mr. Durant and Ms. Smith.

24 Q: Okay. And Alex Robinson was nowhere on the premises?

25 A: No, ma'am.

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1 Q: And which police officer said y'all are gonna get charged
2 for whatever room the drugs are found in; was that you or Mr.
3 Hardee?

4 A: Me.

5 Q: Okay. And you said to Tiffany Nicole Smith, to Kenneth
6 Levon Durant and to -- and I hope I'm pronouncing her name --
7 Gil Yakoel, you told them more than once they would be charged
8 for what room the drugs were found in?

9 A: It's a possibility, yes.

10 Q: Okay. But you remember at least once telling them that?

11 A: Yes, I did.

12 Q: Okay. And Mr. Durant was -- told you that this was his
13 book bag?

14 A: Yes.

15 Q: His drugs?

16 A: Yes.

17 Q: His gun?

18 A: Yes.

19 Q: Okay. And no matter if the gun has been destroyed or
20 not, it was completely legal for him to have a gun?

21 A: I think so, yes.

22 Q: It was a registered gun, correct?

23 A: I don't know if it was registered or not. You're not
24 required to have it registered here in South Carolina.

25 Q: Okay. But proper for him to have it and he told you it

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1 was his?

2 A: It's proper for him to have it, yes.

3 Q: Okay. And that is Number Twelve. Okay. And Number Nine,
4 where there's scales, baggies, Pepto-Bismol, some tape, looks
5 like those are playing cards -- right?

6 A: Yes, ma'am.

7 Q: --- a watch, and baking soda. Where was that -- tell the
8 jury where that was found in the house.

9 A: That would be in the living room area.

10 Q: And no question that Mr. Alex Robinson was nowhere near,
11 not on the property, not near the living room?

12 A: He was not.

13 Q: Okay. Now, in this picture, Number Nine, the scales are
14 closed up, correct?

15 A: Correct.

16 Q: Okay. In Number Sixteen, who took the scales and opened
17 them up and moved the baggies and put them on top of the
18 scales, who did that?

19 A: That would be me.

20 Q: Okay. So, in Number Sixteen, you by yourself, no other
21 officer?

22 A: No, ma'am.

23 Q: Okay. You took the scales and opened them up and you put
24 the baggies on top of the scales to take the picture?

25 A: Yes, ma'am.

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1 Q: That's not how they were when you found them, correct?

2 A: No, they were found -- the other picture that you have
3 that's how they were found.

4 Q: Okay. But you and you alone moved them to take the
5 picture?

6 A: Yes, ma'am.

7 Q: Okay. And whose green gloves are those?

8 A: Those would probably be one of the officers doing the
9 search.

10 Q: Okay. One of the officers doing the search?

11 A: Yes.

12 Q: You got little green latex gloves?

13 A: Yes, ma'am.

14 Q: And that's so you don't get your fingerprints on anything
15 in the house and you don't disturb the property and handle it
16 -- it keeps you safe, too, because ---

17 A: Yes, ma'am.

18 Q: So, you don't get germs and stuff on you, correct?

19 A: Correct.

20 Q: Okay. And that's Number Sixteen but that's not your
21 gloves, that's another officer's gloves?

22 A: I think so, yes, ma'am.

23 Q: Okay. Thank you, sir. And this picture, Number Eleven
24 of Kenneth Levon Durant, he was the only male in the house at
25 the time of the search warrant, correct?

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- 1 A: Yes, ma'am.
- 2 Q: And when the people were arrested, correct?
- 3 A: Correct.
- 4 Q: Okay. That's Number Eleven. And on Number Twenty-one
5 and Twenty-two, whose hand is that with the gloves on?
- 6 A: I think it's probably Detective Hardee's.
- 7 Q: Detective Ashley Hardee?
- 8 A: Yes, ma'am.
- 9 Q: Are you sure or you just think?
- 10 A: I think since he's found it so I'm gonna say it's
11 probably him.
- 12 Q: Okay. And what is Number Nineteen a picture of?
- 13 A: That is a picture of a clear plastic bag with off-white
14 powder substance found on the floor next to some black pants.
- 15 Q: Okay. And you took all the pictures, you testified to
16 yesterday, correct?
- 17 A: Yes, ma'am.
- 18 Q: All right. And we were referring to Twenty-one and
19 Twenty-two and the detective has on gloves in that case, does
20 he not?
- 21 A: Yes, ma'am.
- 22 Q: Okay. But those look more like work gloves are they not?
- 23 A: Yes, ma'am.
- 24 Q: Okay. More like suede-type gloves? I can't tell.
- 25 A: Those are fire retard gloves.

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1 Q: Okay. What exactly do you mean, what kind of material
2 are we talking about?

3 A: It's -- Nomex, stuff that racecar drivers use to
4 protective them from fire.

5 Q: Okay. All right. And does that look like the same pair
6 of gloves in both pictures or can you tell?

7 A: Where do you see gloves?

8 Q: All right. That might be the only one with gloves. What
9 is this right here? What's that white stuff in Number Twenty-
10 one? What is this right here?

11 A: I couldn't tell you -- a pair of underwear, maybe.

12 Q: All right. Thank you. When you went through -- Officer
13 Hardee called you and told you to come in the bedroom where
14 Gil Yakoel was, correct?

15 A: Yes.

16 Q: All right. And where did he tell you he found these
17 drugs, in the bedroom where Gil Yakoel was?

18 A: He was checking the closet and pulled down the pants and
19 the package fell out.

20 Q: Okay. And you collected all the evidence in the case,
21 correct?

22 A: Yes, ma'am.

23 Q: Okay. And you discussed yesterday with Mr. Solicitor
24 that you compared Gil Yakoel's body with my client, Mr.
25 Hilliard's client, Alex Robinson, correct?

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1 A: Yes.

2 Q: And you talked about the different heights and weights
3 and all that stuff?

4 A: Yes.

5 Q: Okay. Where are the blue jeans that allegedly the drugs
6 were found in; where are they?

7 A: Probably at the house.

8 Q: Okay. Did you or -- did Detective Hardee give you the
9 jeans to put into evidence?

10 A: No, ma'am.

11 Q: Did you go and collect the jeans and put them into
12 evidence?

13 A: No, ma'am.

14 Q: But had you collected the jeans, they could've been sent
15 to SLED, right, South Carolina Law Enforcement Division?

16 A: Yes, for what purpose?

17 Q: They could've ---

18 THE COURT: Please talk into the microphone for me,
19 please.

20 A: Yes, for what purpose?

21 Q: They could have been sent for trace evidence, correct?

22 A: Yes, ma'am.

23 Q: And what they would do at trace evidence is they comb the
24 pants and see if they found anything on them, right?

25 A: That's possible, yes, ma'am.

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- 1 Q: They could've also been sent for serology, right?
- 2 A: I guess; I don't know.
- 3 Q: Okay. They could've also been sent for DNA, correct?
- 4 A: Could have, yes, ma'am.
- 5 Q: And then we would've known who sweated on the jeans,
- 6 whose leg hair was on the jeans, if it was a lady, other kind
- 7 of hair on the jeans or if there were any bodily fluids on the
- 8 jeans, had they been brought in, correct?
- 9 A: Is it a possibility, yes, ma'am.
- 10 Q: And we could've excluded people or included people had
- 11 you taken the jeans or had Detective Hardee taken the jeans,
- 12 correct?
- 13 A: It's a possibility, yes, ma'am.
- 14 Q: Now, you're not saying the jeans were destroyed; you're
- 15 saying they were never taken?
- 16 A: No, we didn't destroy them and we didn't take them.
- 17 Q: Okay. Did you take any of the other clothes that were on
- 18 the floor where Ms. Yakoel was?
- 19 A: No, ma'am.
- 20 Q: Okay. So, we don't -- we can't see the clothes where the
- 21 drugs allegedly were found or where Ms. Yakoel was?
- 22 A: No, ma'am.
- 23 Q: And that car that was parked in the yard, who did Ms.
- 24 Yakoel tell you was the driver or the owner of that?
- 25 A: She stated it was her car.

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1 Q: Okay. And you ran the plate on that, did you not?

2 A: Yes, ma'am.

3 Q: Okay. You yourself personally?

4 A: Yes, ma'am.

5 Q: Okay. I apologize that this is taking a minute. Your
6 Honor, I need to approach the witness.

7 MR. RICHARDSON: Your Honor, if she could have it marked
8 for the record.

9 MS. BASS: Okay.

10 MR. RICHARDSON: And I have seen it, Your Honor.

11 THE COURT: Have you seen it?

12 MR. RICHARDSON: Yes, sir.

13 MS. BASS: Just one moment, Your Honor.

14 DEFENDANT'S EXHIBIT NUMBER ONE

15 MARKED FOR IDENTIFICATION

16 BY MS. BASS:

17 Q: Sorry for the delay. I want to show you what's been
18 marked as Defense Number One. This is the plate that you ran
19 on the car in the yard, correct?

20 A: It is.

21 Q: Okay. And you yourself personally ran that plate?

22 A: I did.

23 Q: And would you please tell the jury what's the name of the
24 person you ran the plate on?

25 A: Alex Lorenzo Robinson.

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- 1 Q: Okay. And what is the owner's address?
- 2 A: [REDACTED] Conway, South Carolina 29527.
- 3 Q: Okay. And what is his mailing address?
- 4 A: [REDACTED], Myrtle Beach, South Carolina
- 5 29576.
- 6 Q: And when did he list this as his -- when did he register
- 7 that information with the highway department. I'm trying to
- 8 see over your shoulder, I apologize. What was the date of
- 9 issue?
- 10 A: April 8th, 2008.
- 11 Q: So, April 8th of 2008.
- 12 A: Yes.
- 13 Q: Okay. And how long is that tag for -- good at that
- 14 address? Can you see that decal expiration date?
- 15 A: Decal expiration date is April 30th, 2009.
- 16 Q: Okay. One moment, Your Honor. Okay. And you ran that
- 17 yourself?
- 18 A: Yes, ma'am.
- 19 Q: And nowhere on there does it say anything about the
- 20 address where the search warrant was issued?
- 21 A: No, ma'am.
- 22 Q: Okay. And you filled out a report in this case; is that
- 23 correct?
- 24 A: Yes, ma'am.
- 25 Q: Okay. And you did a report that you turned into the

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- 1 solicitor's office and that we've been provided with a copy
2 of, correct?
- 3 A: Yes, ma'am.
- 4 Q: Have you got it in front of you today?
- 5 A: You're talking about the report of investigation?
- 6 Q: Yes, sir.
- 7 A: Yes.
- 8 Q: Okay. And can you look at that and tell the jury when
9 you did that report of investigation and turned it in as your
10 official report?
- 11 A: I don't have a date on here when it was turned in.
- 12 Q: Okay. The last date it mentions is 9/25/08 -- is that
13 correct -- in your report of investigation.
- 14 A: 9/25/08, no, ma'am.
- 15 Q: Under report of investigation, at the top where it says
16 Horry County Police Department Criminal Investigation
17 Division.
- 18 A: Yeah, that's on there, correct.
- 19 Q: Okay. And then later on it talks about, I believe,
20 9/30/08?
- 21 A: You're talking about in the body itself?
- 22 Q: Yeah, and you've got a 10/1/08.
- 23 A: Yes.
- 24 Q: After 10/1 of '08, can you give us an idea of when you
25 turned this in and it became your official report? Was it the

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1 end of the month, two weeks later, ten days; what's your
2 recollection?

3 A: It's probably gonna be within ten days.

4 Q: Within ten days, okay.

5 A: Yes, ma'am.

6 Q: Fair enough. All right. Had you gone back and made any
7 changes to it in 2008?

8 A: No, ma'am.

9 Q: 2009?

10 A: No, ma'am.

11 Q: The year 2010?

12 A: No, ma'am.

13 Q: 2011?

14 A: No.

15 Q: And that was your recollection of what happened while it
16 was fresh in your mind?

17 A: Yes, ma'am.

18 Q: Okay. I want to draw your attention to page one, two,
19 three -- page four, second paragraph.

20 A: Yes, ma'am.

21 Q: Okay. I want you to refresh your recollection if you
22 need to, I've just got a couple of questions for you regarding
23 that second paragraph.

24 A: Okay.

25 Q: Do you recall testifying yesterday that you saw Alex

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1 Robinson talking to a male at J. Reuben Long in the parking
2 lot near DSS?

3 A: Yes.

4 Q: Okay. Okay, you were talking to a male. Would you like
5 to change your testimony at this time?

6 A: No. He was talking to a male.

7 Q: Okay. In your report, who did you have that he was
8 talking to?

9 A: (No response.)

10 Q: Well, let me ask you this: Isn't it correct, what you
11 said in 2008 and you've not changed it until yesterday was
12 that you saw him meet with an unknown female.

13 A: Yes, ma'am, and that's in the report.

14 Q: Okay. And not a male, he had a male in the car but he was
15 talking to a female, correct?

16 A: No, he had a male in the car and he was talking to a male
17 in the parking lot.

18 Q: You have in your report it was a female, correct?

19 A: No, he drove around and met with a female.

20 Q: Okay. But you had female, you didn't mention anything
21 about a female, yesterday, correct?

22 A: Yes, I did.

23 Q: That he was meeting with a -- okay. I'll -- okay. Do
24 you recall testifying yesterday he was talking to a male.

25 A: Yes.

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1 Q: Okay. Do you -- today, regardless of whatever you said
2 yesterday, you remember that he also talked to a female,
3 correct?

4 A: I didn't say he talked to a female; he met up with a
5 female.

6 Q: Okay.

7 A: He drove his vehicle around, handed something to a
8 female.

9 Q: Okay. And the female is Gil Yakoel's sister; have you
10 found out that since then?

11 A: Don't know who she is.

12 Q: Okay. And you said that he handed her -- that he handed
13 a person a package, you testified to that twice yesterday.

14 A: Yes, ma'am.

15 Q: Okay, show -- tell me, point to me where it is you said
16 anywhere 2008, '9, '10, '11, until yesterday that there was a
17 package?

18 A: You're talking about in this report?

19 Q: Uh-huh (affirmative response). You don't have anything
20 in your report about a package, right?

21 A: No, ma'am, do not.

22 Q: Okay. And I'm not gonna reach down and get this but
23 Number Twenty-two, this surveillance monitor.

24 A: Yes, ma'am.

25 Q: Okay. Nothing illegal about having this?

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1 A: No, ma'am.

2 Q: Been quite a few break-ins that Horry County has
3 investigated out in that area, correct, near -- out near
4 [REDACTED], correct?

5 A: Yes, ma'am.

6 Q: Correct?

7 A: I would say so, yes, ma'am.

8 Q: Okay. And you see these in daycares, people's houses,
9 nothing wrong with that?

10 A: No, ma'am.

11 Q: Not a problem with somebody having a monitor in their
12 house, having ADT, having Coggins Security, nothing -- no
13 problem with that?

14 A: No.

15 Q: And actually when you police officers go out and talk to
16 people about personal safety, you tell them you or members of
17 Horry County PD tell them that that's a good idea?

18 A: Yes, ma'am.

19 Q: Okay. And in that area, we don't have any drawings but
20 in that area on [REDACTED] tell me if this is a fair
21 statement, if not you correct me, okay, when you turn into
22 [REDACTED] there's like a mobile home, a little tiny
23 driveway, some people have a dog or not, another mobile home,
24 another driveway and then it goes around in a circle kind of
25 like that?

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- 1 A: Yes, ma'am.
- 2 Q: And the mobile homes are really, really close to each
3 other, correct?
- 4 A: Correct.
- 5 Q: And it's a nice mobile home area, right?
- 6 A: Fairly nice.
- 7 Q: Okay. And no question that -- did you go and look
8 through the whole mobile home park?
- 9 A: I drove around it, yes, ma'am.
- 10 Q: Okay. And Kenneth Levon Durant, Gil Yakoel and Tiffany
11 Nicole Smith were not the only people out there that had
12 monitors, the little video cameras in the window, right?
- 13 A: That I don't know.
- 14 Q: Oh, you -- okay, so you didn't look for that in all the
15 houses?
- 16 A: No, ma'am.
- 17 Q: Okay. And no question in your report you've got that
18 it's at the door as you come in. I mean, they clearly wanted
19 people to see or it's clearly displayed that there is a little
20 camera as you come through the door, right?
- 21 A: It's at the window.
- 22 Q: At the window but it's on the front of the house?
- 23 A: Yes, ma'am.
- 24 Q: So, if you and I were standing looking at the front of
25 the house, you'd be able to say, Julia, it's right there; I'd

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1 be able to see it, right?

2 A: Yes, ma'am.

3 Q: It's smaller than that one up there, correct?

4 A: Yes.

5 Q: But it's still displayed so you can walk -- you see it
6 before you even knock on the door?

7 A: If you're looking, yes.

8 Q: Okay. And in burglaries and things like that, tell me if
9 you know, a lot of people have these in the window and they're
10 not hooked up to anything, right?

11 A: Yes, ma'am.

12 Q: Okay. You wore gloves and Detective Hardee wore gloves,
13 correct?

14 A: Yes, ma'am.

15 Q: Who else was in there for the search warrant?

16 A: I would have to see my ops plan because I don't know that
17 offhand.

18 Q: Well, glance real quick if you -- let me see if I can
19 find it for you.

20 A: I don't have my ops plan.

21 Q: All right. Let me see ---

22 MR. RICHARDSON: Ms. Bass, the ops plan wouldn't be in
23 discovery.

24 MS. BASS: Okay. So, you don't have that, okay.

25 BY MS. BASS:

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- 1 Q: Can you just give us an idea who all was there?
- 2 A: It was 2008. We've had some personnel changes.
- 3 Detective Cooper, Detective Neely, Detective Hardee, Detective
- 4 Furr, myself, Sergeant Hutchinson; that's about all I can
- 5 recall right now.
- 6 Q: That's your best estimate?
- 7 A: Yes, ma'am.
- 8 Q: Okay. And did everybody have on gloves?
- 9 A: Yes, ma'am.
- 10 Q: Okay. And everybody collected things and those officers
- 11 collected things and brought them to you and were you the one
- 12 that bagged them up?
- 13 A: Yes, ma'am.
- 14 Q: Okay. And what items did you send off to SLED for
- 15 fingerprint analysis?
- 16 A: Nothing.
- 17 Q: What items did Detective Hardee send off to SLED for
- 18 fingerprint analysis?
- 19 A: Nothing.
- 20 Q: Cooper?
- 21 A: Nothing.
- 22 Q: Was Jolliff there?
- 23 A: Yes, he was there.
- 24 Q: Did Jolliff send anything off for fingerprint analysis?
- 25 A: No, ma'am.

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1 Q: Okay. And if you sent things off for fingerprint
2 analysis, you could at least add -- well, let me -- did
3 anybody send any of the mail off for fingerprint analysis to
4 see if Alex Robinson had ever touched any of the mail?

5 A: No, ma'am.

6 Q: Did anyone send the Jamaican ashtray and the monkey
7 ashtray off to see whose fingerprints were on it?

8 A: No, ma'am.

9 Q: Did anyone dust the monitor for prints, the toolbox for
10 prints to see if Alex Robinson had touched any of those?

11 A: No, ma'am.

12 Q: Or to see who had touched them?

13 A: No, ma'am.

14 Q: Were the baggies that the drugs were found in -- I'm
15 sorry -- thank you, ma'am -- I'll show you State's Number
16 Twenty-nine. Before all those drugs were analyzed, were the
17 bags that they were in, were they tested for fingerprints?

18 A: No, ma'am.

19 Q: Were they sent off for DNA or serology to see if
20 anybody's perspiration or sweat was on them?

21 A: No, ma'am.

22 Q: Or saliva?

23 A: No, ma'am.

24 MS. BASS: Just one minute, Your Honor, I'm trying to go
25 fast.

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1 BY MS. BASS:

2 Q: The toolbox, y'all didn't take that into evidence,
3 correct?

4 A: No, ma'am.

5 Q: Okay. The prescription bottle, the scales, the baggies,
6 anything like that, the book bag, the gun, was anything
7 analyzed for fingerprints, DNA, serology or trace evidence up
8 to today?

9 A: No, ma'am, not that I'm aware of.

10 Q: Okay. And you were in charge so if it was done, somebody
11 would've had to clear it through you?

12 A: Yes, ma'am.

13 Q: Okay. And any of the bags in Number Twenty-two or
14 Nineteen or any of the clothes or anything around those -- I'm
15 sorry. I guess it's a two-part question. None of this was
16 sent off for anybody to try to analyze for DNA, serology,
17 trace evidence, fingerprints, anything?

18 A: No, ma'am.

19 Q: Okay. And the monitors in State's Seventeen is the same
20 thing that's been marked down here as Twenty-seven and Twenty-
21 eight; is that correct?

22 A: Yes, ma'am.

23 Q: Okay. And this Number Eighteen, that -- tell the jury
24 now exactly, what view is that?

25 A: That would be a view that the camera was showing when we

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1 got there that morning.

2 Q: Thank you. And you're looking out the front window
3 taking that picture, correct, by the door front window?

4 A: The cameras, yes, the -- well, the monitor is right there
5 in the living room, so, yes.

6 Q: Okay. So, if I was standing at the front door, you'd be
7 able to see me?

8 A: If you were standing at the front door?

9 Q: Uh-huh (affirmative response).

10 A: No, you'd have to be on the side where the window is.

11 Q: Where the steps were?

12 A: No.

13 THE COURT: Please talk into the microphone so those
14 folks on the far end of the jury can hear you.

15 A: No. The window is facing the street so you would not be
16 seen by the front door.

17 Q: Is that the same one -- Number Twenty-four, State's
18 Number Twenty-four is the same thing that's been marked down
19 here at Twenty-eight, correct?

20 A: Yes.

21 Q: Okay, same thing?

22 A: Yes.

23 Q: And the view that I just showed you is what you took from
24 standing where Twenty-four was, correct?

25 A: (No response.)

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- 1 Q: All right. Let me do it this way. I'm sorry. I'll
2 break it down; I apologize. Okay. Number Twenty-four is the
3 camera?
4 A: Yes.
5 Q: That's marked as Twenty-eight?
6 A: Yes.
7 Q: Okay. Can you -- you see what I'm talking about?
8 A: Yes.
9 Q: Okay. And that is the view that you took looking out the
10 window from Eighteen; is that right?
11 A: That's still the front street -- that's still [REDACTED]
12 right there.
13 Q: Okay. But these are all three the same thing, is what
14 I'm asking you?
15 A: Yes.
16 Q: Okay. I'm sorry. Okay. And the drugs in Twenty, this
17 was Gil Yakoel's bedroom; is that correct? Who's bedroom was
18 this?
19 A: I'm alleging it's Alex Robinson's bedroom.
20 Q: Okay. Well, let me change that then. Let me ask you
21 Number Twenty -- I think that's Twenty, where was this picture
22 taken in the house?
23 A: It was in the back bedroom.
24 Q: And who was sleeping in that bed?
25 A: Gil Yakoel.

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1 Q: Okay. And were any of these clothes where the drugs are,
2 were they taken into evidence?

3 A: No.

4 Q: Okay. And these white things, what do you think those
5 are?

6 A: Like I said, they could be underwear, I'm not sure.

7 Q: But that's not gloves or anything ---

8 A: No.

9 Q: --- that belonged to the police department?

10 A: No.

11 Q: And none of this was taken into evidence on Number
12 Twenty?

13 A: The bag of marijuana was, yes.

14 Q: But none of the clothes that ---

15 A: No.

16 Q: Okay. And one of the reasons that you go early in the
17 morning, is -- is it safer and you catch people exactly as
18 they are, right?

19 A: Yes, ma'am.

20 Q: And you guys didn't come in with the wigwags or whatever
21 they're called, you know, you didn't come in with the sirens
22 and everything blazing when you got there, you wanted to
23 surprise them, right?

24 A: Yes, ma'am.

25 Q: And you didn't knock outside and say 5-0, 5-0, we here,

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- 1 come and let us in, y'all hide your stiff, we're on our way;
2 you just busted in, right?
3 A: Yes, ma'am.
4 Q: And when you busted in early in the morning, right?
5 A: Yes, ma'am.
6 Q: When everybody is asleep?
7 A: Yes, ma'am.
8 Q: Alex Robinson was not there in the bed with Gil Yakoel,
9 right?
10 A: He was not.
11 Q: And about the mail, no question whatsoever, there were
12 other people's mail found at that house, correct?
13 A: Correct.
14 Q: No question there were -- there was at least another
15 woman's mail found there, right?
16 A: Yes, ma'am.
17 Q: Alicia, I think, N. Black, correct?
18 A: I believe so, yes, ma'am.
19 Q: Okay. And you photographed some of that mail?
20 A: Yes, ma'am.
21 Q: That mail has since been destroyed by Horry County PD?
22 A: Yes, ma'am.
23 Q: So, you don't have it here today to show the jury?
24 A: No, ma'am.
25 Q: Okay. And your pictures are blurry at best, correct?

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1 A: Yes, ma'am.

2 Q: And a lot -- you described a lot of the mail as junk
3 mail, did you not?

4 A: I said various paper; I didn't say junk mail.

5 Q: Oh, various mail, okay.

6 A: Yes.

7 Q: Okay. And you said there's a picture of -- on the wall,
8 you believe of Alex Robinson in her bedroom, right?

9 A: Yes, ma'am.

10 Q: Now, if I have a picture of Brad Pitt and George Clooney
11 in my bedroom, that does not mean they like me, right?

12 A: No.

13 Q: Okay. And in regards to the mail, what you all could
14 have done -- well, let me just ask you, what you didn't do was
15 you didn't take the mail and lay it out on a table like you
16 did the drugs, right, and take pictures of each individual
17 piece of mail, right?

18 A: No, we did not.

19 Q: And you didn't get a piece of paper and write down every
20 address and every piece of mail that was in that drawer,
21 correct?

22 A: No, ma'am.

23 Q: And that certainly wouldn't have taken long to write down
24 the person's name or take a picture of each piece of mail, did
25 it -- would it?

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1 A: There was quite a bit of paperwork there.

2 Q: Okay. But this is a really serious charge and you
3 could've taken pictures of each piece of mail and written out
4 who the mail was to but you did not, correct?

5 A: Did not, no.

6 MS. BASS: Your Honor, I want to ask him to use my
7 magnifying glass.

8 THE COURT: Sure.

9 BY MS. BASS:

10 Q: And I'm going to show you what's been marked -- let me
11 get some glasses here -- State's Number Seven. If you could
12 use this magnifying glass, would you please read the address
13 and the name of person on the envelope.

14 A: Alex Robinson, looks like it says 411 Dunn Shortcut Road,
15 Conway.

16 Q: Okay. Is that 411 or 423? Well, you think it says 411
17 Dunn Shortcut, right?

18 A: It looks like it says 411.

19 Q: Okay.

20 A: Two lines.

21 Q: Okay. Thank you. And that is Number Seven. And I want
22 to show you Number Six. This is the picture here of what --
23 the big picture was of, correct?

24 A: Yes, ma'am.

25 Q: All right. And would you pull that up as best you can

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1 and read that entire envelope to the jury, the one that I just
2 showed you over here.

3 A: Holiday Inn Express celebrates twenty-five years with
4 25,000 bonus points, more than enough for a free night,
5 addressed to Alex Robinson 4-something Dunn Shortcut Road,
6 Conway, South Carolina 29527 and other numbers.

7 Q: Okay. And have you ever gotten paperwork like that
8 before in the mail where it's offering you 25,000 bonus points
9 if you'll do something?

10 A: Not from Holiday Inn Express.

11 Q: Okay. Have you gotten it from other places?

12 A: Credit cards, yes.

13 Q: That you didn't ask for?

14 A: Yes, ma'am.

15 Q: But they sent it to your house anyway?

16 A: Yes, ma'am.

17 Q: Me too. Your Honor, if I can just have a minute, I may
18 be finished.

19 And the stuff that was returned to the different
20 individuals from Horry County PD, you didn't have anything to
21 do with that?

22 A: No, ma'am.

23 Q: And you didn't have anything to do with anything being
24 destroyed?

25 A: No, ma'am.

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1 Q: Okay. Just one moment, Your Honor. I think there's just
2 one or two more things, Your Honor.

3 The picture -- I only have a couple of more questions for
4 you. Let me know if you need to see the pictures that you
5 took. Did you take the picture of the purse?

6 A: Yes, ma'am.

7 Q: Okay. And where did you find the purse with the money in
8 it?

9 A: I think -- I'm gonna say that was in Tiffany Smith's and
10 Kevin -- not Kevin -- Kenneth Durant's room, the master
11 bedroom.

12 Q: Okay. Is that -- does that refresh your recollection?
13 Is that the purse we're talking about?

14 A: I believe so.

15 Q: Okay. It's like GGG all over it?

16 A: Let me see.

17 Q: I'm sorry.

18 MR. RICHARDSON: Your Honor, once again for the record
19 purposes, if we could just have it marked for ---

20 THE COURT: Sir?

21 MR. RICHARDSON: If we could just have it marked for
22 identification purposes for the record.

23 THE COURT: Please.

24 MS. BASS: I'm sorry. Thank you.

25 We'll have that marked as Two, if we could, please.

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1 Your Honor, at this time, I gonna just mark these for
2 identification.

3 DEFENDANT'S EXHIBITS NUMBER TWO, THREE AND FOUR
4 MARKED FOR IDENTIFICATION.

5 THE COURT: Have you shown these documents to counsel for
6 the State?

7 MS. BASS: Yes, sir. He gave them to me.

8 THE COURT: All right.

9 BY MS. BASS:

10 Q: And I'm going to show these to you for identification and
11 I'm only going to ask you a couple of questions. I want to
12 ask you about Mr. Durant since we've got the big picture of
13 him.

14 A: Yes.

15 Q: This lady -- number -- in Defense for ID only, Number
16 Three, could you tell the jury who that lady is?

17 A: That'd be Tiffany Smith.

18 Q: Okay. Tiffany Nichole Smith?

19 A: Yes.

20 Q: And whose bedroom was she in when you all broke in and
21 served the search warrant?

22 A: She was in the master bedroom.

23 Q: Okay. And who was she in the master bedroom with?

24 A: Durant.

25 Q: Kenneth Levon Durant?

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- 1 A: Yes.
- 2 Q: Okay. Mr. Robinson nowhere near them, correct?
- 3 A: No.
- 4 Q: Okay. And I started showing you the picture, Number Two,
- 5 just for ID only of the purse and is your answer still the
- 6 same; is that Ms. Yakoel's room? Where did you find it as
- 7 best you can remember?
- 8 A: I don't remember where this one was. Looking at the
- 9 pants, it might've been in the room where she was.
- 10 Q: You're not sure?
- 11 A: I'm not sure, no.
- 12 Q: Okay. Thank you. And State's Number Four for ID only,
- 13 only about the young lady at the top left, do you remember
- 14 her?
- 15 A: Yes.
- 16 Q: And what is her name?
- 17 A: Gil Yakoel.
- 18 Q: Gil Yakoel. And where did -- that's the lady wrapped in
- 19 the blanket?
- 20 A: Correct.
- 21 Q: Where did you find her when you served the search warrant
- 22 and went in?
- 23 A: She was in the back bedroom.
- 24 Q: Okay. And she was in the back bedroom of the mobile
- 25 home?

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1 A: Yes.

2 Q: And no one was in there with her?

3 A: No.

4 Q: Okay. And you didn't call -- I may've messed up earlier,
5 but you didn't call anyone and tell them that they were
6 coming?

7 A: No.

8 Q: Okay. And you didn't call and warn anyone. So, you
9 found them as they were?

10 A: Correct.

11 Q: Okay. No further questions. Thank you, Your Honor.

12 THE COURT: Do you have any further direct questions?

13 MR. RICHARDSON: Real brief, Your Honor.

14 THE COURT: You may proceed. Thank you, Ms. Bass.

15 REDIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR.

16 RICHARDSON:

17 Q: Ms. Bass asked you about early morning, what time was it?

18 MS. BASS: Your Honor, can we approach very briefly, I
19 apologize, very brief, sir.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of the jury but out of hearing of the jury.)

22 BY MR. RICHARDSON:

23 Q: I'm sorry, Sergeant Donald, what time of the morning was
24 it?

25 A: It was early, I want to say probably about seven, eight

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SERGEANT KENT DONALD - REDIRECT BY MR. RICHARDSON

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- 1 o'clock, maybe.
- 2 Q: And Ms. Bass asked about the gun, what happened to that
3 gun?
- 4 A: That gun was seized by the State.
- 5 Q: Okay. Because why?
- 6 A: Because of close proximity to drugs.
- 7 Q: And that gun was found in that book bag in Mr. Durant's
8 room?
- 9 A: Yes, it was.
- 10 Q: And was the Defendant charged with anything in that book
11 bag?
- 12 A: He was not.
- 13 Q: Ms. Bass asked you about fingerprints. How long did you
14 work narcotics?
- 15 A: Ten years.
- 16 Q: And how often did you fingerprint baggies?
- 17 A: Not often.
- 18 Q: And why or why not?
- 19 A: It's been my experience when you try to fingerprint
20 baggies, the prints that you do receive are inconclusive,
21 they're more than likely smudged and you can't get a good
22 reading off of them.
- 23 Q: So, you just can't read them?
- 24 A: You can't read them so you can't identify anybody with
25 smudged prints.

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SERGEANT KENT DONALD - REDIRECT BY MR. RICHARDSON

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- 1 Q: So it'd be futile?
- 2 A: Yes.
- 3 Q: And the car -- Ms. Bass asked you about the car that was
4 at the residence during the time of the search warrant.
- 5 A: Yes.
- 6 Q: Did y'all seize the car that day?
- 7 A: We did not.
- 8 Q: How about the keys to that car, did y'all seize those?
- 9 A: We did not.
- 10 Q: She asked you about the mail said there were some other
11 names on some of the mail, correct?
- 12 A: Yes.
- 13 Q: The majority of the mail, who did it belong to?
- 14 A: Alex Robinson.
- 15 Q: And just want to make sure -- I got a little confused,
16 just want to make sure we're clear. The photo -- let's see if
17 we can find it. State's Number Eighteen ---
- 18 A: Yes.
- 19 Q: That is a picture of -- that's a close-up picture of the
20 monitor in State's Number Seventeen?
- 21 A: Correct.
- 22 Q: Okay. So, that's not you looking out the window, that's
23 the feed from that camera in the bedroom?
- 24 A: Yes.
- 25 Q: And the jeans, Ms. Bass asked you did you take pictures

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1 of everything else in the room, why did you take a picture of
2 those jeans, the ---

3 A: Oh, the Enyce, again there were male clothing found in
4 who I believe to be Alex Robinson's bedroom. It's male
5 clothing, it's not a female clothing, what the -- that
6 particular size, it would be a female's clothing.

7 Q: And the dope was found on those jeans, correct?

8 A: Yes.

9 Q: You didn't disturb that area any way?

10 A: No.

11 MR. RICHARDSON: Your Honor, on further questions for
12 this witness.

13 THE COURT: Was there any further recross examination,
14 Ms. Bass?

15 MS. BASS: No, Your Honor, thank you.

16 THE COURT: All right. You may come down. Thank you.

17 (REPORTER'S NOTE: Witness leaves the witness stand.)

18 MR. RICHARDSON: Your Honor, Sergeant Donald will remain
19 with us however I do ask that he be ---

20 THE COURT: Sir?

21 MR. RICHARDSON: Sergeant Donald has a doctor's
22 appointment tomorrow morning, I'd just ask that this continues
23 into the tomorrow morning, he be excused for that purpose.

24 THE COURT: Yes, I will excuse you.

25 MS. BASS: No objection to any of that, Your Honor.

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1 THE COURT: All right. Next witness.

2 MR. HILLIARD: Judge, could we take just a couple of
3 seconds. I could approach the bench if you'd like.

4 THE COURT: All right, sir. I'll let you go to the jury
5 room for just a moment. We'll call you right back.

6 (REPORTER'S NOTE: The jury retires to the jury room.)

7 THE COURT: Yes, sir?

8 MR. HILLIARD: I just wanted to go to the bathroom,
9 Judge.

10 THE COURT: Well, I know, but we had a conference where
11 you wanted to be on the record, it is necessary now?

12 MS. BASS: Your Honor, I had just mentioned to Your Honor
13 that one of the witnesses that we're talking about in the
14 search warrant had come in and I think it's Ms. Gil Yakoel or
15 Yakoel and that I was asking for her to be sequestered so that
16 she couldn't hear the testimony, what the officer was saying.

17 THE COURT: She came in after he had basically got
18 through testifying, did he not?

19 MS. BASS: Yes, sir. And then at that point, the
20 Solicitor continued what he said.

21 MR. RICHARDSON: I just said that there's not been --
22 basically the other witnesses that are potential witnesses
23 have been in the courtroom as well.

24 THE COURT: Well, nobody asked for sequestration.

25 MR. RICHARDSON: Yes, sir.

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1 THE COURT: But the truth of the matter is that
2 particular witness came in after he had basically completed
3 his examination, had he not?

4 MS. BASS: Yes, sir. And I thank you for letting me put
5 that on the record.

6 THE COURT: All right. But first there was no
7 sequestration ordered; and secondly, that witness came in
8 after, after redirect and was never here for his direct or
9 cross examination; can you agree with that?

10 MS. BASS: I think you're pretty close; thank you, Your
11 Honor.

12 THE COURT: All right. Thank you.

13 All right. Take a short break and let's get on.

14 MR. RICHARDSON: Thank you, Your Honor.

15 MR. HILLIARD: Thank you, Judge.

16 *****OFF THE RECORD*****

17 (On the Record.)

18 THE COURT: All right. Let's bring the jury in, please.

19 (REPORTER'S NOTE: They jury returns to the courtroom.)

20 THE COURT: The jury is present and the Defendant is in
21 the courtroom. Proceed with your next witness.

22 MR. RICHARDSON: Thank you, Your Honor. The State would
23 call Gil Yakoel-Garby.

24 GIL YAKOEL-GARBY, HAVING BEEN SWORN,
25 TESTIFIED AS FOLLOWS:

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GIL YAKOEL-GARBY - DIRECT BY MR. RICHARDSON

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1 CLERK: Please state your full name and spell your last
2 name.

3 MS. YAKOEL-GARBY: Gil Yakoel-Garby.

4 DIRECT EXAMINATION OF GIL YAKOEL-GARBY BY MR. RICHARDSON:

5 Q: Good morning, Gil, how are you doing today?

6 A: I'm fine; how are you?

7 Q: Could you tell us all a little bit about yourself, how
8 old you are, where you grew up, so on and so forth?

9 A: I am twenty-two. I just got married November 24th.

10 THE COURT: Please talk into the microphone for us.
11 Thank you, ma'am.

12 Q: Here, let me adjust this thing. Okay.

13 A: Okay. I'm twenty-two and I just got married on November
14 24th and I'm in school for cosmetology. I do have a three-
15 year-old son and that's about it.

16 Q: And the Defendant sitting out there; do you know him?

17 A: Yes, I do.

18 Q: And how do you know him?

19 A: We have a past relationship and a child in common.

20 Q: And that's the three-year-old?

21 A: Yes.

22 Q: Now, you said you're married now?

23 A: Yes.

24 Q: But not to the Defendant?

25 A: No, not to Alex.

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GIL YAKOEL-GARBY - DIRECT BY MR. RICHARDSON

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1 Q: Okay. Now, you said you were in a prior relationship
2 with him and you have a child in common? What if any kind of
3 relationship have you had with the Defendant in the past? How
4 long did y'all date?

5 A: About four and a half years.

6 Q: About four and a half years, you're twenty-two now, when
7 did you start dating the Defendant?

8 A: About sixteen or seventeen.

9 Q: When you were sixteen or seventeen, so -- trying to do
10 the math -- that's six years ago, five or six years ago?

11 A: Yes.

12 Q: Back in 2008, you were dating the Defendant?

13 A: Yeah. We -- I was pregnant.

14 Q: And what was the extent of your relationship? You said
15 you were pregnant, but your living arrangements?

16 A: It was -- at that point it was very rocky but I stayed
17 with him for my child's sake because I did want his father in
18 his life, so ---

19 Q: Ms. Yakoel, I know it's hard -- am I pronouncing that
20 right, is it Yakoel?

21 A: It's actually Garby.

22 Q: Excuse me, but I do say Yakoel -- it's Yakoel, yeah.

23 A: Yakoel.

24 Q: Yakoel, okay. And just remember to speak into the
25 microphone, okay? So, September 2008 y'all were living

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1 together?

2 A: Yes.

3 Q: And how about back in August of 2008, had y'all been
4 living together?

5 A: Yes.

6 Q: At that point you say you were pregnant?

7 A: Yes.

8 Q: With the Defendant's child?

9 A: Yeah.

10 Q: About how far along in September?

11 A: September, I was about -- the end of my fourth, beginning
12 of my fifth.

13 Q: Month?

14 A: Yes.

15 Q: When was the baby born?

16 A: January, January 25th.

17 Q: Okay. Now, you were sixteen or seventeen when you
18 started dating the Defendant?

19 A: Uh-huh (affirmative response).

20 Q: You said that y'all had lived together?

21 A: Uh-huh (affirmative response).

22 Q: How old were you whenever you lived together?

23 A: When I started living with him about seventeen.

24 Q: When you were seventeen?

25 A: Uh-huh (affirmative response).

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1 Q: And when you first started living with the Defendant,
2 where were you living?

3 A: We were living at Burcale, I don't recall the
4 neighborhood, it was a two-story apartment.

5 Q: And Burcale, that's towards Myrtle Beach, correct?

6 A: Yeah, that's like in the -- by the Hard Rock Park.

7 Q: By Hard Rock Park?

8 A: Uh-huh (affirmative response).

9 Q: And did you stay there for the entire relationship?

10 A: No. We've moved several times.

11 Q: So, you moved around?

12 A: Yeah.

13 Q: In the course of your relationship, were you ever aware
14 of any addresses at [REDACTED]?

15 A: Yes.

16 Q: In what way?

17 A: Well, before we actually moved into together, that was
18 like his house so I would come over there and we'd hang out
19 and then I'd go to my parents' house before we actually moved
20 in together.

21 Q: Okay. You're twenty-two, that was when you were sixteen
22 or seventeen, so we're looking at 2004, 2005, somewhere in
23 there, 2006 maybe?

24 A: Yeah, something like that.

25 Q: So, he had lived there previously?

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- 1 A: Yeah.
- 2 Q: And you moved to several addresses while in your
3 relationship, I believe you said?
- 4 A: Yes.
- 5 Q: Now, when you were living with the Defendant were you
6 working anywhere?
- 7 A: I was working at -- I worked at Hooters -- I mean Hooters
8 -- Hollister for about I want to say two or three weeks and I
9 was cocktailing at Masters for about like a month.
- 10 Q: Are those the only jobs you had while you were dating
11 him?
- 12 A: Only jobs.
- 13 Q: So, a total period of a couple of months, maybe?
- 14 A: Basically, yeah.
- 15 Q: Who was the breadwinner in that family?
- 16 A: Meaning ---
- 17 Q: And I use family loosely -- who brought the money into
18 that family?
- 19 A: Oh, Alex.
- 20 Q: Who paid the rent?
- 21 A: Alex.
- 22 Q: So, he was the provider for you?
- 23 A: Yeah.
- 24 Q: And where was he working at that time?
- 25 A: He was doing his own thing. He was self-employed.

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- 1 Q: Self-employed, was he punching a time clock anywhere?
- 2 A: No.
- 3 Q: Now, when you and the Defendant lived together during the
4 relationship did he stay at home every night?
- 5 A: There was some nights he wouldn't come home. There was
6 some nights -- two nights out the week he wouldn't come home,
7 I was basically by myself for almost half of the relationship.
- 8 Q: So, he would leave ---
- 9 A: He would leave when he wanted to leave, he would come
10 when he wanted to come.
- 11 Q: So, basically you're saying you were a kept woman at that
12 time?
- 13 A: Basically.
- 14 Q: And he'd drop in when he wanted to drop in?
- 15 A: Yeah.
- 16 Q: But he was paying the rent?
- 17 A: He was paying the rent and paying everything in the
18 house.
- 19 Q: How about his belongings, did he ---
- 20 A: Yeah, he had some stuff there, he had his clothes and his
21 shoes. He would come home, get dressed, go, not come back two
22 days, come home.
- 23 Q: Ms. Garby, let me go ahead and get this out of the way.
24 You've got some charges pending against you, correct?
- 25 A: Yes, I do.

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- 1 Q: Your first arrest was August of 2008?
- 2 A: Yes, at [REDACTED]
- 3 Q: I'm sorry?
- 4 A: At [REDACTED]
- 5 Q: At [REDACTED] ---
- 6 A: Yeah, [REDACTED].
- 7 Q: Okay. And where is that located for the jury?
- 8 A: That is behind Tanger Outlet on 501. You can't really --
- 9 you'd never tell there's a neighborhood back there but there
- 10 is.
- 11 Q: Just if you follow that road down ---
- 12 A: Yeah, you can just go straight and you'll pass like the
- 13 Sleep Inn and then you just keep on going straight and there's
- 14 like a neighborhood.
- 15 Q: And what kind of home were you living in at that point?
- 16 A: It was a double-wide.
- 17 Q: That was a double-wide out at [REDACTED]?
- 18 A: Yes.
- 19 Q: And real brief, who arrested you?
- 20 A: I don't know your name -- it was them two -- I don't know
- 21 your name, sorry.
- 22 Q: Those two agents?
- 23 A: Yeah.
- 24 Q: Horry County Police Department?
- 25 A: Yeah, Horry County.

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1 Q: And that was in August of 2008?

2 A: Yes.

3 Q: August 20?

4 A: I want to say -- it was in August.

5 Q: And there was a home -- who all lived at that home?

6 A: It was me, Alex, Michela (spelled phonetically), Johnny,
7 which he was like with Alex, never come home. So, basically
8 it was just me and Michela.

9 Q: Okay. But the two guys, they would come and go?

10 A: They would come and go as they pleased.

11 Q: You say Alex kept some of his belongings at that address?

12 A: Yes.

13 Q: And how about Johnny?

14 A: Johnny also had some stuff over there.

15 Q: Okay. So, they'd come and go as they please but they
16 kept their stuff over there?

17 A: Yeah.

18 Q: And who was arrested whenever the police served the
19 search warrant that day?

20 A: It was me and -- Michela and I, so, yeah.

21 Q: Okay. Now, we've entered a proffer agreement, correct?

22 A: Yes.

23 MR. RICHARDSON: For identification purposes only. And
24 Your Honor for the record, I've handed a copy of the proffer
25 agreement to Mr. Hilliard.

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1 MR. HILLIARD: That's correct.

2 MR. RICHARDSON: And I'll give an extra copy to Ms. Bass.

3 MS. BASS: Thank you.

4 STATE'S EXHIBIT NUMBER FORTY

5 MARKED FOR IDENTIFICATION.

6 BY MR. RICHARDSON:

7 Q: Just for identification purposes, Ms. Garby, I'm going to
8 show you what's been marked as State's Number Forty, see if
9 you recognize that.

10 A: I do.

11 Q: And what is State's Number Forty?

12 A: It's -- I don't have any promise of anything, I just ---

13 Q: That's the proffer agreement you signed?

14 A: Yes.

15 Q: And what if anything was promised to you?

16 A: It wasn't.

17 Q: Other than any statements you made wouldn't be against
18 you?

19 A: Oh, yeah.

20 Q: And that's signed September 22nd, 2011 or it was issued
21 September 22nd, 2011.

22 A: Yes.

23 THE COURT: Are you introducing that into evidence?

24 MR. RICHARDSON: I'm not introducing it into evidence. I
25 just wanted to identify it, Your Honor.

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1 THE COURT: I see.

2 BY MR. RICHARDSON:

3 Q: And you just -- do you understand what your agreement was
4 in that proffer agreement?

5 A: Yes, I do.

6 Q: And tell the jury what your agreement is.

7 A: My agreement is to testify against Alex Robinson. I have
8 no promises, there's -- basically, I'm doing my will -- of my
9 own ---

10 THE COURT: Please talk into the microphone so that lady
11 can hear you at the far end.

12 Q: Once again, there are no promises?

13 A: There is no promises.

14 Q: On the charges from August of 2008?

15 A: There is no promises.

16 Q: How about the charges from this search warrant,
17 September?

18 A: No promises.

19 Q: Now, at the time of the arrest at [REDACTED], I
20 believe it's [REDACTED], how long had you been
21 living at that address?

22 A: We were living there about -- that was our longest
23 residence about -- I want to say about a year and a half
24 almost.

25 Q: So, you'd been living there for some time?

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1 A: Yes.

2 Q: A year and a half back into 2007?

3 A: Yeah. There was -- we had got an apartment at -- we had
4 another apartment at Burcale, like those little apartments,
5 you know, like little corner -- we had an apartment there but
6 I would -- I used to prefer to stay at Waccamaw. He would be
7 --

8 Q: I'm sorry.

9 A: He would be at Burcale and I would be at Waccamaw.

10 Q: Back and forth?

11 A: Back and forth.

12 Q: Who paid the rent at Waccamaw?

13 A: Alex.

14 Q: Who paid the rent over at Burcale?

15 A: Alex.

16 Q: And he worked for himself?

17 A: Yes, he did.

18 Q: And you got arrested, I said August 9th -- the 20th, I
19 think it was August 19th, you bonded out August 21st. Who
20 posted bond for you?

21 A: Alex gave my mother the money and she went half and he
22 went half and my mom bonded me out.

23 Q: And that was the first arrest?

24 A: That was the first arrest.

25 Q: Now, so you bonded out August 21st, 2008. When you got

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- 1 out of J. Reuben Long, where did you go?
- 2 A: Alex picks me up.
- 3 Q: He picked you up?
- 4 A: Yeah.
- 5 Q: And did you go back to Waccamaw Pines?
- 6 A: Actually I went to go eat. I was hungry and pregnant.
- 7 Q: Okay. They did feed you at J. Reuben?
- 8 A: Yeah.
- 9 Q: But where did you go back to live?
- 10 A: We went back to -- after the arrest at Waccamaw, Legacy.
- 11 I went to go get my stuff from Waccamaw and I moved into
- 12 Legacy.
- 13 Q: Now Legacy -- Legacy Apartments?
- 14 A: Yes.
- 15 Q: Where is that located?
- 16 A: Right beside Conway Hospital.
- 17 Q: Okay.
- 18 A: Yeah, it's right there.
- 19 Q: And who moved you there?
- 20 A: Alex did. It was his mother's apartment.
- 21 Q: And so that's August 21st. So, how long did you stay
- 22 there?
- 23 A: Only a couple of weeks till his mom threw me out, so.
- 24 Q: So, his mom didn't care for you?
- 25 A: It was like -- it was about two or three weeks I was

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1 staying there.

2 Q: Now, so you got thrown out end of August, first of
3 September.

4 A: Yeah, it was like the end of September, beginning of
5 August.

6 Q: End of August, beginning of September?

7 A: I mean, yeah, sorry.

8 Q: Get your months mistaken. After you moved out of Legacy,
9 you're homeless, where do you go?

10 A: I was staying at [REDACTED] and actually was
11 looking for an apartment because I did not want to stay there.

12 Q: Why didn't you want to stay at [REDACTED]?

13 A: I don't know. I just didn't feel safe over there. I was
14 about almost five months pregnant, trying to -- the stress was
15 not healthy for my child.

16 Q: Now, that [REDACTED] address, that's a mobile
17 home?

18 A: Yes.

19 Q: Whose mobile home is that?

20 A: It was Alex's.

21 Q: How did you know it to be Alex's?

22 A: It's been Alex's before we even started -- when we first
23 started talking, when we first got together.

24 Q: So, if I understand you, he maintained that through the
25 entire relationship?

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1 A: Yeah, that's ---

2 MR. HILLIARD: Objection to the leading.

3 THE COURT: Sir?

4 MR. HILLIARD: I object to his leading, so he maintained
5 it or ---

6 THE COURT: He is leading. Rephrase your question.

7 BY MR. RICHARDSON:

8 Q: Did there ever come a time -- describe if you will any
9 time that came up in which Mr. Robinson didn't maintain that?

10 A: No, that was his.

11 Q: That was his?

12 A: He was getting all his mail there, he was paying it half
13 with his brother, that was it.

14 Q: Now, that mobile home at [REDACTED], it sits kind of T'd
15 up to the street, to the road?

16 A: It's T -- yeah.

17 Q: And as I face the house from [REDACTED], which
18 side is the door on?

19 A: Like from the road?

20 Q: Yeah, I'm standing in the road.

21 A: All right. If you're the road, the door would be right
22 here.

23 Q: So over on the left-hand side?

24 A: Yeah, it was like in the middle. Like this is the
25 trailer and the door would be right here in the middle, like

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1 three little steps.

2 Q: Okay. And when you moved into that mobile home at
3 [REDACTED] who was staying there?

4 A: It was Fish ---

5 Q: Now, who is Fish?

6 A: Fish is Alex's older brother.

7 Q: Older brother. Do you know his name other than Fish?

8 A: No. I know just Fish.

9 Q: Well, let's see. Let me show you what's been previously
10 admitted into evidence as State's Number Eleven, do you
11 recognize the person in State's Number Eleven?

12 A: Yeah, this is Fish.

13 Q: Okay. Previously identified as Mr. Durant -- we'll call
14 him Durant; you can call him Fish if you want to.

15 A: Okay.

16 Q: So, Fish was living there and that's the Defendant's
17 brother?

18 A: Yes.

19 Q: And who else?

20 A: At the time, Mr. Durant had a girlfriend, she was staying
21 there.

22 Q: Did you know her name?

23 A: Tiff or Tiffany is her real name.

24 Q: Okay. You say that the mobile home is laid out ---

25 A: Yes.

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1 Q: Here's the road, walk towards the trailer, where was your
2 bedroom?

3 A: Right in front of the road.

4 Q: So, as you enter the door ---

5 A: You would have to ---

6 Q: --- to your right?

7 A: Um ---

8 Q: Closest to the road?

9 A: Yeah.

10 Q: Okay. How about Mr. Durant, Fish and his girlfriend
11 Tiffany, where did they stay with relation to the road?

12 A: They stayed in the master bedroom. Since Alex move out,
13 his brother got the master bedroom.

14 Q: This is when Alex moved out to be at Waccamaw Pine?

15 MR. HILLIARD: Objection to the leading, when Alex moved
16 out to go to Waccamaw Pines.

17 MR. RICHARDSON: I'm asking for clarification, Your
18 Honor.

19 THE COURT: Rephrase the question, please.

20 BY MR. RICHARDSON:

21 Q: You said when Alex moved out.

22 A: Yes.

23 Q: What did you mean by that?

24 A: He left his premises.

25 Q: Okay. And why did he leave his premises? For what

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1 purpose?

2 MR. HILLIARD: How could she know why he moved?

3 THE COURT: Well, let her -- he can ask why. If she
4 knows, she can say so; if she don't know, she can say that.
5 He's asked her why.

6 MR. RICHARDSON: Your Honor, if I could just have some
7 leeway with my witness.

8 THE COURT: I understand. Just follow the rule but I
9 mean she can answer if she knows.

10 MR. HILLIARD: Very well, Your Honor.

11 THE COURT: Ask the question again and let her answer it.

12 BY MR. RICHARDSON:

13 Q: Do you know why Alex left the residence?

14 A: Basically because I got a -- I was in the picture so I
15 moved out of my parents' house and he decided to get an
16 apartment and for me and Michela to stay there basically.

17 Q: And that was the address at Waccamaw Pines?

18 A: It was actually first Burcale and then it was Waccamaw
19 Pines.

20 Q: Now, the bedroom where you were staying ---

21 A: Uh-huh (affirmative response).

22 Q: Who else stayed in that bedroom?

23 A: Alex.

24 Q: Okay. And how often did Alex stay in that bedroom?

25 A: Well, since he had really nowhere to go besides go out to

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1 the clubs, he would stay there when he wanted to sleep.

2 Q: So, when it was time to sleep, he would come back ---

3 A: Yeah, he would come.

4 Q: --- to that bedroom?

5 A: Yeah or he would go get a hotel room like he usually does
6 and then leave me there.

7 Q: And how about his clothing and whatnot, where was that
8 kept?

9 A: In the back room in the closet.

10 Q: In the bedroom where you were found?

11 A: Yes.

12 Q: I'm going to show you, Ms. Garby what's been previously
13 marked as State's Number Thirty-two, Thirty-three, Thirty-
14 four, Thirty-five, Thirty-six, Thirty-seven -- I'm sorry --
15 Thirty-eight and Thirty-nine. Let me make sure I'm counting
16 the right Thirty-two, Thirty-three, Thirty-four ---

17 THE COURT: You're mumbling now, she can't hear you.

18 MR. RICHARDSON: I'm sorry, Your Honor. Just for the
19 record purposes, I'm making sure that I have the numbers
20 right.

21 THE COURT: I understand but I want them to hear it too.

22 MR. RICHARDSON: I'll call them loud and clear as we
23 publish them, Your Honor, I promise.

24 THE COURT: Okay.

25 BY MR. RICHARDSON:

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1 Q: Thirty-two, Thirty-three, Thirty-four, Thirty-five,
2 Thirty-six, Thirty-eight and Thirty-nine. I feel like an
3 auctioneer, but here we go. Can you look at those photographs
4 and see if you recognize those photographs.

5 A: Yeah. Like to recognize where it's at?

6 Q: Do you recognize those?

7 A: Yeah.

8 Q: And how do you recognize these photographs?

9 A: Because it's the [REDACTED] trailer.

10 Q: Do you know approximately when these pictures were taken?

11 A: I don't know when this one was taken. I have no idea but
12 this was the living room of [REDACTED]

13 Q: So, that fairly and accurately -- State's Number Thirty-
14 two fairly and accurately represents ---

15 A: Yes.

16 Q: --- the [REDACTED] layout when you were living there?

17 A: Yes.

18 Q: With Mr. Robinson?

19 A: Yeah.

20 Q: Okay.

21 MR. HILLIARD: Objection to the leading.

22 THE COURT: I would permit that question. Go ahead.

23 MR. HILLIARD: Thank you, Judge.

24 BY MR. RICHARDSON:

25 Q: Okay. And the remainder of these photographs, if you can

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1 just look at them quickly.

2 A: [REDACTED] [REDACTED] [REDACTED] [REDACTED],

3 [REDACTED].

4 Q: Do you know approximately when these photographs were
5 taken?

6 A: Yes. This one was taken September ---

7 Q: They're not into evidence yet. Just if you could tell
8 me when they were taken?

9 A: September 5th.

10 Q: And how do you know it was September 5th?

11 A: Because it was my best friend's birthday.

12 Q: And that was the year 2008?

13 A: Yes.

14 Q: And how can you be sure it was 2008?

15 A: Because I was pregnant.

16 Q: And how many times have you been pregnant.

17 A: Once and let it stay like that.

18 MR. RICHARDSON: Your Honor, the State would seek to
19 introduce State's Number Thirty-two, Thirty-three, Thirty-
20 four, Thirty-five, Thirty---

21 THE COURT: I believe during the recess you were shown
22 these pictures.

23 MR. HILLIARD: And I have no objection to those pictures.

24 THE COURT: All right.

25 MR. HILLIARD: I'm gonna say that at the end when he

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1 finishes calling them out, Judge.

2 MR. RICHARDSON: Thirty-eight and Thirty-nine.

3 MR. HILLIARD: No objection.

4 THE COURT: All right.

5 STATE'S EXHIBIT NUMBERS THIRTY-TWO, THIRTY-THREE,
6 THIRTY-FOUR, THIRTY-FIVE, THIRTY-SIX, THIRTY-EIGHT
7 AND THIRTY-NINE ADMITTED INTO EVIDENCE.

8 BY MR. RICHARDSON:

9 Q: We'll get to them in just a second.

10 A: Uh-huh (affirmative response).

11 Q: You said those photographs, that collection of
12 photographs -- the one you said you didn't know when it was
13 from and I think ---

14 A: Yeah, there's a couple in there that I don't know when
15 it's from but the rest of them were September 5th.

16 MR. HILLIARD: Judge, our agreeing for them to be into
17 evidence was based on our understanding that she knew the
18 dates. She said that she doesn't. The only thing I would ask
19 is if she would make into one pile the ones she knows the date
20 of and one pile that she doesn't know the date.

21 MR. RICHARDSON: I'll ask her specifically about each
22 one. The purpose where she wouldn't know the date, Your
23 Honor, would be the condition of the [REDACTED] as it was
24 whenever it was searched, whenever she was living there.

25 THE COURT: Go ahead and do it with specificity, please.

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1 MR. HILLIARD: Thank you, Your Honor.

2 BY MR. RICHARDSON:

3 Q: Okay. State's Number Thirty-three and, Your Honor, I
4 would seek to publish at this time.

5 THE COURT: Yes.

6 Q: Thirty-three.

7 MR. HILLIARD: Can I look over his shoulder to see which
8 one is for dates and not?

9 THE COURT: Well, he numbered it Thirty-three he said.

10 MR. HILLIARD: All right, sir. Thank you.

11 BY MR. RICHARDSON:

12 Q: Thirty-three, do you know when that was taken?

13 A: Yeah, September 5th.

14 Q: And whose birthday was that?

15 A: Michela's.

16 Q: Okay.

17 THE COURT: If you care to publish at this time, I
18 thought you said you did, you may do so.

19 MR. RICHARDSON: Yes, sir, Your Honor.

20 THE COURT: Please pass them around.

21 MR. RICHARDSON: I was just gonna try and speed it up and
22 do it all at once, Your Honor.

23 THE COURT: That's all right. Well, that's why I want
24 you to do it one at the time and they can pass them around
25 real quickly.

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1 BY MR. RICHARDSON:

2 Q: All right. Thirty-five.

3 A: Also September 5th.

4 Q: Number Thirty-four.

5 A: Also September 5th.

6 Q: Thirty-six?

7 A: Also September 25 -- I mean, 5th, sorry.

8 Q: Number Thirty-eight?

9 A: September 5th.

10 Q: And Thirty-nine?

11 A: September 5th.

12 Q: Okay. So, all of these were taken at that birthday
13 party, September 5th, thereabouts, 2008?

14 A: Yes.

15 Q: Last but not least Number Thirty-two ---

16 THE COURT: Madame Foreman, these things will be with you
17 in the jury room during your deliberations, too.

18 All right. Proceed.

19 BY MR. RICHARDSON:

20 Q: Thirty-two?

21 A: I have no idea when that was taken.

22 Q: But the condition of ---

23 A: The layout, it is [REDACTED]

[REDACTED] And that's the same condition it was in when you were
25 living there?

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1 A: Yeah, it never changed.

2 Q: With the monitor here?

3 A: Yeah, and the computer right there and the flat screen
4 and the kitchen was on that side, yeah.

5 MR. RICHARDSON: I would seek to move all these into
6 evidence, Your Honor.

7 THE COURT: Yes.

8 MR. HILLIARD: Without objection. I think they were
9 already in evidence, but in any event, without objection.

10 THE COURT: All right.

11 BY MR. RICHARDSON:

12 Q: Ms. Garby, I can't remember which one of those
13 photographs, one of them has a couple of guys in the picture.

14 A: Yes.

15 Q: One has a hat on; one does not.

16 A: Yes.

17 Q: Who is the person without a hat?

18 A: Alex.

19 Q: And the person with the hat on, do you know him?

20 A: I do not recall his name.

21 Q: And the jury is probably asking this question, so all
22 those people there in that -- in those photographs, did you
23 know all of them?

24 A: I knew names and faces. There were only like -- besides
25 Alex the only one that I really associated with was Michela.

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- 1 I've known her my whole life. So that was my best friend,
2 yeah. The other ones, I just known them by Alex. He was the
3 one that'd bring them in the house and ---
4 Q: So, whose idea was it for the party?
5 A: Actually it was mine.
6 Q: Who invited the people over?
7 A: Alex did. I just wanted to surprise her with a cake.
8 Q: Wanted to make someone happy?
9 A: Yeah.
10 Q: And why did you feel it was important to surprise her and
11 make her happy?
12 A: Yeah. Why?
13 Q: Why?
14 A: Because she was my best friend, you know, that's what
15 friends do.
16 Q: Now, we're seeing some photographs of a big red toolbox.
17 A: Uh-huh (affirmative response).
18 Q: How many of the houses where you stayed was that in?
19 A: Just one.
20 Q: And where was that?
21 A: At [REDACTED]
22 Q: Now, any of these other people in the photograph --
23 photographs that we saw, were they living at Stoneybrook when
24 you were there?
25 A: Not that I know of. At the time that I was staying

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1 there, no.

2 Q: And when was it that you got to [REDACTED]

3 A: I stayed there, I think it was like the beginning of
4 September, yeah, around Michela -- yeah, it was the beginning.

5 Q: Until your arrest?

6 A: Yes.

7 Q: Now, let's talk about your arrest in September.

8 A: Uh-huh (affirmative response).

9 Q: Do you recall Horry County Police Department serving a
10 search warrant on the house?

11 A: Yes.

12 Q: And that was on September 25th, 2008.

13 A: Yeah.

14 Q: Let's step back twelve to sixteen hours, the day before.

15 A: Okay.

16 Q: Can you tell us what happened the day before?

17 A: I had actually left him.

18 Q: And ---

19 A: Meaning him as Alex.

20 Q: Okay. And explain to the jury what do you mean by you
21 had left him?

22 A: I actually had broke things off, I was just tired and I
23 would stress out and I just needed to get in my mind, for me
24 to by myself and go home to my moms.

25 Q: And that was about three years ago?

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- 1 A: Yeah.
- 2 Q: So, you were nineteen at the time?
- 3 A: Yeah, yeah.
- 4 Q: And tell us how you planned on leaving him?
- 5 A: I had packed my stuff in the black -- what was it a
- 6 Hyundai and I just drove to my mom's house.
- 7 Q: What time of day was that?
- 8 A: It was mid-afternoonish.
- 9 Q: Now, you say you drove to your mom's house.
- 10 A: Uh-huh (affirmative response).
- 11 Q: The afternoon, we'll say the 24th, day before?
- 12 A: Yes.
- 13 Q: What preparations did you take to go to your mom's house?
- 14 A: What did I take -- what?
- 15 MR. HILLIARD: I'm sorry. I couldn't hear that question.
- 16 Q: What preparations did you take to go to -- to move out?
- 17 THE COURT: Talk into the mics, again, for me please.
- 18 A: Uh-huh (affirmative response).
- 19 Q: What steps did you take to move out?
- 20 A: Oh, he wasn't -- he didn't even come home that night so
- 21 basically, I just packed my stuff up and left, got in the car
- 22 and drove.
- 23 Q: By yourself, you're talking about your clothes?
- 24 A: My clothes.
- 25 Q: And that was all in that Hyundai?

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- 1 A: Yes.
- 2 Q: And you went to your mom's house, I believe you said?
- 3 A: Yes.
- 4 Q: Did there come a time when you returned to [REDACTED]?
- 5 A: Yes, I did. I returned that night.
- 6 Q: And why did you return?
- 7 A: Alex started calling me back to back begging me to come
- 8 back saying that he was -- that we're gonna start doing right
- 9 and that he was gonna be there for the ultrasound and be there
- 10 for the birth. Basically just pillow-talking me and I came
- 11 back because I was like, okay, I'm having a child with this
- 12 kid, wanted my son to have his father around but it didn't
- 13 happen.
- 14 Q: Okay. And when you say this kid, the Defendant, is he
- 15 your age?
- 16 A: Alex, no.
- 17 Q: Older or younger?
- 18 A: Older.
- 19 Q: Do you know how much? It's okay if you don't.
- 20 A: I want to say about -- almost ten years.
- 21 Q: Okay. So, you're at your mom's house and you get calls
- 22 from the Defendant?
- 23 A: Uh-huh (affirmative response).
- 24 Q: And he -- I think you said pillow-talked you back ---
- 25 A: Yeah.

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- 1 Q: --- to [REDACTED]? What time did you get back to
2 [REDACTED]?
- 3 A: I got back around, I want to say, 9:30-10:00.
- 4 Q: And when you arrived back at [REDACTED] on the 24th, who
5 was there?
- 6 A: It was Mr. Durant, Tiffany and Alex.
- 7 Q: And take us through that when you get back to [REDACTED]
8 on the 24th about 9:30-10:00, I believe you said.
- 9 A: Yeah. I just -- basically, I just got me a pair of
10 pajamas out the car, I didn't even take anything out my car.
11 I showered, he showered and left and didn't come back. So I
12 basically stayed there again by myself.
- 13 Q: So, you laid down in bed?
- 14 A: Yeah, I asked him if he was coming, he was like, no, I'm
15 going out.
- 16 Q: How about Mr. Durant and Ms. Smith?
- 17 A: They went -- we were all watching TV, it was actually --
18 me, Tiffany and Mr. Durant were watching TV, that's after Alex
19 left and then we just went to sleep.
- 20 Q: Now, you told us previously that Mr. Durant and Tiffany
21 stayed in the master bedroom?
- 22 A: Yes.
- 23 Q: The bedroom where you were staying, who had access to
24 that bedroom?
- 25 A: Just Alex.

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- 1 Q: Were there any locks or anything on the door?
- 2 A: No.
- 3 Q: And you lived there for -- you said you moved in the
- 4 first of September and this is the 25th, so about three to
- 5 four weeks, you were there?
- 6 A: Yes.
- 7 Q: All right. At any time while you were there, tell us
- 8 anybody other than the Defendant or you that entered that
- 9 bedroom?
- 10 A: No.
- 11 Q: Now, you'd gone to sleep on the 24th or early morning
- 12 hours of the 25th in the back bedroom, your bedroom?
- 13 A: Yes.
- 14 Q: And that's the bedroom you shared with the Defendant?
- 15 A: Yes.
- 16 Q: Tell us how you woke up?
- 17 A: That day?
- 18 Q: Yeah, the 25th.
- 19 A: I had SWAT in my face.
- 20 Q: What do you mean by you had SWAT in your face?
- 21 A: I had Horry County, they busted down the door, I swear it
- 22 was a dream but it really wasn't.
- 23 Q: Okay. How about the Defendant?
- 24 A: Alex was nowhere to be found.
- 25 Q: Did you try calling him that morning?

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- 1 A: I was calling him all through the night before Horry
2 County came to see if he would come home. He didn't pick up
3 my phone calls or not answering my text messages, nothing.
- 4 Q: And that morning, did you have the opportunity to call
5 him?
- 6 A: No, no.
- 7 Q: Now, you say you woke up to SWAT in your face?
- 8 A: Uh-huh (affirmative response).
- 9 Q: The narcotics unit?
- 10 A: Yeah.
- 11 Q: What did they do once they were in your face?
- 12 A: Basically just telling me to turn around. I guess they
13 were trying to cuff me, telling them I was pregnant, I
14 couldn't turn around. So, and then went to use the bathroom
15 and they sat us on the couch.
- 16 Q: Now, previously, the August arrest.
- 17 A: [REDACTED], yeah.
- 18 Q: At [REDACTED], did you ever inform the officers who the
19 father of your child was?
- 20 A: At the time, I don't think so. I don't recall that. I'm
21 pretty sure they knew.
- 22 Q: Did they speak to you about it?
- 23 A: I don't think I was -- I was still in a state of shock in
24 mind and everything was going through my head.
- 25 Q: Okay. Back to the [REDACTED] search warrant, once the

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- 1 officers -- did the officers leave you in the bedroom or ---
2 A: No. They -- I had a girl -- I don't know her name, I
3 forgot. She was really nice though. She took me to the
4 restroom and then she put a blanket over me and sat me on the
5 couch.
6 Q: So, they bring you out and that's back in the living room
7 area, living room/kitchen?
8 A: Same -- yeah, Tiffany and Mr. Durant were already there.
9 Q: Now, describe for us, if you will the bedroom that you
10 telling us Mr. -- the Defendant put you up in.
11 A: Uh-huh (affirmative response).
12 Q: How big was the bedroom, about?
13 A: I want to say as a size a little bit bigger than a walk-
14 in closet. It was very small.
15 Q: Were there any closets or anything in that bedroom?
16 A: Yes, there was a closet.
17 Q: And whose clothes were in that closet?
18 A: Alex's.
19 Q: Did you ever have any other men that came over?
20 A: Not in that bedroom, no.
21 Q: Were you seeing anybody else at the time?
22 A: No.
23 Q: There was a black Hyundai that was found there at the
24 scene?
25 A: Yes.

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- 1 Q: Who did that belong to?
- 2 A: It belonged to Alex but I was driving it to get to
3 doctor's appointments for the pregnancy.
- 4 Q: Who purchased that car?
- 5 A: Alex.
- 6 Q: And you said it was so you could get to doctor's
7 appointments?
- 8 A: To get to my doctor's appointments.
- 9 Q: Do you remember when he got that car for you?
- 10 A: He got it -- I want to say we were still living at
11 Waccamaw.
- 12 Q: So, it was before [REDACTED]?
- 13 A: It was before [REDACTED].
- 14 Q: You told the police it was your car?
- 15 A: Yeah.
- 16 Q: Now, the keys to the car, who had those?
- 17 A: I did.
- 18 Q: And were there any other keys to the car?
- 19 A: I don't think we had a spare.
- 20 Q: You were arrested that morning, correct?
- 21 A: Yes, I was.
- 22 Q: What did you do with the car keys?
- 23 A: I think I left them in the house.
- 24 Q: There was some testimony about some white powder found in
25 that bedroom, the one where you were staying?

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- 1 A: At [REDACTED]
- 2 Q: At [REDACTED] Was that yours?
- 3 A: No, that was definitely not mine.
- 4 Q: Now, after you were arrested at [REDACTED], where were
- 5 you taken?
- 6 A: I was taken to J. Reuben.
- 7 Q: And how long were you there?
- 8 A: About a week.
- 9 Q: Did you make bond?
- 10 A: Yes, my mom bonded me out.
- 11 Q: Now, prior to bonding out, did you speak with the
- 12 Defendant?
- 13 A: Yes.
- 14 Q: Okay. And how did you speak to him?
- 15 A: Through a collect call.
- 16 Q: Collect call?
- 17 A: Yeah.
- 18 Q: And what did you tell him?
- 19 A: Definitely that the drugs were not mine, I made that
- 20 clarified while I was in J. Reuben, that he needed to get me
- 21 out of here, that I was pregnant, I couldn't deal with the
- 22 stress and that he just needed to get me out.
- 23 Q: And what if anything did he tell you?
- 24 A: He was -- basically, he was trying to say that he was
- 25 gonna let me fall for everything and that he didn't care. And

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- 1 that he was gonna try to help me get out, that he was gonna
2 give my mom half of the money. My mom really wanted me out.
3 Q: Gil, did you talk with the police when you were arrested?
4 You didn't give a statement, did you?
5 A: No, I didn't.
6 THE COURT: Would you like a cup of water?
7 A: I'm fine.
8 Q: I'm sorry. Normally, I have some Kleenex around here.
9 A: That's okay.
10 Q: Let's go back to the proffer agreement again. Any
11 promises made?
12 A: No, there was no promises made.
13 Q: Other than what's said in court can't be used against
14 you.
15 A: Cannot be used against me.
16 Q: And the reason you were staying at [REDACTED] was why?
17 A: Because I had got kicked out by his mother from Legacy.
18 Q: And who moved you into [REDACTED]?
19 A: Alex.
20 Q: And who did that mobile home belong to?
21 THE COURT: You need to talk a little louder so that she
22 can hear you.
23 Q: Yes, sir. Who moved you into [REDACTED]?
24 A: Alex did.
25 Q: And whose mobile home was that at [REDACTED]?

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1 A: It was Alex's.

2 Q: And the room where you were found, whose room was that?

3 A: It was Alex's room.

4 Q: And that male clothing in the room?

5 A: It was Alex's.

6 Q: Let me show you what's been previously marked as State's
7 Nineteen and Twenty. Do you recognize the clothing in those
8 photographs?

9 A: Yeah, they were Alex's clothing.

10 Q: Clothes you had seen him wear before?

11 A: Yeah.

12 Q: And so that was his pants where the dope fell out?

13 A: Yeah.

14 Q: Gil, thank you. If you will answer any questions the
15 Defendant might have. Okay?

16 A: Okay.

17 Q: Thank you.

18 CROSS EXAMINATION OF GIL YAKOEL GARBY BY MR. HILLIARD:

19 Q: It's not really an easy place to be today; is that right?

20 A: Yeah, that's right.

21 Q: It's -- this lady is writing down everything you ---

22 THE COURT: You'll have to talk a little louder now,
23 you're mumbling at her but back there they can't hear you.
24 Please talk a little louder.

25 MR. HILLIARD: I will, Judge, and thank you.

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1 THE COURT: Thank you.

2 BY MR. HILLIARD:

3 Q: This lady has to take down everything that you say so I'm
4 gonna have to talk louder so these folks can hear me and
5 you're gonna have to talk a little louder so they and she can
6 hear you. Okay?

7 A: Yeah.

8 Q: All right. And to go back a little bit, this is not an
9 easy place for you to be.

10 A: No, it's not.

11 Q: And you brought some people here with you to kind of make
12 it better for you; is that correct?

13 A: Yes.

14 Q: And the fellow on the end, that's your lawyer on the end
15 of the second row.

16 A: Yes, it is.

17 Q: And the people on the back row, who are those folks?

18 A: My family.

19 Q: And could you identify them for us, please?

20 A: My uncle, my mother, my aunt and my best friend.

21 Q: And your best friend is ---

22 A: Michela.

23 Q: Michela?

24 A: Torrence.

25 Q: Michela Torrence. And Michela -- which one is Michela?

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1 Michela is raising her hand?

2 A: Yes.

3 Q: And Michela is the person that was arrested with you in
4 the original arrest; is that right?

5 A: At Waccamaw, yeah.

6 Q: And that was Michela your best friend that was arrested
7 with you for how many tabs of Ecstasy do you recollect?

8 A: I don't recall.

9 Q: Would it be over 140 and less than 150?

10 A: I don't -- I don't remember.

11 Q: You remember there was over 100?

12 MR. RICHARDSON: Your Honor, she's already asked and
13 answered.

14 THE COURT: No, sir. That's -- this is cross examination
15 now. I'm gonna give him leeway as I would give you.

16 BY MR. HILLIARD:

17 Q: You remember it was over 100?

18 A: Yeah, something like that, could've been.

19 Q: And she was selling the Ecstasy; is that right?

20 A: I -- I wasn't with her, I was at the house.

21 Q: Right. She went to sell Ecstasy to an undercover agent
22 leaving her baby with you at the house?

23 A: Yes, my nephew.

24 Q: And Michela's baby was with you when Michela came back
25 with the police and they did a search warrant; is that right?

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1 A: I didn't see her. I saw the detectives, they knocked on
2 my door, yeah.

3 Q: And they came and did a search warrant?

4 A: Yeah.

5 Q: And arrested you?

6 A: Yeah.

7 Q: And those cases have been dismissed?

8 A: I have no -- actually, I really don't know.

9 Q: So, you don't know whether that case has been dismissed
10 or not?

11 A: No.

12 Q: Does that give you any pause for concern?

13 A: I trust my lawyer.

14 Q: And your lawyer didn't tell you whether that case was
15 dismissed or not?

16 A: No, I didn't really ask.

17 Q: And that was back in 2008?

18 A: Yeah.

19 Q: And when the solicitor was asking you about State's
20 Exhibit Nineteen and Twenty and he said that these were the
21 clothes -- these are Alex's clothes is what you said; is that
22 right?

23 A: Yeah, the -- he's worn them -- yeah.

24 Q: And when he said that these were the clothes that the
25 dope fell out of, you said yes this is the clothes that the

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- 1 dope fell out of.
- 2 A: It's the clothes were in it and it was his then yeah.
- 3 Q: If -- but you don't know where the dope was, right?
- 4 A: No, I didn't.
- 5 Q: You didn't know that there was any dope in that closet?
- 6 A: No, I -- no, I didn't.
- 7 Q: And you didn't know there was any dope in that front
- 8 room?
- 9 A: No.
- 10 Q: And you didn't know there was any dope being sold out of
- 11 that house?
- 12 A: What do you mean?
- 13 Q: Well, what I'm asking you is you didn't know that there
- 14 was drug dealing going on out of that house that you were
- 15 living in, right?
- 16 A: I knew.
- 17 Q: You knew, right?
- 18 A: Yeah.
- 19 Q: All right. And you knew that there was a lot of drug
- 20 dealing going on out of that house, right?
- 21 A: I wasn't really focused on that. There was a lot of
- 22 people coming in and out the house; I didn't really care.
- 23 Q: You didn't care?
- 24 A: I mean, I cared but like I wasn't into it. It was really
- 25 none of my business.

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- 1 Q: And when you say there weren't any promises made to you,
2 they did promise that nothing you said today would be used
3 against you; is that right?
- 4 A: Correct.
- 5 Q: And so you knew that Fish was selling dope out of the
6 house?
- 7 A: Like I said, he was not my main -- like I didn't care --
8 he was definitely not my main concern. I wasn't in a
9 relationship with him, I was not pregnant by him. What he had
10 going on on his side, I didn't care.
- 11 Q: He was living in the master bedroom.
- 12 A: Yeah.
- 13 Q: With his girl, right?
- 14 A: With his girlfriend at the time.
- 15 Q: Okay. And the photographs that the solicitor has put
16 into evidence, those were photographs -- I'm sorry, I should
17 be more specific. The photographs that the solicitor put into
18 evidence that were from the party ---
- 19 A: Not this one.
- 20 Q: Except for that one?
- 21 A: Yes.
- 22 Q: Except for Number Thirty-two, the other photographs,
23 those are from a chip that was in your camera; is that
24 correct?
- 25 A: I'm guessing, yeah, I don't remember the camera it's been

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- 1 so long but yeah.
- 2 Q: You don't remember the camera?
- 3 A: I don't even remember what the camera looks like.
- 4 Q: Okay. So, you don't know where these photographs came
5 from?
- 6 A: They probably -- they come from my camera but I don't --
7 it's been so long, I don't even remember that camera.
- 8 Q: Okay. How many times have you told members of law
9 enforcement your story about what happened?
- 10 A: Only when they asked me.
- 11 Q: How many times have members of law enforcement asked you
12 about what happened?
- 13 A: I want to probably say maybe two or three times.
- 14 Q: Two or three times?
- 15 A: Uh-huh (affirmative response).
- 16 Q: And your agreement requires ---
- 17 A: It all went through my lawyer, so...
- 18 Q: Pardon?
- 19 A: They all went through my lawyer.
- 20 Q: State's Exhibit Number Forty for identification which is
21 your testimony agreement, you remember this right?
- 22 A: Uh-huh (affirmative response).
- 23 Q: And you signed it?
- 24 A: Uh-huh (affirmative response).
- 25 Q: And your lawyer explained it to you?

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- 1 A: Yes, he did.
- 2 Q: And you know that it requires that you testify
3 consistently with prior statements made to the state; is that
4 right?
- 5 A: I don't really understand the question.
- 6 Q: All right. You know what consistently means?
- 7 A: No.
- 8 Q: I'm sorry.
- 9 A: That's okay.
- 10 Q: If you don't say -- if you don't -- so, you didn't ask
11 your lawyer what consistently meant?
- 12 A: At the time, no.
- 13 Q: Well, let me help you with that. If you for some reason
14 here today say something different than you told them before,
15 then this agreement is no good anymore.
- 16 A: No, my story is the same story as it's been since the
17 get-go, since the beginning
- 18 Q: But if it's not the same, you understand that you're in
19 trouble.
- 20 A: Yeah, I don't have nothing to hide.
- 21 Q: Okay. There were other people -- the bedroom that you
22 have identified as the back bedroom in the trailer where you
23 were arrested, there were other men that stayed in the
24 bedroom; isn't that true?
- 25 A: No.

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- 1 Q: Do you know an individual by the name of Roland Robinson?
- 2 A: Do you have a nickname maybe?
- 3 Q: Okay. Most people you know by a nickname; is that
- 4 correct?
- 5 A: Yeah, I don't ---
- 6 Q: Okay.
- 7 A: At the time that we were living there, there was no other
- 8 men staying in that back bedroom besides Alex.
- 9 Q: On some occasion -- when you moved into that house, there
- 10 was a man staying in that bedroom; is that right?
- 11 A: Not that I know of.
- 12 Q: And ---
- 13 A: I just known of his brother, Mr. Durant and that he was
- 14 staying in the master bedroom.
- 15 Q: And that's the brother that was paying the rent; is that
- 16 correct?
- 17 A: Him and Alex were going half, yes, sir, cause everything
- 18 was under Alex's name.
- 19 Q: All right. You're guessing that they were going half?
- 20 A: Yeah, cause there was times that he did pay bills over
- 21 there.
- 22 Q: Pardon?
- 23 A: There were times that he did pay bills over there.
- 24 Q: And times that he did not?
- 25 A: Yeah.

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1 Q: Sure, okay.

2 MR. HILLIARD: Excuse me just one second, Judge.

3 MR. RICHARDSON: I've seen all these pictures.

4 THE COURT: Let's move on, please.

5 MR. HILLIARD: Thank you, Judge.

6 DEFENDANT'S EXHIBITS FIVE THROUGH EIGHTEEN AND
7 TWENTY-ONE THROUGH TWENTY-FOUR MARKED FOR IDENTIFICATION

8 BY MR. HILLIARD:

9 Q: Defendant's Exhibit Number Six for identification, can
10 you tell me who that is?

11 A: I don't know her. She was one of Alex's friends but this
12 is [REDACTED] at the place in [REDACTED].

13 Q: Pardon?

14 A: I don't know her; she was one of Alex's friends.

15 Q: Okay.

16 A: But the picture was, the layout, it was at [REDACTED].

17 Q: And was this at the birthday party?

18 A: I don't think so. I don't think she was there. It
19 might've -- I don't -- like I said, I don't really know her, I
20 just known her because that's Alex's friend.

21 Q: But do you believe that this Number Six for
22 identification could have come out of your camera?

23 A: It probably could have. Alex loved taking pictures of
24 everything and everybody.

25 Q: Number Seven for identification, who is that?

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- 1 A: That's Michela.
- 2 Q: That's Michela, your friend Michela?
- 3 A: Uh-huh (affirmative response).
- 4 Q: Is that at the birthday party?
- 5 A: Yes, I think it was. Yeah, that was.
- 6 Q: And that's the toolbox.
- 7 A: Yeah, that's at [REDACTED].
- 8 Q: All right. The toolbox at [REDACTED] and Michela?
- 9 A: Uh-huh (affirmative response).
- 10 Q: And who else was in the picture, do you know the other
- 11 people?
- 12 A: Yeah, that's -- that was -- that was Durant's girlfriend
- 13 at the time.
- 14 Q: I'm sorry?
- 15 A: That was Durant's girlfriend at the time.
- 16 Q: And what's her name?
- 17 A: Tiffany.
- 18 Q: And do you know where Tiffany worked if at all?
- 19 A: No, I didn't.
- 20 Q: How about Michela, where did she work, do you know?
- 21 A: Michela wasn't working at the time.
- 22 Q: She wasn't dancing?
- 23 A: Not at that time, I don't think so, no.
- 24 Q: Is she a dancer?
- 25 A: Now?

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1 Q: Ever?

2 A: Yes, do you ---

3 MR. RICHARDSON: Your Honor, what's the relevance to
4 these questions whether or not she was dancing or whatever?

5 THE COURT: Not sure but I'll permit the question to get
6 on. I don't see the relevancy either but -- go ahead.

7 MR. HILLIARD: Thank you.

8 BY MR. HILLIARD:

9 Q: Was she a dancer ever?

10 A: Yeah, she had her times.

11 Q: She had her times?

12 A: Uh-huh (affirmative response).

13 Q: During that time?

14 A: I don't think so. I don't recall. No because that's
15 when we just got out she was settling in with her mom.

16 Q: Defendant's Exhibit Number Eight, do you recognize that
17 individual?

18 A: Like I said, that was Alex's friends.

19 Q: And on the left, who is -- do you know who that is?

20 A: No.

21 Q: Not at all?

22 A: No, I can't -- I can't even see her face.

23 Q: Okay. Is that photograph taken in the bedroom that
24 you've talked about?

25 A: Not the back bedroom, no, that was the middle bedroom.

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- 1 Q: The middle bedroom?
- 2 A: Yeah, there as a middle bedroom.
- 3 Q: All right. And did people stay in the middle bedroom on
4 occasion?
- 5 A: Only his little -- if you want to say his little
6 girlfriends, yeah. There was only females staying in that
7 room.
- 8 Q: Only females stayed in the little bedroom?
- 9 A: Yeah.
- 10 Q: All right. Defendant's Number Nine for identification,
11 do you know who that is?
- 12 A: Yeah, that's my nephew and Michela.
- 13 Q: Your nephew and Michela?
- 14 A: Yeah. That's her son.
- 15 Q: And Michela is your best friend?
- 16 A: Yeah.
- 17 Q: And ---
- 18 A: That was not even taken near the house. That was at her
19 mom's house.
- 20 Q: All right. And on the -- Michela has a tattoo on the
21 bottom right of her hip; is that right?
- 22 A: Yeah.
- 23 Q: And what does that tattoo say?
- 24 A: Red Monkey Entertainment.
- 25 Q: Red Monkey Entertainment?

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- 1 A: Yeah.
- 2 Q: And Red Monkey Entertainment, what is that?
- 3 A: That was -- if you want to say that was Alex's little
4 business that he was calling himself.
- 5 Q: Okay. And Red Monkey Entertainment, Alex's business was
6 in fact a recording business; is that correct, a recording
7 business. He made CDs for people?
- 8 A: Not really. He would try to make music but he never got
9 it on a -- he would have one single on a CD. He never sold
10 any of those CDs or anything. He would put them in the house
11 from five o'clock in the morning till the next night.
- 12 Q: All right. But Red Monkey Entertainment, he was making
13 CDs with one song on a CD; is that right?
- 14 A: He made -- his CD, he made I want to say maybe four songs
15 and it took him almost three months.
- 16 Q: So, he wasn't a particularly successful music person but
17 he was trying?
- 18 A: No, no not really.
- 19 Q: You don't feel like he was trying hard enough?
- 20 A: No because if that's what he wanted to do he would've
21 done it every day.
- 22 Q: All right. Can you identify the people in this
23 photograph?
- 24 A: That's Michela blowing her cake. That's me on with the
25 glasses and like I said, I don't know the one in the middle.

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- 1 Q: And on the cake it says -- what does it say on the cake?
- 2 A: That was a red monkey.
- 3 Q: Well, I mean it says Happy Birthday ---
- 4 A: Oh, yeah, it says, yeah, Happy Birthday Mickey.
- 5 Q: Happy Birthday Mickey, that's Michela's birthday party.
- 6 A: Yes.
- 7 Q: And then it has Red Monkey Entertainment and a red monkey
- 8 on the cake?
- 9 A: Yes.
- 10 Q: All right. And then in this photograph, Number Eleven
- 11 for identification, who is that?
- 12 A: Me.
- 13 Q: That's you?
- 14 A: Uh-huh (affirmative response).
- 15 Q: And you're pregnant at the birthday party?
- 16 A: Yes.
- 17 Q: Defendant's Exhibit Number Twelve ---
- 18 A: Uh-huh (affirmative response).
- 19 Q: Who are these folks?
- 20 A: That's Tiffany on the left, yeah.
- 21 Q: And on the right is?
- 22 A: Like I said, Alex's friend.
- 23 Q: Now Tiffany is your best friend?
- 24 A: No, Tiffany is not my best friend.
- 25 Q: Tiffany is not your best friend. Tiffany is the

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1 girlfriend of ---

2 A: That was Durant's.

3 Q: Okay. And the other girl you don't know?

4 A: No.

5 Q: All right. And so I'm guessing in Number Thirteen, you
6 don't know her?

7 A: Huh-uh (negative response).

8 Q: And Number Fourteen, who is that?

9 A: I don't know; I don't recall her name either. That was -
10 - they two were friends and he -- I mean, Alex is the one that
11 introduced everybody to them.

12 Q: Okay. So ---

13 A: Basically, they were just ---

14 Q: I'm sorry.

15 A: That's okay. If I would've went somewhere Alex insisted
16 that if they wanted to come basically, I had to take them. So
17 like I say if I went to the mall ---

18 Q: Right.

19 A: --- they would come because he insisted for them to come.

20 Q: They being who?

21 A: Her and the one that you just had -- no, the other one,
22 her.

23 Q: Okay. So, Defendant's Number Fourteen ---

24 A: Uh-huh (affirmative response).

25 Q: If you went to the mall, Alex would ---

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- 1 A: Insisted for me to take them and he would give them money
2 to go shopping and to get their nails done and whatever they
3 wanted.
- 4 Q: And he would give you money to do the same thing?
- 5 A: Yeah. I would mostly buy my son clothes because I'd just
6 found out what I had in September, so, yeah.
- 7 Q: Okay.
- 8 A: I'm just giving you an example.
- 9 Q: Sure, I understand. And Number Twelve, to go back to
10 that one, I was wrong, so Tiffany is ---
- 11 A: Was Durant's ex-girlfriend -- girlfriend at the time.
- 12 Q: Fish's girlfriend at the time?
- 13 A: Yes.
- 14 Q: But not his girlfriend now?
- 15 A: No.
- 16 Q: All right. And that's her friend ---
- 17 A: I don't think so. I think they went -- I think they both
18 went to North Myrtle Beach together but no.
- 19 Q: They're acting friendly in the picture.
- 20 A: Yeah. Basically like just to be nice to whoever came in
21 the house, you know, we would be nice and conversate and not
22 be rude and not conversate.
- 23 Q: All right. And in Number Fifteen there's a baby?
- 24 A: Uh-huh (affirmative response).
- 25 Q: What baby is that?

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- 1 A: That's Michela's son.
- 2 Q: That's Michela -- and Michela is your best friend?
- 3 A: Yes.
- 4 Q: Okay. Thank you. So, that's Michela's baby and where is
- 5 that?
- 6 A: That was -- that was at her mom's house if I'm not
- 7 mistaken.
- 8 Q: All right.
- 9 A: Yeah, because Johnny was about three months old, four
- 10 months old.
- 11 Q: And then Eleven is Michela's baby again. Where is that?
- 12 A: That's at Michela's mom's house.
- 13 Q: And Seventeen, who are those folks?
- 14 A: That's Tiffany and, like I said I didn't know her name at
- 15 the time or I don't recall her name, sorry.
- 16 Q: And I think Eighteen is a duplicate of what the
- 17 prosecutor showed you.
- 18 A: Yeah.
- 19 Q: Who is that?
- 20 A: That's her friend. I don't recall her name.
- 21 Q: You don't know her name?
- 22 A: But it's the layout of Stoneybrook, yeah.
- 23 Q: These people would spend the night at [REDACTED] on
- 24 occasion?
- 25 A: The only people that would like stay there stay there for

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1 the four weeks that I had to stay there because I had nowhere
2 to go was just me, Alex when he wanted to stay, Tiffany and
3 her boyfriend at the time, Durant.

4 Q: You had nowhere to go?

5 A: No.

6 Q: How about your mom?

7 A: I -- at the time, no, it was a rocky situation with my
8 family.

9 Q: It was a rocky situation with your family?

10 A: Yeah, my father didn't accept the fact that I was
11 pregnant. I was young and he wanted me to go to school. It's
12 a -- you know...

13 Q: Back to Roland Robinson, Sheik, does that help you?

14 A: Yeah.

15 Q: All right. So, was Sheik living there when you came to

16 [REDACTED]

17 A: No.

18 Q: Do you recall Sheik staying in that back bedroom?

19 A: Sheik is the one with the dreads, right?

20 Q: Yeah.

21 A: Before me and Alex moved in, yes, but when I moved in at
22 [REDACTED] there was no clothing whatsoever and the room was
23 empty basically besides the bed.

24 Q: And do you know Sheik coming to the hose -- or when you
25 would come to the house, were there times when Sheik was in

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- 1 the bedroom and he would move to the front room?
- 2 A: Before I moved in or after?
- 3 Q: Well, when you ---
- 4 A: Before, yeah, because we had our own place. But after it
- 5 was clear that he was not allowed in that bedroom.
- 6 Q: When you were there?
- 7 A: Yeah.
- 8 Q: Right. But I mean, when you say you moved in, sort of
- 9 the way you're describing this thing, you guys were living in
- 10 a lot of different places?
- 11 A: Yeah, he moved me around.
- 12 Q: And he moved him around?
- 13 A: He went where he wanted to go; I had no say in that.
- 14 Q: Right. All right. Defendant's Number Twenty-one, those
- 15 folks, do you know them?
- 16 A: Yeah, that's me on the left.
- 17 Q: And who is on the right?
- 18 A: Like I said, I don't recall her name.
- 19 Q: Y'all seem happy together there in the car?
- 20 A: Like I said, I'm not gonna sit here -- just because he
- 21 brought them in and I was his baby momma at the time, I was
- 22 not gonna be rude because I'm not like that. I'm not gonna be
- 23 rude to somebody that just walked in. And like I said if I --
- 24 when I went to the mall it was I have to take them.
- 25 Q: Okay. And that's just a photograph ---

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- 1 A: That is just a photograph of me being nice.
- 2 Q: All right. Do you know where she was working at the
- 3 time?
- 4 A: No.
- 5 Q: How about Defendant's Twenty-two?
- 6 A: Me and Tiffany.
- 7 Q: You and Tiffany, okay.
- 8 A: Uh-huh (affirmative response).
- 9 Q: Defendant's Number Twenty-three.
- 10 A: Uh-huh (affirmative response).
- 11 Q: Who is that?
- 12 A: That's Michela.
- 13 Q: Twenty-four?
- 14 A: Me.
- 15 Q: And Number Five.
- 16 A: That was also a mutual friend.
- 17 Q: Pardon?
- 18 A: That was also a mutual friend from Alex, like I've known
- 19 her through Alex.
- 20 Q: But do you know her name?
- 21 A: They call her Kelly.
- 22 Q: Kelly?
- 23 A: Uh-huh (affirmative response).
- 24 Q: But you would agree with me that these are ---
- 25 A: Yeah, we were pregnant at the same time.

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- 1 Q: You were pregnant at the same time?
- 2 A: Her son is two weeks older than mine.
- 3 Q: And you knew when her son was born?
- 4 A: January -- January something, her -- yeah, they're two
- 5 weeks apart.
- 6 Q: And where was that photo taken?
- 7 A: Stoneybrook.
- 8 Q: Where at [REDACTED]?
- 9 A: May I see it?
- 10 Q: Sure.
- 11 A: Thank you. That was the back bedroom, there was a door
- 12 -- the doorway. The bathroom was right there and then the
- 13 back bedroom was right here.
- 14 Q: Okay. So, this is the back bedroom of [REDACTED]
- 15 A: Uh-huh (affirmative response).
- 16 Q: All right. And that's Number Five and you and this young
- 17 lady's child were born -- children were born ---
- 18 A: Two weeks apart.
- 19 Q: Do you know where she worked?
- 20 A: No.
- 21 Q: Okay. You were talking about Alex and his working --
- 22 give me just a second, a little housekeeping. And do you know
- 23 what and all you're charged with right now?
- 24 A: Right now?
- 25 Q: Right.

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1 A: As we speak? No. I'm kind of embarrassed to know.

2 Q: You are embarrassed to know what you're charged with; is
3 that what you're saying?

4 A: Yes, it's -- yes.

5 Q: And help me understand what you mean by that. I mean it
6 embarrasses you to know how many things you're charged with or

7 ---

8 A: Yeah, I'm ashamed of it.

9 Q: What about that makes you ashamed?

10 A: What about it?

11 Q: Uh-huh (affirmative response).

12 A: Everything. That's like you're -- okay, I'm gonna give
13 you an example. You're eighteen, you're pregnant, you came
14 from a family that's very respected, from a very small Jewish
15 community in Myrtle Beach, went to Jewish school half my life,
16 talk to all the Jewish people around here and for you to open
17 the news at 6:30 and see your face on there is embarrassing,
18 wouldn't you think?

19 Q: And I'm guessing that none of the folks from the Jewish
20 community would've been in the audience at the strip club when
21 you were dancing; is that probably unlikely?

22 A: No, I had to take care of my son. It's not like Alex was
23 helping me take care of my son.

24 Q: Well, your son ---

25 A: I had no choice but to dance to take care of my son to

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1 put clothes on my son, to feed my son. Yeah, I had my parents
2 helping me but as a twenty -- at the time I was nineteen,
3 about to be twenty-one asking your family for money because,
4 to help you support your child is not right. You made him,
5 I'm gonna take care of him. That is my child. And yeah I did
6 some mistakes in my life, I understood that but he is the only
7 best thing I have. So I'm gonna do what I have to do to take
8 care of my son. It's not like his father was helping me do
9 that.

10 Q: So what ---

11 THE COURT: Counsel, I want you to move on with your
12 cross examination now. You're entitled to wide latitude but
13 you are spending a lot of time on some pictures here -- let's
14 move on. In fairness to this witness, she's been on the
15 witness stand her for about an hour and I would respectfully
16 request that given your right wide cross examination, move on
17 with it, please.

18 MR. HILLIARD: Yes, sir. Well, Judge, I'm happy for the
19 witness to take a break but this is the ---

20 THE COURT: No, sir. You go on with your cross
21 examination but ---

22 MR. HILLIARD: Yes, sir.

23 THE COURT: --- but you spent too much time on those
24 pictures in my view but you -- move on.

25 MR. HILLIARD: Thank you, Judge.

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1 BY MR. HILLIARD:

2 Q: So, what you're saying is you dance because you need to
3 pay for your child?

4 A: Yes.

5 Q: Were you pregnant when you were dancing?

6 A: No.

7 Q: Were you dancing after your child was born?

8 A: I was dancing -- I started dancing when my son was about
9 almost a year old.

10 Q: As to Alex and his working, he worked at Friendly's,
11 right?

12 A: Yeah, when he was nineteen.

13 Q: Okay. And he worked at Wild Wing?

14 A: Like again he was in high school; that was before my
15 time.

16 Q: And he worked at -- he was working at the recording
17 studio business; is that right?

18 A: Not really.

19 Q: Okay. Did he buy and sale used cars?

20 A: If you want to say him driving them all the time and
21 trying to sell them -- no.

22 Q: Okay. Well, at some point in time, you liked him, right?

23 A: Yeah, he's my son's father.

24 Q: Well, and that's how he got to be your son's father was
25 you liked him?

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- 1 A: Okay, yeah.
- 2 Q: All right. Did you have storage at Emerson (spelled
3 phonetically) Storage?
- 4 A: Yes, Alex put that in my name.
- 5 Q: Pardon?
- 6 A: Yes. Alex put that on my name.
- 7 Q: He put that on your name?
- 8 A: Yeah. Well, I had to go sign for it. I really had no
9 choice but yeah, he paid for it.
- 10 Q: He paid for it?
- 11 A: Yeah.
- 12 Q: Okay. And he made you do that?
- 13 A: Yeah, if you want to say that, yeah. Like I said, I had
14 no choice to do anything in this relationship -- in that
15 relationship.
- 16 Q: He controlled everything you did?
- 17 A: Yes. Like I said, I was young so yes I didn't know no
18 better.
- 19 Q: All right. And did he have storage in his name?
- 20 A: Yes.
- 21 Q: And the address was ---
- 22 A: It was somewhere in Burcale.
- 23 Q: [REDACTED]?
- 24 A: No, that was the house.
- 25 Q: Pardon?

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- 1 A: That's the house.
- 2 Q: Right but I mean that's the address where the bills came
3 to for the storage?
- 4 A: Oh, yeah.
- 5 Q: For you and for him?
- 6 A: Yeah.
- 7 Q: And when they did the search warrant at your house with
8 your best friend and the Ecstasy, do you recognize that money
9 that they found at the house?
- 10 A: The singles?
- 11 Q: Yes.
- 12 A: Yeah, they're singles.
- 13 Q: Right. And there -- it's almost all singles?
- 14 A: Okay, uh-huh (affirmative response).
- 15 Q: And you and your friend got those singles how?
- 16 A: I was definitely pregnant and -- I'm thinking amateur
17 hour.
- 18 Q: Dancing pregnant at amateur hour?
- 19 A: No, no, no, no, no. I was not doing it -- that was not my
20 money, I would have not danced when I was pregnant.
- 21 Q: All right. Alex Robinson was not around when you were
22 arrested with your best friend; is that correct?
- 23 A: No, he was nowhere to be found, once again.
- 24 Q: Right. And once again Alex Robinson was not around when
25 you were arrested in this case that you're testifying about

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GIL YAKOEL-GARBY - CROSS BY MR. HILLIARD

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1 today?

2 A: No, he was never around.

3 Q: Right. And you don't intend to go to jail connected to
4 this, right?

5 A: No.

6 Q: Because you've got nothing to do with it, right?

7 A: I don't got nothing to do with it.

8 Q: And you intend for the solicitor to dismiss the
9 trafficking case against you, right?

10 A: What do you mean?

11 Q: I mean you intend for this case against you to be
12 dismissed?

13 A: I mean, if it happens, yeah.

14 Q: All right. And even though Alex is not with you now ---

15 A: No.

16 Q: He pays child support, right?

17 A: Yeah, right, when he wants to.

18 Q: He pays it through the Clerk of Court, doesn't he?

19 A: Yeah, he -- there was times that he hasn't paid it for
20 months. I haven't got a child support check in so long. Last
21 time I got one was almost what, two months ago.

22 Q: Almost how many months ago?

23 A: Almost two months ago.

24 Q: Have you been down to the Clerk of Court to check and
25 see?

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GIL YAKOEL-GARBY - REDIRECT BY MR. RICHARDSON

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- 1 A: No, I haven't.
- 2 Q: Okay. And he provided you with a place to live, right?
- 3 A: When, when I was pregnant or after my son was born?
- 4 Q: The times that you've been talking about when he moved
- 5 you from apartment to house to trailer, he was providing you
- 6 with a place to live at those times?
- 7 A: Yeah, you can say that.
- 8 Q: And he provided you with a car?
- 9 A: Yeah, because -- who was gonna take me; he wasn't gonna
- 10 take me. So, yeah, he -- I asked him for a car.
- 11 Q: And you got a car?
- 12 A: Yeah. I mean, how was I supposed to get to the doctors.
- 13 Q: And he put you up at his mother's house?
- 14 A: Yeah, and then not even three weeks later I got kicked
- 15 out.
- 16 Q: And whatever else happens, you don't intend to go to jail
- 17 about this?
- 18 A: No.
- 19 Q: And you don't know any about drugs being in that bedroom.
- 20 A: No, I didn't know.
- 21 Q: Thank you, ma'am. That's all I have.
- 22 THE COURT: All right. Do you have any redirect?
- 23 MR. RICHARDSON: Just very briefly.
- 24 REDIRECT EXAMINATION OF GIL YAKOEL-GARBY BY MR. RICHARDSON:
- 25 Q: You said after your son was born ---

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- 1 A: Uh-huh (affirmative response).
- 2 Q: --- you went to work dancing?
- 3 A: Yes.
- 4 Q: You talked -- Mr. Hilliard asked you about child support,
- 5 when was the first time you got child support?
- 6 A: He was late on that one too. I applied for child support
- 7 ---
- 8 Q: How old was the baby?
- 9 A: I want to say almost two.
- 10 Q: When did the Defendant cease to support you?
- 11 A: When he stopped?
- 12 Q: Yes.
- 13 A: He -- basically, after we got arrested at [REDACTED]
- 14 there was nothing.
- 15 Q: So, you got out of jail and he wrote you off?
- 16 A: Basically. I mean he might have wrote me letters saying
- 17 that he loved me and that he missed me and hold my head up,
- 18 Daddy is soon coming home but no.
- 19 Q: Where did you move after you got out?
- 20 A: I moved with my mom.
- 21 Q: Mr. Hilliard asked you about Red Monkey Entertainment and
- 22 you said it wasn't very successful?
- 23 A: No. It was just his brand.
- 24 Q: Was there anything the Defendant was successful at?
- 25 A: Selling drugs.

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GIL YAKOEL-GARBY - REDIRECT BY MR. RICHARDSON

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1 Q: Okay. And you said you didn't pay attention to what
2 happened on Mr. Durant's side?

3 A: No, I didn't and that was none of my business; it was not
4 my concern.

5 Q: Since you were charged in this incident, have you been
6 charged since?

7 A: No. I've been in school, taking care of my child, trying
8 to find a job that won't look in my background which is very
9 difficult to find. I've been working in my father's store but
10 my main concern is my son and my school right now.

11 Q: And you haven't let the Defendant move you around since
12 ---

13 A: No, he don't have no contacts with my son whatsoever.

14 Q: When you said he's the best thing I had, you're talking
15 about your son?

16 A: Yes, my son.

17 MR. RICHARDSON: Thank you, Your Honor.

18 THE COURT: All right. You may come down. Thank you.

19 (REPORTER'S NOTE: Witness leaves the witness stand.)

20 MR. HILLIARD: No, sir, just moving my chair back, Judge

21 THE COURT: Sir?

22 MR. HILLIARD: I said I was just moving my chair back.

23 THE COURT: Okay. Thank you.

24 All right. Call your next witness.

25 MR. RICHARDSON: The State would call Detective Ashley

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DETECTIVE ASHLEY HARDEE - DIRECT BY MR. RICHARDSON

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1 Hardee.

2 MR. RICHARDSON: May Ms. Garby be excused?

3 THE COURT: She may -- do you have an objection to her
4 being excused?

5 MR. HILLIARD: Not a bit, Judge.

6 THE COURT: All right, sir. She may be -- she may remain
7 the courtroom if she chooses to.

8 DETECTIVE ASHLEY HARDEE, HAVING BEEN
9 SWORN, TESTIFIED AS FOLLOWS:

10 CLERK: State your full name and spell your last name.

11 DETECTIVE HARDEE: Detective Ashley Hardee, last name
12 spelled H-A-R-D-E-E.

13 DIRECT EXAMINATION OF DETECTIVE ASHLEY HARDEE BY MR.

14 RICHARDSON:

15 Q: Detective Hardee, can you please tell us where you are
16 employed, in what capacity?

17 A: I'm employed with the Horry County Police Department
18 assigned to the Special Operations Unit, narcotics and vice.

19 Q: Okay. And I think we all know what the narcotics
20 division does now?

21 A: Yes, sir.

22 Q: Were you serving in that same position back in September
23 of 2008?

24 A: Yes, I was.

25 Q: Did you have the opportunity to help execute a search

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- 1 warrant at, I believe it was [REDACTED] ?
- 2 A: Yes, I was.
- 3 Q: And where is that address located again?
- 4 A: Behind the Cocola plant off of 501 headed beach bound
- 5 from Conway from the steam plant.
- 6 Q: Okay. And that's here in Horry County?
- 7 A: Yes, sir.
- 8 Q: Do you recall what time of day y'all served the search
- 9 warrant?
- 10 A: I remember it was early morning. I'm not positive on
- 11 exact time, somewhere from the six to eight o'clock in the
- 12 morning range. I know it was early.
- 13 Q: Prior to serving that search warrant, was there anything
- 14 that the narcotics -- the team did in preparation.
- 15 A: As far as that morning?
- 16 Q: Yes.
- 17 A: We just got our brief and -- we met and got our briefing
- 18 on what operation we had to do, got our assignments and then
- 19 we moved out to the location to execute the search warrant.
- 20 Q: Okay. And was there a plan in place?
- 21 A: Yes.
- 22 Q: Part of the plan -- what kind of things did the plan
- 23 detail?
- 24 A: Our operation plan, who was gonna be breeching ---
- 25 Q: By breeching you mean?

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1 A: Making entry into the residence by the safest route. Who
2 was gonna be flooding what areas of the house. We had -- like
3 a breech person, just different assignments that people are
4 assigned at that particular time to get in the residence.

5 Q: And by flooding the house -- I don't know that anybody's
6 been on a SWAT team before. What do you mean by flooding the
7 house?

8 A: We do room clearing. It was a special tactic of doing
9 that to ensure our safety throughout the residence to get it
10 secured.

11 Q: Now, y'all hit the house early in the morning, correct?

12 A: Yes.

13 Q: Take us through that. What were your duties?

14 A: We came up in our vehicle that we arrived in, exited
15 through the back, came over to the -- we were looking at the
16 residence from [REDACTED], the entrance to the left-
17 hand side which would've been the front of the house.

18 MR. RICHARDSON: Tell you what, Your Honor, if could have
19 Detective Hardee just come down from the stand and we'll get
20 him to sketch that and address that if that's okay.

21 THE COURT: Come down.

22 BY MR. RICHARDSON:

23 Q: We've all been hearing about it ---

24 THE COURT: Counsel, you may move around ---

25 MR. HILLIARD: Thank you, Judge.

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1 Q: Detective Hardee, do you remember what the mobile home
2 looked like?

3 A: Vaguely, yes, sir. I remember what my responsibilities
4 were.

5 Q: Okay. Let's make [REDACTED] -- my writing is
6 atrocious but if you could sketch out -- first show us the
7 shape of the mobile home, what direction.

8 A: Okay. You've got [REDACTED] down here, the mobile
9 home sits perpendicular, it's a single-wide mobile home, here
10 and this would've been [REDACTED] the mobile home here.

11 Q: And what side was the door y'all entered?

12 A: All right. The door was gonna be here, we were parked
13 here and that's where I exited the vehicle at.

14 Q: And when you entered -- can you tell us where the
15 bedrooms were located?

16 A: Okay. The only bedroom that I can attest to is the
17 bedroom that I went in that I cleared and that would've been
18 the back bedroom here.

19 Q: And that was located ---

20 A: Right here at the very end of the mobile home.

21 Q: Very end of the mobile home?

22 A: Yes, sir.

23 Q: All right. So, did you see any of the other bedrooms?

24 A: Just vaguely out of my peripheral vision, this end of the
25 house I never had any responsibilities for any part of that

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- 1 other part of the mobile home.
- 2 Q: Okay. This end of the house ---
- 3 MR. HILLIARD: If the solicitor could just stand over
- 4 just a little bit, I'm trying to find a place where I can see.
- 5 That's good right here. Okay. Thank you, Judge.
- 6 Q: Were there any other bedrooms adjacent to that back
- 7 bedroom?
- 8 A: I believe there was like maybe a smaller room or
- 9 something right here. Like I said, I don't -- I didn't clear
- 10 that room and I wasn't involved in searching that room, so I'm
- 11 not -- again, that's ---
- 12 Q: So, you're saying your area, as you entered the door was
- 13 to the right?
- 14 A: Yes.
- 15 Q: Now, when you went down to the right, your detail was the
- 16 furthest room, I guess?
- 17 A: Yes, the furthest room.
- 18 Q: And so where did you end up?
- 19 A: I ended up in the last bedroom.
- 20 Q: How big was that bedroom?
- 21 A: Not very big at all, like a small, a standard, I'd say
- 22 single-wide mobile home spare bedroom or second bedroom; it's
- 23 not very big.
- 24 Q: Ten-by-ten?
- 25 A: Pretty close to it.

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1 Q: Okay. Now, there was a window in the back bedroom?

2 A: Yes, there as a window -- remember -- I do know for a
3 fact that the window was here. I don't know about any other
4 windows that may've been but I specifically remember this
5 because of our point of entry into the mobile home.

6 Q: Were there any vehicles located at this mobile home

7 A: If I remember correctly, there was a car or something
8 maybe parked like right in this area here at the mobile home.
9 I know it was on the very end of the mobile home.

10 Q: That was the only vehicle there?

11 A: That I remember, yes.

12 Q: Now you come in and you end up in this -- this is what
13 we've heard described as the back bedroom?

14 A: Yes.

15 Q: Okay. Tell us what you find when you go in the back
16 bedroom?

17 A: Upon exiting our vehicle that we came up in, as I said,
18 we -- I came in and came to the point of entry into the
19 residence, I broke right, traveled down to the last -- people
20 were dumping in rooms here so -- my responsibility and I
21 believe another detective, we go in two per room, another
22 detective went in with me. I found a bedroom down here and
23 found a female lying in the bed.

24 Q: Okay. Did you identify that female?

25 A: At that particular time, no, I didn't know who she was at

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1 that particular time, I just knew there was somebody laying in
2 the bed. Told her to show me her hands and we got her out of
3 the bed and then I started recognizing ---
4 Q: Did there come a time when you did recognize that female?
5 A: Yes.
6 Q: And when was that?
7 A: Once we got her up and she was pregnant, I had dealt with
8 her before and I recognized her by face at that particular
9 time. I don't think I could call her by name but I remembered
10 I had just, you know, recently dealt with her.
11 Q: About a month prior?
12 A: Yes.
13 Q: And where was that?
14 A: That was behind the Tanger Outlets, I'm not sure what the
15 address was.
16 Q: Okay. Now, you come into this bedroom to find a female
17 you recognize.
18 A: Yes.
19 Q: After you get her up, what do you do with her?
20 A: We were gonna handcuff her or secure her and make sure
21 she didn't have any weapons on her. Then we found out she was
22 pregnant, so we kind of worked around that because we didn't
23 want to injure the baby in any way, we just wanted to get her
24 out of the room to get her away from any weapons before we
25 could search.

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1 Q: Okay and ---

2 THE COURT: Can he now take the witness stand?

3 Q: Yes, sir; yes, sir. Go ahead back. You've been in the
4 courtroom Detective Hardee, you just saw Ms. Yakoel testify,
5 do you recognize Ms. Yakoel or did you recognize Ms. Yakoel?

6 A: Yes, I did.

7 Q: And how did you recognize her?

8 A: From the prior residence, the search warrant that we went
9 on and also the one before that.

10 Q: Okay. So, she was the one you found in this bedroom?

11 A: Yes.

12 Q: Now, you get her out of the bedroom, who takes her out?

13 A: I don't remember who took her out. Like I said, another
14 detective was with me, I know a female -- we had a female
15 detective with us and any time we have a female, we normally
16 have her secure a female because we can't really search a
17 female, so we called her and I believe it was Detective
18 Phillips.

19 Q: Okay. So, after you deliver now Ms. Garby, Gil Yakoel-
20 Garby, to other agents, what do you do?

21 A: We go back to -- you would've been at the doorway of the
22 bedroom that Detective Phillips had met with me and the other
23 detective that was there and we pass her off to take her to an
24 area in the living room that had been cleared and we stood by
25 in the room where we were gonna search.

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1 Q: Okay. Did there come a time when you did search that
2 back bedroom?

3 A: Yes, I did.

4 Q: Take us through that search.

5 A: It had just started. We broke it up into two parts, we
6 normally do and start in the area of responsibility in a
7 corner, moving around in the room. The particular part that I
8 started was a closet, I had just started ---

9 Q: Okay.

10 A: --- reached up in the top of the closet, that was one
11 main thing, money and drugs are hidden in clothes, I pulled
12 down some clothes that were in the top of the closet, I heard
13 a big thump at my feet. I didn't know what it was. I looked
14 down and it was a clear plastic bag with what looked like an
15 off-white powder filled pretty heavy.

16 Q: Now, let's see, that ---

17 THE COURT: If you're through the diagram, please remove
18 it so it will be out of the way.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Thank you.

21 BY MR. RICHARDSON:

22 Q: That closet, was it on the witness side of that back
23 bedroom or where was it in relation to the window?

24 A: It was opposite of the window.

25 Q: Okay. As you come in the door?

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1 A: Yes.

2 Q: And that bag that you saw drop, what if anything did you
3 do at that point?

4 A: Our normal responsibilities if we do find something,
5 notify the case agent, let them know we found something so it
6 can be photographed and properly documented where it's coming
7 from and that's what I did, I notified Detective Donald.

8 Q: So, Detective Donald is the case agent in this particular
9 incident?

10 A: Yes.

11 Q: After you notified them, what if anything happened?

12 A: If I recall correctly, I believe Detective Donald had
13 come into the room and he was notating where it had came from
14 and we were taking photos of it.

15 Q: Let me show you what's been marked and entered into
16 evidence as State's Nineteen and Twenty. If you could tell us
17 what we see in State's Nineteen if you recognize it.

18 A: That looks like what fell into my feet. It's like a
19 cellophane wrapper and maybe a white powder and a pair of
20 jeans.

21 Q: Now, is that the closet?

22 A: Yes.

23 Q: And how about State's Number Twenty?

24 A: It looks like a bag of green leafy substance and some
25 clothes.

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1 Q: Now, the pants that you grabbed and dope fell out of, why
2 kind of clothes were they?

3 A: They seemed to be men's jeans, they were pretty -- kind
4 of -- I mean, they were definitely men's jeans, not women's
5 jeans.

6 Q: Okay. So, they're not one, two, three, four, five, six,
7 seven, eights?

8 A: No not at all?

9 Q: Thirty-two, thirty-four?

10 A: Not at all.

11 Q: Did you look at the pants at any time?

12 A: Other than when they were photographed and I think once I
13 had the jeans in my hand is when they actually fell so they
14 kind of -- took notice or what was on my feet and they may've
15 -- I may've grabbed the rest -- as I was pulling them down
16 when the thump came, that might've been why they were on the
17 ground in front of the closet.

18 Q: And you notified then Detective Donald, now Sergeant
19 Donald, of the -- he came in, he photographed?

20 A: I believe so.

21 Q: Prior to him coming in to photograph, did anybody touch
22 manipulate the bag in any way?

23 A: It fell on my feet. I'm pretty sure that Detective
24 Donald was called immediately after that and then he came into
25 the room. That's normally our protocol for what we do when we

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- 1 find something.
- 2 Q: How long have you been working narcotics work?
- 3 A: Since 2006.
- 4 Q: In the course of your working narcotics, have you bought
- 5 and sold cocaine, powder cocaine?
- 6 A: Yes, I have.
- 7 Q: Have you previously bought and sold in ounces?
- 8 A: Yes, I have.
- 9 Q: Are you familiar with the price for an ounce of cocaine?
- 10 A: Round about.
- 11 Q: And let's say 109 grams of cocaine, how many ounces is
- 12 that?
- 13 A: 109, we've got 28 grams per ounce, 109, you've got
- 14 somewhere around probably four ounces.
- 15 Q: So, 109 grams of powder cocaine, how much would that be
- 16 worth, street value?
- 17 A: 409?
- 18 Q: 109.
- 19 A: 109, you're looking to somewhere around 1,000 to 1100 per
- 20 ounce, so I'd say 44 to \$4500 depending on what it is.
- 21 Q: 4,000 to \$4,500?
- 22 A: Yes.
- 23 Q: For just over a hundred grams of powder cocaine?
- 24 A: Yes, sir.
- 25 Q: And the camera, did you find that camera in the window?

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1 A: I don't believe I did, no, as I said as I started
2 searching I found the narcotics and I had another agent in the
3 room with me that probably found that, that was his side of
4 the room.

5 Q: As I understand it, you found the narcotics and you
6 alerted Detective Donald ---

7 A: Yes, sir.

8 Q: --- now Sergeant Donald?

9 A: Yes, I did.

10 Q: And he took possession of those?

11 A: Yes.

12 Q: And they came out of a male pair of pants?

13 A: Yes.

14 Q: Thank you, Detective. Answer any question the Defendant
15 may have for you.

16 THE COURT: Counsel?

17 MR. HILLIARD: Thank you, Judge.

18 CROSS EXAMINATION OF DETECTIVE ASHLEY HARDEE BY MR. HILLIARD:

19 Q: The price that you're quoting for the cocaine is
20 wholesale, retail ---

21 A: Just in my past experience with what I normally purchased
22 it for. I don't know of a wholesale/retail thing you have
23 like Walmart or anything.

24 Q: Okay. All right. So, when you buy cocaine by the ounce,
25 it's cheaper than if you buy it by the gram?

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- 1 A: Say that again now.
- 2 Q: Okay. If you buy an ounce of cocaine, it costs less than
3 if you buy 28 grams one gram at a time?
- 4 A: I would agree, yes, sir.
- 5 Q: I mean, there isn't ---
- 6 A: It depends on the person, yes, sir.
- 7 Q: Well, but that's the reason -- that's the way markup
8 works, right?
- 9 A: Yeah.
- 10 Q: Okay. All right. And the people who buy cocaine are not
11 honest folks?
- 12 A: I don't know if they are. I couldn't say that about
13 every person, I'm sure.
- 14 Q: I mean, you ordinarily -- well, let me ask the question
15 this way. Every time you find somebody buying cocaine you
16 arrest them, right?
- 17 A: Yes.
- 18 Q: So, people who buy cocaine are not honest folks, they're
19 breaking the law.
- 20 A: I guess you can say that.
- 21 Q: Right. And it would make sense if you were a cocaine
22 dealer to not keep your little tiny bags of cocaine that you
23 sell to the people who buy cocaine in the same spot as you
24 kept the big bag of cocaine? That wouldn't make sense, right?
- 25 A: I guess you can say that.

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1 Q: Okay. Now, when you were searching the closet, you say
2 that people keep drugs a lot of times in closets; is that
3 right?

4 A: I said in clothes, yes, sir.

5 Q: In clothes, okay. And they keep clothes in closets?

6 A: Yes, sir.

7 Q: And so you went to the closet as a first place to search
8 for the drugs?

9 A: Yes, I did.

10 Q: And the first -- was it -- was the top of the closet, the
11 first place that you searched?

12 A: I'm pretty sure that's the first thing I started with
13 because everything coming from the top, so I didn't get it
14 mixed up with anything on the bottom.

15 Q: Okay.

16 A: It was just an easier way to do it.

17 Q: So, you start from here and go to there?

18 A: Yes.

19 Q: And when you started at the top, what was it that you
20 did?

21 A: Grabbed a pair of pants that were on the top shelf to
22 pull them down.

23 Q: All right, sir. And pulled them down?

24 A: Yes, sir.

25 Q: And what happened?

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1 A: The thump that happened and I saw a fall from the top
2 that landed on my feet.

3 Q: Okay. And you put the pants back up on the top of the
4 closet?

5 A: I believe I pulled them -- as I was pulling them down is
6 when it -- is when the thump came down and landed on my feet
7 so I probably would pull the pants down.

8 Q: Okay. So, you pulled the pants down and when you were
9 making the gesture and the prosecutor was asking you the
10 questions, you held it up like this, I mean, when you pulled
11 the pants down, did you hold them up like that to see kind of
12 ---

13 A: Well, I don't know if I held them up. I mean, I was in
14 the process of pulling them down from the top of the closet
15 when the thump happened at my feet. So I probably did pull
16 them the rest of the way down as I was pulling them off the
17 shelf.

18 Q: Okay. And then there was a thump at your feet?

19 A: Yes.

20 Q: And what did you do with the pants?

21 A: I probably was still maybe holding one -- in one of my
22 hands and dropped them on the ground, I can't recall, I'm not
23 sure.

24 Q: Okay. And then you called for the case agent?

25 A: Yes.

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- 1 Q: And said, there's dope on the floor.
- 2 A: Right.
- 3 Q: And he came over there and took some pictures?
- 4 A: Right.
- 5 Q: Right. Did you pick up the dope and put the pants under
- 6 it and put the dope on top of it?
- 7 A: I can't recall. I know it fell on my feet and I don't
- 8 know if maybe the pants fell at the same time; I can't recall
- 9 now.
- 10 Q: All right. But I mean it wouldn't make any sense,
- 11 really, for you to pick up the dope and put the pants under it
- 12 and put the dope back on top of it and then call for the case
- 13 agent, that wouldn't make any sense, would it?
- 14 A: I don't believe so.
- 15 Q: Right. And the reason you called for the case agent to
- 16 come immediately is so he can get a photographic record of
- 17 what it is that's happening with the drugs when you see it?
- 18 A: That would be correct.
- 19 Q: All right. In either of the photographs that you got
- 20 right; is that right? I'm sorry. These are State's Twenty
- 21 and State's Nineteen. These are the photographs that you
- 22 have.
- 23 A: Yes, sir.
- 24 Q: And those are the only photographs that you're aware of;
- 25 is that right?

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- 1 A: I didn't take them so I'm not sure. I haven't seen all
2 the photographs.
- 3 Q: You don't know?
- 4 A: I don't know.
- 5 Q: All right, sir. And is the white bright looking thing in
6 the middle of Nineteen, do you know what that is?
- 7 A: By looking at that picture, no, sir.
- 8 Q: You don't know what that is?
- 9 A: (Indicates negatively.)
- 10 Q: All right, sir. And the Twenty, State's Number Twenty,
11 what -- the thing that you can identify in that other than the
12 pants is ---
- 13 A: A green leafy substance in a clear plastic baggie.
- 14 Q: And so that the clear, the green leafy substance that
15 would be suspected marijuana?
- 16 A: I would say so, yes, sir.
- 17 Q: Right. And can you tell from that is there anything else
18 in that bag?
- 19 A: In which one?
- 20 Q: In the bag, the green leafy substance bag, can you tell?
- 21 A: Not by looking at that; no, sir, I can't.
- 22 Q: Did you ever make any later determination about whether
23 anything else was in that bag or not?
- 24 A: I didn't go in that bag, sir, I'm not the case agent so I
25 wouldn't be able to go in it.

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- 1 Q: You just call him over and said, hey, look at this.
- 2 A: Yeah, I can't open the bag because I'm not the one that's
3 handling the evidence.
- 4 Q: All right, sir. And you don't know what's in Number
5 Nineteen?
- 6 A: Not by looking at that picture, no, sir.
- 7 Q: All right, sir. Well, by looking at both pictures, can
8 you say that Nineteen -- what's -- the shiny thing in Nineteen
9 in the middle of the picture and the suspected green leafy
10 material in Twenty, is that the same thing or something
11 different?
- 12 A: You're asking is this the same thing as this?
- 13 Q: Right, is this shiny thing right here ---
- 14 A: I would say not.
- 15 Q: They're not the same thing?
- 16 A: No, sir.
- 17 Q: All right, sir. Did you search the closet anymore?
- 18 A: I feel sure, yes, sir, I did. After that was taken care
19 of, I'm sure we did. We wouldn't have a reason not to.
20 Normally, when we find illegal narcotics in a closet, we
21 continue to search because there's gonna be more if -- in our
22 past experience, if we found some, we're gonna find more.
- 23 Q: And you really searched the whole house?
- 24 A: I didn't; no, sir.
- 25 Q: Well, I'm sorry. The whole house was searched?

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1 A: I can't attest to that. I did the room that I was in.

2 Q: Fair enough. You searched the closet?

3 A: Yes, sir.

4 Q: And you -- best you know, you searched the closet fully
5 and completely?

6 A: Yes, sir.

7 Q: And you didn't take anything into evidence at all?

8 A: I wasn't the case agent, so I couldn't do that.

9 Q: All right. So, the only thing you can tell the folks on
10 the jury is you looked up, pulled down some pants, something
11 fell on the floor and you said, hey, come take a picture of
12 it, they took a picture of it and after that you don't know.

13 A: That would be my only involvement in it because I'm not
14 the case agent.

15 Q: I understand and -- but you can tell us that you believe
16 based on your experience with blue jeans that those were men's
17 blue jeans and not ladies' blue jeans in the ---

18 A: Being I wear them, yes, sir, I would say they were men's
19 jeans.

20 Q: All right, sir. But you don't -- you can't tell us
21 whether they were fat men's jeans or skinny men's jeans?

22 A: No.

23 Q: Fair enough. Thank you, sir.

24 Excuse me just one second, Judge.

25 All right, sir. I neglected to ask you something. I

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1 apologize.

2 A: That's fine.

3 Q: That's the -- Gil Yakoel, you had arrested her before
4 with Michela?

5 A: Yes, sir.

6 Q: For trafficking in Ecstasy?

7 A: Yes, sir.

8 Q: Was -- she was pregnant at that time?

9 A: To be honest with you, I'm sure -- I can't recall if she
10 was or not, that's ---

11 Q: How far in time was it between the two arrests?

12 A: Do you have a date on it because I'm not sure -- like I
13 said, I don't have the case file in front of me and I don't
14 know.

15 Q: You don't really remember but ---

16 A: It was close -- it was nearby but I don't know exact
17 date.

18 Q: All right, sir. But you arrested her at one place ---

19 A: Yes.

20 Q: And then she was with Michela but Alex Robinson was not
21 connected to that?

22 A: That particular arrest for the charge, no, Mr. Robinson
23 was not connected. I did have charges on him but ---

24 Q: All right, sir. And then in this case, you recognized
25 her from the other arrest and she was in the bedroom and

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1 that's where the dope was?

2 A: Yes.

3 Q: And she was pregnant?

4 A: Yes, she was.

5 Q: And again, Alex Robinson wasn't there?

6 A: No, sir.

7 Q: Nor was Michela?

8 A: Michela was not -- Michela was where at now? At the ---

9 Q: At the second arrest, Michela was not at the second
10 arrest?

11 A: No, she was not at the second arrest, no, sir.

12 Q: All right, sir. And the decision of what to take away
13 from that second search warrant that was not your decision?

14 A: That's -- I'm not the case agent, so that's not my
15 responsibility.

16 Q: That's all I have. Thank you very much, sir.

17 THE COURT: Do you have any further questions?

18 MR. RICHARDSON: Three, Your Honor.

19 REDIRECT EXAMINATION OF DETECTIVE ASHLEY HARDEE BY MR.

20 RICHARDSON:

21 Q: Mr. Hilliard wanted to ask you about Gil's first arrest
22 in August?

23 A: Yes.

24 Q: Of the Ecstasy. Are you familiar with what happened to
25 that charge?

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DETECTIVE ASHLEY HARDEE - REDIRECT BY MR. RICHARDSON

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1 A: That charge got dismissed.

2 Q: Why was that?

3 A: Because it ended up turning up -- it hadn't been
4 scheduled yet, it was BZP, so it was dismissed due to the fact
5 it wasn't Ecstasy.

6 Q: So, it wasn't illegal to have it ---

7 A: No, sir.

8 Q: --- in South Carolina? And Mr. Hilliard asked you about
9 discounts and all that with cocaine, the price you gave us is
10 that a low price?

11 A: That's just a general price that I've -- my past
12 experience in the past. I mean, depending on the person of
13 who it is, I mean, different people are different prices. It
14 depends on what they paid for it and what kind of hook up
15 they've got.

16 Q: 100 grams if it's broken down in the gram weight, sold by
17 the gram, how much can you make off of that?

18 A: 100 grams by the gram? I don't know if I can answer that
19 or not.

20 Q: How much does a gram go for on the street?

21 A: Well, a gram -- I'm trying to think of a good price now,
22 I'm now -- I'm not really sure. I can't give you an accurate
23 answer on that.

24 Q: Ballpark --

25 MR. HILLIARD: Judge, he's -- this is re-something and

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1 he's asked him that question three times now and ---

2 THE COURT: What a gram is worth really is not relevant
3 in this case.

4 MR. RICHARDSON: He brought up the value talking about
5 wholesale ---

6 THE COURT: I know it but it wasn't relevant when he did
7 it and you didn't object to it and I let it go. You should've
8 stopped it then.

9 MR. RICHARDSON: Yes, sir, Your Honor.

10 THE COURT: It's not relevant as to what a gram costs in
11 this case.

12 MR. RICHARDSON: Your Honor, it goes to the value of the
13 merchandise that's there in the room. I believe the Defense
14 is trying to go ---

15 THE COURT: Well, apparently he doesn't know so why ---
16 BY MR. RICHARDSON:

17 Q: Can you make more money selling it by the gram?

18 A: Yes, you can.

19 Q: Thank you.

20 THE COURT: All right, sir. You may come down. Thank
21 you.

22 MR. RICHARDSON: I'd ask that this witness be excused,
23 Your Honor.

24 MR. HILLIARD: No objection, none at all.

25 THE COURT: I didn't think you had any more questions.

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1 (REPORTER'S NOTE: Witness leaves the witness stand.)

2 THE COURT: Madame Foreman, ladies and gentlemen, it's
3 nearly 1:00. We're gonna break for lunch. You've been very
4 patient all morning long. We'll ask that you come back at
5 2:30; that'll give you an hour and half to have lunch and
6 relax.

7 Remember my admonitions of last evening. Do not discuss
8 this case with anyone, let no one discuss it with you, do not
9 even discuss it among yourselves until I have given you the
10 case for your deliberations. Have a nice lunch, be back in
11 the jury room at 2:30.

12 (REPORTER'S NOTE: The jury is excused for lunch break.)

13 All right. We are -- anything further at this time?

14 MR. RICHARDSON: What time back, Your Honor?

15 THE COURT: 2:30.

16 MR. RICHARDSON: 2:30.

17 (RECESS.)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 THE COURT: State ready to proceed?

21 MR. RICHARDSON: Yes, sir, Your Honor.

22 THE COURT: Defense?

23 MR. HILLIARD: Yes, sir, Judge. A question as to the
24 timing, I wondered how late you were gonna go today so we
25 could see whether we needed to bring witnesses that we

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1 anticipated calling. Are you gonna let them rest and start
2 again tomorrow or go forward today?

3 THE COURT: I'll just see how we go. I'm gonna probably
4 work till 6:00 anyway. I doubt if you gonna call all the
5 witnesses you listed; I wouldn't think so.

6 MR. HILLIARD: No, sir, I don't think we're gonna -- one
7 of them you already said I couldn't call, so that one is out.

8 THE COURT: Which one was that?

9 MR. HILLIARD: That was their informant. So, I can't
10 call their informant, we don't know who that is.

11 THE COURT: I didn't say you couldn't call anybody.

12 I said I didn't give you the name of the confidential
13 informant.

14 MR. HILLIARD: True. If I knew it was I could call them
15 but ---

16 THE COURT: Well, I didn't say you couldn't call, you
17 wasn't entitled to it under the rules at that time.

18 MR. HILLIARD: Yes, sir. I understand.

19 THE COURT: All right.

20 Bring the jury in.

21 (REPORTER'S NOTE: The jury returns to the courtroom.)

22 THE COURT: Good afternoon, Madame Foreman, ladies and
23 gentlemen, I hope everybody had a nice lunch.

24 All right. Call your next witness.

25 MR. RICHARDSON: The State would call Investigator Paul

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INVESTIGATOR PAUL PARTIN - DIRECT BY MR. RICHARDSON

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1 Partin with Horry Electric Cooperative.

2 INVESTIGATOR PAUL PARTIN, HAVING BEEN

3 SWORN, TESTIFIED AS FOLLOWS:

4 CLERK: State your full name and spell your last name.

5 MR. PARTIN: It's Paul Partin.

6 DIRECT EXAMINATION OF INVESTIGATOR PAUL PARTIN BY MR.

7 RICHARDSON:

8 Q: Investigator Partin, could you please tell us about your
9 place of employment, how long and in what capacity?

10 A: I'm employed by Horry Electric Cooperative as a special
11 service investigator, been there for approximately seven and
12 half years.

13 Q: Prior to going to work with Horry Electric, where were
14 you employed?

15 A: Horry County Police Department.

16 Q: And how long was that?

17 A: Ten years.

18 Q: Tell us about your duties as an investigator with the
19 Electric Cooperative.

20 A: It's my responsibility to take care of the company's
21 security issues as well as thefts, copper, electrical, any
22 security breaches as well as fill in records requests.

23 Q: So, you look into the records for ---

24 A: Yes, sir.

25 Q: Okay. So, your duties do entail reviewing records and

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1 investigating parties responsible for electrical service?

2 A: Yes, sir.

3 Q: In the normal course of business, what information is
4 collected with regard to those seeking or having electrical
5 service?

6 A: Information that's requested is usually location, dates
7 of service at these locations and then the information on the
8 subject that would be listed at that location?

9 Q: That's information y'all normally keep?

10 A: Yes, sir.

11 Q: Normal course of business?

12 A: Yes, sir.

13 Q: For what period of time are those records kept?

14 A: Beginning in 2006, it was a upgraded system, everything
15 on the current system would be in there from now -- it's
16 there, my understanding, right on.

17 Q: So, from 2006 on?

18 A: Yes, sir.. Actually, that's in the new metering system.
19 Documentation goes back way before that, long before my time.

20 Q: Okay. So, we keep those records for a long time?

21 A: Yes, sir.

22 Q: And those are records y'all collected back in 2008?

23 A: Yes, sir.

24 Q: Now, you recently were served with a subpoena requiring
25 the production in court today of records as they pertained to

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INVESTIGATOR PAUL PARTIN - DIRECT BY MR. RICHARDSON

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1 Alex Robinson?

2 A: Yes, sir.

3 Q: What procedure did you follow in responding to this ---

4 A: In responding to this procedure, on the subpoena it
5 requested locations for Mr. Robinson, Alex Lorenzo Robinson to
6 include name or names on account, the address on the account,
7 the address of the service through June 30th of 2009.

8 Q: Okay. Do you have those records -- did you provide those
9 records today?

10 A: Yes, sir.

11 MR. RICHARDSON: If I could get these -- just get them
12 collectively marked as one exhibit, Your Honor.

13 THE COURT: Have you shown these to counsel?

14 MR. RICHARDSON: Yes, sir. They were faxed copies last
15 week and they were ---

16 THE COURT: All right. Thank you.

17 STATE'S EXHIBIT NUMBER FORTY-ONE

18 MARKED FOR IDENTIFICATION.

19 BY MR. RICHARDSON:

20 Q: I'm going to show you what's been marked now for
21 identification as State's Number Forty-one. Do you recognize
22 State's Forty-one?

23 A: Yes, sir.

24 Q: And what is State's Forty-one?

25 A: It is off of the what we call the PCS billing system,

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1 customer information system.

2 Q: Okay. And those are records you brought today?

3 A: Yes, sir.

4 Q: And the information we're talking about as far as billing
5 names, billing addresses that's in that -- that's contained on
6 that ---

7 A: Either the first page or the second, there's two parts
8 for that location.

9 MR. RICHARDSON: Your Honor, the State would seek to
10 introduce State's Forty-one into evidence.

11 MR. HILLIARD: If I could just take a look at what he's
12 got.

13 THE COURT: Weren't you previously supplied with a copy
14 of that document?

15 MR. RICHARDSON: Yes, sir.

16 MR. HILLIARD: This is one of things we got on Friday, is
17 that ---

18 MR. RICHARDSON: No, that was faxed out the beginning of
19 last week after I received it.

20 MR. HILLIARD: Beginning of last week we got this, Judge.

21 MS. BASS: Your Honor, his copies are wonderful that the
22 investigator brought, we're just trying to make sure we can
23 see the same information.

24 THE COURT: There can't be anything complicated about
25 that document, can there?

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1 MR. HILLIARD: Well, you would think not, Judge, but I'm
2 curious about its relevance.

3 THE COURT: Well, let's put it in and you can talk to him
4 about it if you got some question. I just want to make sure
5 you were provided a copy of it.

6 MR. HILLIARD: There's some question about that.

7 THE COURT: Well, you've got it in your hand now.

8 MR. HILLIARD: But I can only read so fast, Judge.

9 THE COURT: All right. Go ahead and read it and then
10 we're gonna put it in and then you can talk about it.

11 THE COURT: Mr. Witness, explain to me what this document
12 is. They apparently have some difficulty understanding it.

13 A: Your Honor, the first page shows an address in question,
14 it shows an individual's name and the timeframe in which the
15 power was connected there, being a connect date and disconnect
16 date and then the other pages are showing previous locations
17 or other locations where the same subject may've had power or
18 did have power and the dates.

19 MR. HILLIARD: That's fine, Judge. I don't have --
20 whether I've seen it or ---

21 THE COURT: That's what I thought his testimony was.
22 Introduce it.

23 MR. RICHARDSON: The State would seek to introduce
24 State's Forty-one at this time and publish the information
25 there from, Your Honor.

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1 THE COURT: All right, sir.

2 STATE'S EXHIBIT NUMBER FORTY-ONE

3 ADMITTED INTO EVIDENCE.

4 THE COURT: Does that conclude your examination?

5 MR. RICHARDSON: No, sir.

6 BY MR. RICHARDSON:

7 Q: On the records in your hand, State's Forty-one ---

8 A: Yes, sir.

9 Q: Was there ever service connected at [REDACTED]

10 [REDACTED] in the Defendant's name, Alex L. Robinson?

11 A: Yes, sir.

12 Q: When was that service begun?

13 A: September 15th, 2005.

14 Q: And was there a termination of services?

15 A: Yes, sir.

16 Q: And when was that?

17 A: August 27th of 2009.

18 Q: So, service was not interrupted as of September 25th,
19 2008?

20 A: September ---

21 Q: 25th, 2008?

22 A: No, sir.

23 Q: So, as of September 25th, 2008, the services for [REDACTED]

24 [REDACTED] were in the name of Alex Robinson and I

25 believe there was another name on there, too, Johnny Robinson?

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INVESTIGATOR PAUL PARTIN - CROSS BY MR. HILLIARD

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1 A: Yes, sir.

2 Q: Thank you. That would be all my questions.

3 THE COURT: You may examine.

4 CROSS EXAMINATION OF INVESTIGATOR PAUL PARTIN BY MR. HILLIARD:

5 Q: When you were talking earlier about the electric service
6 records ---

7 A: Yes, sir.

8 Q: You said that your records -- something about 2006; what
9 was that about?

10 A: Yes, sir. There was a conversion done on the system.
11 That's when this current programming was put in place, in
12 2006.

13 Q: Yes, sir.

14 A: There was a new metering system put in place and in this
15 same timeframe that went from the old clock face, the man go
16 out and punch things in, to a digital system. So, it was a
17 conversion completely into a more modern digital, if you
18 would, metering system.

19 Q: All right, sir. So, that wouldn't have anything to do
20 with the records that you have there with you; is that
21 correct?

22 A: No, sir.

23 Q: All right, sir. And the records that you have there with
24 you today from the electric company show that an individual by
25 the name of Alex Robinson got service on -- well, let me ask

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1 that question. The records that you have there with you, are
2 those records of Alex Robinson or are those the records of an
3 address on [REDACTED]?

4 A: They're both in there, yes, sir.

5 Q: Can you separate out for me, please, sir, the ones that
6 are connected to Alex Robinson on the one hand and ones that
7 are for [REDACTED] other hand?

8 A: Sir, in the printout, I'll be glad to show you ---

9 Q: Yes, sir.

10 A: There's the name that the service is in.

11 Q: All right, sir.

12 A: As well as the service location.

13 Q: All right, sir.

14 A: So that they would be on one unit -- one piece of paper,
15 one in the same. In this case, this is also a mailing address
16 where the bill may be sent and it also being the [REDACTED]
17 address.

18 Q: And this record was connected when?

19 A: It would be -- if you don't mind me turning it around a
20 little bit for lighting.

21 Q: No, sir.

22 A: September 15th, 2005 and it shows connect and disconnect
23 here.

24 Q: All right, sir. And that's when the electricity was
25 connected and disconnected?

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- 1 A: Yes, sir; yes, sir.
- 2 Q: And that's on this one piece of paper?
- 3 A: Yes, sir.
- 4 Q: And these other pieces of paper, what -- so this one here
- 5 that's part of it and that's -- we're talking about State's
- 6 Exhibit Number Forty-one as identified, this one ---
- 7 A: Yes, sir.
- 8 Q: This says Alex Robinson at the top of it; is that right?
- 9 A: Yes, sir.
- 10 Q: And then it says Johnny Robinson?
- 11 A: Yes, sir.
- 12 Q: As spouse?
- 13 A: Yes, sir.
- 14 Q: And that's also dated 9/15/2005; is that right?
- 15 A: Yes, sir.
- 16 Q: What's that about?
- 17 A: It's the connect date, this will be page two, this is
- 18 account at a glance, basically a summary for that account.
- 19 Q: All right.
- 20 A: This is the applicant address and the applicant
- 21 information. And if I were listed on the account as well, I
- 22 would be added in on the third line and then my information
- 23 as well.
- 24 Q: All right, sir. So, that is -- this account is in the
- 25 name of not just Alex Robinson but in the name of Johnny

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- 1 Robinson; is that right?
- 2 A: Yes, sir. Under the category, it says primary individual
3 and then spouse or other -- like a secondary individual.
- 4 Q: Well, but it says spouse.
- 5 A: Yes, sir.
- 6 Q: But that might not be right?
- 7 A: Sure, I mean, I don't -- I don't know the individuals
8 personally.
- 9 Q: Right. But it is on here?
- 10 A: Yes, sir.
- 11 Q: And the electricity is in the name of Johnny Robinson on
12 this account?
- 13 A: As the spouse.
- 14 Q: All right, sir. So you wouldn't know if Johnny Robinson
15 were in fact Alex Robinson's sister?
- 16 A: No, sir.
- 17 Q: And you wouldn't know if in fact Johnny Robinson also
18 happened to be the name of Alex Robinson's father?
- 19 A: No, sir.
- 20 Q: But the way this looks both Alex and Johnny Robinson live
21 at [REDACTED] is that right?
- 22 A: It's listed primary for Alex -- someone's gonna have to
23 be primary.
- 24 Q: Right.
- 25 A: And then if it was your account but you wanted me to do

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- 1 business on it, I could be added to your account otherwise you
2 call in and ask what's due, when's it due or anything else,
3 they're not gonna divulge that information.
- 4 Q: Right. But it also lists [REDACTED] as the
5 address for Johnny Robinson; is that correct?
- 6 A: Yes, sir; yes, sir.
- 7 Q: Very good. All right, sir. And what else you got there?
- 8 A: Under the name Alex Robinson, if you'll see the one line
9 being darker, this location's connect and disconnected.
- 10 Q: Connected and disconnected and that is a mobile home on
11 Lauren Lane; is that right?
- 12 A: Yes, sir.
- 13 Q: And that's Alex Robinson?
- 14 A: Yes, sir.
- 15 Q: And then there's also up on this one, it's [REDACTED]
16 is that right?
- 17 A: Yes, sir. This is this document here.
- 18 Q: And that's still connected?
- 19 A: No, sir. It was connected on August 31st, 2005 and was
20 disconnected on February 24th, 2006.
- 21 Q: That's the Burcale Road one that we're talking about?
- 22 A: Yes, sir. This one in question ---
- 23 Q: Lauren Lane.
- 24 A: Yes, sir. It'll show the connect and disconnect of July
25 of 2005 and August 31st, 2005.

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- 1 Q: All right, sir.
- 2 A: Same thing with Highway 544.
- 3 Q: Highway 544 ---
- 4 A: Yes, sir.
- 5 Q: All right, sir. And that's got ---
- 6 A: Connect and disconnect.
- 7 Q: That is February 23rd of 2006 was the connect, disconnect
- 8 was August the 10th of 2010; is that right?
- 9 A: Yes, sir.
- 10 Q: And that's -- that's where Alex Robinson, according to
- 11 this document at least was living at that point in time?
- 12 A: That's where power had been placed in his name at these
- 13 locations.
- 14 Q: Right.
- 15 A: Yes, sir.
- 16 Q: To the extent that any of these things mean anything,
- 17 they all mean the same thing?
- 18 A: Yes, sir.
- 19 Q: All right, very good. What else you got?
- 20 A: This Alex Robinson, Halyard Way, Alex L. Robinson and it
- 21 was from ---
- 22 Q: I'm sorry.
- 23 A: Apparently, I need glasses and I wasn't aware of that.
- 24 Q: Yes, sir.
- 25 A: October 26th, 2004 to 7/14/2005. There again, being the

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1 service address of Halyard Way, this being a mailing address.

2 Q: Well, and the mailing address that was Martha Robinson?

3 A: Yes, sir. It's -- just like the other documents Alex L.

4 Robinson, Sandy Bay Road, connected October 14th, 2004,

5 disconnected 9/19/2006 and the mailing address.

6 THE COURT: Just confine it to the time in question
7 reasonably now. We're not interested in the fact in 2004 --
8 that has nothing to do with this case.

9 MR. HILLIARD: Well, Judge, if you would ---

10 THE COURT: Not 2004, now. Confine it generally to the
11 time in question.

12 MR. HILLIARD: I objected as to the relevance, he put
13 them in evidence, not me, Judge.

14 THE COURT: I know but we don't need to go back to 2004.
15 That has no relevancy in this case whatsoever.

16 MR. HILLIARD: I'm with you a hundred percent, I renew my
17 objection and I ask that they be withdrawn from evidence
18 because they are in fact not relevant.

19 THE COURT: No, sir. I will permit the jury to determine
20 whether they are relevant or not as to date in question but
21 they're certainly not relevant as to 2004. We're not
22 concerned with that year and that date.

23 MR. HILLIARD: That's the only thing on that piece of
24 paper, Judge.

25 THE COURT: Well ---

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INVESTIGATOR PAUL PARTIN - CROSS BY MR. HILLIARD

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1 MR. HILLIARD: That's what I said in the beginning and I
2 don't mean to argue with you and I'll ---

3 THE COURT: No, I'm gonna leave it in for the jury's
4 consideration. You want to tell me why you put something in
5 2004?

6 MR. RICHARDSON: Your Honor, these were all the
7 documents. I asked for documents of power in his name to show
8 whether or not he had those places.

9 THE COURT: I understand that's why they're in there but
10 in 2004 has no relevance to any issue in this case. The jury
11 can determine what other issues in that document may or may
12 not be relevant.

13 MR. RICHARDSON: Your Honor, if it will assist counsel, I
14 withdraw the pages that don't pertain to [REDACTED] k [REDACTED]

15 THE COURT: No, just leave them in there since they are
16 the totality of it. The jury will understand we're talking
17 about the dates in question.

18 You may proceed with your examination.

19 BY MR. HILLIARD:

20 Q: All right, sir. I appreciate your being here and I know
21 this is probably ---

22 A: Yes, sir.

23 Q: --- but in any event, you don't know, have any idea who
24 was living at any of those locations at any point in time?

25 A: No, sir. These are ---

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SHARON LILLY - DIRECT BY MR. RICHARDSON

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1 Q: As long as the electric company got the electric bill
2 paid, they don't care who paid the electric bill?

3 A: Correct.

4 Q: All right, sir. This document provided to me by the
5 solicitor, does this have any connection to you at all?

6 A: No, sir.

7 Q: All right, sir. Thank you, sir. Appreciate your coming.

8 MR. RICHARDSON: No further questions, Your Honor. I'd
9 ask that Investigator Partin be ---

10 THE COURT: You may step down and are excused; thank you.

11 A: Thank you, Your Honor.

12 (REPORTER'S NOTE: Witness leaves the witness stand.)

13 MR. RICHARDSON: State would call Sharon Lilly.

14 SHARON LILLY, HAVING BEEN SWORN,

15 TESTIFIED AS FOLLOWS:

16 CLERK: State your full name and spell your last name.

17 MS. LILLY: Sharon Lilly, L-I-L-L-Y.

18 DIRECT EXAMINATION OF SHARON LILLY BY MR. RICHARDSON:

19 Q: Ms. Lilly, could you please tell us where you're
20 employed, how long and in what capacity?

21 A: Horry County Police Department, Property and Evidence and
22 I've been there about five years.

23 Q: Now, in Property and Evidence, what's the job title?

24 A: I take in property and evidence turned in by the officers
25 to hold for court.

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LISA FLOYD - DIRECT BY MR. RICHARDSON

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1 A: That's right.

2 Q: And when they came in on Monday, October 31st of 2011, as
3 of today's date, they are still investigating the Horry County
4 Police Department -- not you, ma'am, but the Horry County
5 Police Department and how they store evidence; is that
6 correct?

7 A: I couldn't answer that. That would be my supervisor; I
8 couldn't answer that.

9 MS. BASS: Just one moment, Your Honor, I might be
10 finished. No further questions, thank you, ma'am.

11 THE COURT: You may come down.

12 MR. RICHARDSON: No further questions, Your Honor. The
13 State would call Ms. Lisa Floyd.

14 I'd ask that Ms. Lilly be excused.

15 THE COURT: I will permit her to be excused, yes.

16 (REPORTER'S NOTE: Witness leaves the witness stand.)

17 MR. RICHARDSON: The State would call Ms. Lisa Floyd.

18 LISA FLOYD, HAVING BEEN SWORN,

19 TESTIFIED AS FOLLOWS:

20 CLERK: State your full name and spell your last name.

21 MS. FLOYD: Lisa Floyd, F-L-O-Y-D.

22 DIRECT EXAMINATION OF LISA FLOYD BY MR. RICHARDSON:

23 Q: Ms. Floyd, would you please tell us where you're
24 employed, how long and in what capacity.

25 A: Yes, I work for the Horry County Police Department. I'm

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LISA FLOYD - DIRECT BY MR. RICHARDSON

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1 the police chemist, I run the regional drug analysis
2 laboratory and I've been there since September of 2002.

3 Q: The Horry County Regional Drug Analysis Laboratory, is
4 that -- am I terming that right?

5 A: Yes.

6 Q: Okay. How long -- that's been up since 2002?

7 A: We officially opened the laboratory in August of 2003.
8 I've been employed since September of 2002 in the beginning
9 simply getting the lab up and running.

10 Q: And what -- what is the purpose of that lab?

11 A: We test drug evidence -- I say we, I'm the only person --
12 test drug evidence that's turned in by pretty much any agency
13 in the Fifteenth Judicial Circuit originally. Now, I pretty
14 much test for most of the agencies in Horry County.

15 Q: Could you tell us a little bit about your educational
16 background?

17 A: Yes, I have a Bachelor of Science degree in Biochemistry
18 ---

19 THE COURT: Could you slow down a little bit. You're
20 talking a little fast.

21 A: Okay. A Bachelor of Science degree in Biochemistry from
22 Clemson University and approximately twenty-four hours toward
23 a Master's degree from that same university.

24 Q: How about any training you've had with regard to forensic
25 drug analysis?

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1 A: Yes, I have certification in forensic drug analysis that
2 was through the Spartanburg County Sheriff's Office
3 laboratory. At the time it was run by a former SLED chemist
4 who was the top level trainer that they had at the time. At
5 the time that I was hired SLED did not have a trainer that had
6 enough experience to train me so we went to Spartanburg and I
7 underwent a fourteen-week program which pretty much
8 encompassed every type of drug, how it's used, how to test for
9 it.

10 Q: And do you use any kind of specialized equipment in
11 analyzing drugs?

12 A: Yes, we do.

13 Q: And have you previously testified in court as an expert
14 in the field of forensic drug analysis?

15 A: Yes, I have.

16 Q: How many times?

17 A: Forty-two times.

18 Q: Forty-two.

19 MR. RICHARDSON: Your Honor, I'd seek to introduce Ms.
20 Floyd as an expert in the field of forensic drug analysis?

21 MR. HILLIARD: Yes, sir, Your Honor. We have no voir dire
22 on her qualifications and we would consent ---

23 THE COURT: I find that she is qualified based on her
24 testimony as to drug analysis, she having testified as an
25 expert in my court on several occasions.

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1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: And her qualification as an expert is without
3 objection.

4 MR. RICHARDSON: Thank you, Your Honor.

5 BY MR. RICHARDSON:

6 Q: Let's go ahead and get one thing right off the bat. The
7 drug lab is still up and running today?

8 A: Yes, it is.

9 Q: The evidence room to your knowledge, still up and running
10 today?

11 A: Yes, it is.

12 Q: Ms. Floyd, you are employed with the forensic drug -- as
13 the Forensic Drug Analyst for the Horry County Police
14 Department between the dates of November 24, 2008 through
15 January 27, 2009?

16 A: Yes, I was.

17 Q: Still employed today?

18 A: Yes.

19 Q: And in the course of your work as a forensic drug
20 analyst, were you assigned to analyze the suspected narcotics
21 in this particular case?

22 A: Yes, I was.

23 Q: Allow me to show you what's been previously identified as
24 State's Number Twenty-nine. Can you tell me if you recognize
25 State's Number Twenty-nine?

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1 A: Yes, I do.

2 Q: And how do you recognize State's Number Twenty-nine?

3 A: By the preprinted control number on the package, the
4 laboratory number which I give it and the law enforcement case
5 number that are written on there by myself.

6 Q: And that's how you can be sure?

7 A: Yes.

8 Q: In what condition was State's Number Twenty-nine whenever
9 you received it?

10 A: When I received the what's referred to as the BEST kit,
11 that's the inner bag that you see inside this clear outer bag
12 and it's actually folded in half. Around the whole outside of
13 it, there's tamper-evident markings and I have marked it as OK
14 which simply means that there was no evidence of tampering
15 when it was received. And had there been, it simply would
16 have been returned to evidence and not analyzed.

17 Q: So, if there's any evidence of tampering, you stop it
18 right there?

19 A: That's right.

20 Q: So, with regards to State's Twenty-nine what kind of
21 condition was it in whenever -- you marked it OK?

22 A: I marked it OK and indicating it was tamper-free.

23 Q: Now, the particular -- did you begin the analysis that
24 day?

25 A: The analysis was performed on January 22nd of 2009.

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1 Q: January 22nd. Now you received it when?

2 A: I believe November 24th of 2008.

3 Q: And from whom did you receive it?

4 A: From Sharon Lilly.

5 Q: And the BEST kit was intact but you didn't do the
6 analysis until January?

7 A: Right.

8 Q: What did you do with the BEST kit until that point?

9 A: It's stored in the laboratory with other pieces that are
10 untested at that point.

11 Q: Okay. And the BEST kit remains intact?

12 A: Yes, it remains in the exact same packaging that it's
13 given to me in.

14 Q: Now, once the BEST kit is in your laboratory untested,
15 who has access to that BEST kit?

16 A: Me.

17 Q: So, I assume the BEST kit, you got it back out on the
18 22nd; is that correct?

19 A: Yes, it's simply stored in the laboratory so it's at my
20 disposal whenever I'm ready to test it.

21 Q: Okay. Well, on January 22nd, what did you do?

22 A: At that point I opened it, there's a place at the bottom
23 of the bag that you can't really see anymore but it says, open
24 here, so that's where I open it. The evidence is ---

25 Q: Do you look at one more time and make sure it's not been

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1 tampered with?

2 A: Yes, that's actually -- when I receive everything, I
3 don't make any markings on the package, I just simply look
4 everything over and make sure it's still airtight, that
5 there's not any evidence of stretching or anything like that.
6 And when I actually open it is when I make that indication on
7 the day that I tested it which was January 22nd of '09.

8 Q: Thank you. And I'm sorry for interrupting you.

9 A: That's okay. So, I pull out all the evidence that's
10 inside and at first I do what's called a -- excuse me, a
11 presumptive test which is simply a color test, it's very
12 similar to maybe the field test kits you might've seen on TV,
13 officers use on TV, and that gives me an indication of what
14 that substance might be and then from there depending on what
15 the presumptive test tells me then I do what's called a
16 confirmatory analysis that's done by Gas Chromatography with a
17 Mass Selective Detector, it's commonly referred as a GC-MS and
18 it's been used for decades in forensic drug analysis.

19 Q: And we're gonna get to your findings in a minute, but --
20 and we're gonna confine everything to just the powder. Okay?

21 A: Okay.

22 Q: After you completed your analysis that day and after you
23 completed your analysis, what if anything did you do?

24 A: Well, the weights of the substances that were in the
25 package were also noted and then everything was repackaged in

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1 these red top Ziploc bags and any packaging that came with it
2 to begin with was also repackaged in this outer clear bag that
3 you see and then I write the lab number, my initials and the
4 date that it's sealed and then heat seal it into the top.

5 Q: And when was that done?

6 A: On January 22nd, 2009.

7 Q: And State's Number Twenty-nine, is it in the same
8 condition today as it was on January 22nd, 2009?

9 A: Yes, it appears to be, yes.

10 MR. RICHARDSON: Your Honor, at this time, the foundation
11 being complete, the State would seek to move State's Number
12 Twenty-nine into evidence.

13 MR. HILLIARD: If I could just ask, do I understand your
14 testimony to be that you sealed it up and it's still sealed in
15 the way that you sealed it up?

16 A: Yes.

17 MR. HILLIARD: And what did you do with it after you
18 sealed it up? How did it get in Court today?

19 A: Typically evidence is stored until I get twenty or thirty
20 cases and then there are all group transferred back over to
21 the evidence department for them to store it at that time

22 MR. HILLIARD: And then it would've gotten to Court today

23 ---

24 A: I can't speak for exactly what happened today but normal
25 procedure would be the case agent would come and get the drugs

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1 and bring them to court.

2 MR. HILLIARD: But in any event, it looks the same way
3 today that it did the last time you saw it?

4 A: Yes, it does.

5 MR. HILLIARD: I don't have any objection, Judge.

6 THE COURT: All right. Without objection then it's
7 admitted into evidence.

8 MR. RICHARDSON: Thank you, Your Honor.

9 STATE'S EXHIBIT NUMBER TWENTY-NINE

10 ADMITTED INTO EVIDENCE.

11 THE COURT: You may continue your examination.

12 BY MR. RICHARDSON:

13 Q: Ms. Floyd, I think you took us through it a little bit,
14 on the 22nd, you say you opened the BEST kit?

15 A: Yes, sir.

16 Q: And let's just talk about the powder, that white powder,
17 what's the first thing you did with that?

18 A: I would've done -- what I refer to the color test or
19 presumptive test to determine what it might be.

20 Q: Now, what do you -- how does that go? What if it doesn't
21 turn the right color? What color does it need to turn?

22 A: Well, every, every drug or known controlled substance is
23 gonna have some type of specific color change to that
24 particular drug. With regard to item three, which is the
25 powder that he's referring to, it turned blue in cobalt

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1 thiocyanate and stannous chloride which indicates that there
2 is a possibility of the presence of cocaine powder.

3 Q: Okay. So, you make it past step one that tells you
4 there's a possibility of the presence of cocaine?

5 A: Uh-huh (affirmative response).

6 Q: What's the next step?

7 A: It's extracted using a general extraction procedure for
8 that drug which is based in methylene chloride, which is the
9 base is to remove the hydrochloride from the cocaine and then
10 the methylene chloride is just a solvent that's used to get
11 the cocaine into solution for testing.

12 Q: And I take it this is the CSI type stuff?

13 A: At that point, it's placed into a vile and put into an
14 autosampler for the GC-MS. If you ever watched the show CSI,
15 they show it quite often. It's a large boxy-looking
16 instrument, it looks remarkably like an oven which part of it
17 is. And at the top, there is typically a round turntable that
18 you place the vial in. It has a automated process that it
19 comes over and picks pick up the vial, takes a small sample of
20 it, injects it and then all of that is hooked to what's called
21 a mass selective detector which simply scans the mass ranges
22 of the ions that come through that after it's separated in the
23 chromatograph. And then whatever those results are, it's
24 compared to a standard library. I actually have about six or
25 eight that it compares all the substances in there to my

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- 1 sample and gives me a printout of what it thinks is the best
2 match.
- 3 Q: So, as I understand it, we don't test the entire lump of
4 cocaine, correct?
- 5 A: That's correct.
- 6 Q: You take a random sampling?
- 7 A: Yes.
- 8 Q: Now, did you get to the end of your test?
- 9 A: Yes.
- 10 Q: And with regard to your results, do you have an opinion
11 with regard to what that white powder is?
- 12 A: Cocaine was found along with deltiazem and levamisole.
- 13 Q: And those last two items, I'm not gonna attempt it. What
14 are those two items?
- 15 A: Deltiazam is a vasodilator, I believe it's commonly used
16 for high blood pressure. The brand is Cardizem. It's just a
17 prescription substance. And levamisole, I believe is a
18 deworming agent that farmers use.
- 19 Q: Okay. And those two items, have you seen them before?
- 20 A: Yes, I have.
- 21 Q: And do you typically find them in cocaine?
- 22 A: The levamisole is very common. And deltiazem, I see
23 eight to ten times a year, maybe.
- 24 Q: And is there a specific term for what they're called when
25 they're in cocaine?

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- 1 A: It's referred to bulking or cutting agents.
- 2 Q: It just adds to it, waters it down?
- 3 A: Yes.
- 4 Q: So, did you feel a need to determine how much of it was
- 5 cocaine and how much of it was the cutting agent?
- 6 A: No, I simply test for the presence of any controlled or
- 7 prescription substances.
- 8 Q: And why is that?
- 9 A: Mainly because our statutes are not written such that
- 10 purity level needs to be determined.
- 11 Q: So, it's any mixture thereof with cocaine, correct?
- 12 A: Yes.
- 13 Q: And in your opinion, how much cocaine mixture did you
- 14 find?
- 15 A: The item three weighed 109.35 grams which is 1,687.27
- 16 grains.
- 17 Q: And that's the extent of your involvement in this case?
- 18 A: Yes, at that point it would've been repackaged and handed
- 19 back over to evidence.
- 20 Q: Okay. So no doubt about it what we have here, the white
- 21 powder in State's Number Twenty-nine was 109.35 grams of
- 22 cocaine along -- it's cocaine under South Carolina law,
- 23 correct?
- 24 A: That's correct, yes.
- 25 Q: Thank you, Ms. Floyd. If you'll answer the Defendant's

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1 questions.

2 CROSS EXAMINATION OF LISA FLOYD BY MR. HILLIARD:

3 Q: The solicitor was asking you about the weight of the
4 cocaine and this is the powder substance here is cocaine and
5 cut; is that correct?

6 A: Yes.

7 Q: Some cocaine and some cut?

8 A: That's correct; yes, sir.

9 Q: And you didn't test all of it to see what percentage was
10 cocaine and what percentage was cut?

11 A: No.

12 Q: And the three blue pills that in there, those are what's
13 commonly known as Ecstasy; is that correct?

14 A: Yes. Ecstasy, the term Ecstasy actually is a class of
15 drugs and that was a drug that shows up as Ecstasy from time
16 to time, yes, sir.

17 Q: The generic sort of a name and that a lot of people use
18 for a lot of different drugs but this is one of them?

19 A: Yes.

20 Q: It used to not be illegal but now it is; is that right?

21 A: Yeah, BZP was scheduled in the past five or ten years.

22 Q: State's Exhibit Number Twenty-six, does that appear to
23 you to be fairly consistent with what's in the powder that's
24 in State Exhibit Number Twenty-nine?

25 A: I really can't tell from the picture.

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- 1 Q: Okay, fair enough. In ---
- 2 A: Um ---
- 3 Q: Go ahead.
- 4 A: In my item three description, it was in a tall sandwich
- 5 bag, so that would be the only thing I could say it was
- 6 packaged similarly to that, yeah.
- 7 Q: In connection with this case, did you do an examination
- 8 on seven small clear bags containing an off-white powder
- 9 substance?
- 10 A: I'm not sure. I'd have to look at my records for that
- 11 case number.
- 12 Q: Do you have your records?
- 13 A: I have no other case file here.
- 14 Q: Let me ask you this question. If presuming for the sake
- 15 of our discussion that State's Exhibit Number Thirteen were
- 16 found at the house and for the purpose of our discussion they
- 17 contained some cocaine and State's Exhibit Number Twenty-six
- 18 were found at a house and contained some cocaine, there is a
- 19 process by which you could determine if that is the same
- 20 cocaine; isn't that true, if those seven little bags came from
- 21 that big bag?
- 22 A: My laboratory is not set up that way to handle that type
- 23 of analysis but yes, I believe SLED or a DEA lab could
- 24 definitely do that.
- 25 Q: So, SLED and DEA can do what's called a cocaine

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- 1 signature, isn't that true?
- 2 A: I'm pretty sure SLED can; I know DEA can.
- 3 Q: All right. But I mean, it is possible scientifically to
- 4 do what is called a cocaine signature?
- 5 A: Yes, it is.
- 6 Q: And you could -- not you, I'm sorry, the government, for
- 7 lack of a better word, could have sent these drugs to a lab
- 8 that could've done a cocaine signature?
- 9 A: Yes, that's possible.
- 10 Q: And they didn't do that?
- 11 A: Not to my knowledge.
- 12 Q: In connection with and let me say this, there has been
- 13 testimony that there was a female agent at this search, you
- 14 weren't at this search, you don't know anything about this
- 15 case except you did the testing on the drugs; is that right?
- 16 A: That's right.
- 17 Q: And there is some sort of an investigation going on over
- 18 at the Horry County drug lab/evidence room at this point; is
- 19 that correct?
- 20 A: Not for the drug analysis laboratory, no.
- 21 Q: As to the evidence room?
- 22 A: From what I read in the Sun News, yes.
- 23 Q: Okay. That's what you know about it is what you read in
- 24 the news?
- 25 A: Yeah. I have not spoken with anyone at work to know

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1 what's going on exactly.

2 Q: Fair enough. And you don't have any recollection about
3 whether you tested these bags or not?

4 A: Not off the top of my head, no.

5 Q: And that would be State's Exhibit Number Thirteen.

6 Excuse me just one minute, Judge.

7 Thank you very much.

8 A: You're welcome.

9 MR. RICHARDSON: No further questions.

10 THE COURT: You may come down. Can this witness be
11 excused?

12 MR. RICHARDSON: I would ask that she does be excused so
13 she can go to work.

14 THE COURT: All right. Thank you so much.

15 (REPORTER'S NOTE: Witness leaves the witness stand.)

16 THE COURT: All right, sir.

17 MR. RICHARDSON: Your Honor, the State would rest at this
18 point.

19 THE COURT: The State has concluded its testimony. I'll
20 let you go to the jury room for a few minutes, I'll be calling
21 you right back.

22 (REPORTER'S NOTE: The jury retires to the jury room.)

23 THE COURT: All right, sir. Yes, sir?

24 MR. HILLIARD: Thank you, Judge. Judge could we have
25 about five minutes for a break to start back?

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1 THE COURT: Yes. Do we need to get on the record as to
2 whether the Defendant desires to testify or not?

3 MR. HILLIARD: We're not ready for that part yet, Judge,
4 we're gonna have some -- we're gonna have some other
5 witnesses. In the event our directed verdict motion is
6 unsuccessful, we would have some other witnesses prior to ---

7 THE COURT: Let's hear any motions you've got at this
8 time and then we'll take a break.

9 MR. HILLIARD: What I wanted to do was ---

10 THE COURT: Pardon?

11 MR. HILLIARD: What I wanted to do was take a break so I
12 could organize my thoughts and organize my cases so I can make
13 a good presentation.

14 THE COURT: I'll do that. Let it be a short break now.

15 MR. HILLIARD: It will be, Judge, short break and a short
16 presentation, Judge, I promise.

17 THE COURT: All right. Go ahead.

18 MR. HILLIARD: Thank you.

19 (RECESS.)

20 *****OFF THE RECORD*****

21 (On the Record.)

22 THE COURT: Are you ready?

23 MR. HILLIARD: We're ready for the directed verdict
24 motion, yes, sir.

25 THE COURT: Yes, sir.

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1 MR. HILLIARD: Thank you,, Your Honor. Judge, recognizing
2 and acknowledging that the standard at this stage of the
3 proceeding is taking the light -- the evidence in a light most
4 favorable to the State, the only thing that they have shown is
5 that there is a closet with drugs that was in the closet that
6 was in a bedroom occupied by the Defendant's girlfriend who
7 said that she had not ever seen those drugs before. And on
8 the occasion when the search was executed, the drugs were
9 found in that closet. The fact that the closet was there and
10 his girlfriend was there and a pair of pants identified by her
11 as being his were there, I would submit to the Court is
12 insufficient to show that in fact drugs which were located in
13 that closet were his. And for that proposition, I would cite
14 to the Court among others State v. Heath wherein even though
15 ---

16 THE COURT: I have that case and I'm familiar with what
17 it says, go ahead.

18 MR. HILLIARD: Thank you, Your Honor. And that even
19 though ---

20 THE COURT: And I thank you for providing it to me.

21 MS. BASS: Yes, sir.

22 MR. HILLIARD: That even though the Defendant in that
23 case was present where the drugs were found that the State has
24 an obligation in order to be successful and to surpass a
25 directed verdict motion that they must show a Defendant had

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1 dominion and control or the right to exercise dominion and
2 control over the illegal substance. And also they must show
3 that he had knowledge of the presence of the illegal substance
4 such that -- and I was thinking about this earlier and I'll
5 use this example even though I don't necessarily -- but in any
6 event, for the purpose of our discussion say that my daughter
7 who does not I hope had a trunk full of cocaine in her bedroom
8 at my home as I stand here in court and the police were to go
9 to my house and get the drugs from that bedroom and although I
10 own the house and I certainly can exercise dominion and
11 control over the entirety of it that it would not be any proof
12 that the drugs were in my possession even though I could
13 exercise dominion and control over the entirety of the house.
14 I would submit to the Court even in a light most favorable to
15 the State, they haven't actually shown that Alex Robinson had
16 the ability to exercise dominion and control over this spot.
17 They have showed that in 2005 the electricity was in his name.
18 They have shown that there was a car in the yard that he
19 drove. They have shown ---

20 THE COURT: You mean in 2008, I believe you mean, you
21 said 2005.

22 MR. HILLIARD: The electric bill, Judge, if we could go
23 back to it, the electricity was put into his name in 2005.

24 THE COURT: But it was still in in 2008?

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: All right.

2 MR. HILLIARD: And on thereafter. And so the electric --
3 well, but it's also in Johnny Robinson's name.

4 THE COURT: Let me cut to the chase here and I'll give
5 you an opportunity to review this at a later date, this case
6 is different from the two cases you cited which is mere
7 presence and I agree with that, it's not sufficient. In this
8 case, the testimony, if believed, first, that the Defendant
9 lived there. Secondly, the drugs were found in his bedroom.
10 Thirdly, the drugs were found in his britches. And lastly,
11 there is testimony that he was selling drugs. Clearly, that --
12 those four factors taken together are for the jury to
13 determine. It's far more than mere presence when 109 --
14 allegedly 109 grams is found in your britches in your home and
15 the jury is entitled to take that into consideration. So, I
16 would respectfully deny at this stage your motion for a
17 directed verdict, giving you full opportunity to present it
18 again at the conclusion of all the testimony.

19 MR. HILLIARD: Thank you, Your Honor, and one thing that
20 I neglected ---

21 THE COURT: Those two cases are correct on points but
22 circumstantial evidence just standing alone if there's no
23 circumstances and I agree with the case where the boy was
24 outside in the yard and they found the stuff outside and there
25 was no nexus or connection, State hadn't met the burden. But

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1 given the -- considering the facts as I must on behalf of the
2 nonmoving party, which is the State, those for evidence alone
3 are sufficient to take the case forward at this time.

4 MR. HILLIARD: Yes, sir.

5 THE COURT: And I respectfully deny that motion.

6 MR. HILLIARD: Thank you.

7 THE COURT: Any other motions at this point?

8 MR. HILLIARD: Well, Judge, I wanted to point out one
9 thing. When I did not object to the introduction of the
10 powder cocaine into evidence, what I intended and what I meant
11 by that was I did not object to the chain of custody aspect of
12 it. I preserve and reserve my previous objections. I
13 understood what Your Honor's ruling was, I didn't reiterate
14 that at that point but --

15 THE COURT: Your previous objection as to the search
16 warrant?

17 MR. HILLIARD: Yes, sir.

18 THE COURT: Oh, I understand that.

19 MR. HILLIARD: Yes, sir.

20 THE COURT: No, you are protected on the record as to
21 that issue clearly and I understood that it was subject to
22 that objection in fairness to you.

23 MR. HILLIARD: Thank you, Judge. Thank you very much.

24 THE COURT: All right. Are we ready to go? At the
25 appropriate time now if it becomes necessary I want to make

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1 THE COURT: When is the last time you talked to this
2 witness?

3 MR. HILLIARD: Thursday.

4 THE COURT: Well, how do you know an emergency still --
5 I don't understand this. How do you know an emergency still
6 exists.

7 MR. HILLIARD: No, sir. I'm -- I ---

8 THE COURT: That's all right. Let the jury come in.
9 Bring the jury in.

10 Go ahead and make every effort to get that witness here
11 this afternoon.

12 MR. HILLIARD: We're doing it right now, Judge, yes, sir.

13 THE COURT: All right.

14 (REPORTER'S NOTE: The jury returns to the courtroom.)

15 THE COURT: All right. The jury is present. Call your
16 first witness, please.

17 MS. BASS: Your Honor, the Defense calls Kenneth Levon
18 Durant to the stand, please.

19 KENNETH LEVON DURANT, HAVING BEEN
20 SWORN, TESTIFIED AS FOLLOWS:

21 CLERK: State your name and spell your last name, please.

22 MR. DURANT: Kenneth Levon Durant, D-U-R-A-N-T.

23 DIRECT EXAMINATION OF KENNETH LEVON DURANT BY MS. BASS:

24 Q: Good afternoon, Mr. Durant, I'm Julia Bass, I believe I
25 met you last week.

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- 1 A: Yes, ma'am.
- 2 Q: Okay. Would you please tell the jury what part of the
3 county that you live in here in Horry County; what part of our
4 county?
- 5 A: Carolina Forest.
- 6 Q: Carolina Forest. And would you tell the jury where
7 you're currently employed?
- 8 A: FLS Landscaping.
- 9 Q: Okay. And what do you do at FLS Landscaping?
- 10 A: Irrigation.
- 11 Q: Irrigation systems?
- 12 A: Yes.
- 13 Q: For businesses or homes or ---
- 14 A: For all, everything.
- 15 Q: Okay. And what parts of the county do you travel to?
- 16 A: The whole Horry County.
- 17 Q: And you've been employed there for how long?
- 18 A: On and off ---
- 19 THE COURT: We can't hear you. You're gonna have to talk
20 into that mic.
- 21 A: On and off about a year.
- 22 THE COURT: Thank you.
- 23 Q: Okay. And where were you employed prior to working at
24 FLS Landscaping.
- 25 A: Planet Hollywood.

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1 Q: And what did you do at Planet Hollywood?

2 A: I was a cook.

3 Q: Okay. And where else have you worked?

4 A: I worked for the County.

5 Q: Horry County?

6 A: Horry County, Storm Water Management.

7 Q: And when you worked for Storm Water Management, what
8 exactly were your job duties.

9 A: We did like drainage, like cleaning like drainage,
10 ditches and stuff like that.

11 Q: Okay. All throughout the county?

12 A: The whole county.

13 Q: And businesses and residential?

14 A: Uh-huh (affirmative response).

15 Q: Uh-huh, yeah -- is that yes?

16 A: Yes, ma'am.

17 Q: I'm so sorry but you have to -- since the court reporter
18 is taking everything down you have to say yes/no for your
19 answer, okay?

20 A: Okay.

21 Q: And how old are you?

22 A: I'm thirty-four.

23 Q: And are you married or single?

24 A: Single.

25 Q: And do you have any children?

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- 1 A: Three girls.
- 2 Q: Okay. And how old are your little girls?
- 3 A: My littlest girl, she's twelve. The next to the oldest,
- 4 she's fourteen and my next to the oldest, fifteen.
- 5 Q: Okay. And do you remember -- I'm gonna draw your
- 6 attention back to September of 2008. Okay? Yes or no?
- 7 A: Yes.
- 8 Q: Okay. And do you remember the month of September 2008?
- 9 A: Yes.
- 10 Q: Okay. And do you remember the police coming to your
- 11 house on September 25th, 2008?
- 12 A: Yes, ma'am.
- 13 Q: Okay. Would you tell the jury what time they came to your
- 14 home early that morning?
- 15 A: I think it was about 6:00. I was asleep so I don't
- 16 exactly know the right time but it was early.
- 17 Q: Okay. Early in the morning?
- 18 A: Yes, ma'am.
- 19 Q: Okay. And how did they get in the house?
- 20 A: They just kicked the door in like bust the door down.
- 21 Q: And was it an entire police force?
- 22 A: Yes.
- 23 Q: And was -- okay -- do you see any of the officers that
- 24 were at your home on September 25th, '08 in the courtroom
- 25 today?

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- 1 A: No, ma'am.
- 2 Q: Okay. And when they came into your house, what were you
- 3 doing early in the morning?
- 4 A: I was sleep.
- 5 Q: Okay. You were asleep and which part of the house were
- 6 you in?
- 7 A: I was in the master bedroom.
- 8 Q: Okay. And who was in the master bedroom with you?
- 9 A: Me and Tiffany Smith.
- 10 Q: Okay. And is that Tiffany Nicole Smith?
- 11 A: Tiffany Nicole Smith.
- 12 Q: And who was she at the time that y'all were asleep
- 13 together?
- 14 A: She was my girlfriend.
- 15 Q: Okay. And are you currently dating Tiffany Nicole Smith?
- 16 A: No, no, I'm not.
- 17 Q: Okay. And who is your girlfriend now?
- 18 A: Erica Adams.
- 19 Q: And where does Ms. Adams live?
- 20 A: She stays in the Carolina Forest area.
- 21 Q: Okay. Does she stay with you?
- 22 A: Yes.
- 23 Q: And where does she work?
- 24 A: She work at Zaxby's, 38th Avenue North.
- 25 Q: In Myrtle Beach?

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- 1 A: Myrtle Beach.
- 2 Q: Okay. And when the police came into your room, how did
3 they come in?
- 4 A: All I seen was a bunch of lights and guns pointing.
- 5 Q: Okay. And when they came into the bedroom, what did you
6 tell the police?
- 7 A: The first thing I told them, don't shoot and they like
8 just told me to get on the ground.
- 9 Q: So, you got up and got on the ground?
- 10 A: Yes.
- 11 Q: Okay. And what did Ms. Tiffany do?
- 12 A: Basically the same thing.
- 13 Q: She got on the ground?
- 14 A: Well she was still sleep and they just, I guess just drug
15 her out the bed.
- 16 Q: And who else was in the house at the time?
- 17 A: It was me, Tiffany Smith and Gil Yakoel.
- 18 Q: Gil Yakoel, okay. And anyone else in the house at the
19 time?
- 20 A: No, ma'am.
- 21 Q: Was Alex Robinson in the bedroom with you and Tiffany?
- 22 A: No, ma'am.
- 23 Q: Was Alex Robinson in the kitchen or the bathroom?
- 24 A: No, ma'am.
- 25 Q: Was Alex Robinson in any of the bedrooms?

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- 1 A: No, ma'am.
- 2 Q: Was Alex Robinson anywhere in the house proper that you
3 saw?
- 4 A: No, ma'am.
- 5 Q: While the police were there and they detained you, did
6 you ever see Alex Robinson on the property?
- 7 A: No, ma'am.
- 8 Q: Was he ever on the property?
- 9 A: No, ma'am.
- 10 Q: Okay. And what did you tell them about the gun? Did
11 they have to find the gun or did you tell them where it was?
- 12 A: I told them where it was.
- 13 Q: And what did you tell the -- what did you tell them about
14 the gun?
- 15 A: I told them it was in my book sack in the closet ---
- 16 Q: Okay.
- 17 A: --- in the master bedroom.
- 18 Q: Okay. And did you give it to them or show it to them?
- 19 A: No, they went and got it.
- 20 Q: And did you cooperate with the police?
- 21 A: Yes, ma'am.
- 22 Q: Okay. And who showed the police where your belongings
23 were, the things that belonged to you?
- 24 A: No one.
- 25 Q: Okay. I'm gonna show you some pictures. Okay. I'm

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1 gonna show you what's been marked as State's Number Eleven.

2 Tell the jury who that is.

3 A: That's me.

4 Q: Okay. And where were you -- you said in the back bedroom
5 or the master bedroom when the police came in?

6 A: The master bedroom.

7 Q: Okay. And whose toolbox is this in Fourteen and Fifteen?

8 A: It's mine.

9 Q: Nothing illegal about having a tool box?

10 A: No, ma'am.

11 Q: Okay. And is -- Your Honor, can I ask him to stand up
12 for a minute and just look down at this system and see if it's

13 ---

14 THE COURT: Don't tell me you're going through all those
15 photographs again?

16 MS. BASS: I'm gonna ask him about some of them, Your
17 Honor.

18 THE COURT: Well, we spent forty-five minutes with your
19 colleague going through each one of them. Let me -- go ahead
20 and let me see how far you're going with it.

21 MS. BASS: Your Honor, he's not been on the stand before.

22 THE COURT: I said go ahead.

23 MS. BASS: Okay.

24 BY MS. BASS:

25 Q: I'm going to ask you -- look down and tell me if you can

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- 1 see this Number -- it's been marked as Twenty-seven and
2 Twenty-eight.
- 3 A: Uh-huh (affirmative response).
- 4 Q: Okay. Were these in the house when you began renting the
5 house?
- 6 A: Yes.
- 7 Q: And nothing illegal about that; is that correct?
- 8 A: No.
- 9 Q: I'm sorry. I couldn't hear you.
- 10 A: No, ma'am.
- 11 Q: Okay. And of the people that live in your neighborhood,
12 you're not the only one that has a monitor; is that correct?
- 13 A: No.
- 14 Q: Okay. There'd been quite a few break-ins in the area,
15 correct?
- 16 A: Yes, ma'am.
- 17 Q: And there a lot of little children that live in the
18 neighborhood?
- 19 A: Yes, ma'am.
- 20 Q: Okay. And single parents and grandparents?
- 21 A: Yes, ma'am.
- 22 Q: And I want to show you what's been marked as Number
23 Twelve and whose book bag is this in State's Number Twelve?
- 24 A: That's mine.
- 25 Q: Okay. And who did you tell the police it belonged to?

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- 1 A: Me.
- 2 Q: And who did you tell the gun belonged to?
- 3 A: Me.
- 4 Q: And the drugs ---
- 5 A: That's mine.
- 6 Q: Okay. And I'm gonna show you what's been marked as
- 7 State's Number Nineteen. Whose bedroom were those drugs found
- 8 in? Which bedroom?
- 9 A: The back bedroom.
- 10 Q: And who had been spending the night in there?
- 11 A: Gil.
- 12 Q: Yakoel?
- 13 A: Yakoel.
- 14 Q: Okay. I'm sorry, Gil Yakoel?
- 15 A: Yakoel.
- 16 Q: Okay. And Alex Robinson has not been staying there with
- 17 Ms. Gil Yakoel, had he?
- 18 A: That's correct.
- 19 Q: Okay. Who was the gentleman, if I can find a picture of
- 20 him, who was the man that had been staying over at the house
- 21 at [REDACTED]?
- 22 A: Staying with me? Roland Robinson.
- 23 Q: Roland Robinson. And I apologize if I don't -- Roland
- 24 Robinson is a black male; is that correct?
- 25 A: Yes.

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1 Q: Okay. And is he a big man or a smaller man?

2 A: He's a smaller man.

3 Q: Okay. Tall and skinny?

4 A: Tall and skinny.

5 Q: Long dreads?

6 A: Long dreads.

7 Q: Hair longer or shorter than mine?

8 A: About the same.

9 Q: Okay. And he had lived with you for quite some time at

10 [REDACTED] is that correct?

11 A: That's correct.

12 Q: Alex Robinson was not living there?

13 A: No.

14 MR. RICHARDSON: Your Honor, I'd just that she'd kind of
15 cut down on the leading questions, leading, Your Honor.

16 THE COURT: What?

17 MR. RICHARDSON: Leading questions, Your Honor.

18 MS. BASS: I'll straighten that out, Your Honor.

19 THE COURT: Well, in fairness to her, she's trying to
20 expedite going through these pictures.

21 MR. RICHARDSON: She's asking about Roland Robinson,
22 direct questions, Your Honor.

23 THE COURT: I understand that. I understand. Just
24 follow the rules, please, Ms. Bass.

25 MS. BASS: Your Honor, I promise I'll rephrase.

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1 THE COURT: That's okay. You're doing fine.

2 BY MS. BASS:

3 Q: I'm trying to see if we've got -- and what was the --
4 this is Number Twenty-three, who was living in the house?

5 A: Me, Roland Robinson and Yakoel -- I'm saying it correct?
6 -- and Tiffany Smith.

7 Q: Okay. And was Roland Robinson involved with any kind of
8 romantic relationship that you know of with Gil Yakoel or
9 Tiffany Nichol Smith.

10 A: Not that I know if.

11 Q: And when Roland Robinson would stay at the house, would
12 he spend the night in the same bedroom with Gil Yakoel?

13 A: No, he'd sleep on the couch and she'd sleep in the room.

14 Q: Okay. And the couch is where in the house?

15 A: It's in the living room.

16 Q: Okay. And the lady you've been talking about, Gil Yakoel
17 -- I'm gonna show you State's Number Thirty-three, can you
18 please identify for the jury who those two women are?

19 A: That's Gil Yakoel and Kelly, I don't know her last name.

20 Q: Okay. And where was Gil Yakoel working when she was
21 staying at the house with you and your girlfriend and Roland
22 Robinson?

23 A: A strip club.

24 Q: Okay. What strip club?

25 A: I don't -- I want to say Derriere's, probably quite a

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1 few.

2 Q: Okay. And who was -- and the other lady, what -- with
3 the green shirt on in that picture, who was she? You said
4 Kelly?

5 A: Uh-huh (affirmative response).

6 Q: Where was she working?

7 A: I have -- I don't know.

8 Q: Okay. Thank you. And did y'all -- did you have parties
9 at the house?

10 A: Parties, yes.

11 Q: Okay. And when you had parties at the house, where were
12 people allowed to go?

13 A: Basically anywhere in the house.

14 Q: Okay. Did Gil keep people out of her bedroom?

15 A: No.

16 Q: What did you or Tiffany or Roland or Gil do to keep
17 people out of your bedrooms?

18 A: I mean, I would lock my door but the back two bedrooms
19 usually stay open.

20 Q: Okay. And who is Number Thirty-eight standing in front
21 of your toolbox?

22 A: Her name was Michela Torrence.

23 Q: Okay. Michela Ashley Torrence?

24 A: Uh-huh (affirmative response).

25 Q: And where was she employed at the time?

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- 1 A: I think she was a stripper too if I'm not mistaken.
- 2 Q: What -- which establishment?
- 3 A: Derriere's.
- 4 Q: Okay. And that's all nude all the time, correct?
- 5 A: Yes.
- 6 Q: And who are these women in Number Thirty-nine if you can
- 7 tell at this -- in front of the toolbox?
- 8 A: I see Kelly but I can't tell who this other girl is.
- 9 Q: Okay. That's fine. I've not ever shown you these
- 10 pictures before, have I?
- 11 A: No.
- 12 Q: Nor has Mr. Hilliard, correct?
- 13 A: That's correct.
- 14 Q: Okay. And Number Thirty-four, would you please identify
- 15 for the jury who these two gentlemen are?
- 16 A: That's my brother Alex Robinson and Roland Robinson.
- 17 Q: Okay. Is Roland Robinson any relation to you?
- 18 A: No.
- 19 Q: Okay. And how is Alex Robinson related to you?
- 20 A: That's my brother.
- 21 Q: And do you have the same daddies?
- 22 A: No, we don't.
- 23 Q: Okay. So, your half brothers?
- 24 A: Half brothers.
- 25 Q: You share the same mom?

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- 1 A: Yes.
- 2 Q: Okay. And when the police came in, now, our Sergeant is
3 back in the room, what did the Sergeant tell you, Gil Yakoel
4 and Tiffany Nicole Smith in regards to who would be charged
5 for the drugs?
- 6 A: When he came in, he said whatever room you in, that's
7 what you getting charged with, basically.
- 8 Q: Okay. So, how many times did he tell y'all that that
9 morning?
- 10 A: He kept saying it over and over.
- 11 Q: Any other police officers tell you that day or that you
12 personally heard say you would be charged for whatever room
13 you were in when the drugs -- whatever room the drugs were
14 found in if you stayed in that room?
- 15 A: Yeah, that's what he said, whatever room you was in,
16 that's what you get charged with, whatever was in the room.
- 17 Q: Okay. Did you understand what he meant?
- 18 A: Pretty much.
- 19 Q: What you mean by pretty much?
- 20 A: Yes, I understood.
- 21 Q: Okay, the camcorder that was found in the house, who did
22 it belong to?
- 23 A: The JVC camcorder, it was mine.
- 24 Q: Okay. And have you gotten that back?
- 25 A: No, ma'am.

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- 1 Q: Okay. And the -- there was shotgun shells found, old
2 shotgun shells; is that right?
- 3 A: Yes.
- 4 Q: Who did they belong to?
- 5 A: Mine.
- 6 Q: Okay. Well, do you have a shotgun?
- 7 A: No, I don't.
- 8 Q: Okay.
- 9 A: I think I found them one day.
- 10 Q: Okay. And how many nights -- we're just talking about
11 the month of September of '08 and only if you know, don't
12 answer if you don't know. Roland Robinson, how often was he
13 staying over there?
- 14 A: He stayed pretty often. I mean, like I would say
15 probably out of a week, he'd probably be there at least four
16 nights out the week.
- 17 Q: Did you ever see him, in the entire time he was there,
18 spend the night with Gil Yakoel?
- 19 A: No.
- 20 Q: All right. Were there any other girls that spent the
21 night over there?
- 22 A: There was quite a few.
- 23 Q: Okay. Were they staying with you?
- 24 A: No.
- 25 Q: Were they staying with Roland Robinson?

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- 1 A: No.
- 2 Q: Who were they staying with?
- 3 A: With Gil.
- 4 Q: Okay. Were they in her bedroom?
- 5 A: Yes.
- 6 Q: Okay. Would they spend the night -- if you know and only
- 7 if you know, did they spend the night in the bed with her?
- 8 A: I don't know.
- 9 Q: Did you ever see them sleeping on the couch?
- 10 A: Yeah, I seen some of them sleep on the couch.
- 11 Q: Okay. How many times during the month -- I'm only asking
- 12 during the month of September of '08, how many times did Lacy
- 13 Chesney spend the night at the house?
- 14 A: Lacy ---
- 15 Q: Chesney, if at all -- do you even know who that is?
- 16 A: Yeah, I know Lacy. She'd been there -- I don't know
- 17 exactly how many times but she's been there a lot in a month.
- 18 Q: Okay. Only in the month of September of '08, how many
- 19 times -- you don't know how many?
- 20 A: No, I don't.
- 21 Q: All right. Do you remember where she slept?
- 22 A: I think she slept in this little middle room.
- 23 Q: Okay. Is that the room where Gil was?
- 24 A: No, that was the middle room right before you get to
- 25 Gil's room.

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- 1 Q: Okay. And did Alex Robinson ever spend the night with
2 Lacy Chesney in that home?
- 3 A: No.
- 4 Q: Okay. Michela Ashley Torrence, that's in that picture
5 that -- how many times did she spend the night over there if
6 at all during the month of September of '08?
- 7 A: I don't think she -- she never spent the night.
- 8 Q: Okay. Kelly Nichols, how many times did she spend the
9 night over there during the month of September of '08, if you
10 remember?
- 11 A: I don't think she never spent the night neither.
- 12 Q: Okay. When Kelly and Michela came over they visited but
13 they didn't spend the night?
- 14 A: Yeah, they visited, they stayed pretty late but they
15 never spent the night.
- 16 Q: Okay. What's the latest they left?
- 17 A: I'd say about 2:00.
- 18 Q: 2:00 a.m.?
- 19 A: 2:00 a.m.
- 20 Q: Okay. And were they visiting you or Tiffany?
- 21 A: Me and Tiffany.
- 22 Q: Okay. Were they ever visiting with Roland?
- 23 A: Well, they knew Roland.
- 24 Q: But who would they coming to visit, if you know?
- 25 A: Me and Tiffany.

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1 Q: You and Tiffany, okay. And if you know and only if you
2 know, during the September 25th of '08, what was the
3 relationship if you know between Gil Yakoel or Yakoel and Alex
4 Robinson?

5 A: I know it was rough and they wasn't getting along too
6 good.

7 Q: How was it that Gil Yakoel came to live over there with
8 you and Tiffany and Roland around the time of September 25th,
9 '08?

10 A: She wouldn't -- I guess, she -- my brother wanted her to
11 like go home but she wouldn't never leave, I guess, she just
12 feel like she needed to be around him.

13 Q: Okay. Let me stop you because I don't want to ask you
14 any hearsay. Who asked you to let Gil stay at the house in
15 September of '08?

16 A: Well, she basically came and stayed. I didn't -- I mean,
17 nobody asked me, she just came over and she started staying.

18 Q: Did she ask if she could spend the night?

19 A: Oh, yeah, she, she -- like she was gonna lay her head
20 there for the night. She didn't ---

21 Q: How -- did you let her live there?

22 A: Yes.

23 Q: Okay. And was she paying any rent?

24 A: No.

25 Q: Did she pay for any food?

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- 1 A: No.
- 2 Q: Okay. Did she pay part of the utility bill?
- 3 A: No.
- 4 Q: Phone bill?
- 5 A: No.
- 6 Q: Did she take out the trash?
- 7 A: Huh-uh (negative response).
- 8 Q: Did she clean up?
- 9 A: No.
- 10 Q: Did she cook?
- 11 A: No.
- 12 Q: Okay. How many times during the month of September '08
- 13 did a woman by the name of Courtney Temple stay there?
- 14 A: Courtney, I don't know exact how many times she stayed
- 15 but she stayed ---
- 16 Q: Just during the month of September?
- 17 A: I would say she stayed probably out of a week, she's
- 18 probably stayed at least two or three nights.
- 19 Q: Okay. And who did she stay with, Courtney Temple when
- 20 she came?
- 21 A: She usually been with Lacy and Gil.
- 22 Q: Okay. Did she spend the night -- where did she spend the
- 23 night when she spent the night in September of '08?
- 24 A: When she -- when she -- what do you mean, where she slept
- 25 at?

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1 Q: Yeah.

2 A: Like I said, we got a middle room and we got a room in
3 the back where Gil slept at between two of them rooms. I'm
4 not exactly sure where she slept at but it was between two of
5 them rooms.

6 Q: Okay. If you're not sure, I don't want you to answer it
7 All right. What kind of ID card did Roland Robinson have at
8 your house?

9 A: He had a ---

10 Q: September 25th of '08?

11 A: He had a South Carolina State Prison card, ID card.

12 Q: Did it have a picture on it?

13 A: Yes.

14 Q: Did the police take it when they left?

15 A: I don't think so.

16 DEFENDANT'S EXHBIIT NUMBER FIFTY-EIGHT

17 MARKED FOR IDENTIFICATION.

18 Q: Okay. I'm gonna show you what's been marked as
19 Defendant's Fifty-eight and I'm only gonna ask you about if
20 you can identify those items and tell the jury what it is,
21 only if you can identify it.

22 A: It look like a ashtray, two ashtrays.

23 Q: Okay. And what do the ashtrays look like?

24 A: Like, like monkeys.

25 Q: Okay. And who had -- who brought the monkey ashtrays

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1 into the house?

2 A: Not sure. I think it was one of the girls but I'm not
3 sure exactly who brought it in.

4 Q: Okay. I don't want to ask you anything else if you're
5 not sure.

6 Okay. Were people in and out of Ms. Gil Yakoel's
7 bedroom?

8 A: Yes.

9 Q: How long had she been living there on September 25th of
10 '08?

11 A: She's been there for a while, probably about a good month
12 or two.

13 Q: A month or two?

14 A: Yeah.

15 Q: Okay. And the Sony Ericsson cell phone, who did that
16 belong to?

17 A: That was my phone.

18 Q: Okay. And the wallet that the police took, who was that?

19 A: I think that was my wallet.

20 Q: Have you gotten it back?

21 A: Yes.

22 Q: Okay. And when the police were there, how did they bag
23 up all of this stuff?

24 A: I saw brown paper bags.

25 Q: Okay. And did they get the brown paper bags from your

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1 house or did they bring them in?

2 A: They brought them in.

3 Q: Okay. And did you see anyone taking fingerprints or
4 getting any clothes together or anything like that?

5 A: No, ma'am.

6 Q: Did you hide any clothes from them?

7 A: No, ma'am.

8 Q: Did you tell them they couldn't take anything?

9 A: No, ma'am.

10 Q: Okay. Did you interfere with ---

11 THE COURT: You understand now that your last five
12 questions were leading?

13 MS. BASS: Okay, I'll stop, Your Honor. I'm just trying
14 to speed it up.

15 THE COURT: I understand but you need to follow the
16 rules.

17 MS. BASS: I'm sorry, Your Honor.

18 THE COURT: This is your witness.

19 MS. BASS: Thank you, Your Honor.

20 THE COURT: Okay.

21 BY MS. BASS:

22 Q: Who helped pay the light bill?

23 A: I did, Tiffany helped out and Roland.

24 Q: And who was paying rent on the mobile home?

25 A: I was.

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- 1 Q: And who was paying rent on the lot?
- 2 A: I was.
- 3 Q: Explain -- who was your landlord?
- 4 A: His name was -- I don't know his last name but we called
- 5 him Mr. Petrick (spelled phonetically). I mean the landlord
- 6 that owed the land was -- I can't even remember.
- 7 Q: Two different people or the same person?
- 8 A: The person that owned the trailer was -- his name was Mr.
- 9 Petrick but I can't remember the landlord because we usually
- 10 paid like to the people that keep the land up out there where
- 11 I was staying at. We just paid like a lot rent to them and
- 12 they pay it to the landlord.
- 13 Q: Okay. All right. I don't want to lead you but how many
- 14 different payments were you making?
- 15 A: I was making a lot payment and I was making a trailer
- 16 payment.
- 17 Q: Okay. How much was the trailer payment?
- 18 A: The trailer payment was \$300.
- 19 Q: And what arrangement did you have with Mr. Petrick in
- 20 regard to the mobile home?
- 21 A: Sometimes like if I wouldn't have all the money, he would
- 22 like work with me, he like comes by and get a couple of
- 23 hundred dollars from me and then he'll come back the next
- 24 month or whenever I call him and get some more money from me.
- 25 Q: Okay. And how much was it gonna cost you to buy the

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- 1 mobile home for it to be yours and not owe any rent on it?
- 2 A: It was like \$2,000 left before it would be mine.
- 3 Q: When did you only owe -- what month was it and what year
- 4 was it when you only owed \$2,000 and the trailer would be
- 5 yours?
- 6 A: It was around -- it was around like during that time,
- 7 September of '08.
- 8 Q: Okay. And how much money would you have had to pay to
- 9 own the lot?
- 10 A: Oh, it was just rent -- the lot was just rent. I don't
- 11 think you could own the lot, it was just rent. You had a
- 12 trailer out there and you just rent the lot.
- 13 Q: Okay. So, if you bought the trailer you could keep it
- 14 but you would never get the lot?
- 15 A: Yeah, the trailer was from a totally different person.
- 16 The people that was owning the lot, they was just renting out
- 17 lots but the trailer was owned by another person.
- 18 Q: Okay. Alex used to live -- all right, let me ask you
- 19 this. Who did Alex live with when he first moved into the
- 20 place on [REDACTED]
- 21 A: He stayed there and his family, Alicia ---
- 22 Q: Okay. Alicia Black, do you see her in the courtroom?
- 23 A: Oh, no, she's not in here.
- 24 Q: Okay. And when did he and Alicia move out?
- 25 A: I'd say around 2006.

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1 Q: Okay. And what arrangement did you have with Alex after
2 he and Alicia Black -- after he and Alicia Black moved out,
3 what arrangement did you have with your brother Alex, your
4 half-brother Alex.

5 A: Well, basically, when I moved in, I had really nowhere to
6 go and so he just let me take over all the bills and I paid
7 the bills and he told me I could have the trailer once I paid
8 it off.

9 Q: Okay. So, what do you mean wad of bills?

10 A: No, I said -- he -- when I moved in, he moved out, he
11 basically gave me the trailer and just told me to take care of
12 the -- like pay all the bills and once I paid the trailer off
13 or whatever it was mine.

14 Q: Was your agreement a sublet?

15 A: No.

16 Q: Okay. You don't know what that is?

17 A: Huh-uh. (negative response).

18 Q: Okay. Did you pay Mr. Petrick monthly, weekly, how did
19 you do that?

20 A: I started off paying them monthly and then my money
21 started getting tight so I just -- any time I could get some
22 money to pay him, I'd call him and he would come by and get
23 it.

24 Q: Okay. And is the trailer still there at [REDACTED]

25 [REDACTED]?

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- 1 A: Oh, no, ma'am. It's gone.
- 2 Q: And did you end up buying it?
- 3 A: Oh, no, ma'am, sold it.
- 4 Q: Okay. You sold it?
- 5 A: Yes.
- 6 Q: Or they sold it?
- 7 A: Well, I sold it.
- 8 Q: Okay. So, you eventually bought it?
- 9 A: Yeah, I eventually bought it and then turned around and
- 10 sold it.
- 11 Q: Okay. What I'm trying to figure out, when did you pay it
- 12 off?
- 13 A: It was in 2000 -- I want to say 2009.
- 14 Q: Okay. So you lived there for what years?
- 15 A: 2006 all the way up to 2009.
- 16 Q: Okay. And what month did you pay it off in 2009?
- 17 A: I can't remember the month exactly. I would say -- it
- 18 had to've been somewhere around ---
- 19 Q: Summer, winter, fall?
- 20 A: Probably winter.
- 21 Q: Okay. And when you paid it off, you owned the mobile
- 22 home in 2009 through the winter?
- 23 A: Yes.
- 24 Q: Couldn't buy the lot?
- 25 A: Yes.

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1 Q: Who did you sell -- when did you sell the mobile home?

2 A: As soon as I sold it -- I mean bought the trailer, I
3 turned right around and sold it.

4 Q: Okay. Who did you sell it to?

5 A: One of my close friends.

6 Q: Okay. And where is it currently parked?

7 A: Oh, I have no clue.

8 Q: Okay. When Alex you said moved out in 2006 and Alicia
9 moved out in 2006, who became your roommates in 2006?

10 A: It was me and Roland.

11 Q: All right. The same roommates in 2007?

12 A: Yes.

13 Q: '8?

14 A: Yes, except for Roland and Tiffany came 2008.

15 Q: Okay. Did anybody move in after Gil Yakoel?

16 A: No, ma'am.

17 THE COURT: Your Honor, if I could just check, I may be
18 almost finished.

19 BY MS. BASS:

20 Q: And you pled guilty, you entered a guilty plea at this
21 courthouse to the drugs that were found in the room where you
22 were that day; is that correct?

23 A: Yes.

24 Q: Okay. And you pled guilty what year?

25 A: 2008.

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1 Q: Okay. And what did you plead guilty to?

2 A: To possession of cocaine.

3 Q: Possession of cocaine?

4 A: Yes.

5 Q: Was there anything else, any other wording?

6 A: No.

7 Q: Okay. Hold on just one moment.

8 THE COURT: Do you have some other questions for him, Ms.
9 Bass?

10 MS. BASS: Your Honor, just two. I'm trying to find
11 exactly -- two questions and I'm done, I promise.

12 BY MS. BASS:

13 Q: Who represented you? Who was the lawyer that represented
14 you on your charge?

15 A: Melinda Knowles.

16 Q: And you pled guilty in front of Judge Steven John to
17 possession with intent to distribute cocaine; is that correct?

18 A: Yes.

19 Q: And how many days prior to the search warrant being
20 served had it been since Alex Robinson had even been at that
21 house?

22 A: I haven't seen him before the search warrant been served
23 I haven't seen him none I'd say probably about two weeks or
24 something. He wasn't over.

25 Q: Okay. Wasn't over at [REDACTED]?

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1 A: Yes.

2 Q: Okay. I have no further questions. Thank you, Your
3 Honor.

4 THE COURT: All right Mr. Richardson.

5 MR. RICHARDSON: Yes, sir, Your Honor.

6 CROSS EXAMINATION OF KENNETH LEVON DURANT BY MR. RICHARDSON:

7 Q: Let me see those party pictures, just one real quick.
8 You said this was your toolbox, right?

9 A: Yes.

10 Q: This is on State's Number Thirty-nine, Your Honor. Now,
11 there's a motorcycle helmet on top of that toolbox, who does
12 that belong to?

13 A: It was mine.

14 Q: That's yours? Where was the motorcycle whenever they
15 served the search warrant?

16 A: The motorcycle wasn't there.

17 Q: So you just liked to have the helmet?

18 A: The motorcycle, I didn't even have a motorcycle at that
19 time.

20 Q: But you got a motorcycle helmet?

21 A: Yes.

22 Q: Okay. And there was not a motorcycle there whenever the
23 search warrant was served?

24 A: Yes.

25 Q: And Ms. Bass just indicated that you pled -- you actually

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1 pled in 2009, correct?

2 A: I think that's right.

3 Q: December, 2009?

4 A: Yes.

5 Q: So, search warrant was September of '08 so about a year
6 and three months after the search warrant, correct?

7 A: A year and three months after the search warrant?

8 Q: Yes, sir.

9 A: Yes.

10 Q: And at -- prior to that plea, let me show you -- I'm
11 gonna have a document marked real quick.

12 STATE'S EXHIBIT NUMBER FORTY-THREE

13 MARKED FOR IDENTIFICATION.

14 Q: It's been marked as State's Number Forty-three. See if
15 you can identify that item.

16 A: It's just a statement that I ---

17 Q: I want you to speak up into the microphone.

18 A: It's the statement that I wrote for Tiffany Smith that I
19 had took the charge -- all the charges, the charge that was in
20 -- that I was charged with.

21 Q: So no doubt about it, in this affidavit you're taking
22 responsibility for the drugs found in your bedroom?

23 A: Yes.

24 Q: In your backpack?

25 A: Yes.

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1 Q: And when is it dated? When did you do this?

2 A: This was February of 2009, the 15th.

3 Q: So, your brother has already been charged at this point,
4 correct?

5 A: I assume so. I don't know.

6 Q: Where is the affidavit for him?

7 A: Oh, I don't know.

8 Q: So you didn't do an affidavit for your brother saying the
9 drugs in the back bedroom belong to Roland Martin, not my
10 brother?

11 A: Roland wasn't there or my brother so why would I -- I
12 mean, I don't understand your question.

13 Q: You didn't do an affidavit for your brother?

14 A: I didn't do an affidavit for my brother or Roland because
15 neither one of them was there.

16 MR. RICHARDSON: The State would seek to introduce Number
17 Forty-three.

18 MS. BASS: No objection to that, Your Honor.

19 THE COURT: All right. Thank you.

20 STATE'S EXHIBIT NUMBER FORTY-THREE

21 ADMITTED INTO EVIDENCE.

22 BY MR. RICHARDSON:

23 Q: You say you lived in Carolina Forest, when did you start
24 living in Carolina Forest?

25 A: I -- right after I got out of prison.

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1 Q: When was that?

2 A: 2010.

3 Q: 2010, do you remember what month?

4 A: February.

5 Q: February, 2010. Did you ever list as your address [REDACTED]

6 [REDACTED], Conway, South Carolina?

7 A: And have I ever had that as an address, yes, that's my
8 father's house.

9 MR. HILLIARD: We object to this -- I'm sorry.

10 THE COURT: What's the document you propose to show?

11 MR. RICHARDSON: Your Honor, if we can approach on this
12 one?

13 THE COURT: Just tell ---

14 MR. RICHARDSON: It's for identification purposes only,
15 Your Honor, it'd be very brief.

16 THE COURT: I'm gonna let you go the jury room and I'll
17 hear this on the record. I'll be calling you back very
18 shortly.

19 (REPORTER'S NOTE: The jury retires to the jury room.)

20 THE COURT: All right. First what is it that you propose
21 to show or do?

22 MR. RICHARDSON: Your Honor, I propose to show that this
23 Defendant -- jail signing, visitor's name log where he
24 indicates -- I have the name on here Kenneth Durant visiting
25 Alex Robinson on October 2nd, 2010 under the address, he lists

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1 MS. BASS: And also, Your Honor, we object because we
2 don't know who wrote this.

3 THE COURT: Do what?

4 MS. BASS: Also, Your Honor, we would object because we
5 don't know who wrote all this.

6 THE COURT: Well, ---

7 MS. BASS: It's like a jail ---

8 THE COURT: Well, let's take a short break her a few
9 minutes and then ---

10 MR. RICHARDSON: You want me to proffer it to him, Your
11 Honor?

12 THE COURT: Go ahead and proffer it now and we'll end it
13 right quick like outside the presence of the jury.

14 BY MR. RICHARDSON:

15 Q: Do you see your name right here, Kenneth Durant?

16 A: Yes.

17 Q: Is the address [REDACTED]?

18 A: Uh-huh (affirmative response).

19 Q: 10-2-2010?

20 A: Yes.

21 Q: Did you write that?

22 A: Yes.

23 Q: You did write that?

24 A: Uh-huh (affirmative response).

25 THE COURT: That answers that question. Let's take a

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1 MR. RICHARDSON: I asked him if he wrote it and he said
2 yes.

3 THE COURT: He's under oath and he says yes and he's
4 answering truthfully or he's under oath.

5 MS. BASS: And the solicitor said that he's just gonna
6 ask if he wrote that out at the jail.

7 THE COURT: No, ma'am.

8 MS. BASS: So, we don't have any objection to that.

9 THE COURT: No, now, whether you have an objection or not
10 he asked him and he's entitled to ask him and he answered, is
11 that your signature and he said yes.

12 MR. RICHARDSON: We're good, Your Honor. Thank you.

13 Thank you, Your Honor.

14 THE COURT: We'll be right back in just a minute. You
15 may ask that same question in front of the jury.

16 MR. RICHARDSON: Yes, sir.

17 (RECESS.)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 THE COURT: All right. Are we ready again?

21 MR. RICHARDSON: Yes, sir, Your Honor.

22 We're ready to bring the jury out.

23 THE COURT: All right. Have the jury come on back.

24 (REPORTER'S NOTE: The jury returns to the courtroom.)

25 THE COURT: All right. Mr. Richardson, let's move on

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1 now.

2 STATE'S EXHIBIT NUMBER FORTY-FOUR

3 MARKED FOR IDENTIFICATION.

4 BY MR. RICHARDSON:

5 Q: Once again, Mr. Durant, I'm gonna show what's been marked
6 as State's Number Forty-four just for identification purposes.
7 Looking at that sheet, did there come a time in October of
8 2010 when you identified [REDACTED], Conway, South
9 Carolina as your address?

10 A: Yes.

11 Q: So, previously whenever you said you moved in, at Carolina
12 Forest in February of 2010, were you wrong on that?

13 A: It's not like -- it's not my house, it's my girlfriend
14 house, so I'm just basically staying with her when I want to.

15 Q: Okay. But you come and go as you please?

16 A: Yeah.

17 Q: Okay. And who stays at [REDACTED]?

18 A: My father.

19 Q: Your father. That's your father's address?

20 A: Uh-huh (affirmative response).

21 Q: Any other family along Dunn Shortcut?

22 A: No.

23 Q: So nobody else lives along Dunn Shortcut Road?

24 A: Not that I'm aware of that's kin to me, my father stay
25 there.

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- 1 Q: Okay. Your father stays there. Once again, you and the
2 Defendant have the same father or mother?
3 A: We have the same mother.
4 Q: Same mother, okay.
5 A: But that's the father that I know.
6 Q: Okay. Okay. And that's your father that stays ---
7 A: On [REDACTED].
8 Q: Okay. And that's the same person who's Mr. Robinson's
9 father?
10 A: Yes.
11 Q: What's his name?
12 A: Johnny Robinson.
13 Q: Okay. Johnny Robinson. You're talking about Johnny, the
14 male ---
15 A: Johnnie the female is my sister.
16 Q: Okay. Now, when did you sell that mobile home?
17 A: I want to say it was in 2009.
18 Q: Do you remember what time of year it was? Was it cold,
19 was it hot?
20 A: Probably the fall, kind of cold.
21 Q: Fall of 2009, probably. You said you sold it to a
22 friend, what's that friend's name?
23 A: A friend. He's a good close friend of mine. I don't
24 really want to reveal his name in this case.
25 MR. RICHARDSON: Your Honor I'd ask for the friend's

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1 name.

2 THE COURT: Well, ask him ---

3 MS. BASS: Your Honor, I'm gonna object to the -- I'm
4 gonna object to the relevance at this point because we're
5 already past -- may we approach?

6 THE COURT: No, ma'am. Let's get on -- be on the record.

7 MS. BASS: Okay. On the record then, this happened in
8 2008, he's asking about 2009. I've already asked him, he said
9 he didn't remember and ---

10 THE COURT: Well, you asked him; he's entitled to ask
11 him, too.

12 MS. BASS: Okay, but Your Honor we're -- I'm just
13 objecting as to going beyond the dates.

14 THE COURT: You want to say you can ask him but you want
15 to say he can't ask him; that's not proper. He can ask him
16 too.

17 MR. RICHARDSON: And Your Honor, previously he said I
18 sold it to a good friend. I'm asking the identity of the
19 friend.

20 A: Jamie Eaddy.

21 BY MR. RICHARDSON:

22 Q: Jamie who?

23 A: Eaddy.

24 Q: Eaddy?

25 A: Yes.

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- 1 Q: And you say that was approximately in the fall of 2009?
- 2 A: Yes.
- 3 Q: And now until that fall of 2009, did the manufactured
- 4 home or mobile home stay at [REDACTED] -- not [REDACTED],
- 5 I'm sorry -- [REDACTED]?
- 6 A: Yes.
- 7 Q: The whole time?
- 8 A: Of the fall, yes. 2009?
- 9 Q: Did you or anyone else at that address ever get served
- 10 with an eviction notice?
- 11 A: Yes.
- 12 Q: When was that?
- 13 A: It's probably in the fall of 2009?
- 14 Q: Probably in the fall of 2009. And who was served with
- 15 that eviction notice?
- 16 A: I was.
- 17 Q: Okay. And whenever you were served with that, who did
- 18 you identify yourself as being?
- 19 A: Alex Robinson.
- 20 Q: So, you identified -- and who did you identify that to?
- 21 A: When they come to me, they thought I was my brother, I
- 22 said he was locked up and I was taking care of the payments.
- 23 Q: So, a Sheriff's deputy -- you identified yourself as Alex
- 24 Robinson to a Sheriff's deputy?
- 25 A: Yes. Cause, I mean, I was taking over the payments, I

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1 was making all the payments, I was paying all the bills and I
2 took -- when I got the eviction notice, it came Alex Robinson,
3 they didn't ask me who I was, I just told them I was Alex
4 Robinson.

5 Q: No doubt about it you lied to a law enforcement officer
6 that day?

7 A: Yes. Cause I knew he was locked up so it wouldn't have
8 been -- no way he could've got the letter.

9 Q: Now, Roland Robinson, when did you -- your brother got
10 locked up September 30th - October 1st on this charge,
11 correct?

12 A: Correct.

13 Q: And you got locked up on the 25th of September?

14 A: Correct.

15 Q: How long did you stay in jail?

16 A: I think I stayed in jail for about a week, week or two.

17 Q: So, where you there whenever your brother got booked in?

18 A: No.

19 Q: So, you stayed there a week or two, your brother is
20 booked in five days later. So you bonded out before your
21 brother got booked into J. Reuben?

22 A: Yes.

23 Q: Did you know he got arrested?

24 A: No, not at that time.

25 Q: When did you find out about it?

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- 1 A: I didn't find out until I got out.
- 2 Q: Okay. But before February, 2009 you knew your brother
- 3 had been arrested on these charges?
- 4 A: Before February?
- 5 Q: Yeah.
- 6 A: Yes.
- 7 Q: And you never wrote an affidavit saying it wasn't his
- 8 drugs?
- 9 A: Did I ever write a what -- say that again?
- 10 Q: Did you ever write another affidavit like you did for
- 11 your girlfriend?
- 12 A: No, I wrote -- I didn't write nothing for him or Roland
- 13 Robinson because neither one of them was there as I stated
- 14 before.
- 15 Q: But you knew your brother got locked up on these charges
- 16 for the dope found in that bedroom?
- 17 A: Yes.
- 18 Q: And your brother, he did date Gil Yakoel, correct?
- 19 A: That was his baby's -- his girlfriend, baby-momma,
- 20 whatever.
- 21 Q: She was pregnant at this time?
- 22 A: I think so.
- 23 Q: Those party pictures we saw, you don't appear in them,
- 24 correct?
- 25 A: No.

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- 1 Q: Were you part of Red Monkey Entertainment?
- 2 A: Red Monkey what?
- 3 Q: Red Monkey Entertainment, I believe that's -- was
- 4 discussed earlier, some entertainment group?
- 5 A: No, never heard of it.
- 6 Q: You never heard of it?
- 7 A: No.
- 8 Q: So, if there was anything found at the mobile home with R
- 9 -- I believe it's RME, Red Money Entertainment or RM --
- 10 whatever it was, that wouldn't be yours?
- 11 A: No.
- 12 Q: I belonged to whoever was part of that group?
- 13 A: Like I said, I never heard of it so...
- 14 Q: You say you found the shotgun shells?
- 15 A: Yeah.
- 16 Q: You found a box of shotgun shells?
- 17 A: It was laying around and I picked them up one day.
- 18 Q: Inside or outside?
- 19 A: It was on the outside.
- 20 Q: So, that nice pristine crisp box of shotgun shells on
- 21 State's Fourteen, that was just laying around outside?
- 22 A: It look like that on the picture but it's not that nice
- 23 and crisp if you looked at it at person.
- 24 Q: And how long did you say Ms. Yakoel had been living over
- 25 at ---

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1 A: About two months.

2 Q: About two months. So, that takes us back to July, she
3 moved in in July?

4 A: She moved -- yeah, basically she'd been staying there for
5 a while. She'd been in and out of there -- might as well she
6 was staying there because she was in and out of there all the
7 time and then she got to the point that she just started
8 staying.

9 Q: And who let her in?

10 A: I did.

11 Q: And you weren't dating her?

12 A: No.

13 Q: Your brother was dating her?

14 A: He was -- I guess, I don't know what their relationship
15 was at the time.

16 Q: Did he buy her a car?

17 A: No, not that I know of.

18 Q: Well, that Hyundai that was parked at [REDACTED] whose
19 was that?

20 A: I don't know.

21 Q: You don't know?

22 A: Huh-uh (negative response).

23 Q: You never saw anybody driving it?

24 A: No. I had my own car, that's the only one I worried
25 about.

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1 Q: Where was your car?

2 A: My car was at my father's house at the time. It was kind
3 of -- it wasn't running that good.

4 Q: So, there was another car that was available at the house
5 that was not there when they served the search warrant?

6 A: Say that -- repeat that question again.

7 Q: Typically, there was another car at the house?

8 A: It probably was.

9 Q: And that morning, your car wasn't at the house?

10 A: I think my car was at the house. I had a Cadillac.

11 Q: You just said you thought it was over at your dad's?

12 A: No, my car was at my dad's, that's what I said, it was --
13 not that morning, you didn't say the morning of the search
14 warrant, you said -- you trying to confuse me, man.

15 Q: Where did you park?

16 A: I parked right in the back like beside the A/C unit.

17 Q: But we don't have any record of that car being there,
18 correct?

19 A: I guess not.

20 Q: And that monitor, State's Number Twenty-seven, it's not
21 in your bedroom, correct?

22 A: No, it's not in no bedroom; it was in like the front
23 living room.

24 Q: It was in the living room, okay. No doubt about it you
25 pled to the drugs that were in your room?

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- 1 A: Yes.
- 2 Q: And you cleared Tiffany from the charges, correct?
- 3 A: Yes, because she was in the room with me.
- 4 Q: And you didn't clear anybody else?
- 5 A: I was in the room where Tiffany was at, that's who I
- 6 cleared. Nobody else was in the house but Tiffany Smith and
- 7 Gil.
- 8 Q: Where were you working at the time?
- 9 A: I'm not sure. I think I was doing landscaping or Storm
- 10 Water Management; I'm not sure.
- 11 Q: You're not sure on where you working, correct?
- 12 A: No, sir.
- 13 Q: Not sure of whether your car was there or not that day,
- 14 correct?
- 15 A: Oh, I know my car was there that day because I had just
- 16 brought it back over there.
- 17 Q: Not sure exactly what your address was from February 2010
- 18 to October 2010?
- 19 A: February 2010?
- 20 Q: Uh-huh (affirmative response). You said you got out and
- 21 moved to Carolina Forest but you put a different address when
- 22 you signed in.
- 23 A: Yeah, because that was my -- I never had changed my
- 24 address at the time.
- 25 Q: Okay.

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1 A: I had just got out of prison so I had -- I didn't have to
2 time to just change my address right then and there which that
3 ain't really my address where I stay at. Like I said, it was
4 my girlfriend house.

5 Q: So, you're not sure about these but you're real sure
6 about what happened in September of 2008 who was coming and
7 going?

8 A: Yes.

9 Q: You want to help your brother out, correct?

10 A: I'm up here to answer your question.

11 Q: Thank you. That's enough. Your Honor, I have no further
12 questions.

13 MS. BASS: Your Honor, I may just have two questions.

14 REDIRECT EXAMINATION OF KENNETH LEVON DURANT BY MS. BASS:

15 Q: I just have one question for you. The lady that was
16 living -- the lady that moved out -- that lived with Alex and
17 moved out in 2006 that I asked you about, Ms. Alicia Black, do
18 you see her present in the courtroom?

19 A: Yes.

20 Q: All right. Would you identify her for the record,
21 please.

22 A: She's right there with the pink/grey and striped shirt.

23 Q: Okay. And just one more question.

24 THE COURT: You understand the rule, now, your further
25 redirect has got to be -- to his cross?

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KENNETH LEVON DURANT - REDIRECT BY MS. BASS

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1 MS. BASS: Yes, sir. I'm looking for one -- God bless
2 you -- I'm looking one picture and that's it and I'll be
3 through, I promise, Your Honor.

4 BY MS. BASS:

5 Q: I want to show you what's been marked as State's Number
6 Six, okay. And what was that drawer kept for?

7 A: Mail.

8 Q: Okay. And the Alicia Black that's been identified in the
9 courtroom ---

10 MR. RICHARDSON: Your Honor, I didn't cover any of this
11 in cross.

12 MS. BASS: I'll stop, Your Honor.

13 THE COURT: You're not following the rules.

14 MS. BASS: I'll stop, Your Honor.

15 THE COURT: That's fine.

16 MS. BASS: No further questions, Your Honor.

17 THE COURT: Okay. Thank you. You may come down.

18 Thank you, ma'am.

19 Please call your next witness, Ms. Bass?

20 MR. HILLIARD: We'll call Ms. Lisa Rabon.

21 MR. RICHARDSON: Lori.

22 MR. HILLIARD: Lori Rabon, I'm sorry.

23 MS. BASS: Your Honor, we would move to have Mr. Durant
24 relieved from his subpoena so he can return to work.

25 THE COURT: You may do so. He is relieved.

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LORI RABON - DIRECT BY MR. HILLIARD

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1 MR. HILLIARD: Thank you, Your Honor.

2 (REPORTER'S NOTE: Witness leaves the witness stand.)

3 LORI RABON, HAVING BEEN SWORN,

4 TESTIFIED AS FOLLOWS:

5 CLERK: If you'll state your full name and spell your
6 last name.

7 MS. RABON: Lori Rabon, R-A-B-O-N.

8 DIRECT EXAMINATION OF LORI RABON BY MR. HILLIARD:

9 Q: Ms. Rabon, you are the chief evidence person for the
10 Horry County Police Department; is that correct?

11 A: Yes, I am. My position is Property and Evidence
12 Supervisor.

13 Q: And all the evidence custodians work for you?

14 A: That's correct.

15 THE COURT: Please talk into the microphone for us.
16 Thank you.

17 Q: In connection with that, do you have a document that is
18 the evidence log for this case?

19 A: What do you mean evidence log? The ---

20 Q: Do you have a list of the things that were taken into
21 evidence in connection with the search warrant that was
22 executed at [REDACTED]?

23 A: Yes. There's a evidence record for every case that our
24 department comes in contact with.

25 Q: And do you have that with you here today?

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LORI RABON - DIRECT BY MR. HILLIARD

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- 1 A: No, I don't have it with me.
- 2 Q: You don't have it with me?
- 3 A: No, I do not.
- 4 Q: In connection with this case, the [REDACTED] [REDACTED]
- 5 have spoken about it in the past; is that correct?
- 6 A: Yes, we have.
- 7 Q: And as it turns out when we were there looking at the
- 8 evidence, there is evidence connected to this case that was
- 9 gathered at the Stoneybrook residence that was inadvertently
- 10 destroyed; is that correct?
- 11 A: Yes, it is.
- 12 Q: And that's not to say that you did anything wrong in this
- 13 case but it is a fact that there are -- let me show you
- 14 State's Exhibit Number Six, a photograph of a lot of letters.
- 15 One of the things that we determined that was in fact
- 16 destroyed was a number of letters; is that correct?
- 17 A: If I remember correctly the evidence log said various
- 18 paperwork; that's correct.
- 19 Q: And there were a number of things that were taken into
- 20 evidence that are not available to us for the purpose of this
- 21 trial that were returned to people that would come in and say,
- 22 well, that's mine; is that correct? Return to owner, I think
- 23 is the ---
- 24 A: There were some items that by request of the
- 25 investigating officer were returned to the owner; that is

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LORI RABON - DIRECT BY MR. HILLIARD

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- 1 correct.
- 2 Q: And the investigating officer indicates that this
- 3 gentleman here, is that ---
- 4 A: Yes, it was Detective Donald.
- 5 Q: Detective -- so Detective Donald released some of the
- 6 things that were taken into evidence in this case back to the
- 7 individuals; is that correct?
- 8 A: Detective Donald authorized for our section to release
- 9 the property.
- 10 Q: And you actually were the one that released it?
- 11 A: I believe so, yes.
- 12 Q: Right. And the -- the shotgun shells, do you remember us
- 13 talking about the shotgun shells and they had been identified
- 14 on the return to the search warrant as 12 gauge shotgun
- 15 shells, do you remember us talking about that?
- 16 A: Yes, I do.
- 17 Q: And in fact they were not 12 gauge, they were 20 gauge
- 18 shotgun shells?
- 19 A: Yes, I do.
- 20 Q: But those were the shotgun shells?
- 21 A: Yes.
- 22 Q: In connection with this case, there was no clothing taken
- 23 into evidence; isn't that correct?
- 24 A: That is correct.
- 25 Q: And do you remember other than the paperwork that was

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LORI RABON - DIRECT BY MR. HILLIARD

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1 destroyed, what else was destroyed? Do you remember what else
2 was done away with?

3 A: The -- there were pipes and an ashtray, I think, that
4 were also destroyed; however that was not an inadvertent
5 thing. We have an agreement with the solicitor's office that
6 we do not retain paraphernalia.

7 Q: Okay. So, of the evidence that was collected in
8 connection with this search warrant, some of it was
9 inadvertently destroyed, some if it was destroyed by agreement
10 with the solicitor's office and some of it was returned to
11 various individuals by the permission of the investigating
12 officer; is that correct?

13 A: That's correct.

14 Q: Excuse me just one second, please. And one other
15 question, when you say that it was various paperwork that was
16 destroyed, there was never any detailed list of what was taken
17 from the Stoneybrook search; is that correct?

18 A: The paperwork had an item number beside it and was
19 labeled various paperwork.

20 Q: And it was in a box?

21 A: Yes.

22 Q: And nobody did anything other than just destroy what was
23 in the box?

24 A: That's correct.

25 Q: Thank you, ma'am. That's all the questions I have and I

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LORI RABON - CROSS BY MR. RICHARDSON

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1 think you for coming.

2 THE COURT: Do you have any questions?

3 MR. RICHARDSON: Your Honor, I just want to get a little
4 specific on the various paperwork. I ask her to identify ---

5 STATE'S EXHIBIT NUMBER FORTY-FIVE

6 MARKED FOR IDENTIFICATION

7 CROSS EXAMINATION OF LORI RABON BY MR. RICHARDSON:

8 Q: State's Number Forty-five for identification, do you
9 recognize that item?

10 A: Yes, I do.

11 Q: How do you recognize it?

12 A: It has Horry County Police Evidence Record with a -- with
13 this coinciding case number.

14 MR. RICHARDSON: I've shown it to Defense counsel, Your
15 Honor.

16 BY MR. RICHARDSON:

17 Q: Do you see the paperwork Mr. Hilliard was asking about
18 listed there?

19 MR. HILLIARD: I would object to her publishing that
20 document, Judge.

21 MR. RICHARDSON: All right, Your Honor, then I move it
22 into evidence at this time.

23 THE COURT: What's the basis for your objection?

24 MR. HILLIARD: Our objection is that she testified that
25 she didn't know what was in the box that she destroyed and

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LORI RABON - CROSS BY MR. RICHARDSON

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1 that document purports to characterize what was in the box and
2 she's not the person that put it in the box.

3 THE COURT: What you say about that, solicitor?

4 MR. RICHARDSON: Your Honor, she said she destroyed what
5 was in the box, the box is entitled however it is on the
6 evidence sheet.

7 THE COURT: I can let her testify as to what she
8 personally destroyed.

9 MR. RICHARDSON: She indicated that she was the one that
10 destroyed this and it goes by the item number and it's listed
11 as it is on the sheet.

12 THE COURT: Well, I'll permit that testimony if she
13 herself destroyed it.

14 BY MR. RICHARDSON:

15 Q: Ms. Rabon, the titles that appear on the evidence sheet,
16 is that what appears on the box or the UPC code that you see
17 on it?

18 A: Yes. When we enter evidence at the Horry County Police
19 Department each item is individually bar coded and it would've
20 been bar coded with our case number and a coinciding Item
21 Twenty-two and the description would be various paperwork in
22 the name of Alex Robinson on the description portion of the
23 barcode label.

24 Q: And that's what you destroyed?

25 A: That's exactly what it was.

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LORI RABON - CROSS BY MR. RICHARDSON

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1 Q: And that's how you can identify that ---

2 A: Yes, it is.

3 Q: --- that you destroyed? And once again why was that
4 destroyed?

5 A: There were co-defendants on this case and the solicitor's
6 office sends over monthly dispositions that during the month
7 have -- the cases have been cleared. When our office receives
8 the dispositions from the solicitor's office that property is
9 pulled and the cases are disposed. In this situation, the
10 various paperwork was located in our warehouse housing area
11 for evidence, that's the reason that's the only item that was
12 destroyed at that time.

13 Q: You can only carry so much?

14 A: Exactly.

15 Q: And you -- and because of my office's actions, you
16 thought that the case was resolved?

17 A: Exactly.

18 Q: And with regard to what evidence was destroyed in what
19 fashion, what's the first evidence that typically gets
20 destroyed?

21 A: General property.

22 Q: General property, paperwork?

23 A: Exactly.

24 MR. RICHARDSON: No further questions, Your Honor.

25 THE COURT: Confine your redirect now to his cross

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LORI RABON - REDIRECT BY MR. HILLIARD

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1 examination and don't go into new matters.

2 MR. HILLIARD: Nothing new, Judge.

3 REDIRECT EXAMINATION OF LORI RABON BY MR. HILLIARD:

4 Q: State's Exhibit Number Forty-five, this is the paper that
5 I asked you did you have, right?

6 A: Yes, it is.

7 Q: And you didn't have it?

8 A: I didn't have it.

9 Q: That guy had it?

10 A: Yes.

11 Q: Okay. But now we got it. And the -- where it says there
12 box of 12 -- Remington 12 gauge shotgun shells; that's wrong,
13 right? That's just flat -- number twenty-one, box of
14 Remington 12 gauge shotgun shells typed, that is wrong.

15 A: The description of the shotgun shells is noted beside it
16 indicated by the evidence technician as 20 gauge instead of
17 12.

18 Q: Right. So, they corrected it. And where it says, number
19 twenty-two, various paperwork in the name of Alex Robinson,
20 that doesn't necessarily mean that the only thing in that box,
21 you got a box, right?

22 A: That is actually what is inside that box. We have to
23 inventory the property that comes in as it comes in. We don't
24 just take the word for the paperwork, we have to actually
25 physically see what we're signing for.

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LORI RABON - REDIRECT BY MR. HILLIARD

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1 Q: Okay. And when I say in the box, the -- you didn't
2 review the paperwork to determine that in fact it was only
3 paperwork with Alex Robinson's name on it.

4 A: No, we would not have done that.

5 Q: All right. And so my question to you is just because
6 that piece of paper says Alex Robinson paperwork does not mean
7 that it's only Alex Robinson paperwork from your ability to
8 swear under oath to these twelve people?

9 A: Are you asking me can I definitively say that that's the
10 only name that was on the paperwork that was in the box?

11 Q: Right.

12 A: No, I can't say that.

13 Q: And you destroyed what was in the box?

14 A: Under item twenty-two.

15 Q: And the only person who could say what was actually in
16 item twenty-two is the person that put the stuff in item
17 twenty-two, right?

18 A: That's correct.

19 Q: If he remembered?

20 A: That's correct.

21 Q: Were you here when he testified that he didn't remember?

22 A: I just walked in the door; no, sir, I was not.

23 Q: This is not your first opportunity to testify in this
24 case?

25 A: No, it's not.

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SERGEANT KENT DONALD -- DIRECT BY MR. HILLIARD

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1 Q: And on the other occasion were you ---
2 MR. RICHARDSON: Your Honor, we're going beyond ---
3 THE COURT: Yes, sir. You're going beyond ---
4 MR. RICHARDSON: Well beyond.
5 THE COURT: You're going beyond his cross examination.
6 MR. HILLIARD: The only thing -- very well.
7 Thank you, ma'am.
8 THE COURT: All right. You may come down. Thank you.
9 Can this witness be excused?
10 MR. HILLIARD: Without objection.
11 THE COURT: All right. Thank you. Thank you so much.
12 (REPORTER'S NOTE: Witness leaves the witness stand.)
13 Call your next witness, please.
14 MR. HILLIARD: Kent Donald.
15 SERGEANT KENT DONALD, HAVING BEEN
16 SWORN, TESTIFIED AS FOLLOWS:
17 CLERK: State your full name and spell your last name.
18 SERGEANT DONALD: Kent Donald, D-O-N-A-L-D.
19 DIRECT EXAMINATION OF SERGEANT KENT DONALD BY MR. HILLIARD:
20 Q: Mr. Donald -- I'm sorry, Sergeant?
21 A: Yes.
22 Q: Thank you. We've talked about item twenty-two on State's
23 Exhibit Number Forty-five before; is that correct?
24 A: Yes.
25 Q: And as I understand it, you don't recollect what all

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SERGEANT KENT DONALD - DIRECT BY MR. HILLIARD

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- 1 paperwork was in item twenty-two; is that correct?
- 2 A: That is correct.
- 3 Q: And just because that says Alex Robinson on that document
- 4 that does not mean that the only documents in item twenty-two
- 5 were Alex Robinson; that doesn't mean that?
- 6 A: No.
- 7 Q: And in fact, there was at least one document in there
- 8 that you recollected, I believe, from a Ms. Black, Alicia
- 9 Black, do you remember one Alicia Black document in there; is
- 10 that correct?
- 11 A: It might've been in there. I know we took a picture of
- 12 Alicia Black and that's it right there.
- 13 Q: Right here?
- 14 A: Yes.
- 15 Q: And that would've been part of the paperwork that was
- 16 connected to that?
- 17 A: I don't know if I took that.
- 18 Q: All right, sir. And in connection to the drawer of
- 19 documents that was part of what you collected and ---
- 20 A: Some of it, yes.
- 21 Q: All right, sir. And so when there is a destruction of
- 22 item twenty-two, that doesn't necessarily mean only Alex
- 23 Robinson documents were destroyed?
- 24 A: Yes.
- 25 Q: I am correct in what I said?

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SERGEANT KENT DONALD - CROSS BY MR. RICHARDSON

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1 A: Yes.

2 Q: Okay. Very good. Thank you, sir. That's all I have.

3 THE COURT: Do you have any questions, Mr. Richardson?

4 MR. RICHARDSON: Very briefly.

5 CROSS EXAMINATION OF SERGEANT KENT DONALD BY MR. RICHARDSON:

6 Q: Was the reason you didn't photograph more pictures of
7 Alex Robinson documents was because you took a lot of those
8 documents?

9 A: Yes, sir.

10 Q: And in the search of the trailer, did you find any
11 identification belonging to one Roland Robinson?

12 A: No, sir.

13 Q: Did you find anything that you recall at all with the
14 name Roland Robinson on it in that apartment -- that mobile
15 home?

16 A: No, sir.

17 MR. RICHARDSON: Thank you, Your Honor.

18 THE COURT: Come down. Thank you. Call your next
19 witness.

20 Thank you, sir.

21 (REPORTER'S NOTE: Witness leaves the witness stand.)

22 MR. HILLIARD: That's the matter that we were speaking
23 about earlier, Judge.

24 THE COURT: Sir?

25 MR. HILLIARD: I say that's the matter that we were

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BY THE COURT

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1 THE COURT: All right. 9:30 in the morning.

2 MR. RICHARDSON: Thank you, Your Honor.

3 (RECESS.)

4 *****OFF THE RECORD*****

5 (On the Record.)

6 (NOVEMBER 9, 2011)

7 THE COURT: Defense ready to proceed?

8 MR. HILLIARD: Yes, Your Honor.

9 THE COURT: All right. Bring my jury in, please.

10 DEPUTY: Yes, sir.

11 THE COURT: Who is here with the high school group,
12 please?

13 MS. HICKMAN: Hi, this is the Academy for Technology and
14 Academics, I'm ---

15 THE COURT: Come forward, please, ma'am.

16 Bring the jury in.

17 MS. HICKMAN: Pardon me?

18 THE COURT: May I have your -- come forward. May I have
19 your name?

20 MR. RICHARDSON: He's calling the jury, too.

21 MS. HICKMAN: Nora Hickman.

22 THE COURT: Ma'am?

23 MS. HICKMAN: Nora, N-O-R-A, Hickman.

24 THE COURT: Ms. Hickman.

25 MS. HICKMAN: Uh-huh (affirmative response).

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BY THE COURT

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1 THE COURT: And what is your class?

2 MS. HICKMAN: It's the prelaw class.

3 THE COURT: Of where?

4 MS. HICKMAN: The Academy for Technology and Academics.

5 THE COURT: Academy, where is that academy?

6 MS. HICKMAN: Out on 701 and 22 in Conway.

7 THE COURT: Prelaw?

8 MS. HICKMAN: You've had us in here before, Judge
9 Cottingham.

10 THE COURT: I know I have.

11 MS. HICKMAN: And you've had -- we're real excited to be
12 in your courtroom again.

13 THE COURT: Well, when we take the morning break, I'll be
14 glad to bring your class back and talk to them.

15 MS. HICKMAN: Well, thank you very much. They'd be very
16 excited.

17 THE COURT: Are you bringing the jury in?

18 MS. HICKMAN: Thank you, sir.

19 THE COURT: Okay.

20 (REPORTER'S NOTE: The jury returns to the courtroom.)

21 THE COURT: Good morning, ladies and gentlemen. Prior to
22 proceeding, let me introduce to you a class of prelaw
23 students. Please stand. (REPORTER'S NOTE: JURY CLAPS)
24 They're here with Ms. Hickman. Ms. Hickman -- you may be
25 seated. It's my pleasure to have this class here and as is my

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BY THE COURT

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1 policy at the morning break I will ask that you come with your
2 class to my chambers and we'll have a question and answer
3 period and I always appreciate the fact that teachers bring
4 their students to observe their court in session. This is not
5 my court; this is the people's court. And this is the jury
6 who has kindly given of their time to be here this week to
7 participate in our judicial process and we are indeed grateful
8 to all of these twelve folks who have given of their time and
9 left their jobs and their family and their work to come here
10 and to be a part of their judicial system.

11 On yesterday or last evening, I've been advised that
12 there was some TV statement about the trial of this case. My
13 inquiry is, Did any of you happen to see that TV interview.

14 (REPORTER'S NOTE: Jury unanimously indicates in the
15 negative.)

16 THE COURT: If so please stand. Anybody happen to see
17 it?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Anybody know anything about it or anybody
20 have anything to discuss with you about that TV interview?

21 (REPORTER'S NOTE: Jury unanimously indicates in the
22 negative.)

23 THE COURT: Okay. Any other questions as to that issue?

24 MR. RICHARDSON: No, sir. The State is fully satisfied.

25 MR. HILLIARD: Satisfied, Your Honor, thank you very

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TIFFANY SMITH - DIRECT BY MS. BASS

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1 much.

2 THE COURT: All right. Call your next witness.

3 MS. BASS: Tiffany Smith, Your Honor.

4 TIFFANY SMITH, HAVING BEEN SWORN,

5 TESTIFIED AS FOLLOWS:

6 CLERK: If you'll state your full name and spell your
7 last name.

8 MS. SMITH: And spell it?

9 CLERK: Yes, ma'am.

10 MS. SMITH: Tiffany Smith, S-M-I-T-H.

11 DIRECT EXAMINATION OF TIFFANY SMITH BY MS. BASS:

12 Q: Good morning, Ms. Smith, I'm Julia Bass, I have some
13 questions for you. If you have trouble hearing me, let me
14 know and you need to make sure that -- the Judge will let you
15 know if you're not close enough, okay, but all the jurors need
16 to hear what you have to say. Okay?

17 A: Okay.

18 THE COURT: I want to make sure she speaks into the
19 microphone so that these jurors in the far corner can hear her
20 too.

21 If at any time you have some difficulty, please let me
22 know.

23 You may proceed.

24 MS. BASS: Thank you, Your Honor.

25 BY MS. BASS:

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TIFFANY SMITH - DIRECT BY MS. BASS

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1 Q: And if I talk too fast or you don't understand the
2 question let me know. Okay?

3 You're not related by blood or marriage to me, Mr.
4 Hilliard, Mr. Richardson; is that correct?

5 A: Correct.

6 Q: And in this particular case, has anyone threatened you,
7 promised you anything to get you to testify?

8 A: No.

9 Q: Were you served with a subpoena?

10 A: Yes.

11 Q: By Mr. Hilliard?

12 A: Uh-huh (affirmative response).

13 Q: Yes or no?

14 A: Yes.

15 Q: Okay, you can't say uh-huh.

16 A: Okay, sorry.

17 Q: The court reporter is taking down what you say so --
18 okay? How old are you?

19 A: Twenty-three.

20 Q: Okay. And where do you live, what part of the county?

21 A: Conway.

22 THE COURT: Talk into the microphone for me, please.

23 Q: Okay. Did you --

24 A: Conway.

25 Q: And where do you currently work?

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TIFFANY SMITH - DIRECT BY MS. BASS

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- 1 A: At Pizza Hut in Myrtle Beach.
- 2 Q: Okay. And are you married or single?
- 3 A: Single.
- 4 Q: Do you have any children?
- 5 A: No.
- 6 Q: Okay. And have you ever been married?
- 7 A: No.
- 8 Q: Okay. I'm gonna draw your attention back to September --
- 9 the month of September of 2008. Okay?
- 10 A: Okay.
- 11 Q: Do you remember that month?
- 12 A: Yes.
- 13 Q: Okay. I'm gonna draw your attention specifically to
- 14 September 25th of 2008. Who were you dating back on September
- 15 the 25th of 2008?
- 16 A: Kenneth Durant.
- 17 Q: Okay. Are you currently dating him?
- 18 A: No.
- 19 Q: How long has it been since y'all have broken up?
- 20 A: Like six months after.
- 21 Q: Okay. So, that would be the early part of '09?
- 22 A: Yeah. Well, it was like right before -- probably
- 23 February of '09.
- 24 Q: Okay. February of 2009 you broke up with him?
- 25 A: Uh-huh (affirmative response).

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TIFFANY SMITH - DIRECT BY MS. BASS

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- 1 Q: Yes or no?
- 2 A: Yes.
- 3 Q: Okay. And have you dated him, gotten back together,
4 spent any time with him since February of 2009?
- 5 A: No.
- 6 Q: Have you ever dated my client Alex Robinson?
- 7 A: No.
- 8 Q: Are you close personal friends with Alex Robinson?
- 9 A: No.
- 10 Q: Have you even been close personal friends with Alex
11 Robinson?
- 12 A: No, other than being my boyfriend's brother, no.
- 13 Q: Okay. And Gil Yakoel or Gil Yakoel, are you close
14 personal friends with her?
- 15 A: No.
- 16 Q: Okay. Did you spend any time with these people -- these
17 people being the ones that I've named before '08?
- 18 A: Huh-uh (negative response).
- 19 Q: Yes or no?
- 20 A: No.
- 21 Q: Okay. And where were you living in August of 2008?
- 22 A: Conway, at 1915 Highway 548.
- 23 Q: And who were you living with?
- 24 A: My grandmother.
- 25 Q: Okay. On your mom's side or your daddy's side?

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TIFFANY SMITH - DIRECT BY MS. BASS

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- 1 A: Dad's.
- 2 Q: Your paternal grandmother?
- 3 A: Uh-huh (affirmative response).
- 4 Q: Yes or no?
- 5 A: Yes.
- 6 Q: Okay. And who were -- where you working at the time back
- 7 in August?
- 8 A: Dollar Tree in Conway.
- 9 Q: And where is Dollar Tree -- where was that located?
- 10 A: Conway.
- 11 Q: And were you working at Dollar Tree in -- September 25th
- 12 of '08?
- 13 A: Not September -- it was early September is when I quit.
- 14 Q: Okay. You quit or you got laid off?
- 15 A: Well, laid off.
- 16 Q: Okay. And after you got laid off, what kind of income
- 17 did you have in September?
- 18 A: Unemployment.
- 19 Q: Unemployment check?
- 20 A: Uh-huh (affirmative response).
- 21 Q: Yes or no?
- 22 A: Yes.
- 23 Q: Okay. And other than receiving unemployment checks in
- 24 September of '08 what other forms of income or who other --
- 25 I'm sorry, what other forms of income did you have?

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TIFFANY SMITH - DIRECT BY MS. BASS

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- 1 A: Well, that was really enough but my grandmother if I
2 needed help she, you know, helped me cause I'd help her.
3 Q: Okay. So, your grandmother that you'd been living with
4 ---
5 A: Uh-huh (affirmative response), yes.
6 Q: --- would also give you money?
7 A: Yes.
8 Q: Did you parents give you any money?
9 A: Sometimes if I needed it.
10 Q: Okay. Do your parents live in Horry County?
11 A: No, in Georgia.
12 Q: Okay. And September 25th of '08, what is the first thing
13 you remember happening that day?
14 A: Getting thrown in the floor.
15 Q: Okay. What do you mean getting thrown in the floor?
16 A: And arrested.
17 Q: Okay.
18 THE COURT: You're not talking into the microphone for
19 me, I wish you would, please.
20 A: I remember getting arrested.
21 Q: Okay. And who arrested you on September 25th of '08?
22 A: I don't know their names but ---
23 Q: Do you see them present in the courtroom?
24 A: No.
25 Q: Okay. And when you were arrested, where were you on the

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- 1 morning of September 25th of '08?
- 2 A: Asleep in the bed.
- 3 Q: Okay. And how old were you then?
- 4 A: Twenty.
- 5 Q: Twenty years old?
- 6 A: Uh-huh (affirmative response), twenty-one, maybe.
- 7 Q: Okay. Had you graduated from high school?
- 8 A: Huh-uh (negative response).
- 9 Q: Okay. And how far did you go in school?
- 10 A: Eleventh grade.
- 11 Q: Okay. And where were -- what was the location of the
- 12 house where you were arrested on September 25th of '08?
- 13 A: In the back bedroom, the master bedroom.
- 14 Q: Okay. And what was the location of the house -- I
- 15 apologize, what address? Was it in Conway, was it in South
- 16 Carolina, where were you?
- 17 A: Conway.
- 18 Q: Okay. Do you remember the physical address of the place
- 19 where you were?
- 20 A: Stoneybrook, I'm not sure of the number.
- 21 Q: Okay. And you were living on [REDACTED]; is that
- 22 correct?
- 23 A: Uh-huh (affirmative response), yes.
- 24 Q: And what kind of home were you living in?
- 25 A: It was a mobile home.

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1 Q: Okay. And who were your roommates on September 25th of
2 2008, at [REDACTED] in Conway?

3 A: Gil and Kenneth.

4 Q: And Kenneth would be Kenneth Durant?

5 A: Uh-huh (affirmative response).

6 Q: Yes or no?

7 A: Yes.

8 Q: And Kenneth would be Kenneth Levon Durant?

9 A: Yes.

10 Q: Any other people living there at the time, spending the
11 night?

12 A: Well, unless, you know, somebody didn't want to drive
13 home but other than living there it was Gil, Kenneth and me.

14 Q: Okay. During the month of -- well, when exactly did you
15 move in? Do you remember what timeframe?

16 A: In July, maybe the end of June, July, somewhere around
17 that time.

18 Q: Okay. Of '08?

19 A: Yes.

20 Q: From -- in the month of July, August, September, up until
21 the time you were arrested, did you ever -- did Alex Robinson
22 ever live there as a roommate?

23 A: No.

24 Q: Okay. Did he ever spend the night there?

25 A: No.

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1 Q: Okay. And the things I'm gonna ask you from here on out,
2 if you don't understand or you don't know the answer just say
3 so. Okay?

4 A: Okay.

5 Q: What type of relationship -- what kind of dating
6 arrangement did you observe, you personally observe between
7 Alex Robinson and Gil Yakoel or Yakoel?

8 A: That he just was trying to help her because she was
9 pregnant but it wasn't really a boyfriend/girlfriend type
10 relationship.

11 Q: Okay.

12 A: I've never seen them hugged up or -- yeah.

13 Q: Hugged up, you mean like actually hugging?

14 A: Yeah.

15 Q: Is that what you mean by hugged up? Yes or no?

16 A: Yes.

17 Q: Okay. The night of September 25th of '08, Alex Robinson
18 did not spend the night there, correct?

19 A: Correct.

20 Q: The night of the 24th, he did not spend the night there?

21 A: Correct.

22 Q: Did you -- and I'm only talking about you -- did you ever
23 see Alex Robinson spend the night at that house on [REDACTED]

24 [REDACTED] in Conway, South Carolina during the month
25 of July, August or September?

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- 1 A: No.
- 2 Q: Okay. After you were arrested did you go back to the
3 house on Stoneybrook Road, where you were arrested?
- 4 A: Yes.
- 5 Q: How long did you live there after you were arrested on
6 September 25th of '08?
- 7 A: Till around February, around that time.
- 8 Q: Till around February of '09?
- 9 A: Uh-huh (affirmative response).
- 10 Q: What did you notice about the condition of the mobile
11 home where you and Gil and Kenneth were living after you got
12 out of jail?
- 13 A: It was -- everything was everywhere.
- 14 Q: What do you mean everything was everywhere? Tell the
15 jury what you mean.
- 16 A: Like it was trashed where the police had went through the
17 house.
- 18 Q: Okay.
- 19 A: When I ---
- 20 Q: Did anyone come back and repair the door that you know of
21 after you got out of jail?
- 22 A: No.
- 23 Q: When you got out of jail and you returned the home, were
24 any of your things missing?
- 25 A: Yes.

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- 1 Q: Okay. Had there been a break-in while y'all were in
2 jail?
3 A: Yes.
4 Q: Okay. So, I'm gonna make sure we're clear, we're not
5 blaming the police for stuff that was taken after the police
6 left and after y'all were arrested, the house was broken into?
7 A: Yes.
8 Q: Okay. During the month of September, do you remember
9 other break-ins, hearing about other break-ins in the
10 Stoneybrook area?
11 A: Yes.
12 Q: Tell the jury how many break-ins there were that you
13 remember or remember being told about from the neighbors over
14 there in September of '08?
15 A: One.
16 Q: One. Okay. How many during the month of August did you
17 remember?
18 A: I don't remember.
19 Q: Okay. Do you remember any from the month of July?
20 A: No.
21 Q: Okay. Did you pay rent at the house?
22 A: Yes.
23 Q: And how much rent -- who would you pay rent to?
24 A: To Kenneth.
25 Q: And how much rent would you pay?

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- 1 A: Probably like -- I'd give maybe half of my check.
2 Q: Half of your unemployment?
3 A: Yes.
4 Q: To Kenneth Levon Durant?
5 A: Yes.
6 Q: Okay. And did you ever see him paying the rent over
7 there at [REDACTED] or did you ever go with him when he went
8 to pay the rent?
9 A: Yes.
10 Q: Okay. Who was in the car when you went to pay the rent?
11 A: Me and him.
12 Q: Okay. Him being Kenneth Levon Durant?
13 A: Yes.
14 Q: And where did y'all go when you went to pay the rent?
15 A: We'd get a money order and send it through the mail.
16 Q: Okay. And who -- do you remember who y'all were paying
17 rent to?
18 A: Peterkin (spelled phonetically), I think his name was.
19 Q: A Mr. Peterkin?
20 A: Yes.
21 Q: Did you ever go physically pay it where like you went
22 into a store you went to somebody's house to pay the rent?
23 A: No.
24 Q: Okay. You always mailed it?
25 A: Yes.

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1 Q: Okay. While Gil Yakoel was there or Gil Yakoel was
2 there, did -- what kind of duties, what kind of
3 responsibilities did she have around the house? Did she do
4 any cooking?

5 A: No.

6 Q: Did she clean up?

7 A: No.

8 Q: Did she pay rent?

9 A: No.

10 Q: Okay. Do you recall if she was working anywhere at the
11 time?

12 A: She wasn't working.

13 Q: Okay. You don't remember her working anywhere ---

14 A: No.

15 Q: --- during that timeframe? Okay. Do you know whose
16 house, do you know who -- did you ever see any paperwork with
17 Kenneth's name on it where he was paying the rent?

18 A: No.

19 Q: Okay. Did you ever see a lease for over there?

20 A: No.

21 Q: Okay. When you left your grandmother's house in Conway,
22 did you change your address with the Department of Motor
23 Vehicles?

24 A: No.

25 Q: When you left [REDACTED] in 2009, did you change your

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- 1 address with the Department of Motor Vehicles?
- 2 A: No.
- 3 Q: Okay. Where is your address? Is it your grandmother's
- 4 house, your parents' house?
- 5 A: On my ID?
- 6 Q: Yes.
- 7 A: It's at my uncle's house, the 4175 Primrose Lane.
- 8 Q: It's been at your uncle's house?
- 9 A: It's been that every since I've had a South Carolina
- 10 license.
- 11 Q: Does your uncle live with your grandma?
- 12 A: No.
- 13 Q: Okay. So, you list your address on your driver's license
- 14 as being your uncle's house?
- 15 A: Yes.
- 16 Q: Do you stay there from time to time?
- 17 A: Well, now I stay there.
- 18 Q: Okay. But you never changed your address from your
- 19 grandmother's to [REDACTED] you just kept your address the
- 20 whole time?
- 21 A: Yes.
- 22 Q: At your uncle's?
- 23 A: Yes.
- 24 Q: Okay. Did you ever receive anyone else's mail other than
- 25 your own at [REDACTED]?

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1 A: It -- well, it would be different mail coming. I just
2 put it up.

3 Q: Okay. What do you mean you put it up? Where would you
4 put it?

5 A: In the drawer.

6 Q: What drawer?

7 A: The ones by the -- in the kitchen?

8 Q: Okay. I'm going to show you some pictures, please. And
9 I'll ask you some questions based on the numbers, okay. Can
10 you tell us, tell the jury, please, who's in Number Thirty-
11 three if you know? Can you identify those two people?

12 A: That is Gil and Kelly.

13 Q: Gil Yakoel?

14 A: Yes.

15 Q: What's Kelly's last name?

16 A: Not sure.

17 Q: Do you know where she worked or who she ---

18 A: No.

19 Q: Do you know who she was at the party with? Or what was
20 going on at that time?

21 A: Um...

22 Q: If you don't know that's okay.

23 A: At this time, I'm not sure but I know that she was there
24 and I'm not sure what we was doing.

25 Q: Okay. That's all right. Did you ever -- when this get-

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1 together was going on, were you there?

2 A: Yes.

3 Q: Okay. When you were there, how did y'all prevent people
4 from going in the different bedrooms or were people free to go
5 throughout the house?

6 A: We didn't.

7 Q: We didn't do what?

8 A: I mean, I wasn't paying attention, I'm not sure who went
9 where?

10 Q: Okay. Did -- were people free to go in and out of your
11 bedroom?

12 A: No.

13 Q: Okay. Why not?

14 A: Because it was right there where I could see it.

15 Q: Okay. Were people free to go in and out of the restroom,
16 the kitchen?

17 A: Yes, because the restroom that everyone used was down
18 that hallway, so ---

19 Q: Okay.

20 A: --- it was kind of hard to pay attention.

21 Q: Were they free to go in and out of the room Gil was
22 staying in?

23 A: I'm not sure.

24 Q: That's okay. If you don't know, just say so. Okay. I'm
25 gonna show you what's been marked as Number Thirty-four, tell

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- 1 the jury who those people are?
- 2 A: I can't really see this one but that's Alex.
- 3 Q: Okay. And can you tell who the individual is next to
- 4 him?
- 5 A: Not really.
- 6 Q: Okay. That's all right.
- 7 A: It's kind of dark.
- 8 MR. RICHARDSON: What number is that, Ms. Bass?
- 9 MS. BASS: That is Thirty-four.
- 10 BY MS. BASS:
- 11 Q: And who is the person if you know in Number Thirty-five?
- 12 A: That's Gil.
- 13 Q: Gil Yakoel?
- 14 A: Uh-huh (affirmative response).
- 15 Q: Okay. And who is this person in Number Thirty-eight or
- 16 who are the people in Thirty-eight?
- 17 A: That's me and that's Michela.
- 18 Q: Okay. Michela Ashley Torrence?
- 19 A: Yes.
- 20 Q: Okay. Thank you. And this is Number Twelve, whose book
- 21 bag does that belong to?
- 22 A: I don't know.
- 23 Q: Okay. You don't recognize the book bag?
- 24 A: Huh-uh (negative response).
- 25 Q: That's no?

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- 1 A: Yes, that's no.
- 2 Q: Okay. And identify, please, Number Eleven.
- 3 A: That's Kenneth Durant.
- 4 Q: Okay. And that was your boyfriend at the time?
- 5 A: Yes.
- 6 Q: You've broken up with him?
- 7 A: Yes.
- 8 Q: Hadn't talked to him in how long?
- 9 A: It's been about three years now or '09, the beginning of
- 10 '09.
- 11 Q: So, it's been about three years since you talked to him?
- 12 A: Yes.
- 13 Q: Okay. And you were not here yesterday for any of the
- 14 testimony, correct?
- 15 A: No.
- 16 Q: Okay. You were out of state yesterday?
- 17 A: Yes.
- 18 Q: Okay. And can you identify the women in Number Thirty-
- 19 nine, please?
- 20 A: I know that's Kelly but I'm not sure who that is in the
- 21 background.
- 22 Q: Okay. And have you -- I know you've not ever seen the
- 23 picture but -- I mean, the chart but Number Six, can you tell
- 24 the jury what that is and what it contained?
- 25 A: The drawer of mail.

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- 1 Q: Okay. And who all's mail would you throw in there?
- 2 A: If it wasn't for me or him, I'd -- me or Kenneth, I'd
- 3 just throw it in the drawer.
- 4 Q: Okay. And did you ever put anyone's mail in there other
- 5 than Alex Robinson?
- 6 A: Yes.
- 7 Q: Okay. Did you ever put any mail in there for a female?
- 8 A: Yes. It was -- sometimes it would be mail from people I
- 9 didn't even know so I'd just put it in there.
- 10 Q: Okay. In that drawer there were more people's mail that
- 11 just Alex Robinson?
- 12 A: Yes.
- 13 Q: Did you put any of your mail in there?
- 14 A: No.
- 15 Q: Did you put any of Kenneth's mail in there?
- 16 A: No.
- 17 Q: Okay. And I'm gonna show you what's been marked as
- 18 Number Twenty and ask you is that your bedroom, is that Ms.
- 19 Michela's bedroom, whose bedroom is that? Well, what part of
- 20 the house is that, can you tell?
- 21 A: That's the room Gil was sleeping in.
- 22 Q: Okay. That's the room where Gil was sleeping?
- 23 A: Yes.
- 24 Q: Okay. And when the police left that day, did they take
- 25 any of your clothes on September 25th of '08?

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- 1 A: My clothes?
- 2 Q: Yeah.
- 3 A: No.
- 4 Q: Did you see them take any of Gil's clothes or Kenneth's
- 5 clothes?
- 6 A: No.
- 7 Q: Okay. You said that Alex Robinson never spent the night
- 8 over at that house; is that correct?
- 9 A: Correct.
- 10 Q: In July, August or September of '08; is that correct?
- 11 A: Correct.
- 12 Q: Did Alex Robinson ever come over and help you do laundry?
- 13 A: No.
- 14 Q: Did Alex Robinson ever pick up the dry cleaning for you?
- 15 A: No.
- 16 Q: Did he ever come over and wash dishes with you?
- 17 A: No.
- 18 Q: Okay. Did you ever see Alex Robinson bring clothes over
- 19 to the house?
- 20 A: No.
- 21 Q: Okay. Did Gil walk around nude or did she have clothes
- 22 at the ---
- 23 A: She had her clothes.
- 24 Q: Okay. And in the bedroom where Gil was staying, whose
- 25 clothes were in there that you know of if you know?

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1 A: Other than hers, I'm not sure because, you know, it was
2 just her clothes and guy clothes, so I don't know whose they
3 were but I know she had hers there too.

4 Q: Okay. She had her clothes there too. And she was
5 pregnant at the time?

6 A: Yes.

7 Q: Okay. Did you ever see her wear big jeans?

8 A: No.

9 Q: Okay. Did you ever see her wear what's called boyfriend
10 jeans?

11 A: No.

12 Q: Okay. Did you ever -- you never saw anybody wear those
13 jeans that I showed you; is that correct?

14 A: Correct.

15 Q: Okay. Do you know a person by the name of Shek or Roland
16 Robinson?

17 A: Yes.

18 Q: Did Roland Robinson ever stay at that house during the
19 months of July, August or September of '08, if you know?

20 A: Yes. Off and on like -- not continuously but I would see
21 him there and he would stay.

22 Q: What is his race?

23 A: He's black.

24 Q: Okay. And how was his hair?

25 A: He has dreads.

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- 1 Q: All right. Dreadlocks.
- 2 A: Uh-huh (affirmative response).
- 3 Q: Is his hair longer or shorter than mine?
- 4 A: Shorter.
- 5 Q: Okay. And is he taller or shorter than I am?
- 6 A: I don't know.
- 7 Q: Okay. Was he a big guy or little guy?
- 8 A: Average.
- 9 Q: Okay. Did anyone ask you if it was okay for Gil Yakoel
- 10 to stay there since she wasn't paying rent and you were?
- 11 A: No.
- 12 Q: Okay.
- 13 A: I mean, I didn't see a problem because she was pregnant
- 14 you know so...
- 15 Q: Okay. And at any time prior to September 25th of '08
- 16 when they -- the police executed that search warrant, had she
- 17 ever moved out?
- 18 A: No.
- 19 MS. BASS: Your Honor, if you'll give me just a minute.
- 20 I may be finished.
- 21 THE COURT: You may proceed.
- 22 MS. BASS: Thank you, Your Honor.
- 23 BY MS. BASS:
- 24 Q: When Roland spent the night, Roland Robinson, did he
- 25 sleep in the bed with Gil?

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- 1 A: No.
- 2 Q: Did he sleep in the room with Gil?
- 3 A: No.
- 4 Q: Where did he sleep?
- 5 A: If she was there, he would sleep in the living room.
- 6 Q: Where would he sleep, floor, couch, futon?
- 7 A: I don't really remember all that.
- 8 Q: Okay. Did Gil ever have any girls spend the night over
- 9 during the months of July, August, September?
- 10 A: Well, the girls that I knew too, the -- but no, her
- 11 friends didn't really spend the night.
- 12 Q: Okay. Did any of your friends spend the night over there
- 13 during the month of July, August or September?
- 14 A: Yes. I had one friend spend the night.
- 15 Q: What was her name?
- 16 A: Kendra.
- 17 Q: Okay. What's Kendra's last name?
- 18 A: Wilson.
- 19 Q: And when I say spend the night, did you have any -- did
- 20 any of Gil's, your friends, Kenneth's friends come over ---
- 21 MR. RICHARDSON: Your Honor, I've been letting the
- 22 leading going on but there's a lot leading questions. I would
- 23 just ask to please stop.
- 24 Q: Did anyone stay past midnight?
- 25 A: Sometimes.

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- 1 Q: But not spend the night?
- 2 A: Right.
- 3 Q: Can you remember who any of those people were, what their
4 names are?
- 5 A: I don't really remember exact time who it was that spent
6 the night but I know like if we were up hanging out that
7 people would stay if it was really late and then leave.
- 8 Q: Prior to the search warrant, did you ever see any drugs
9 in the house?
- 10 A: No.
- 11 Q: Did you sell any drugs?
- 12 A: No.
- 13 Q: Did you see anyone sell any drugs during the months you
14 lived there?
- 15 A: No.
- 16 Q: When the police broke in on September 25th, that morning,
17 where were you, who were you in the room with?
- 18 A: I was asleep in the bed with Kenneth Durant.
- 19 Q: And what time as best you can remember was it in the
20 morning?
- 21 A: It was early in the morning, probably about 8:00, 7:30, I
22 don't really remember what time but I know it was early.
- 23 Q: Okay. And was there anyone anywhere in the bathroom, the
24 kitchen, living room, anything like that?
- 25 A: Like ---

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- 1 Q: Any other people in ---
- 2 A: Oh, no. Gil because she was asleep in the back room.
- 3 Q: Okay. And was anyone in the bed with Gil?
- 4 A: No.
- 5 Q: Anyone spend the night with her?
- 6 A: Huh-uh (negative response).
- 7 Q: Who did you see in that room other than Gil Yakoel in the
- 8 days prior to the search warrant. Name every person you saw
- 9 in that bedroom?
- 10 A: Roland Robinson, her, and me other than going back there
- 11 and talking with them but that's it.
- 12 Q: Okay. And you were charged in this case; is that
- 13 correct?
- 14 A: Correct.
- 15 Q: Tell the jury what you were charged with?
- 16 A: Manufacture and distribution.
- 17 Q: Manufacture and distribution of what?
- 18 A: Cocaine.
- 19 Q: Okay. And did you plead guilty to the charge?
- 20 A: They dropped it to criminal conspiracy.
- 21 Q: And you pled to the criminal conspiracy?
- 22 A: Yes.
- 23 Q: Okay. What did the police tell you about who would be
- 24 charged per what room, what did the police tell you on
- 25 September 25th of '08? What did Donald Kent [sic] from Horry

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1 PD tell you?

2 A: Well, I just remember there was like, was there anything
3 in here and he said whatever is found in each room is what
4 you'll be charged with.

5 Q: Okay. And you were charged and Kenneth was charged for
6 what was in your room?

7 A: Right.

8 Q: And Kenneth later signed an affidavit saying you had no
9 knowledge of the drugs; is that correct?

10 A: Correct.

11 Q: And you saw a copy of that?

12 A: Correct.

13 Q: Okay. Had you ever seen Kenneth's gun before that day?

14 A: No.

15 Q: Okay. Did you -- just a couple -- I'm not gonna ask you
16 about all these pictures, I'm just gonna ---

17 MR. RICHARDSON: Your Honor, for the record, the -- if
18 the Defense wants to move these photographs in that were
19 previously identified by Ms. Yakoel, I have no objection to
20 those moving into evidence instead of going through them.
21 Okay?

22 THE COURT: You need to index those pictures, so you can
23 see them faster.

24 MR. RICHARDSON: Your Honor, I have no objection to these
25 pictures being moved into evidence.

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1 THE COURT: Without objection. Move them in and let's
2 move on, please.

3 MS. BASS: Okay.

4 MR. RICHARDSON: You may just want to call them out for
5 the record.

6 MS. BASS: That's what I'm gonna do.

7 THE COURT: Sir?

8 MR. RICHARDSON: She may just want to call the numbers
9 out for the record without having to go through the
10 identification process.

11 MS. BASS: Number Two, Number Three ---

12 THE COURT: You have no objection to all of them, do you?

13 MS. BASS: Number Four.

14 MR. RICHARDSON: None of them, Your Honor. She just
15 needs to put them on the record what numbers they are. These
16 were -- these were discussed previously but the numbers ---

17 MS. BASS: Five, Six, Seven, Eight, Nine, Ten, Twelve,
18 Eleven, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen,
19 Eighteen, Twenty-one, Twenty-two, Twenty-three, Twenty-four,
20 Fifty-eight.

21 And Your Honor, I think I only have about three questions
22 and I'm not gonna touch the rest of these pictures. We move
23 these into evidence, Your Honor, and I'm only gonna ask her
24 about these.

25 THE COURT: Just -- you handle it the way you think is

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1 appropriately, Ms. Bass.

2 MS. BASS: Yes, sir. I only have three more.

3 DEFENDANT'S EXHIBITS TWO THROUGH EIGHTEEN

4 TWENTY-ONE THROUGH TWENTY-FOUR AND FIFTY EIGHT

5 ADMITTED INTO EVIDENCE.

6 BY MS. BASS:

7 Q: Okay. Could you please identify the lady in Number Six,
8 if you know?

9 A: Lacy.

10 Q: Lacy. And where is Lacy sitting this particular time?

11 A: In the living room.

12 Q: Of what house?

13 A: [REDACTED].

14 Q: Okay. And this Number Five, who is this lady?

15 A: Kelly.

16 Q: And you don't know Kelly's last name?

17 A: Not sure.

18 Q: Do you know where she worked or where she lives?

19 A: No.

20 Q: Okay. And in Number Five, whose bedroom is she standing
21 in?

22 A: Not sure.

23 Q: Okay. But was it [REDACTED]

24 A: Not sure.

25 Q: And this picture, these items here, do you recall who

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1 those belong to?

2 A: No.

3 Q: Okay. Just one moment, Your Honor. No further
4 questions, thank you so much.

5 THE COURT: You may cross examine.

6 MR. RICHARDSON: Thank you, Your Honor, if I may. I want
7 to look at one of those photographs real quick.

8 CROSS EXAMINATION OF TIFFANY SMITH BY MR. RICHARDSON:

9 Q: I'm gonna move all these out the way.

10 Good morning, Ms. Smith.

11 A: Good morning.

12 Q: Ms. Smith, actually you got charged with possession with
13 intent to distribute cocaine that day, correct?

14 A: Correct.

15 Q: In September of 2008?

16 A: Correct.

17 Q: That charge is actually dismissed, correct?

18 A: Yes.

19 Q: You pled to a different charge from a different date; is
20 that correct?

21 A: Well, they were put together, I think, both of them.

22 Q: In March 2009, you pled to criminal conspiracy, I'm
23 sorry, in October of 2009 you plead to criminal conspiracy,
24 correct?

25 A: Correct.

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1 Q: And that was from an incident in March 2009?

2 A: Correct.

3 Q: So, separate charge?

4 A: But I think they were both ran together.

5 Q: But not -- that criminal conspiracy did not deal with

6 [REDACTED], right, didn't take place at [REDACTED]?

7 A: I thought it did because I had both of my charges listed
8 when they offered me probation.

9 THE COURT: You're gonna have to talk a little louder in
10 that microphone. I'm afraid they can't hear you back there.
11 Please lean forward and talk into the microphone.

12 Q: So the only time you were arrested was in September of
13 2008?

14 A: No, I was arrested March the 5th.

15 Q: Okay. And that's what you pled criminal conspiracy on,
16 correct?

17 A: Yeah, well, they ran both charges together, so I pled
18 criminal conspiracy to both.

19 Q: Okay. Now, you told Ms. Bass that Gil was not working
20 when she was staying at [REDACTED], correct?

21 A: Correct.

22 Q: Were you there 24/7?

23 A: Most of the time, yeah.

24 Q: Most of the time? Were you using any drugs at that
25 point?

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- 1 A: No.
- 2 Q: And you were there most of the time, you weren't aware of
3 any drug dealing?
- 4 A: Correct.
- 5 Q: You weren't aware that Mr. Durant was dealing drugs?
- 6 A: No, I wasn't.
- 7 Q: You weren't aware that he had the handgun?
- 8 A: No.
- 9 Q: You told Ms. Bass that you never updated your address on
10 your license, correct?
- 11 A: Correct.
- 12 Q: It's still in your uncle's address?
- 13 A: Yes.
- 14 Q: At the time you were at [REDACTED] it was in your
15 uncle's address?
- 16 A: Yes.
- 17 Q: You told Ms. Bass nobody else was living there during
18 July, August or September.
- 19 A: Correct.
- 20 Q: Okay. So, Roland Robinson wasn't living there?
- 21 A: From time to time but he wasn't there every day.
- 22 Q: He didn't have his stuff there?
- 23 A: I don't know what he had there. I wasn't back there.
- 24 Q: Well, you're there 24/7, did he come in with suitcases?
- 25 A: No, I've never seen him come in with suitcases.

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- 1 Q: Did he come in with a box of clothes?
- 2 A: I don't know what was in there before I came. He was
3 there before I moved in, I know that.
- 4 Q: And the picture with Mr. Robinson sitting on the couch,
5 you couldn't identify who that other person was, correct?
- 6 A: I couldn't tell on him.
- 7 Q: Couldn't tell who it was. What kind of car did Mr.
8 Durant have?
- 9 A: A Cadillac.
- 10 Q: Cadillac. Did he have a motorcycle?
- 11 A: I think he used to; I'm not sure if before me he had it
12 but at the time I was with him, no.
- 13 Q: Didn't have a motorcycle at that time?
- 14 A: No.
- 15 Q: But he did have a Cadillac?
- 16 A: Yes.
- 17 Q: And Alex Robinson did go over to [REDACTED], correct?
- 18 A: I've seen him come over, yeah.
- 19 Q: No doubt he was there before?
- 20 A: Not living there, no.
- 21 Q: And Mr. Durant, you're aware that he's a brother of Mr.
22 Robinson, correct?
- 23 A: Yes.
- 24 Q: And Mr. Durant wrote an affidavit trying to clear you of
25 charges, correct?

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1 A: Correct.

2 Q: Were you aware when Mr. Robinson got arrested on these
3 charges?

4 A: No, I wasn't aware until after -- like awhile when I got
5 out.

6 Q: After you got out?

7 A: Uh-huh (affirmative response).

8 Q: A couple of weeks after you got out, a couple of months,
9 when?

10 A: Well, whenever I got out, his brother told me what
11 happened.

12 Q: Oh, so Mr. Durant knew -- when did you get out? How long
13 were you in jail?

14 A: About two weeks, maybe. September 25th, I got out
15 October 13th, I think.

16 Q: So, when you got out October 13th, Mr. Durant knew his
17 brother was locked up?

18 A: Yes.

19 Q: On trafficking charges?

20 A: Yes.

21 Q: And he told you this?

22 A: How would he not know, it's his brother.

23 Q: Exactly. And he wrote an affidavit just for you,
24 correct?

25 A: Yes.

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1 Q: Thank you, no further questions.

2 MS. BASS: Your Honor, just a couple.

3 THE COURT: Ms. Bass, direct your recross only on those
4 issues that were initially brought up on cross examination.

5 MS. BASS: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 REDIRECT EXAMINATION OF TIFFANY SMITH BY MS. BASS:

8 Q: When you were arrested on March 5th of '09, who were you
9 two co-defendants?

10 A: Gil and Kenneth.

11 Q: On March 5th of '09?

12 A: Darlene Ford and Antwan Bryant.

13 Q: Darlene Ford and Antwan Bryant.

14 A: Correct.

15 MS. BASS: No further questions, Your Honor; thank you.

16 THE COURT: You may come down. Thank you.

17 MS. BASS: Your Honor, we'd ask that she be relieved from
18 her subpoena.

19 THE COURT: She is relieved.

20 MS. BASS: Thank you so much.

21 (REPORTER'S NOTE: Witness leaves the witness stand.)

22 THE COURT: Call your next witness, please.

23 MS. BASS: Just one moment, Your Honor.

24 Your Honor, Defense rests.

25 THE COURT: All right. Was there anything in reply?

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1 MR. ROBINSON: Yes, sir.

2 THE COURT: I accept that decision and I will charge the
3 jury accordingly. All right.

4 MS. BASS: Thank you, Your Honor.

5 THE COURT: You may be seated. Now, any motions on
6 behalf of the State?

7 MR. RICHARDSON: None, Your Honor.

8 THE COURT: On behalf of the Defense?

9 MR. HILLIARD: Judge, in regard to the testimony which
10 was previously offered regarding the chase, we would again
11 move to exclude that testimony. As you will recall, the
12 police officer who testified -- the video, you recall, the
13 video was a video of him going to the scene and then there was
14 something where there was a wreck and somebody jumped out and
15 ran away but he did not recollect the car tag, he did not
16 recollect the car make or model and in that regard, we would
17 move at this time that never having been tied together to
18 excuse that testimony.

19 THE COURT: No, sir. I think given the totality of all
20 the testimony involved, that was for the jury to consider
21 whether or not the Defendant was involved. There's sufficient
22 testimony if believed by the jury.

23 MR. HILLIARD: Yes, sir, and ---

24 THE COURT: So I would respectfully deny that motion.

25 MR. HILLIARD: And also, Judge ---

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1 THE COURT: Of course, we've already heard it; we've
2 heard that motion before.

3 MR. HILLIARD: Except for they could've tied it together
4 in some form or fashion connected to the car, they never did
5 but in any event, it is more prejudicial than probative. I
6 understand your ruling and ---

7 THE COURT: Well, they saw a picture of the car. They
8 could identify it by the pictures themselves of a black
9 automobile. But that's already in evidence so I'm not sure
10 what your motion is.

11 MR. HILLIARD: All right, sir. Well, in -- my motion,
12 Judge, at this point is it was -- I understand that it was in
13 evidence, we asked that it not be placed into evidence and it
14 was my understanding, perhaps incorrect, that they would tie
15 it together in some form or fashion connected to the case.

16 THE COURT: Well, I think it's in evidence and -- yes,
17 sir; do you want to respond to that?

18 MR. RICHARDSON: Your Honor, I can tie it together. The
19 officer that took the failure to stop video said he didn't
20 recall the make and model but then Sergeant Donald said he saw
21 the video, he chased the car from J. Reuben Long, that was the
22 same car in the video.

23 THE COURT: That was my ---

24 MR. RICHARDSON: That ties it together.

25 THE COURT: No, it's going in to the jury. It's in

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1 evidence; I've admitted it. I understand what your position
2 is. Do you have any other positions?

3 MR. HILLIARD: The other motions that we would make, Your
4 Honor, are to dismiss the case. We renew our previous motions
5 as to the exclusions of other evidence. I understand Your
6 Honor's ruling and we are renewing our motions for the purpose
7 of the record.

8 THE COURT: Considering your motion in favorable light to
9 the nonmoving party, the evidence if believed shows the
10 following if believed, that being for the jury. First, that
11 this Defendant resided at that location. Secondly, the
12 evidence shows if believed that the drugs were found in his
13 bedroom occupied by him and his girlfriend. Thirdly, the
14 evidence shows if believed that the quantity of cocaine in
15 question was found in his britches. And lastly, the evidence
16 if believed by the chemist shows that quantity was within the
17 amount as alleged in the indictment. All of which is for the
18 jury to determine as finders of the facts and your motion
19 therefore is most respectfully denied.

20 MR. HILLIARD: Thank you, Your Honor.

21 THE COURT: All right. Let's take a short break and in
22 accordance with agreement of counsel, I'm going to charge the
23 jury prior to argument.

24 Anything further from the State?

25 MR. RICHARDSON: Your Honor, the only charge I would see

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1 THE COURT: I do.

2 MR. HILLIARD: All right, sir. And in that regard, it
3 has the address on the face of the indictment is the address
4 of the event where the search warrant was. Our position is
5 that's not where our client lives. The prosecution put that
6 address on the fact of the indictment, we didn't have any
7 choice about that. We would object to that part of it going
8 to the jury. Certainly, the body of the indictment is the
9 body of the indictment. As to the face of the indictment, we
10 would object.

11 THE COURT: I'm gonna have the Madame Clerk white that
12 part out.

13 MR. RICHARDSON: Without objection.

14 THE COURT: Madam Clerk, let's white that out.

15 MR. HILLIARD: Thank you, Judge.

16 THE COURT: And I'll let you observe it before I send it
17 in.

18 MR. HILLIARD: Thank you, Judge.

19 (RECESS.)

20 *****OFF THE RECORD*****

21 (On the Record.)

22 THE COURT: Bring in the jury please.

23 (REPORTER'S NOTE: The jury returns to the courtroom.)

24 THE COURT: Madame Foreman, ladies and gentlemen, as you
25 now know, I have ordered lunch for you today such that we can

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1 proceed with the process. This will be the last case this
2 week for your consideration. As a result of that, I know
3 you're anxious to conclude the deeds and get home; so I've
4 ordered lunch for you to save an hour, hour and a half of your
5 time.

6 Ordinarily in the trial of a case, at this stage, we have
7 summation by distinguished counsel and then I charge the law.
8 I've been on the bench twenty-seven years and jurors have told
9 me during that period of time, Judge, I wish you would've told
10 us what the law was even before I heard their arguments, I
11 believe I could've followed their position better had I known
12 what the law was. And that makes absolute sense to me. And
13 so for the last few years, I charge the law ahead of time as I
14 do now by and with the consent of counsel of the State and of
15 the Defendant's.

16 Now, I charge you and will charge you at a later moment,
17 this Defendant in this case as is his absolute right elected
18 not to testify. Our constitution provides for that, that is
19 your right, that is my right, that is his right. There is
20 absolutely no adverse inference to be derived from the fact
21 that this Defendant did not testify. The fact that he did not
22 testify cannot even enter into your deliberations in the jury
23 room. He has that constitutional right of no adverse
24 inference against him for exercising that right. Madame
25 Foreman, I instruct you that you must not permit that question

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1 to even enter into your discussions in the jury room. He has
2 that absolute right.

3 Now, this indictment charges this Defendant Alex Lorenzo
4 Robinson with trafficking in the amount of cocaine in the
5 amount of 100 grams or more but less than 200 grams. Your
6 elected legislature met and passed a statute that says an
7 individual who possesses that quantity of cocaine, actual or
8 constructive is guilty of trafficking in cocaine. To this
9 charge, this Defendant specifically pleads not guilty thereby
10 placing the burden of proof upon the State of South Carolina
11 of proving him guilty if they can to your satisfaction by
12 evidence beyond a reasonable doubt.

13 I told you at the beginning of this process and I
14 emphasize again to you, this defendant and all defendants in
15 South Carolina are brought to trial upon an indictment such as
16 I hold in my hand. This indictment simply contains the
17 allegations as against this defendant, not proof but
18 allegations only and the State would prove them beyond a
19 reasonable doubt. To these allegations and they are
20 allegations only, this defendant specifically pleads not
21 guilty. Allegations in this complaint is absolutely no
22 evidence whatsoever. Evidence if any comes from this witness
23 stand under oath and from such other matters that may have
24 been introduced in the trial of this case by evidence. And
25 Madame Foreman, as to those matters that I have permitted in

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1 evidence, they will be with you in the jury room. I have
2 jokingly said that we've used these pictures to the extent we
3 bout wore them out but they will be with you in the jury room.

4 Now, this defendant, as I continue to emphasize to you,
5 has pled not guilty to this indictment and to the allegations
6 it contains and that plea puts the burden of proof upon the
7 State of South Carolina to prove him guilty if they can to
8 your satisfaction beyond a reasonable doubt.

9 I charge you that a person charged with committing a
10 criminal offense in South Carolina is never ever required to
11 prove himself innocent. I charge you that it's an important
12 rule of law that the defendant in a criminal trial, no matter
13 how serious the charge may be will always be presumed innocent
14 of the crime for which the indictment was issued unless his
15 guilt has been proven by evidence satisfying you of that guilt
16 beyond a reasonable doubt. This presumption of innocence does
17 not end when you begin your deliberations but it accompanies
18 the defendant throughout the trial until you have reached a
19 verdict of guilt based on the evidence satisfying you of that
20 guilt beyond a reasonable doubt.

21 It has been said by many scholars that the presumption of
22 innocence is like a robe of righteousness placed about the
23 shoulders of any defendant which remains with the defendant
24 until it has been stripped from the defendant by evidence
25 satisfying you of the defendant's guilt beyond a reasonable

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1 doubt.

2 This presumption of innocence is not merely legal theory,
3 it is not just a legal phrase, but it is a substantial right
4 to which this defendant and every defendant is entitled to
5 unless you the jury are satisfied from the evidence of the
6 defendant's guilt beyond a reasonable doubt.

7 Let's discuss for a moment the term reasonable doubt.
8 What is reasonable doubt in the law? A reasonable doubt is
9 the kind of doubt that would cause a reasonable person to
10 hesitate to act.

11 The State has the burden of proving the defendant guilty
12 beyond a reasonable doubt and some of you may have served as
13 jurors in civil cases where you were told that it is only
14 necessary to prove that a fact is more likely true than not or
15 by the greater weight of evidence. In criminal cases, the
16 State's proof must be more powerful than that. It must be, as
17 I continue to say to you, beyond a reasonable doubt.

18 Now, Madame Foreman and ladies and gentlemen, proof
19 beyond a reasonable doubt is proof that leaves you firmly
20 convinced of the defendant's guilt. There are very few things
21 in this world that we know with absolute certainty and in
22 criminal cases the law does not require proof that overcomes
23 every possible doubt. If, based on your consideration of the
24 evidence, you are firmly convinced that the defendant is
25 guilty of the crime charged, you must find that defendant

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1 guilty. If on the other hand, you think there is a real
2 possibility that the defendant is not guilty, you must give
3 him the benefit of that doubt and find him not guilty.

4 Now, I remind you that during the trial of this case, you
5 and I have certain duties to perform. As the Trial Judge, it
6 is my responsibility to preside over the trial of this case
7 and I also have the duty to rule on the admissibility of the
8 evidence offered during the trial of this case. You are to
9 consider, Madame Foreman and ladies and gentlemen, only the
10 competent evidence before you. You must disregard any
11 testimony that I may have struck from the trial of this case.
12 You are to base your verdict on the law and evidence heard in
13 this case and from no other source.

14 I have the additional duty to charge you the law
15 applicable to this case. As the presiding judge, I am the
16 sole judges of the law in this case. It may be that you or I
17 might disagree with what the law is or ought to be but for the
18 purposes of this case under your oath you are required to
19 accept the law as I give it you remembering at all times as
20 finders of the facts, you take the facts as you twelve
21 determine they are beyond a reasonable doubt and apply those
22 facts to the law of this case and thereafter reach a verdict
23 or either not guilty or guilty. And in that regard, Madame
24 Foreman, I will have for you an appropriate verdict form.

25 Now I want to emphasis to you as I have previously said

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1 to you, you and you alone are the sole and only judges of the
2 facts in this case. I am not permitted to have a factual
3 opinion about any issue and I certainly have none. I tell you
4 that if any ruling, mannerism, just -- judgment of mine might
5 tend to indicate to any of you how I feel about any factual
6 situation between these litigants, please disregard that. I
7 am not entitled to a factual opinion and I absolutely have
8 none. You twelve and you alone in this wide world are the
9 sole and only finders of the facts with regards to the issues
10 in this case.

11 Now, ladies and gentlemen, there are two types of
12 evidence which are generally presented during a trial, direct
13 evidence and circumstantial evidence. Direct evidence is the
14 testimony of a person who claims to have actual knowledge of
15 the facts such as an eye witness. It is evidence which
16 immediately establishes the main fact to the proved.

17 Circumstantial evidence is proof of a chain of facts and
18 circumstances indicating the existence of a fact. It is
19 evidence which immediately establishes collateral facts from
20 which the main fact may be inferred. Circumstantial evidence
21 is based on inferences and not on personal knowledge or
22 observation.

23 I tell you Madame Foreman and ladies and gentlemen, the
24 law makes absolutely no distinction between the weight or
25 value to be given to either direct or circumstantial evidence.

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1 Nor is a greater degree of certainty required of
2 circumstantial evidence than direct evidence. You should weigh
3 all of the evidence in the case. After weighing all of the
4 evidence, if you are not convinced of the guilt of the
5 defendant beyond a reasonable doubt, you must find the
6 defendant not guilty.

7 Necessarily, you must determine the credibility of the
8 witnesses who have testified in this case. Credibility simply
9 means believability. It is your duty as jurors to analyze and
10 to evaluate the evidence and determining which evidence
11 convinces you of its truth.

12 In determining the believability of witnesses who have
13 testified in this case, as I indicated earlier, you may
14 believe one witness against that of many or the other way
15 around. Obviously you do not determine the truth or falsity
16 of a matter by counting the witnesses who may have testified
17 on one side or the other. In other words, you may accept
18 totally or reject totally or accept in part and reject the
19 other in your discretion if you choose as the sole and only
20 finders of the facts in this case.

21 As I told you earlier, we use different means of
22 determining whether or not a witness is telling us the truth
23 or a false. Sometimes we in our experiences in life we
24 observe the demeanor of a witness. As an example, we always
25 ask ourselves how did they come to know about the facts they

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1 are telling us. Sometimes we ask ourselves, hey, is there
2 some reason wants me to believe one thing or another. You
3 have other methods using common sense that you've observed
4 during your life's experiences. The point I make to you is
5 that you and you alone judge every witness's credibility and
6 believability.

7 Now, I designated a witness as an expert witness and
8 qualified her as an expert. Let me talk about that a moment.
9 The rules of evidence ordinarily do not permit witnesses to
10 testify to opinions or conclusions. An exception to this rule
11 exists for witnesses we call experts. A witness who, by
12 education and experience, has become an expert in some area or
13 some art, science or profession or calling may state an
14 opinion relevant and material to the matter in which the
15 plaintiff claims to have been an expert and they give their
16 reasons for that opinion.

17 You should consider an experts opinion received in
18 evidence in this case and like any other evidence give it the
19 weight you think it deserves. If you decide the opinion of an
20 expert witness is not based on sufficient education experience
21 or if you conclude that the reasons given in support of the
22 opinion are not sound that the opinion is outweighed by other
23 evidence, you may if you choose disregard such evidence.

24 An expert witness, ladies and gentlemen, is to be given
25 no greater weight than that of other witnesses simply because

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1 the witness is an expert. You are not required to accept an
2 expert's opinion if you do not conclude it was proper under
3 the circumstances.

4 With regards to a witness with a prior record, I charge
5 you as follows: A person who has a past criminal record is
6 competent to testify during a trial. The past record does not
7 affect the ability of that witness to testify. The past
8 record may only be considered by you if at all in determining
9 the witness's believability or credibility. Remember, you are
10 the sole judges of the facts in this case and to the
11 believability of any and all witnesses.

12 I instruct you at the beginning and I do so again as
13 follows. I instruct you and emphasize that the fact that the
14 Defendant did not testify is not a factor to be considered by
15 you in any way in your deliberations and in your consideration
16 of the question of the guilt or the innocence of the
17 Defendant. It must not be considered by you in any manner
18 whatsoever as I told you before, this defendant and all
19 defendants has the absolutely constitutional right to remain
20 silent and the assertion of this right must not be considered
21 by you in your deliberations in any way whatsoever.

22 In this case, Madame Forman, ladies and gentlemen, there
23 are allegations of spoliation or destruction of evidence. The
24 State not only has the burden of proof of guilt but it also
25 has the burden of producing evidence which could establish the

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1 innocence of the defendant. When evidence is lost or
2 destroyed by a party, you may if you choose infer the evidence
3 which was lost or destroyed by that party would have been
4 adverse to that party. If you find first that the evidence
5 was spoiled or destroyed and if you further find that the
6 evidence could have established the innocence of the
7 defendant, you may then consider these facts in deciding
8 whether or not the State has met its burden.

9 As I told you earlier and I'll tell you again, the
10 defendant is charged with trafficking in cocaine in the amount
11 of 100 grams or more but less than 200 grams. The State must
12 prove beyond a reasonable that the Defendant knowingly had in
13 his possession this quantity of cocaine and they must prove it
14 beyond a reasonable doubt. I use the word in his possession
15 either actual or constructive and I will define those terms
16 for you. The State must also prove beyond a reasonable doubt
17 that the amount of the cocaine or any mixture thereof
18 contained cocaine was 100 grams or more but less than 200
19 grams.

20 There are certain elements that the State must prove
21 beyond a reasonable doubt before the defendant can be
22 convicted and found guilty. Each of these elements must be
23 found by you, the jury, beyond a reasonable doubt. First, it
24 must be found that the defendant did possess a quantity of
25 cocaine at the time and place as alleged in the indictment.

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1 Possession requires that a person be in the actual or
2 constructive possession of the controlled substance with
3 actual knowledge of its presence. Actual possession of a
4 controlled substance is this: When the controlled substance
5 is found in the actual physical custody of the person charged
6 with the indictment. Constructive possession of a controlled
7 substance exists when the person although not in actual
8 physical possession of the controlled substance exercises
9 dominion and control over the controlled substance or has the
10 right to exercise dominion and control over the controlled
11 substance. A person, ladies and gentlemen, has possession of
12 a controlled substance within the meaning of the law when he
13 has the power and intent to control its deposition or use.

14 It must be shown that the defendant had possession of the
15 controlled substance, actual or constructive, and that the
16 defendant knew he had the controlled substance in his
17 possession, actual or constructive. Knowledge of the presence
18 of the controlled substance by the defendant is essential.

19 The defendant's knowledge and possession may be inferred
20 if the substance was found on the premises or property under
21 his control. You, as the jury, are free to accept or reject
22 this permissive inference of knowledge and possession
23 depending upon your view of the evidence.

24 Secondly, you must find that the substance was cocaine
25 and you must find that beyond a reasonable doubt. I charge you

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1 that cocaine is a controlled substance.

2 Third, you must find that the quantity of the controlled
3 substance was 100 grams or more but less than 200 grams and
4 with all of the issues that the State must prove, that issue
5 must be proven beyond a reasonable doubt.

6 Now, ladies and gentlemen, you have been selected as
7 fair, impartial jurors, sworn to impartially try and determine
8 the facts of this case and when you comply with your oath to
9 do so then no one will have a right to criticize your verdict
10 and you would have fully discharged your duty as jurors. You
11 should not be influenced by opinions or expressions of
12 opinions if any which you may've heard on the outside but you,
13 ladies and gentlemen, are to decide this case according to the
14 testimony that you have heard from the lips of the sworn
15 witnesses along with any other evidence in the case that I
16 have introduced for your consideration.

17 Now, Madame Foreman, I have prepared for you a verdict
18 form. There's no significance by the way in which I list
19 them, I could've just as easily turned them around the other
20 way. There are two verdict forms and each one of them of
21 course must be found by you unanimously, could not be found by
22 a majority, obviously not a minority. It must be found by the
23 -- The first says, we the jury unanimously find the Defendant
24 Alex Lorenzo Robinson guilty of trafficking in cocaine of 100
25 grams or more but less than 200 grams; or we the jury

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1 unanimously find the Defendant Alex Lorenzo Robinson not
2 guilty. Whatever your verdict is, it would be unanimous, you
3 would sign your name on the line indicated and date it, let
4 the bailiff know and we will accept it here.

5 I'll let you go to the jury room just a moment and I'll
6 be -- I'm going to send in also the indictment itself which as
7 you understand is not evidence. I've sent this form in just
8 to help you as a guideline but once you've reached a verdict,
9 please return to the back of the indictment and under verdict,
10 write whatever your verdict was, please sign your name.

11 I'll let you go to the jury room just a minute. I'll be
12 calling you back for final summation of counsel. Thank you.

13 (REPORTER'S NOTE: The jury retires to the jury room.)

14 THE COURT: Outside the presence of the jury, any
15 exceptions or additions to the charge?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: What says the Defendant?

18 MR. HILLIARD: None, Your Honor.

19 THE COURT: All right. You want to take a very short
20 break and ---

21 MR. HILLIARD: Before we begin, that would be
22 appreciated, Judge. Thank you.

23 THE COURT: Let me ask you this: Will there be one or
24 two arguments by the State?

25 MR. RICHARDSON: Just one, Your Honor, I'll go last.

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1 THE COURT: Does that suit y'all?

2 MR. HILLIARD: I'd rather go last but that's my only
3 choice.

4 THE COURT: Okay, that's -- well, they'll be -- you will
5 start first as the law requires and they'll have the
6 completion.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: Which one will argue?

9 MR. HILLIARD: Me, Judge.

10 MS. BASS: I lost that battle, too, Your Honor.

11 THE COURT: That's fine.

12 MR. HILLIARD: Thank you, Judge.

13 THE COURT: All right. Thank you. Let's take a short
14 break and get started again, please.

15 MR. RICHARDSON: Thank you, Judge.

16 (RECESS.)

17 *****OFF THE RECORD*****

18 (On the Record.)

19 THE COURT: Bring the jury in.

20 (REPORTER'S NOTE: The jury returns to the courtroom.)

21 THE COURT: Madame Foreman, under our rules,
22 distinguished counsel for the Defense would proceed first
23 followed by the Solicitor. And we'll have lunch by then and
24 we begin deliberations.

25 All right, sir. You may proceed, sir.

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1 CLOSING ARGUMENT BY MR. HILLIARD:

2 MR. HILLIARD: Thank you, Judge.

3 Ladies and gentlemen, I don't mind telling you that as I
4 stand before you at this point in the trial that I am very,
5 very afraid. The reason for that is that there's real
6 possibility that me standing here right now and talking to you
7 for the next -- it's only really gonna be a few minutes -- is
8 going to have a substantial impact on Alex Robinson's life.
9 He has Ms. Bass and myself as his attorneys and to some degree
10 he's stuck with us and that -- if I have done anything that is
11 offensive to you or is -- makes you feel bad in some way or if
12 Ms. Bass, as nice as she is, has done something that has
13 offended you or you think we've done something wrong, please
14 hold that against me or her and when you go home, as the Judge
15 said, and speak with your spouse or significant other, you can
16 say well those lawyers did this or that and I thought it was
17 bad but don't hold it against Alex Robinson because we're his
18 lawyers and we are here to speak on his behalf.

19 One of the things that the Judge said in his charge that
20 I'd like to talk about at the outset, when he was talking
21 about reasonable doubt is -- and I want you to think about
22 this while I'm talking -- a real possibility that he is not
23 guilty, a real possibility that he is not guilty. When the
24 Solicitor in the beginning was talking with you in the very,
25 very beginning of this case, when we first sort of got to know

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1 each other, he was talking about he was down with his son, I
2 believe it was and they were connecting the dots and it was
3 Sponge Bob and he compared his job to that. And as we go
4 through this conversation, I want you think about that. I
5 would submit to you as we get through this that the dots are
6 not connected.

7 Remember that, as the Judge told you, Alex Robinson is
8 presumed to be innocent. That means as he sits right now, he
9 is innocent, he is innocent. It is the responsibility of the
10 State if they bring us all into court to show proof. It is
11 their job to show proof, to investigate and bring forth
12 evidence that will have the opportunity to show you beyond a
13 reasonable doubt that in fact Alex Robinson, a living,
14 breathing human being is in fact guilty of what?

15 Now, here we are today and have been for several days
16 talking about a whole lot of stuff but when the Judge got to
17 the part of where -- what's in the indictment, all right, and
18 that is what are your choices? He has either proved by
19 government's evidence guilty or he is not proved by the
20 government's evidence guilty beyond a reasonable doubt of
21 what? What is it that they say that he did? What is it that
22 you can find him guilty of?

23 State's Exhibit Number Twenty-nine, and you'll have this
24 back in the jury room with you, State's Exhibit Number Twenty-
25 nine has in it a number of things. I'm going to ask you to

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1 remember that Alex Robinson is not charged with having these
2 three blue pills, these three blue pills right here that were
3 identified as street name Ecstasy. Ecstasy, you will recall
4 what Gil Yakoel was originally charged with trafficking at
5 another time. He was not charged with having those pills and
6 he's not charged with this block brick thing here, either,
7 he's charged with having this powder, that's all that he is
8 charged with; that's your choices either guilty or not guilty
9 of possessing that powder, the State with the burden of proof.
10 So, here we are in the trial. So, what does guilty mean?
11 I know when the Judge goes through that and he talks about
12 either guilty or not guilty and he talks about possession,
13 because that's what the trafficking thing is. The trafficking
14 thing is possession of a certain amount of an illegal
15 substance that the legislature has decided warrants a name all
16 its own and that is trafficking. Possession, what does
17 possession mean? One of the things that the Judge said about
18 possession -- and I ask you to remember this because it's, it
19 is confusing. If you -- if I owned a house and Ms. Bass is
20 living in that house and in Ms. Bass' bedroom she has this, I
21 have actual right to go in my house and I have actual right,
22 perhaps, to go in that bedroom. The house belongs to me, it's
23 a bedroom and I have a right under some renter agreement or
24 some sort of thing to go in the house and see what's in there,
25 that does not mean that I am in possession -- just because I

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1 have the right to go in the house and the right to go in the
2 closet doesn't mean that I have possession of what's in there.
3 Possession under the law requires as the Judge said in the
4 very beginning of his charge, knowingly, knowingly. So, the
5 requirement is that it be proved to you beyond a reasonable
6 doubt to the satisfaction of each and every one of you that in
7 fact Alex Robinson knew, knew that this powder was in that
8 closet. If there is a real possibility that this powder was
9 in that closet and he didn't know it, he's not guilty, that's
10 what the Judge said. If there is a real possibility this
11 powder was in the closet and he didn't know it then he is not
12 guilty. Okay?

13 Now, so the government, the State, perhaps doing the best
14 they can under the circumstances, what do they do? Well, they
15 are connecting the dots. What else did the Judge say? What
16 else did the Judge say? At the time and place as alleged in
17 the indictment, that's another requirement that they have to
18 meet. That is he had to know it was in the closet and he had
19 to know it was in the closet at the time and place as alleged
20 in the indictment. So, they have the responsibility under the
21 evidence as they connect the dots to show that he knew that it
22 was in the closet at the time that they say, on the occasion
23 that they say in the indictment that it was there. That's
24 another part of their burden.

25 So, back to what they're doing, Alex Robinson wasn't

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1 there. They pick -- they got a search warrant, right?
2 There's a search warrant. They got a search warrant. The
3 State, the police, they select when they -- and the talked
4 about that some in the testimony, they selected the time that
5 they wanted to execute this search warrant. They selected the
6 day and the time that they wanted to go and hit this house and
7 spread out and do the things that they talked about, knock in
8 the door and go inside and scatter out and do that. They
9 selected the date and the time when they went there. Alex
10 Robinson was not there. He wasn't there. They picked the
11 time, they picked the day; he wasn't there, right. So, we got
12 that part. Now, the police officer says we're gonna charge
13 who's in the room with what's in the room. That's what the
14 police man says. All right. So, you've got two people in the
15 front room and one person in the back room, Gil is the person
16 in the back room. She's already been charged with trafficking
17 drugs on one occasion and now she's trafficking drugs on a
18 second occasion. What in the world is she gonna do? What's
19 she gonna do? She's gonna do what it was that she did and
20 we'll talk more about that later.

21 But you know, when we think about the case and the
22 responsibility of the police, what did they bring you? I
23 mean, they started off in the case and they didn't -- they
24 didn't take much. You know, if you're trying to prove
25 something as serious as trafficking in cocaine, if that's what

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1 you're trying to prove, you're trying to show that somebody is
2 actually engaged in trafficking cocaine, don't you collect up
3 the stuff that's there? I mean, what did they bring you?
4 They brought you this thing. What is this; something that's
5 in the middle room that you can look out the window with.
6 Well, hello, folks, there's a guy in the front room with a
7 gun. Where's the gun? They didn't bring the gun; they gave
8 the gun to somebody at some point in conjunction with a rule
9 that they have about guns, right. So, they didn't bring you
10 the gun but there's a guy in the front room with a gun, right,
11 and he's got a TV to see who's coming. Does that make sense?
12 Sure.

13 What else? Well, the guy in the front room, he's got
14 some little bags of cocaine. They guy in the front room,
15 right? What does that -- you know, that doesn't mean anything
16 about Alex, right? You know, beyond a reasonable doubt, a
17 reasonable possibility he's not guilty, real possibility he's
18 not guilty just because there's this. What?

19 What else do they have? Well, what else do they have?
20 They got some stuff they threw away, they threw it away. And
21 what did they tell you about what they threw away? They don't
22 know what it is. How can -- you know, here's the thing,
23 right, the burden of proof is on the government. The
24 presumption of innocence is on the Defense. They go to a house
25 where they say is his house. They gather up the stuff that

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1 they say proves it's his house and they throw it away, right?
2 But we don't know what's there, you don't know what's there.
3 There is no way anybody on earth is ever gonna know what that
4 was. Maybe that would've been helpful but we don't have the
5 burden; they have the burden. They threw away the evidence.
6 They don't even know what they threw away. They don't know
7 what they threw away.

8 Well, and some stuff they gave away, right, some stuff
9 they gave away. They gave it back to whoever came for it.
10 If, you know, return to owner, they don't know what they gave
11 away back to the owner. Some stuff was destroyed on purpose,
12 some stuff was destroyed by accident and some stuff was given
13 back to whoever it was that it belonged to and what they want
14 you to convict Alex Robinson on is some pictures, a bag of
15 dope, and a BB&T account deposit slip from January the 7th of
16 2008. That's all you've got.

17 If you don't know the answer to the question he's not
18 guilty, this is not an opportunity for you to speculate, to
19 think about it, to investigate, to try to figure it out. If
20 you don't know the answer to the question, ladies and
21 gentlemen, then he is in fact not guilty. They have failed --
22 and they can fail by not preserving the evidence, they can
23 fail by not collecting the evidence. What about that? What
24 about that? You know, there's a photograph -- you're gonna
25 have these with you in the back. You're gonna have these in

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1 the back and that's State's Exhibit Number Twenty and, you
2 know, the police officer testified that in his view that those
3 were man jeans that he pulled down out of the top of the
4 closet and the that the dope fell out when the jeans fell out
5 and I believe that Gil -- and let me say this before I even
6 get any further. When I start talking about what the evidence
7 is, there is -- there are twelve of you that will be
8 discussing this and there's only one of me. I might remember
9 the evidence differently than you remember the evidence. It
10 may be something that I say and you think to yourself, well,
11 that's not what that person said; that person said something
12 else. I will pledge to you that I am not trying to mislead
13 you. If I am mistaken, I am mistaken and I will apologize for
14 that. If -- whatever the evidence is is what you guys it is,
15 not what I say it is and that's true for me and of course the
16 prosecutor. But I recollect that at some point in time Ms.
17 Yakoel said that she felt like the jeans in State's Twenty
18 were Alex Robinson's jeans. Now, if you look at Nineteen and
19 Twenty, and I will submit that if you look at them carefully,
20 that those may not even be the same pair of jeans, those may
21 not even be the same pair of jeans if you look at these -- if
22 you look at these photographs carefully. Of course, had the
23 police collected the jeans, there is a possibility as was
24 indicated that we could test the jeans, we could see who had
25 been wearing the jeans, we could see who the jeans were.

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1 Perhaps we could look at it and at least see what size the
2 jeans were to see if they would fit or not. You know, if we
3 had these jeans, we could do something with them, make a
4 legitimate and reasonable determination about the credibility
5 of Gil I've-got-a-deal Yakoel. But we don't have the jeans so
6 we can't do anything with them and you are forced to make a
7 decision without that piece of evidence which I would submit
8 to you would have been very beneficial, helpful. They didn't
9 collect the jeans.

10 I acknowledge that I am embarrassed to get to this part
11 of my conversation but I will, I will say it and live with it.
12 I don't want Alex to date my daughter. He does not have a
13 lifestyle that is consistent with what I would like for my
14 family. He is a young African-American male. I've come to
15 know him and I like him but I don't want him to date my
16 daughter. Now, when we were picking jurors the truth is I was
17 hoping that we would have some African-Americans on the jury
18 but as it is, we don't. I don't mean by that to suggest that
19 there is any prejudice in any form or fashion on any member of
20 the jury. I will only ask that you remember -- you know, this
21 is -- it's tough to be on a jury, it's hard to do what the law
22 requires, to sit here and to judge a case based only on the
23 evidence and to put aside anything that you might otherwise
24 think. The thing that I will ask you to remember and to keep
25 in your mind is that Alex Robinson is not on trial for his

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1 lifestyle. He is not on trial for his -- the things that he
2 does. You know, one of the things that Ms. Yakoel said, she
3 said he's a good dope dealer. Right? That's what she said,
4 she said he's a good dope dealer. She didn't like anything
5 about him but she said the only thing he was that good at was
6 being a good dope dealer but she also said that she didn't
7 know anything about dope dealing and that sort of thing. But
8 remember this, remember this, that's not what he's on trial
9 for. Without regard to whether you think that's true or false
10 or anything else, remember what the Judge said, remember what
11 the Judge said, knowingly had actual or constructive
12 possession of this right here at the time and place as alleged
13 in the indictment. That's it. That is all he's on trial for,
14 that is it, that's your decision, that's all.

15 What else is it that could've happened and didn't in this
16 case? Now, we know for a fact, the people in the front
17 bedroom pled guilty to something, right? There is a
18 photograph, State's Exhibit Number Thirteen, they put it into
19 evidence, that's the little bags of dope that the front
20 bedroom fellow pled guilty to, right? And then we got State's
21 Exhibit Number Twenty-five, that is the powder that we're on
22 trial about today. Whose powder is that? Whose powder is
23 that?

24 The chemist that they sent this to over at the Horry
25 County Police Department said that there is a way to tell if

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1 those two things came from the same -- but these little
2 baggies with the cocaine in these little baggies came from the
3 same bag as the big bag. What about that? What would that
4 mean to you? Would that mean that the guy in the first case
5 was the possessor of the big bag as well? That he kept his
6 little bags for sale in a spot different than he kept the big
7 bag? It would, I submit to you make sense.

8 Why the police said to the people when they came in the
9 house, well, whatever room you're in, that's the dope. What
10 the heck is that? Whatever room you're in that's the dope
11 you've got. Does that mean that if you were in the front
12 bedroom, that you can't have the dope in the back bedroom? It
13 sort of means that, right, if you're in the front bedroom you
14 can't have the dope that's in the back bedroom but what about
15 if you're not even there? What about that? You're not even
16 there. I guess that doesn't matter.

17 They made a deal, they made a deal with Gil. But before
18 I get into that let me just point out a couple of things,
19 other things that they didn't do in connection with
20 opportunities that they had to show you whose drugs those
21 really are. Fingerprints, fingerprints, and a police officer
22 said -- I wrote it down somewhere but I'm not very good with
23 taking notes. The police officer said when the Solicitor said
24 -- when the Solicitor asked him, well, did you -- how often do
25 you take fingerprints on bags of dope? I submit to you that

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1 the Solicitor expected him to say never but he didn't, he said
2 we seldom take fingerprints off of bags of dope. And then he
3 said because most of the time you can't get a fingerprint off
4 a bag of dope. Well, hey, sometime -- most of the time you
5 can't, that also necessarily means sometimes you can. So
6 there is a great deal of controversy in this case about who
7 that sack of dope belongs to. So, if they wanted to convict a
8 person that wasn't even at the house, shouldn't they have
9 looked for some fingerprints on the bag of dope or something,
10 some fingerprints on the door to the closet or some
11 fingerprints on something, on something? Not a single
12 fingerprint taken in this case. There's no DNA; they didn't
13 do any DNA testing on anything in this case, nothing, no
14 serology, no trace evidence, they didn't look at any hairs,
15 they didn't look at anything. All they did, all they did in
16 connection with that, they went to the room, they arrested the
17 girl, they got a warrant for him and that was the end of the
18 case except for throwing away some of the evidence. They
19 didn't collect anything, nothing.

20 Ladies and gentlemen, don't be fooled by the girl with
21 deal. Now, she presented, she came into court with her family
22 and her lawyer and she walked up there and she said I don't
23 have a deal, I don't know what's gonna happen. But she also
24 said that she didn't intend to go to jail and she knew about
25 that sort of thing because she had been to jail. Her other

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1 case had been dismissed.

2 When you think about her -- when you think about her
3 testimony and I'm -- I may be hitting things that you guys
4 already thought about or maybe I even say some things that you
5 disagree with and if I do that I am truly sorry. But the --
6 when she's up there, she presents as a young, single mom in
7 dire straits who has to take her clothes off to buy food for
8 her child, that's what she -- and she's a bit weepy about it.
9 Alex provided her with a [REDACTED], a place to live,
10 [REDACTED], his brother allowed her to stay at
11 [REDACTED], she stayed his mom. She testified that that car,
12 the car, remember the car, he gave her that car to drive so
13 she could get around to doctors' appointments. He paid her
14 rent. He bought her manicures. Her bond on the charge, he
15 paid half of the bond in the beginning. The child support,
16 child support, he pays child support as she said through the
17 Clerk of Court right downstairs. She said, oh, but he's late
18 but she hadn't been down there to check regarding that. He's
19 had nothing to do with her according to her after the second
20 arrest, after his arrest for this charge. He's had nothing to
21 do with her since the arrest.

22 When she went through the pictures, she said that he
23 controlled what she did. When you look at those pictures and
24 you have then in the jury room, look and see if you don't
25 think she's having a good time. She was enjoying her time.

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1 She was enjoying what she was doing. She was making choices.
2 No question, she was young and at the same time, she was
3 making choices and she is responsible for those choices that
4 she was making.

5 One of the photographs, you heard testimony to the effect
6 that there was another -- there was another individual who
7 lived at the house whose name was Robinson who came there,
8 stayed there, had been there on some occasions, testimony to
9 the effect that he had left his prison ID there. Perhaps it
10 was mistaken identity. He's been identified in State's
11 Exhibit Number Thirty-four as Roland Robinson, the picture is
12 not very good admittedly but the guy in the white shirt was
13 identified to you as Roland Robinson who stayed at the house.

14 I forgot to talk about this when we were talking about
15 what they had and destroyed and whatnot but look at -- and
16 nobody said a word about this that I remember but look at
17 State's Exhibit Number Seventeen. There's a computer sitting
18 on top of that, right. Look at that, that's a computer. What
19 the heck is on that computer, what's on that hard drive,
20 what's on that -- where did that go? Did anybody get it? Did
21 they take it anywhere? Did they do anything with it? Does it
22 prove anything one way or the other? I don't know. You don't
23 know. I don't know if anybody knows but there is it. They
24 had it at some point or at least had the opportunity to have
25 it and they didn't take it but they want you to convict Alex

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1 Robinson anyway.

2 Marijuana, that's about the lifestyle, that's not about
3 the case. Ecstasy, that's about Gil, maybe. Look at this, I
4 mean, evidence -- again evidence, a photograph of a drawer
5 with envelopes. Let's convict this guy for trafficking in
6 cocaine by taking a photograph of a drawer of envelopes. Is
7 that -- I mean, is that right? How about fair? What about
8 fair; is that fair? And look at this, Seven and Eight; come
9 on, really? It's 2011 and that's what you got. To change a
10 young man's life forever and that's what you've got. Is that
11 fair? Isn't there just something about the law that ought to
12 be fair? Sandwich bags, sandwich bags, all right, a junk
13 drawer, photograph of Alex being happy, a photograph of Gil
14 pregnant, happy, liquor bottle behind her -- I don't know if
15 that means anything or not ---

16 THE COURT: Counsel, I remind you, sir, you've now been
17 talking forty minutes.

18 MR. HILLIARD: Thank you, Judge. I'm almost done. I
19 appreciate that. I didn't realize it'd been that long.

20 THE COURT: I didn't think you did.

21 MR. HILLIARD: The one thing that there is that is
22 consistent in this case, when the people got arrested, when
23 the police and the drugs were there, Alex Robinson wasn't
24 there. He was never good enough for his girlfriend at the
25 time, she belittled him, she said he never was good at working

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1 at anything, he just wasn't good enough. She doesn't intend
2 to go to jail. She was in the room, she was there with the
3 drugs, she's got the deal. Alex Robinson nowhere near there
4 and -- I -- Judge, I'm sorry, I didn't -- and I won't take a
5 long time with this but, you know what, he didn't have
6 anything to do with it but in any event you saw it and I
7 reckon I ought to talk about it, I almost forgot. How about
8 the big -- here comes the policeman riding fast down the road,
9 zoom-zoom-zoom, nobody in front of him, he's just going fast
10 from point A to point B, car wreck, people run into the
11 soybean field and get arrested. How about a so what for that,
12 right? I mean, what does the Judge tell you? Judge tells you
13 at the time and place alleged in the indictment with knowledge
14 of its possession, the cocaine, a real possibility he's not
15 guilty. Policeman driving fast down the road, car wreck,
16 that's got nothing to do with this ladies and gentlemen, not a
17 thing in the world, not a thing in the world.

18 The bag of coke, they didn't send it to SLED, there's no
19 way to prove that it's not Kenneth's coke, the coke that was
20 in the front room. There's no way for us to prove that. If
21 we had that analysis, could we show that it was Kenneth's?

22 There's one telling thing and I'll sit down and shut up
23 and I -- let me say I thank you very much. If I've talked too
24 long, I apologize but certainly recognize that when I sit down
25 I am done. I can't say anything else, I can't do anything

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1 else, this thing is over for me and for Alex. The Solicitor
2 is gonna stand up and he will have an opportunity to say
3 within the bounds of the rules, whatever it is that he wants
4 to and I can't reply to any of it. So as you listen to him,
5 I'll ask each of you to think about what it is that I might've
6 said if I had had the opportunity to stand back up. I can't
7 stand back up; this is it. I thank you all, each of you for
8 being with us. I know this has been an enormous imposition on
9 you and I know that it's a terrible responsibility to have a
10 man's life in your hands. But there's a telling thing about
11 this that nobody has really talked much about. If Alex
12 Robinson was the one living in the house and if this is his
13 house and if the electricity is in his name, this is his deal,
14 then why isn't he the one living in the master bedroom. How
15 come?

16 I'll leave it with that. Thank you very much.

17 THE COURT: Thank you, counsel.

18 MR. HILLIARD: Thank you, Your Honor.

19 THE COURT: You may have your closing argument.

20 MR. RICHARDSON: Yes, sir. I just waiting till Mr.
21 Hilliard sits down if that's all right, Judge?

22 CLOSING ARGUMENT BY MR. RICHARDSON:

23 MR. RICHARDSON: Don't want your sandwiches to get cold
24 so I'm gonna try and be quick.

25 Folks, the picture is complete. Every one of those dots

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1 I told you about has connected up and the picture is complete
2 and what has been painted is a picture of man guilty of man
3 trafficking in cocaine greater than 100 grams, less than 200
4 grams. Those dots that composed of the evidence you heard
5 here in court, the credible testimony you got from the stand,
6 the actual physical evidence that was entered, monitors,
7 cameras, the dope, the deposit slip taken out of the
8 Defendant's pocket after he ran from police listing his
9 address at [REDACTED]. Folks, the Defense doesn't
10 want you to look at the evidence, they're trying to confuse
11 you with strippers, who was stripping when, where. Some
12 mystery man, Roland Robinson that only Mr. Durant could
13 identify in a picture, I think the Defense identified he went
14 by the name of Shek and Ms. Yakoel said she knew Shek and Ms.
15 Smith said she knew Shek but they looked at the picture and
16 said I don't know who that is, mystery man, Roland Robinson.
17 They don't want you to look at was collected. They want to
18 worry you about DNA that wasn't collected and the fingerprints
19 that weren't collected because if you look -- they want you to
20 be distracted from what was taken because they know the
21 evidence that was collected all links back to the Defendant.
22 All those dots connect and they make a big flashing arrow
23 pointing directly back at the Defendant saying he's guilty.
24 The Judge told you about the law just a little while ago
25 and I'm not gonna rehash everything but he talked to you about

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1 direct and circumstantial evidence and, folks, that's what we
2 have putting the Defendant in the house, circumstantial
3 evidence. It's a chain of facts, those dots that lead you
4 down the path to show you that was his house, his drug house,
5 where he exercised dominion and control, his girlfriend in
6 there. That was his dope in his pants in his closet with his
7 car outside.

8 The Judge talked to you about the law on trafficking
9 cocaine, possession, constructive possession, the Defendant
10 wasn't there but the dope was in his pants in his closet. The
11 Judge talked to you about reasonable doubt and that's always a
12 magic term that you hear on TV and it seems to be such a high
13 burden we just can't read it. But that's simply not it,
14 folks. The Judge told you to prove the Defendant guilty
15 beyond a reasonable doubt, I have to give you evidence that
16 leaves you firmly convinced of his guilt. And we do that by
17 putting in the relevant, competent and admissible evidence and
18 testimony. That's my job. I'm not here -- my job is not to
19 mislead you, take you down rabbit trails that get you lost and
20 dead end, throw up smoke screens and hope you can't find your
21 way back to the truth, to a just verdict. And if you follow
22 that competent, relevant and admissible evidence, that leaves
23 you to the right answer, the Defendant is guilty. It leaves
24 you firmly convinced of his guilt.

25 So, let's examine the evidence found at the house.

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1 First, electric bill in the Defendant's name. The Defendant's
2 brother in the house. Well, there's mail in the house
3 addressed to the Defendant. Sorry I got it misspelled there.
4 And it's to [REDACTED]. Folks, that's important that
5 there is mail addressed to Alex Robinson found at [REDACTED]
6 [REDACTED] but it's addressed to [REDACTED] I
7 guess the mail carrier picked up that mail at [REDACTED]
8 Road and brought it over to [REDACTED] k because it had to get
9 there somehow. It's the Defendant's mail, he brought it over.
10 [REDACTED], the same address Mr. Durant said he
11 used for his mailing address even though he lives out at
12 Carolina Forest. He told me that when he said he lied about
13 his address on -- whenever he signed in with the officer but
14 mail to Dunn Shortcut Road that got over from Dunn Shortcut
15 Road in the Defendant's name to the mobile home.

16 You've got pictures of the Defendant in the house.
17 You've seen the pictures from the party. So, you've got
18 pictures of him at the house, at the house. You've got his
19 girlfriend four to five months pregnant at the time. She's in
20 the back bedroom with male clothing. You've got a car in his
21 name and once he and Mr. Hilliard that, oh, well, the address
22 on that car, the mailing address for that car is [REDACTED]
23 [REDACTED] Yeah, that's his mailing address. He doesn't
24 want bills coming to his dope house, no, no. He doesn't want
25 a postman coming by there. Send my mail to Daddy's house,

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1 I'll go by and pick it up, I'll take care of it at my dope
2 house. Folks, we know that's his car because a few days
3 later, he runs in that car. Folks, that's the evidence we
4 found there.

5 Prior to the search warrant -- and the officers didn't
6 serve the search warrant on the Defendant, they served it on
7 the property. And they went in and they found evidence that
8 he controlled that house. No, he didn't have the master
9 bedroom. Ms. Yakoel told you that they had just recently
10 moved in because they were a little bit dispossessed with the
11 prior property from her arrest. He tried to move in her into
12 his momma's house, Ms. Robinson didn't like that too much,
13 kicked her out so moved her into the business place for a
14 little while. He'd stay, come and go, kept his clothes there.
15 Those male clothes they pulled down, the dope fell out.
16 Folks, the bill was in his name, his brother was there, he let
17 his brother stay there, his mail was there from Dunn Shortcut.
18 He had pictures of himself in the house, we have pictures of
19 his actually partying in the house, the same month. His
20 pregnant girlfriend is in the house, four to five months
21 pregnant. Are they having a rocky relationship, no doubt.
22 Pregnancy does strange things to a relationship anyway
23 especially when you're dating a drug dealer with \$4,000 worth
24 of cocaine. \$4,000 to \$4,500 worth of cocaine found in his
25 clothes in the bedroom, his car is right outside in his name

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1 and he's caught driving it a few days later.

2 And I almost forgot, folks, Mr. Hilliard talked about
3 this monitor and the camera. Mr. Durant said he didn't have a
4 monitor in his bedroom. The camera was in the back bedroom,
5 the one that faces [REDACTED] The monitor is in the
6 living room, there's good reason for that. When the kingpin,
7 the Defendant over there is sitting in that bedroom, he can
8 see the road, clear as day. If you got a bunch of dope, you
9 want to be able to see who is coming up the walk. If you had
10 the Hope Diamond in your bedroom, you'd want to see who was
11 coming in that bedroom. So, he's got a camera in there for
12 when he's out of the bedroom. He's not gonna be back in his
13 brother's bedroom, in the master bedroom, he's gonna be
14 sitting in the living room watching that big screen TV,
15 playing video games, that's why the monitor is out in the
16 living room. There's no monitor in Mr. Durant's room because
17 he's a small-time drug dealer, seven little bags of cocaine,
18 a pistol in a book bag. And Mr. Hilliard wants to say, oh,
19 you're gonna keep your main supply in a different room that
20 what you're gonna deal. Really? Seven little grams of
21 cocaine but you're gonna keep the 109 grams in a room with a
22 nineteen-year-old pregnant girl where you can't control who
23 comes in and out while you're sleeping, brilliant business
24 plan.

25 Folks, the evidence starts stacking up against him and

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1 the Defense does not want you to look at that. They want to
2 talk about DNA, fingerprints and what wasn't done. You've got
3 the pictures, you look at the mail. I wish we had it, I wish
4 we didn't have to talk about spoliation; there's none. The
5 mail would not help the defendant whatsoever. It clearly
6 states that it was mail in the name of Alex Robinson that was
7 collected. We took pictures of other people, his ex-wife, her
8 mail. I wish we had it. I wish you could look through each
9 one and see what address appears on each one. See his name on
10 each one. You can see a couple of them or they're
11 photographed.

12 The Judge talked to you about credibility of witnesses.
13 How do you know what to believe. He's gonna tell you you can
14 believe one witness over many or vice versa. But one, you're
15 gonna use your common sense. How does it sound to you? How
16 do they act when they're up here on the witness stand? How
17 nervous do they appear? How confident do they appear? What
18 have they got to gain? What enemies do they have to punish or
19 friends to reward? What they say, is it corroborated by
20 evidence.

21 Well, let's look at Mr. Durant. Mr. Durant tells you he
22 lied to police when they came to serve an eviction notice and
23 identified himself as his brother. Told you he lied when he
24 told -- either he lied when he said he lives at Carolina
25 Forest or he lied on a document some months later whenever he

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1 says, no, I live at [REDACTED], the same address
2 as his brother uses.

3 He talks to you about, I think its Roland Robinson. He
4 says there's a prison card for Roland Robinson at the place.
5 Where is Roland Robinson's mail? It wasn't found there.
6 Where's that prison card? The officers did a thorough search;
7 no prison card was found. Folks, there's no Roland Robinson.
8 Nobody else can identify him. There's a guy that's there
9 partying September 5th, 2008 but it's not Roland.

10 Mr. Durant tells you he's got a car. And at first when I
11 said, well, where was it that day? Oh, it's my dad's. Oh,
12 no, no, no, it was parked behind the house. I don't know
13 which one it was. The officers didn't -- didn't say anything
14 about finding another car at that address. Maybe that's what
15 Mr. Robinson was in whenever he left the night before.

16 Mr. Durant, he took his fall on what he had, this guy, he
17 was a small-time drug dealer. He wants to tell you that he
18 let Gil live there. You doggone right he let Gil live there
19 because the kingpin over there, with the power still in his
20 name, the big time dope dealer, told him he was gonna let Gil
21 live there at least for a little while, he'd come and go as he
22 please.

23 Ms. Smith, folks, I don't know how sure she is of
24 anything. She says Alex didn't live there but she says she's
25 not sure how people came and went. She's confused as to what

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1 charge she pled on. Criminal conspiracy, she just doesn't
2 know from what date. She says Gil wasn't working. Mr. Durant
3 said she was. You can throw them out, folks.

4 Let's talk about Gil. Make no doubt about it, she's made
5 mistakes. When you start dating Alex Robinson at the ripe age
6 of fifteen/sixteen, he's got fast money, it's fun but it'll
7 lead you down the wrong path and sure enough, she went there.
8 He put her up, moved her around. Seventeen, she moved in with
9 him, a man almost ten years older than her she told us. Who's
10 got the control in that relationship? She got charged.

11 Mr. Hilliard wants to talk about trafficking in Ecstasy
12 she got charged with in August. Agent Hardee told you it was
13 BZP. Told you that to his understanding, it wasn't a
14 scheduled drug. Tests Ecstasy but it's BZP but in 2008, it
15 wasn't scheduled, wasn't against the law in South Carolina.
16 Folks, I can only prosecute things that are against the law in
17 South Carolina. So, naturally, those charges were dismissed.

18 But let's talk about the proffer, she's still got charges
19 pending. She's been charged from this arrest and has not been
20 promised one thing, one thing other than her testimony won't
21 be used against her. I don't need her testimony against her.
22 She was found in the room.

23 Folks, Ms. Yakoel told you about her relationship. She
24 told you about the people she hung around with. She told you
25 who controlled it. She told you why she was in that bedroom.

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1 Is what she said corroborated? Yeah, we know she lived at
2 [REDACTED], when know when she left. Do we know when she
3 moved in [REDACTED] Yeah, because we got a birthday party
4 September 5th, 2008, that's her best friend, she knows that
5 date, while she's pregnant. Mr. Durant wants to tell you
6 she's stripping during that time. Look at the picture, folks,
7 Ms. Yakoel is not stripping at that time. She told you later
8 on, yeah, she went to dancing because the defendant wasn't
9 paying child support, not at that point. She was able to quit
10 after a while because he didn't start paying a little bit.
11 She told you she got married, thankfully. She's twenty-two
12 now. But she tells you it was a rocky relationship. She'd
13 been with him for four years or so at that point when she's
14 nineteen, three to four years. She's under his spell but
15 she's trying to break loose. She's already been to jail one
16 time for him. And so she decides to leave the night before.
17 That afternoon goes to her mom's, packs up her stuff. And the
18 Defendant calls her, come on back, baby, baby, oh baby, baby,
19 I'll be good, baby, baby, I won't go out no more, baby, baby,
20 I won't go to the strip clubs, I won't leave you at home, you
21 won't need that car anymore because I'll drive with you. I
22 guess he lied to her because she gets back to the house, all
23 Mr. Lovey-Dovey says, good to see you, hops in the shower and
24 leaves. Leaves her there with the dope up in the closet. She
25 tells you about the next morning.

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1 Folks, you'll have the pictures back there with you.
2 There's a picture of Gil that was taken in a blanket that
3 morning. I believe it's a defense exhibit. Look at the
4 girl's face, she's shocked. She's shocked that Alex's dope
5 was up there. She knew he was a dealer. She liked that
6 lifestyle, she liked having the cash. But only now, when she
7 hits twenty-two that she realized how wrong she was. She told
8 you about the arrest and how when she is arrested. She gets
9 out to the jail, the Defendant is not arrested. She leaves
10 her car keys to that Hyundai at the house; who goes back and
11 gets those car keys? Who is caught in the car just five days
12 later? He's got access to the house because that is his drug
13 house. But she tells you she talks to him before he's
14 arrested on the phone. I'm so scared. I can't go to prison,
15 I'm pregnant. What's the Defendant tell her, you've gonna
16 have to -- you're gonna have to take the charge on this one.
17 I ain't going either; I ain't gonna go to prison. He knows
18 he's got charges. He knows he's got charges. His brother
19 knows there's coming. His brother won't write an affidavit
20 for him but the Defendant knows he's got charges and so when
21 he winds up at the jail, last ditch effort, he's gonna do one
22 thing for the mother of his child, he's gonna help post half
23 the bond. Where does he get the cash? But he sees Detective
24 Donald and peels out of there and he runs and he runs because
25 he knows it was his dope house that got hit. It was his dope

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

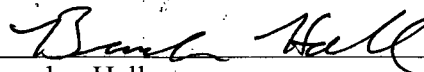
V.

ALEX ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Alex Robinson at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010 this 29th day of May, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of May, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.

RECEIVED
MAY 29 2013
SC COURT OF APPEALS