

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL J. KENNEDY,

APPELLANT

APPELLATE CASE NO. 2022-001293

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS #1-#2 (CD); STATE’S EXHIBITS #6-#11 (PHOTOS);
STATE’S EXHIBITS #16-#18 (PHOTOS)**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	
	)	2021-GS-23-00619
	)	2021-GS-23-00621
	)	2021-GS-23-03572
	)	2021-GS-39-00537
	)	2021-GS-39-00538
STATE OF SOUTH CAROLINA,	)	2021-GS-39-00539
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL J. KENNEDY,	)	
DEFENDANT.	)	
_____	)	

June 10, 2022
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

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

CLARK L. GROUNSELL, ESQ.
Assistant Solicitor

MORGAN C. SHANKLE, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1 P R O C E E D I N G S

2 THE COURT: This is the State vs. Michael Kennedy. And
3 this is Mr. Kennedy's motion to be relieved.

4 He filed it, and you just put it in writing?

5 MS. SHANKLE: I filed it on his behalf. But he
6 requested that I file this motion. He's indicated he
7 would like to represent himself in his pending criminal
8 charges.

9 THE COURT: Mr. Kennedy, if you would, raise your
10 right hand for me.

11 WHEREUPON,

12 MICHAEL J. KENNEDY,
13 after first having been duly sworn, testified as follows:

14 THE COURT: Okay. I have in front of me a motion
15 to -- that was filed with the Court asking that
16 Ms. Shankle be relieved as your lawyer. And you want to
17 proceed pro se; is that true? Tell me about that.

18 DEFENDANT KENNEDY: Yes, sir. Yes, sir.

19 THE COURT: All right. Well, tell me -- you got
20 anything you want to tell me about the motion you filed --
21 that was filed on your --

22 DEFENDANT KENNEDY: I mean, you know, I mean, it's
23 just like this, you know, like, since I've, you know, been
24 incarcerated, you know, my entire situation has been
25 sabotaged by, you know, the Court system and, you know,

1 just all my rights have been disregarded.

2 But I -- you know, nobody has the time to prepare for
3 my case like I do. I got access to a law library and the
4 kiosk. So I've been in here for 21 months with my bond
5 being denied, you know, transportation orders, you know,
6 everything. My bond been taken. My money been taken.

7 So, you know, I just -- I feel more comfortable
8 representing myself, you know. I understand statutes,
9 codes, state court rulings. I just feel more comfortable
10 representing myself.

11 THE COURT: You understand the statutes, the Court
12 rules, and everything?

13 DEFENDANT KENNEDY: Oh, yes, sir.

14 THE COURT: All right. So -- and you -- and I'm
15 looking at you. You've got some -- it looks like it's
16 weapon and drug charges.

17 MS. SHANKLE: That's correct.

18 THE COURT: Okay. So, Mr. Kennedy, let me ask you
19 this, do you -- you know, everyone has the right to
20 represent themselves. I don't recommend that. Because an
21 attorney can be of some assistance to you, as a matter of
22 fact, a lot of assistance to you.

23 Do you understand that?

24 DEFENDANT KENNEDY: Yeah. I understand. I
25 understand.

1 THE COURT: But -- and this is what you want to do?

2 DEFENDANT KENNEDY: A hundred percent so, a hundred
3 percent.

4 THE COURT: Hold on one second.

5 (Pause.)

6 THE COURT: All right. Let's go -- let's go back on
7 the record.

8 Mr. Kennedy, I'm going -- I'm going to read you
9 something. And it's called -- but I notice since you --
10 you've researched it and you may very well be aware of it.
11 But it's called the Faretta warnings. And I'm going to
12 read this to you.

13 Can you listen to me?

14 DEFENDANT KENNEDY: Oh, yes, sir.

15 THE COURT: All right. This is what it says, You do
16 have the -- well, I'm going to start at the top. You've
17 been charged with the criminal offenses that are listed in
18 this motion.

19 Before you can plead guilty or not guilty to this
20 charge or proceed to trial, you must be informed you have
21 the right to an attorney. If you cannot afford an
22 attorney and meet certain guidelines established by the
23 Court, an attorney will be appointed to represent you, if
24 you so choose. Apparently, the public defender's office
25 was appointed to represent you or you met -- and you met

1 the eligibility required guidelines for the appointment of
2 a public defender.

3 You do have the Constitutional right to represent
4 yourself and proceed without an attorney. I must inform
5 you of the following: Self-representation can be
6 dangerous. And you have the right to have the assistance
7 of a lawyer at all stages of the proceedings. If you
8 cannot afford a lawyer, a lawyer will be appointed to
9 represent you.

10 Criminal defense is a highly specialized and
11 technical area of the law. There may be certain factual,
12 legal, or other defenses to the charges you are facing.
13 And if you choose to proceed without the services of a
14 licensed attorney, you may not be aware of certain
15 defenses.

16 There may be issues related to the conduct of the
17 trial or a guilty plea that could arise in the future that
18 you may not be aware of. And it would be your
19 responsibility to be aware of those issues if you're
20 representing yourself and how to properly address them
21 before the Court.

22 There may -- there may be collateral consequences of
23 a conviction or plea that you're not aware of, including
24 but not limited to you could face increased penalties for
25 subsequent offenses, suspension of your driver's license,

1 restriction to possess firearms arms, et cetera.

2 If you exercise your right to proceed without the
3 services of an attorney, you are responsible -- listen to
4 me very carefully. You are responsible for complying with
5 all applicable rules of court, including the rules of
6 evidence, procedural rules, and proper behavior before the
7 Judge and/or jury.

8 You understand that if you waive screening for a
9 court-appointed attorney, you are responsible for hiring a
10 private attorney, if you want one.

11 And this is a document that, counsel, if at all
12 possible -- and I know you got a copy of it or can get a
13 copy of it. I prefer this document being signed by him,
14 placed in his file.

15 Because let me tell you what's going to happen, the
16 reason that's important. I may not be the trial judge and
17 he may go to trial. But if I am the trial judge and I
18 went over this with him, and he's got a copy of it, then
19 when he comes to trial, we're proceeding. I mean, we're
20 not going to hold anything up. Because we're going --
21 we're going to move forward.

22 Because if we don't do that, then at the
23 appropriate -- at the time the trial is called, he's -- he
24 could very well come up and say, well, you know, I
25 didn't -- I didn't -- I'm going to change my mind. Now, I

1 think I want to get a lawyer. And that could very well
2 be -- I hope not for purposes of delay. And I'm trying to
3 avoid that.

4 MS. SHANKLE: A signed copy of Faretta warnings,
5 Judge?

6 THE COURT: Yes, yes. I need that --

7 MS. SHANKLE: We'll take care of that.

8 THE COURT: I need for him to file a copy to the
9 solicitor's office.

10 Sir, you heard everything I just said?

11 DEFENDANT KENNEDY: Yes, sir.

12 THE COURT: Do you still want to represent yourself?

13 DEFENDANT KENNEDY: Yes, sir.

14 THE COURT: And you understand when it comes -- when
15 this matter comes before the court, whatever manner it
16 comes before the Court, you are going to be standing in
17 the shoes of the attorney. You're going to be responsible
18 for knowledge of all court rules, knowledge of the rules
19 of evidence, all that.

20 That's what you want to do?

21 DEFENDANT KENNEDY: Yes, sir.

22 THE COURT: That's what you want to do?

23 DEFENDANT KENNEDY: Yes, sir.

24 THE COURT: All right.

25 MR. GROUNSELL: Your Honor --

1 THE COURT: Yes. I didn't even know you were over
2 there.

3 Go ahead.

4 MR. GROUNSELL: Oh, you're good. If at all possible,
5 can the PD's office be put as standby counsel?

6 We have this tentatively scheduled for an August 1st
7 trial date. And it carries a mandatory minimum of
8 25 years.

9 So it's a very serious charge that he's going to
10 trial on. And it's very soon. And without him having any
11 type of counsel to be around, it seems --

12 THE COURT: You just want a -- a second chair?

13 MR. GROUNSELL: Yeah.

14 THE COURT: Are you willing to do that?

15 MS. SHANKLE: I am willing to do that in this case.
16 I would ask the Court -- I spoke to Mr. Kennedy this
17 morning. I'm not sure that's what he wants. I did bring
18 up that that might be brought up. We're leaving it
19 totally in the discretion. I am willing to do it, if Your
20 Honor is -- thinks it's best.

21 THE COURT: He's getting ready to say something.

22 What are you getting ready to say, Mr. Kennedy?

23 DEFENDANT KENNEDY: Okay. I heard, you know, the
24 State state something about the trial date, or whatever.
25 But I haven't had time to file motions pro se for myself.

1 I haven't had no time. From this date, you know, if she
2 does get taken off my case, whatever, I haven't had any
3 time to file any motions.

4 THE COURT: When's the trial date?

5 MR. GROUNSELL: He's been in -- he's been in jail for
6 21 months, Your Honor. So we're trying to try this on
7 August 1st.

8 THE COURT: Well, you've been in jail for almost two
9 years, Mr. Kennedy. And August 1st is --

10 DEFENDANT KENNEDY: Well, I can't -- I couldn't --
11 these -- I couldn't file any motions pro se through an
12 attorney that -- I've been asking her to file certain
13 motions.

14 THE COURT: Well, you said you were going to file
15 your own --

16 DEFENDANT KENNEDY: Eight, nine --

17 THE COURT: Hold on. I'm going to let you file your
18 own motions. This is what we're going to do. This is
19 May -- this is in June.

20 THE LAW CLERK: June.

21 THE COURT: All right. This is June 10th. I want
22 any motions that you're going to file with the Court to be
23 filed by the end of this month, a month.

24 Can you do that?

25 DEFENDANT KENNEDY: Yes, sir.

1 THE COURT: Filed by the end of this month and served
2 on all the proper parties. I'm sure you know how to do
3 that since you say you -- you're -- you're familiar with
4 that process.

5 DEFENDANT KENNEDY: Yes, sir.

6 THE COURT: Served on all the parties. And then what
7 we'll do, depending upon what the motions are, the trial
8 judge can probably deal it -- deal with his motions ahead
9 of the trial. It depends on what it is.

10 MR. GROUNSELL: Yeah.

11 THE COURT: If it's something that's going to impact
12 the actual start of the trial, then you want to go ahead
13 and get those scheduled probably as soon as you get them.

14 So you've got to file your motions, Mr. Kennedy, by
15 the end of this month. It gives you approximately two
16 weeks.

17 DEFENDANT KENNEDY: Okay. Yes, sir. I already -- I
18 already have them drawn up. I just got to, you know, have
19 them, you know --

20 THE COURT: All right. Well, look at them. Look at
21 them. And get it all nice and neat and then serve. And
22 we'll deal with them. Okay. But you're representing
23 yourself now.

24 DEFENDANT KENNEDY: Oh, yes, sir. Yes, sir.

25 THE COURT: All right. Make sure you get the -- get

1 the Faretta warnings so he can --

2 MS. SHANKLE: Absolutely.

3 And what is Your Honor's ruling regarding standby
4 counsel?

5 THE COURT: Are you willing to be standby?

6 MS. SHANKLE: I'm happy to do it, if Your Honor
7 orders me. I will --

8 THE COURT: Yeah. I'm going to --

9 Mr. Kennedy, I'm going to let Ms. Shankle just be
10 standby counsel. You're going to be the lawyer. So she's
11 just going to be there just in case you might want to ask
12 her a question.

13 DEFENDANT KENNEDY: Okay. That's fine.

14 THE COURT: Okay. Anything else?

15 MR. GROUNSELL: That's it.

16 Thank you, Your Honor.

17 THE COURT: All right.

18 *****END OF TRANSCRIPT OF RECORD*****
19
20
21
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23
24
25

CERTIFICATE OF REPORTER

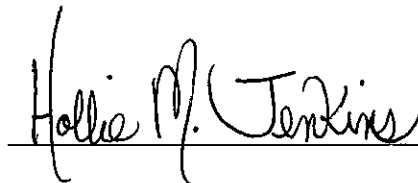
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 10th day of June, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 28, 2023

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MICHAEL KENNEDY,)
)
 DEFENDANT.)
 _____)

2021-GS-23-00619, ETC.

TRANSCRIPT OF RECORD
MOTION TO COMPEL

JULY 15, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE G. D. MORGAN, JR.

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

ATTORNEY FOR PLAINTIFF:

CLARK GROUNDSELL, ASST. SOL.

ATTORNEY FOR DEFENDANT:

PRO SE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** All right. This is State versus Michael
2 Kennedy, is that correct?

3 **MR. KENNEDY:** Correct.

4 **THE COURT:** You Mr. Kennedy?

5 **MR. KENNEDY:** Yes, sir.

6 **THE COURT:** All right. This is your motion. I'll hear
7 from you.

8 **MR. KENNEDY:** All right. Okay. This motion is based on
9 -- it's a motion to compel discovery. This motion is based on
10 the State not furnishing information in discovery that they
11 used to supplement a search warrant affidavit or supplement
12 the Rule 5 Brady versus Maryland.

13 The State did not furnish exculpatory material
14 documentation. They did not furnish lease statement
15 paperwork, documentation from Woodside Eleven. This
16 information is essential to my defense because without this --
17 with this information I could prove that information that was
18 stated inside the search warrant affidavit was made with a,
19 reckless disregard for truth and the act of perjury.

20 The State also did not furnish any evidence from, you
21 know, the -- prove that the confidential informant actually
22 gave a statement, or written statement or any documentation to
23 prove actual chain of custody for the alleged controlled buy
24 to prove that this actually occurred.

25 The State also failed to furnish a copy of the magistrate

1 judge's search warrant log to prove that the State acted in
2 accordance with South Carolina Code Section 17 13 141.

3 The State failed to produce any documentation to prove
4 that the officer/affiant Jonathan McWhite actually have
5 documents to verify that he signed out government funds from
6 Greenville County procurement funds to conduct the controlled
7 buy from me.

8 The State has also not furnished any electronically
9 stored video/audio of anything controlling -- pertaining to
10 the alleged controlled buys.

11 Based on the information in the discovery I'm asking to
12 be compelled is because, you know, this could prove, once
13 again, that, you know, this officer acted with, you know,
14 intention to mislead, you know, the magistrate judge also as
15 well according to, you know, just the law and Constitution.
16 Brady versus Maryland states that, you know, that I, the
17 Defendant, am entitled to, you know, certain material that's,
18 you know, essential to my defense.

19 And it also states that -- it states that the government
20 like general description of the information that is sought to
21 me is not included in their allegations of material subject.
22 A defendant must present facts which would tend to show that
23 the government is in possession of helpful information that
24 can help my defense.

25 During the preliminary hearing -- no, not actual

1 preliminary hearing. During the -- a bond hearing the
2 government, the State presented, you know, like stated
3 information about lease statement paperwork stating that the
4 apartment was allegedly in a CPN. And, you know, this
5 information, this lease statement paperwork -- and without
6 being able to state that information, you would have to have
7 some type of documentation to prove.

8 This documentation could show that the assertions that
9 was made inside of the search warrant affidavit are false
10 because, you know, with them stating that it would prove that
11 the lease statement paperwork agreement that I made with the
12 apartment proved that I wasn't a actual resident of this
13 apartment when the -- when the accusation was made, like the
14 assertion was made.

15 Everything that I'm requesting is, you know, essential to
16 my defense, Your Honor. And I'm just asking for this here to
17 be furnished to me.

18 Also, as well, you know, according to other hearings that
19 I have requested, you know, ...

20 **THE COURT:** Now if you're referring to other motions,
21 like the motions to suppress and the motions in limine, those
22 will be heard by the trial judge when you come up for trial.

23 **MR. KENNEDY:** Nah, it's actually a motion for a Franks
24 evidentiary hearing is why I'm really requesting this ---

25 **THE COURT:** A motion for what?

1 **MR. KENNEDY:** For a Franks evidentiary hearing.

2 **MR. GROUNDSELL:** Your Honor, that hearing -- he had filed
3 a motion. And it was Judge Gravely read the motion and said
4 it should be heard at the day of the trial.

5 **THE COURT:** All right. Anything else, Mr. Kennedy?

6 **MR. KENNEDY:** Yeah. Yes, sir. Also as well, man, you
7 know, according to the Brady doctrine, it says that, you know,
8 where a defendant seeks documents underlining the facts
9 asserted in the search warrant affidavit in order to prepare a
10 possible Franks challenge, you know, moreover that the
11 defendant merely speculates that the discovery might be
12 favorable to him, he does not identify the requested documents
13 or are fact favorable.

14 These documents are favorable to me, you know what I'm
15 saying? I need these in order to prove or verify that, you
16 know, my Constitution was violated and that this
17 affiant/investigator included false information inside of the
18 search warrant affidavit to intentionally mislead the
19 magistrate.

20 So, you know, everything that I requested is, you know,
21 relatively short. And it's not really, you know, shouldn't be
22 much of a burden for the State to actually furnish to me for
23 my defense in preparation of my case.

24 **THE COURT:** All right. Anything else?

25 **MR. KENNEDY:** Nah. No, sir.

1 **THE COURT:** All right. Yes, sir.

2 **MR. GROUNDSELL:** Yes, Your Honor. I'm going to hand you
3 up a couple of cases. I'm probably going to refer to some
4 other ones, but I've at least got a handful of them here for
5 you. I'll give them a copy -- same copy to the Defendant as
6 well.

7 Your Honor, I believe you have his motion in front of
8 you. So I think the easiest way is just to go through one by
9 one of what he's listed on here. And briefly, though, before
10 we get into that I want to give you a snapshot of what this
11 case is about.

12 So there was a confidential informant controlled buy
13 completed with the Defendant. This confidential informant
14 purchased heroin from him. He was not charged with that
15 distribution, but that information was used for a search
16 warrant for his house and for his car. They searched his
17 house and car and find a trafficking weight heroin,
18 trafficking weight methamphetamines and possession with intent
19 to distribute carfentanil.

20 So that's what he is on the trial docket for for August
21 1st. He's on the trial docket for those trafficking charges,
22 not for the distribution charge that occurred with the buy
23 from the confidential informant. So I want to be clear about
24 that before we get into some of this other stuff which will
25 become relevant later on, but let me -- let me work my way

1 through the list.

2 So the first one is he is requesting the lease. No lease
3 was obtained by law enforcement. Basically after this
4 controlled buy they followed him back to his apartment, they
5 watched him walk up the breezeway towards his apartment, they
6 confirmed with the management there that that indeed was -- he
7 was on the lease. And that's all they did. They didn't get a
8 copy of it, but that's what they used for that purposes. So
9 the State does not have that in their possession at this time.

10 As to two, the State did not furnish any evidence,
11 physical or corroborating, used to supplement the search
12 warrant affidavit, which seems to involve two parties, the
13 statement from the confident informant and any documentation
14 to prove a chain of custody for the alleged controlled buy.
15 No physical evidence or oral supplementation was used to
16 strengthen the search warrant affidavit at the time.

17 I talked with deputy or Investigator McWhite about that.
18 Only the information that was actually contained within his
19 affidavit is what was there. There was nothing that
20 supplemented it.

21 As to the actual statement from the confidential
22 informant, why it was not included in the search warrant, it's
23 not a typical practice to include that statement in the search
24 warrant because the search warrant is left behind on the
25 premises after the search warrant is conducted and that if we

1 had that statement, that would compromise the identity of the
2 CI.

3 Investigator McWhite ---

4 **MR. KENNEDY:** I would like -- I would like to object to
5 that, Your Honor.

6 **THE COURT:** Hold on. Now he goes, and then I'll go back
7 to you, all right?

8 **MR. KENNEDY:** All right.

9 **MR. GROUNSELL:** Investigator McWhite did provide in the
10 search warrant that the CI gave a statement of the event. And
11 it was consistent with audio and visual surveillance done by
12 DEU investigators.

13 So when this controlled buy happened, there was audio
14 being recorded and video -- video part not so much, but the
15 audio. And there was also investigators in this area where
16 this took place.

17 The search warrant, as to the other part of this motion,
18 describes exactly how the controlled buy occurred and who
19 handled the heroin. So he's talking about the chain of
20 custody of this.

21 I also provided that in discovery a few days ago with all
22 the rest of the drugs chain of custodies. And so that's in
23 there.

24 **THE COURT:** So what did you provide -- you provided the
25 chain of custody ---

1 **MR. GROUNSELL:** I did provide chain of custody.

2 **THE COURT:** And that's -- you said ---

3 **MR. GROUNSELL:** On the ---

4 **THE COURT:** --- a few days ago?

5 **MR. GROUNSELL:** --- on the controlled buy that he's
6 asking. I don't -- I don't believe the State necessarily
7 would have to do that, but we did anyways.

8 **THE COURT:** All right.

9 **MR. GROUNSELL:** Obviously a search warrant's a sworn
10 affidavit. And Investigator McWhite does not have any knocks
11 on his record. He has the utmost credibility and reliability
12 on his job. He's been in special units doing illegal drug
13 cases and vice related crimes since 2013 for law enforcement.
14 And he currently works for SLED.

15 As to the third thing that the Defendant is asking for is
16 the State failed to furnish a copy of the magistrate judge's
17 search warrant log. He references 17 13 141, which is
18 basically an administrative statute for judges that they have
19 to keep track of certain things that go on.

20 The State's not in possession of that, but the things
21 that that requires, that log requires is date and time of
22 issuance, name of person to whom warrant issued, person whose
23 property to be searched, reason for issuing warrant,
24 description of articles sought in search and date and time of
25 a return.

1 The search warrant itself contains all that information.
2 So a log wouldn't do anything other than reflect what --
3 exactly the search warrant was signed, which has been provided
4 a copy of to the Defendant. And any violation of that statute
5 that he cites is merely a misdemeanor for a judge. A hundred
6 dollar fine and/or 30 days in jail.

7 As to number four and five, this is kind of where we're
8 more focusing on the confidential informant. And that becomes
9 an issue about disclosure. So he is wanting the audio
10 recording of this buy. And that is equivalent to disclosure.
11 If he were able to listen to that call, he would then know who
12 the confidential informant is.

13 And the State's position -- the Defendant was not charged
14 with the distribution of heroin that led to the search
15 warrant. So law enforcement and our office have a duty to
16 protect confidential informants. The decision not to charge
17 the distribution was for the purpose of protecting the CI and
18 their identity.

19 State v. Wright recognizes a public policy interest in
20 protecting an informant's identity. But the State does
21 recognize Your Honor's considerable discretion in the matter.
22 But it is a prosecutorial privilege of ours that has to be
23 overcome by the defendant themselves.

24 If the Defendant were allowed to listen to that audio
25 call, the audio of the buy, the CI information would then be

1 in his hands, and we would no longer be protecting them. And
2 that would cause law enforcement, from my discussions with
3 Investigator McWhite, then to charge him with that
4 distribution of heroin that he was not charged with from the
5 get-go.

6 But back to State v. Wright and other numerous cases, the
7 disclosure of the identity of one who is merely an informer
8 and not a participant in the crime charged, nor material
9 witness is generally not required. The State at this moment
10 doesn't intend on calling the CI at trial. The CI was not an
11 active participant -- participant in the trafficking of
12 heroin, trafficking of meth, PWID carfentanil and the gun
13 charges the Defendant is facing.

14 Furthermore, undoubtedly if -- undoubtedly if he was
15 charged with that distribution and that's what we were going
16 to go to trial for, we would recognize the longstanding
17 practice of this circuit of turning over that CI information
18 72 hours before trial, but we are not going to trial on the
19 distribution. We're going to trial on the trafficking weight
20 of the charges after the fact, Your Honor.

21 Also, I'm not sure the State would be able to call the CI
22 at trial regardless because it would be reflecting the prior
23 bad acts of him distributing heroin. So I think there would
24 be an argument that would be excluded anyways and we wouldn't
25 even be able to have the CI testify to that information.

1 In any event, the State versus Batson, the Defendant
2 bears the burden of establishing disclosure is warranted and
3 must show facts and circumstances to overcome the privilege
4 against disclosure. Also, in United States v. Blevins out of
5 the Fourth Circuit, mere speculation about potential
6 usefulness of the informant's identity is not sufficient to
7 meet the burden.

8 Also, Your Honor, I provided you a case, U.S. v. Myrtle
9 (ph.), which I also believe is a Fourth Circuit case, in that
10 case an informant was used for a controlled buy but not -- not
11 charged with that crime, but rather the drugs were found days
12 later, and no disclosure was required. So that's the State's
13 argument. I guess three -- or, yeah, four and five on this
14 list.

15 But if Your Honor -- if you are inclined to grant
16 disclosure, if you are inclined to grant him the ability to
17 listen to the audio call, we at a minimum ask that we follow
18 the longstanding practice of this circuit and only require
19 disclosure 72 hours before trial.

20 **THE COURT:** All right, Mr. Kennedy. Yes, sir.

21 **MR. KENNEDY:** All right, Your Honor. Specifically, I'm
22 going to reiterate, you know, basically what he stated that
23 the State furnished the complete chain of custody for the
24 actual controlled buy, which they didn't. The chain of
25 custody was broken because I was never presented with or

1 furnished any evidence, you know, to prove that the CI
2 actually gave a statement.

3 The officer testified at a preliminary hearing and stated
4 that the CI gave a written statement of this event, which now
5 has turned into a -- it's not a written statement. The State
6 doesn't have anything to prove a written statement.

7 So I'm just, you know, not only that, you know, it also
8 says that, you know, he -- he even stated that the State does
9 not have, you know, the magistrate warrant search log, you
10 know what I'm saying? Which would prove that they actually
11 had a official search warrant.

12 The search warrant was issued -- I was never presented
13 with this search warrant. So at the time, even proving, you
14 know, this argument here is that, you know like, they never
15 showed me a search warrant during that -- during the
16 encounter, during the -- which is also, you know, a violation
17 of the warrant statute.

18 **THE COURT:** Are you saying that you did not get a copy of
19 the search warrant?

20 **MR. KENNEDY:** No, I was never presented with it, which
21 is, I want to say, section 17 13 150 is what, you know, what
22 -- whenever officers are executing a search warrant, they have
23 to present you with the actual search warrant at the time they
24 execute it.

25 The search warrant has no filing marks. There's no

1 record to prove that this was actually made at that time. So,
2 you know, like the search warrant log would verify that they
3 actually had a search warrant at the time they executed the
4 search.

5 You know, I'm not asking for -- I'm not specifically
6 asking for the identity -- certain information would not
7 disclose the identity of a person. I mean, maybe -- a video
8 would. A video would. But audio, statements, anything to
9 verify that they actually had a control -- a controlled buy
10 was conducted would not reveal the identity of a CI. I
11 understand that.

12 What he said that this is considered to be intrinsic
13 evidence to not, you know, produce certain things because I'm
14 not charged with the actual distribution. The reason why I'm
15 not charged with that distribution because the State cannot
16 produce a complete chain of custody to verify that I
17 distributed heroin to a CI.

18 And I'm only just trying to prove that all of this is
19 fabricated. None of these events actually occurred. The
20 State doesn't have anything to prove or verify that. And I'm,
21 you know, I'm -- I'm stating on record that this never
22 happened.

23 So with that being said, I'm not really specifically
24 asking to see who this person is or just be like, hey, hey,
25 did I actually sell you something? I'm not challenging that.

1 I'm just challenging -- I'm just requesting that the
2 State produce anything that they have to verify, prove that
3 any of this ever occurred because based on the search warrant
4 affidavit, the officers stated that he had many things. He
5 stated that I'm on a video. He stated that he has audio that
6 is consistent with an alleged CI statement.

7 And none of this has been provided. None of this has
8 been disclosed. As he said, you know, the State doesn't have
9 anything to verify this. You know, the only thing -- they
10 don't have anything to verify it but an assertion. So no
11 facts were ever presented to the magistrate at all, ever.
12 Nothing factual.

13 Only thing he was presented with was a piece of paper
14 stating that -- which is, you know, a conclusion, which is
15 assertion by a officer. The legal term for a fact is that,
16 you know, a fact is established by evidence, you know what I'm
17 saying? So an assertion that's -- that can be established by
18 evidence, that's established by evidence, which will make it a
19 fact.

20 There's nothing factual about this. Everything is
21 conclusionary. The State also has nothing to furnish or prove
22 that this ever occurred.

23 So I'm not -- I'm not -- I'm not specifically asking, you
24 know, to see who the CI is, but I'm asking to, you know, be
25 proven that -- that they have any -- anything to prove that a

1 controlled buy -- a redacted statement would not reveal the --
2 reveal the confidential informant. Like it would just, you
3 know; clearly state that a CI, whatever, the CI never raised
4 or stated what actually occurred. I haven't been presented or
5 furnished with any of this material, which I -- I intend to
6 use for my, you know, my Franks evidentiary hearing.

7 **THE COURT:** All right. Mr. Grounsell.

8 **MR. GROUNSELL:** Your Honor, I have a copy of the search
9 warrant. I don't know if you want to see it or not, but it is
10 sworn to by a judge. Doesn't have a time on it. As an
11 officer of the court, I can tell you that we have a CI file on
12 this case, that an audio does exist and that it most certainly
13 happened.

14 You know, obviously, chain of custody, if proven, we'd
15 have to bring every deputy that touched that through chain of
16 custody. But we're not going to trial for that, so that's not
17 -- doesn't seem like a necessary step for the State to do.

18 But I can tell you those investigators would be willing
19 to come in here if that's what's necessary to show that this
20 buy was conducted, this individual went, purchased heroin from
21 Mr. Kennedy, that that informant was searched before and
22 searched after and gave the amount of drugs that were talked
23 about on audio. So that was then taken down to the lab and
24 was tested. I've turned over the records that I have that I
25 can produce right now for him.

1 **THE COURT:** All right. Anything else? Mr. Kennedy,
2 anything else?

3 **MR. KENNEDY:** Yeah, you know, just going off what he
4 said, officer's testimony is not actually -- like it's not --
5 it's not -- it's not evidence. It's only testimony. I'm
6 pretty sure ---

7 **THE COURT:** What was that now? What's not evidence?

8 **MR. KENNEDY:** The officer's testimony just stating that
9 this happened without being able to furnish anything to prove
10 or verify that this actually occurred. It's not, I mean,
11 State versus Sweet states that a complete chain of custody --
12 for a chain of custody to be complete it has to -- everybody
13 that handles or touches this evidence has to produce a
14 written, you know, a statement of what occurred, what they did
15 with it, how they handled it from every officer. Every
16 officer that handled it has to do the same thing as well
17 including the CI, the confidential informant.

18 So there's no complete chain of custody. The chain of
19 custody is broken because there's nothing -- the State has
20 nothing to furnish or prove that this CI actually handled
21 this, you know, this evidence.

22 **THE COURT:** All right. Anything else? Mr. Grounsell,
23 anything ---

24 **MR. GROUNSELL:** No, Your Honor.

25 **THE COURT:** --- from the State? All right. I will take

1 a look at it. I'll read the cases. And I'll take a look at
2 your arguments, both parties' arguments, and I'll let you know
3 my decision.

4 **MR. GROUNDSELL:** Thank you, Your Honor.

5 **THE COURT:** Thank you. It'll probably be today.

6 (Hearing Ended at 1:29 pm)

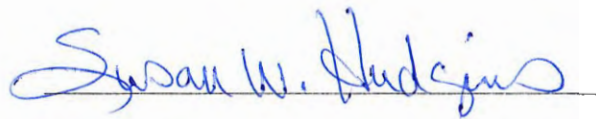
7 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 15th day of July 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 1, 2023



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE) 2021-GS-23-00619; 00620;
) 03572; 00537-00539
)
)
)
 THE STATE)
) PLAINTIFF)
) TRANSCRIPT OF RECORD
)
 MICHAEL J. KENNEDY)
) DEFENDANT)

August 29 - September 1, 2022
 Greenville, South Carolina

B E F O R E:

THE HONROABLE G.D. MORGAN, JR., Judge.

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

CLARK GROUNDSELL, ESQ.
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MICHAEL KENNEDY, PRO SE

MORGAN SHANKLE, ESQ.
 Stand-by Counsel for Mr. Kennedy

APRIL HERRON
 Official Court Reporter

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20 **STATE'S EXHIBITS**

21	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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24	3	Leather Bag	182	222
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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Affidavit	43	

All exhibits were retained by the
Greenville County Clerk of
Court's Office.

1 THE COURT: All right you, Mr. Kennedy?

2 MR. KENNEDY: Yes, sir.

3 THE COURT: All right. Michael Justin Kennedy;
4 is that correct?

5 MR. KENNEDY: Yes, sir.

6 THE COURT: All right. As I understand, you
7 want to remain in your orange jumpsuit; is that
8 correct?

9 MR. KENNEDY: Yes, sir.

10 THE COURT: All right. I just want to let you
11 know the dangers of doing that. That that could
12 really prejudice your case. A jury could see you in
13 a orange jumpsuit and I think that would be highly
14 disadvantageous for you. And I urge you and
15 recommend that you reconsider that. And change into
16 some civilian clothes. Is there any particular
17 reason that you want to inform The Court as to way
18 you want to stay in your jumpsuit?

19 MR. KENNEDY: I mean, you know, I been
20 incarcerated for like, I want to say like 22 months.
21 I mean, I'm a victim. You know, I mean, held -- my
22 entire situation's been sabotaged from the beginning.
23 You know, I was given bonds, bonds was taken away
24 from me for errors of The Court. You know, like, I
25 don't feel like me dressing up would actually change

1 the circumstances and the facts of the case. I just
2 feel like it just won't change anything.

3 THE COURT: One thing too, you need stand up
4 when you talk. You need to stand up each time.
5 Well, I -- I hear you but I can just tell you, I
6 think that's going to be a huge disadvantage for you
7 to be in your orange jumpsuit. A jury may not look
8 at it like you do and that can be very prejudicial
9 against you. I mean, that's certainly your choice if
10 you want to do that. But I just want to warn you
11 that I think it could be very detrimental to your
12 case and I would highly recommend that you change
13 into civilian clothes.

14 MR. KENNEDY: I just proceed like this.

15 THE COURT: You just want to stay in your orange
16 jumpsuit?

17 MR. KENNEDY: (Mr. Kennedy nods.)

18 THE COURT: Because you do have -- they have
19 charged you with some significant charges. And it
20 includes trafficking heroin, trafficking
21 methamphetamine, possession of a controlled substance
22 with intent to distribute, possession of a weapon
23 during the commission of a violent crime, three
24 charges for those. I mean, three indictments for
25 those charges. So you do face some significant

1 penalties if the jury convicts you. That's again, I
2 just want to make sure you understand the
3 significance of these charges and the potential
4 prejudice that you would face if you're in your
5 orange jumpsuit. But if you want to proceed, that is
6 your choice if you want to continue wearing the
7 orange jumpsuit. But, again, I just highly recommend
8 that you not go forward in your orange jumpsuit. You
9 want to proceed in your orange jumpsuit; is that
10 correct?

11 MR. KENNEDY: Yes, I'm just ready to get this
12 over with.

13 THE COURT: All right. Well, what we will do,
14 our next step is we'll go down there and take a look
15 at the jury panel. And you will be in your orange
16 jumpsuit there. But as I understand, you do want to
17 represent yourself; is that correct?

18 MR. KENNEDY: Yes, sir.

19 THE COURT: I will -- while we're here, I'll
20 just go over, I think, again, I want to reemphasize,
21 similar to what I was talking about as far as your
22 wearing your orange jumpsuit, that you certainly have
23 a right to represent yourself under the Constitution.
24 But I just want to let you know that representing
25 yourself can be very dangerous. You got a right to

1 the assistance of a lawyer at all stages of the
2 proceedings. As you, I assume, or if you have not
3 been, you know, if you can't afford one, a lawyer
4 could be appointed to represent you.

5 Criminal defense is a very highly specialized
6 and technical area of the law. So there can be
7 certain factual, legal or other defenses to these
8 charges that you're facing and if you choose to
9 represent yourself without a lawyer, you may not be
10 aware of those defenses. And so, I will also tell
11 you there could be issues related to the conduct of
12 the trial and how it goes. Admission of evidence.
13 And persevering certain things on the record for
14 appellate review. There could be collateral
15 consequences from a conviction that you may not be
16 aware of.

17 The penalties that you face here, you know, if
18 you do represent yourself, that you would be
19 responsible for complying with the rules of court,
20 complying with the rules of evidence. And so, again,
21 it's very dangerous to proceed representing yourself.
22 And it's a huge disadvantage -- disadvantage to
23 represent yourself. And I, again, highly recommend
24 that you get a lawyer. Again, you are certainly
25 entitled to represent yourself under the

1 Constitution. But I just need to make sure that you
2 know what you are doing and understand the
3 consequences. Because, you know, again, are
4 significant charges.

5 Is Ms. Shankle back there?

6 MS. SHANKLE: Yes, Your Honor, I am.

7 THE COURT: Have you advised or informed
8 Mr. Kennedy of the potential range of sentences that
9 he faces for each of these?

10 MS. SHANKLE: Yes, sir, Your Honor, I have.

11 THE COURT: All right.

12 Mr. Kennedy, do you understand the range of
13 sentences you face for each of these charges?

14 MR. KENNEDY: Yes, sir.

15 THE COURT: And if you're convicted that they
16 could -- you could get anywhere in that range or and
17 could even be concurrent or could be consecutive.
18 The sentences, if you were convicted on all of these
19 charges, the sentences could be consecutive. And so
20 Ms. Shankle has informed you of the years and
21 sentence range that you could receive here and you
22 have acknowledged to The Court that you understand
23 those. So it's very dangerous to go forward. How
24 far did you go in school?

25 MR. KENNEDY: I got my GED, completed the tenth

1 grade but I got my GED.

2 THE COURT: How old are you?

3 MR. KENNEDY: Twenty-nine.

4 THE COURT: Twenty-nine, all right.

5 MR. KENNEDY: Yes, sir.

6 THE COURT: Have you had a job up until this,
7 have you worked anywhere?

8 MR. KENNEDY: Yes, sir.

9 THE COURT: What all have you done?

10 MR. KENNEDY: Construction, mainly, you know,
11 like plant jobs, manufacturing, things of that
12 nature.

13 THE COURT: Okay. When did you get your GED?

14 MR. KENNEDY: 2009.

15 THE COURT: All right. Has anybody coerced you
16 to come in here and represent yourself or promised
17 you anything or threatened you? Is this a decision
18 you have made on your own?

19 MR. KENNEDY: I mean, yes, sir. You know, I got
20 a, you know, I got a well off, you know, reading and
21 comprehension level. You know, just me indulging
22 into the law library, you know, that showed me that,
23 you know, Constitution, you know, and rules of higher
24 courts and conclusions of other courts, you know,
25 support my argument, my defense.

1 THE COURT: All right. So you said that you've
2 gone to the law library and you studied up the case?

3 MR. KENNEDY: Yeah, 22 months.

4 THE COURT: All right, twenty-two months. But
5 you do acknowledge that you haven't gone to law
6 school, though, correct?

7 MR. KENNEDY: Oh, yes, sir.

8 THE COURT: All right. And you've been in there
9 22 months and you say you studied the law?

10 MR. KENNEDY: Yes, sir.

11 THE COURT: Do you understand the rules of
12 evidence that, you know, you have to comply with the
13 rules of evidence. That's -- do you understand that?

14 MR. KENNEDY: (Mr. Kennedy nods.)

15 THE COURT: In other words, evidence that's
16 brought out on the stand and through documents and
17 all, you have to be familiar with the rules of
18 evidence to either allow the evidence in or object to
19 it; do you understand that?

20 MR. KENNEDY: Yes, sir.

21 THE COURT: Okay. And, again, you're wanting to
22 represent yourself freely and voluntarily; is that
23 correct?

24 MR. KENNEDY: Yes, sir.

25 THE COURT: All right. And I'm going through

1 these things, Mr. Kennedy, for your protection
2 because I'm required to.

3 MR. KENNEDY: Yes, sir.

4 THE COURT: Under the Faretta case, which is The
5 United States Supreme Court, it's Faretta vs.
6 California. So I'm required to go through these
7 questions with you just to make sure that you
8 understand the nature of the charges, your right to
9 have a lawyer and the range of the punishments that
10 you could receive. And knowing all of that, you want
11 to go forward and represent yourself; is that
12 correct?

13 MR. KENNEDY: Yes, sir.

14 THE COURT: Okay.

15 All right, anything from The State?

16 MR. GROUNSELL: Your Honor, so just briefly,
17 because we're talking about Faretta. I have a
18 timeline on this case and may be appropriate to put
19 on the record at the time the trial begins but I'll
20 do the Faretta part, at least, for right now. On
21 June 10th of 2022 there was a motion to be relieved
22 of Morgan Shankle. He was read his Faretta Warnings
23 by Judge Kinlaw then. Mr. Kennedy acknowledged those
24 warnings and went through with relieving Ms. Shankle
25 anyhow. He signed Faretta Warnings that were typed

1 out for him on June 14th. Because of an error
2 between Ms. Shankle and I, the indictment numbers
3 were wrong, those were given to him again. So
4 July 20, 2022, he resigned Faretta Warnings. So he
5 has had three sets of Faretta Warnings and your
6 Faretta Warnings, Your Honor, as well this morning.

7 THE COURT: Is that correct, Mr. Kennedy?

8 MR. KENNEDY: Yes, sir.

9 THE COURT: All right, so you've had them before
10 you got them again here, all right. All right. So
11 I'm going to allow you to go down there to the jury
12 panel, if you want to do that and look at the jury
13 panel. Now, again, you want to stay in your orange
14 jumpsuit, that's your choice and I'm going to allow
15 you to do that. Now, I'm -- you're going to remain
16 cuffed down there in the jury room. But up here,
17 assuming there's no issues or any interruptions or
18 misbehaving, I'm going to allow you to operate with
19 your hands up here, okay?

20 MR. KENNEDY: Yes, sir, thank you.

21 THE COURT: All right, anything else?

22 MR. GROUNSELL: No, Your Honor.

23 MS. SHANKLE: Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. SHANKLE: Just a practical matter, Judge, am

1 I allowed to provide him a notepad and pen jury
2 quals?

3 THE COURT: Yes, I'll allow to you do that.

4 MS. SHANKLE: Thank you.

5 THE COURT: All right, anything else? All
6 right, I'll see y'all downstairs.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: All right, we ready to proceed?

9 MR. GROUNSELL: Yes, Your Honor, The State is
10 ready to proceed?

11 THE COURT: All right.

12 All right, Mr.~Kennedy, you're ready to proceed?

13 MR. KENNEDY: Yes, sir.

14 THE COURT: All right, do we have any motions?
15 State?

16 MR. GROUNSELL: Your Honor, The State may have
17 some motions in response after Mr.~Kennedy's motions.

18 THE COURT: All right.

19 Also, on that, does anybody intend on submitting
20 up any voir dire?

21 MR. GROUNSELL: No, Your Honor, none from The
22 State.

23 THE COURT: All right. Mr.~Kennedy, do you
24 intend to submit any voir dire questions for the jury
25 panel?

1 MR. KENNEDY: Could you repeat that?

2 THE COURT: Do you intend to submit any voir
3 dire questions for the jury panel? I will ask --
4 when we bring the jury up here, I will ask them
5 certain questions about this case. And as part of
6 that, you have an opportunity to submit to me
7 questions that you want me to ask. I will ask
8 questions of the jury. You'll have an opportunity --
9 -- you have an opportunity to submit questions to me
10 ahead of time to ask them.

11 So my question is, do you have any, at this
12 time, when the jury panel does come up? Again, I
13 will ask questions. I will ask them questions. If
14 they've heard of the case, if they know you, things
15 like that.

16 MR. KENNEDY: Okay, yes, sir. The only
17 questions I really have is just could you ask the
18 jury panel if anybody on the jury has been a victim
19 of drug overdoses or anything related to any type of
20 drug offenses. Family members who may suffer from
21 drug addictions, anything like that.

22 THE COURT: All right.

23 All right, Mr. Grounsell.

24 MR. GROUNSELL: Your Honor, the State has no
25 objection to those.

1 THE COURT: All right, I will ask that. Exactly
2 what do you want asked, Mr.~Kennedy?

3 MR. KENNEDY: Anybody in the jury panel is a
4 victim of having a family member, you know, die from
5 drug overdoses or has a family member or anybody --
6 or if they ever suffered from any type of drug
7 addiction.

8 THE COURT: Anything else?

9 MR. KENNEDY: No, sir.

10 THE COURT: All right, Mr.~Kennedy, do you have
11 any motions?

12 MR. KENNEDY: Yes, sir, I have a motion to
13 suppress evidence, motion for Franks evidentiary
14 hearing and a motion in limine.

15 THE COURT: All right, let's go with the first
16 one. All right. You have a motion to suppress
17 evidence, I'll hear from you.

18 MR. KENNEDY: All right. Can I give you a copy
19 of the search warrant affidavit?

20 THE COURT: What do you have to submit in
21 support?

22 MR. KENNEDY: A copy of the search warrant
23 affidavit. I also have a copy of preliminary
24 transcripts.

25 THE COURT: All right, what else? You want to

1 go ahead and make your motion?

2 MR. KENNEDY: Yes, sir, that's fine. I'll do
3 that.

4 THE COURT: Do you have anything else to submit
5 in support of it? You said you've got the search
6 warrant affidavit. We've got the preliminary hearing
7 transcripts. Is there anything else you want to
8 submit?

9 MR. KENNEDY: Another transcript from my asset
10 forfeiture, pictures, lease statement paperwork.

11 THE COURT: Tell me again what this is. This is
12 transcript from what?

13 MR. KENNEDY: Asset forfeiture, trial.

14 THE COURT: All right, anything else?

15 MR. KENNEDY: Nothing else besides, like, the
16 videos on here, on the laptop.

17 THE COURT: All right. Motion, what is your
18 motion?

19 MR. KENNEDY: Hear my motion to suppress is
20 based on the following grounds. The initial search
21 warrant that led to these listed-above warrant
22 numbers was made in violation of the Fourth Amendment
23 and a protection of laws of the Constitution, which
24 states that anything that is seized in violation of
25 these rights is inadmissible and cannot be used or

1 introduced as evidence during the trial.

2 Ground two is that the search warrant was issued
3 without probable cause. There were no facts or
4 circumstances presented to establish reasonable
5 grounds to make or believe that a necessary level to
6 allow the consent of police seizures of individuals,
7 full searches of dwellings, vehicles and possessions.

8 Ground three, under the fruit of the poisonous
9 tree doctrine, which also says the evidence that is
10 illegally obtained cannot be used in a criminal
11 trial. Evidence illegal obtained is tainted and
12 cannot be used under this rule and the protection of
13 the Constitution.

14 Also, ground four, which gets into the
15 exclusionary rule, which also applies. Evidence that
16 is illegally seized cannot be used.

17 Ground five, the nexus requirement was not met
18 within the four corners of the search warrant
19 affidavit.

20 Ground six, the State did not and failed to
21 comply with warrant statute 17-13-140 South Carolina
22 Code.

23 Ground seven, the State and judicial officer
24 failed to comply and act in accordance with the South
25 Carolina Code statute 17-13-141, which is

1 recordkeeping of when they issue search warrants.

2 Ground eight, the affiant and the executing
3 officers also failed to act within statute and code,
4 South Carolina Code 17-13-150, which states that
5 whenever a search warrant is executed, the property
6 owner has to be presented with the search warrant at
7 the time.

8 Getting into the motion to suppress, summarize
9 the motion to suppress.

10 THE COURT: Tell me, what's your first ground?

11 MR. KENNEDY: My first ground was the search
12 warrant that led to these listed-above warrant
13 numbers was in violation of the Fourth Amendment and
14 the protection of laws of United States Constitution,
15 which states that anything that is seized in
16 violation of these rights is inadmissible and cannot
17 be introduced as evidence at trial.

18 THE COURT: All right. So you've got eight
19 grounds; is that right?

20 MR. KENNEDY: Yes, sir.

21 THE COURT: So what's your argument on those?
22 Let's take those grounds up. What are your arguments
23 on the grounds? So your first ground is violation of
24 Fourth Amendment?

25 MR. KENNEDY: Yes, sir.

1 THE COURT: Tell me about that.

2 MR. KENNEDY: Okay. The affiant did not provide
3 the Magistrate with information to make or -- to make
4 a practical common sense decision under the totality
5 of circumstances approach. Neither did the affiant
6 present sufficient underlying facts and circumstances
7 to the Magistrate to make an independent
8 determination of probable cause in the matter. Based
9 on the information that's provided inside the search
10 warrant, which I've given you, the affidavit did not
11 provide adequate info about the confidential
12 informant's reliability, credibility, status, basis
13 of knowledge or veracity to give the magistrate the
14 basis --

15 THE COURT REPORTER: Sir, you need to slow down,
16 please. Slow down, thank you.

17 MR. KENNEDY: Oh, okay, okay.

18 THE COURT: Need to slow down, Mr.~Kennedy.

19 MR. KENNEDY: All right.

20 The affidavit did not provide adequate info
21 about the confidential informant's reliability,
22 credibility, status, basis of knowledge or veracity
23 to give the magistrate the basis to assess and seek
24 the confidential informant to determine if the
25 hearsay information was provided by a reliable

1 source.

2 It is even stated on record during a preliminary
3 hearing that the affiant, Jonathan McWhite, did
4 provide any oral supplemental testimony. He stated
5 that the only thing that he presented to The Judge
6 was a single search warrant affidavit, clearly,
7 showing and proving The Judge was not given any
8 additional information about the confidential
9 informant or any other factors that are void, but
10 should have been provided.

11 Your Honor, the good faith assessment is not a
12 part of my case. United States vs. Leon 468 United
13 States Code 897, 104 S. Ct. 3405, 82L, Ed.2d 677,
14 which states that it allows the government to use
15 evidence seized based on a defective form if the
16 officer was acting in a good faith. State vs.
17 Robinson 408 South Carolina 268, 758 S.E.2d 725
18 summarizes the Supreme Court and establishes that
19 there is a good faith exception to the exclusionary
20 rule. Holding that when an officer acts in good
21 faith, the evidence should not be suppressed.

22 However, State vs. Weston 329 S.C. 287, 494
23 S.E.2d 801 summarizes the same Supreme Court in Leon.
24 The Court listed three situations in which the good
25 faith exception cannot apply. The Court will not

1 defer to a warrant based on an affidavit that does
2 not provide the magistrate with a substantial basis
3 for the determination that this is a probable cause.

4 Also, State vs. Johnson 302 S.C. 243, 395 S.E.2d
5 at 167 held that, The good faith exception did not
6 apply when the affidavit did not provide the
7 magistrate with information as to the reliability,
8 credibility, status and basis of knowledge of the
9 confidential informant. The Supreme Court states
10 without any information concerning the reliability of
11 the confidential informant, the inferences from the
12 facts which leads to the complaint will be drawn out
13 by a neutral detached magistrate as the Constitution
14 requires, but instead by a police officer engaged in
15 an often competitive enterprise of fettering out
16 crime on a case by an unidentified informant.

17 THE COURT: Let ask you this, Mr.~Kennedy, what
18 is the missing or defective information, or
19 misleading information that you're arguing?

20 MR. KENNEDY: Informant's criminal history, you
21 know, whether the informant -- you know, anything
22 that could establish or take away from this person's
23 reliability or unreliability.

24 THE COURT: What is it, though, in the affidavit
25 that's either misleading or missing?

1 MR. KENNEDY: I mean, specifically, inside the
2 affidavit, when he states the information that is
3 accredited to the confidential informant, he doesn't
4 give any type of information to, you know, verify who
5 this person is, whether this person is an ex-drug
6 dealer, whether this person is a law-abiding citizen
7 who's taking out their trash or notice anything. He
8 doesn't give any of those information, which, you
9 know, courts have ruled that is, you know, depriving
10 of the magistrate to give him the independent
11 determination to access probable cause based on
12 hearsay information. He doesn't know if this
13 confidential informant was a law-abiding citizen or
14 not, who this person is. Any factors that could give
15 any type of identifying, you know, reason to believe
16 that this person is being truthful or honest.

17 THE COURT: All right. So what I'm going to do
18 -- so on each ground -- so on that ground, any other
19 argument on that ground?

20 MR. KENNEDY: Oh, yes, sir, I got pages.

21 THE COURT: All right. Well, I want to hear
22 what is the evidence that -- I know you have the law
23 there. What is the evidence that makes the affidavit
24 misleading or misses information that would allow you
25 to suppress anything as a result of that?

1 MR. KENNEDY: I mean, the fact that everything
2 that was stated was complete undiscoverable
3 information. Like he stated that he had -- which is
4 going into a whole nother motion. You know,
5 everything that he stated that had, he had nothing to
6 support, which is an assertion. And the sole purpose
7 of the Fourth Amendment clearly states that probable
8 cause cannot be based on mere affirmance, belief or
9 suspicion. And not only that, according to the legal
10 term -- according to the Constitution, probable cause
11 is based on affirmation and facts and circumstances
12 being presented to give the magistrate independent
13 determination.

14 Whenever you look up the definition of a fact,
15 according to the legal term dictionary, a fact is
16 specifically -- a fact is a -- a fact, according to
17 legal term dictionary, it is an event or
18 circumstances, the actual occurrence or existence of
19 which is to be established by evidence. So when this
20 officer, you know, during the preliminary hearing
21 stated that the only thing he gave to the magistrate
22 was a search warrant affidavit, makes it impossible
23 for you to present a fact to the issuing magistrate
24 to make his determination of probable cause --

25 THE COURT: I'm looking at the affidavit that

1 you have submitted. It looks like it's pretty
2 detailed. Is there anything in the affidavit that is
3 misleading or missing or anything else?

4 MR. KENNEDY: Oh, yes, sir. According to the
5 Supreme Court, the Supreme Court held that --

6 THE COURT: No, I'm talking about in this
7 affidavit, in this particular affidavit.

8 MR. KENNEDY: Oh, yeah, yes, sir.

9 THE COURT: What is misleading or missing?

10 MR. KENNEDY: Okay, time and date is missing.
11 The time and date of the facts alleged is missing.
12 The Supreme Court had already ruled whenever officers
13 leave out time and date of the facts alleged, it's
14 considered to be an insufficient affidavit --

15 THE COURT: It says within the past 72 hours,
16 and he dates it September 24th, 2020.

17 MR. KENNEDY: Yeah, I mean, you know --

18 THE COURT: And he's talking about within the
19 past 72 hours.

20 MR. KENNEDY: Yeah, basically, time is,
21 basically, like approximately this time, this was
22 conducted. This happened on this time, this date.
23 It don't say exactly what date. It says within the
24 past 72 hours. That could be anytime within 72
25 hours, which is depriving me of my right to alibi.

1 What if I was -- can prove that I was somewhere else
2 when you stated that I was allegedly committing this
3 or indulging into this criminal activity?

4 THE COURT: Well, that's what I'm asking because
5 it's dated September 24th, 2020.

6 MR. KENNEDY: Okay.

7 THE COURT: The affidavit refers to conduct
8 within the past 72 hours.

9 MR. KENNEDY: I mean, the Supreme Court, you
10 know, held that anytime time and date of the facts
11 alleged is an insufficient affidavit. It also proves
12 that you don't know when -- as you can also see as
13 well inside of the preliminary hearing transcripts,
14 he didn't know what time and date that he received
15 information, when he actually received information,
16 once somebody came to him and formally told him that
17 they witnessed me indulge in criminal activity. And
18 he don't know what time that he conducted a
19 controlled buy.

20 I mean, from my understanding of the case law,
21 specifically, they state, specifically, what time and
22 date that criminal activity was engaged in. Mine is
23 void of any type of timeframe -- I mean, it's a
24 timeframe, but it doesn't be specific about time and
25 date of the facts alleged.

1 THE COURT: Okay. What other facts on ground
2 number one there, your first ground you've been
3 pleading for your position, what other facts do you
4 have in support of that? I recognize the law. I
5 understand the law. And the law is what the Court
6 says it is. But as far as this particular case, what
7 are the facts that would support your first argument?

8 MR. KENNEDY: Okay, you mind if I pull up the
9 body cam footage?

10 THE COURT: What are you going to argue about
11 the body cam -- before you pull up any body cam
12 footage, what are you arguing about the body cam
13 footage?

14 MR. KENNEDY: Initially, on how the search was
15 conducted, which is a violation of the seizure aspect
16 of the Fourth Amendment because the Fourth Amendment
17 consists of search and seizure. So the body cam
18 footage will show exactly how the seizure aspect of
19 the Fourth Amendment -- of the execution of the
20 search warrant was conducted.

21 THE COURT: Yes, sir.

22 MR. GROUNDSELL: Your Honor, from my
23 understanding, we're arguing about the search warrant
24 right now. And if we're getting into the actual case
25 in chief, then that's something different than the

1 actual argument on the search warrant.

2 THE COURT: Mr.~Kennedy, you had raised the
3 ground about the search warrant, so that is a
4 different -- that's why I was asking, what is your
5 argument on -- or what are the facts in support of
6 the argument on the search warrant itself? What is
7 the violation of the Fourth Amendment as it relates
8 to the search warrant?

9 MR. KENNEDY: What are the violations, okay.
10 They violated Statute Code Section 17-13-141.

11 THE COURT: How?

12 MR. KENNEDY: Because they have no proof or
13 record of a search warrant ever being issued for my
14 apartment or for my residence. It's already stated
15 clear on record in a motion to compel hearing, The
16 State has no evidence or no documentation to prove
17 that a magistrate judge kept a ministerial record of
18 a search warrant ever being issued for my apartment
19 or residence, which is -- you could easily just come
20 into somebody's house, not have a record of a search
21 warrant and just come and put something together real
22 quick. The search warrant was open for like nine
23 days. You don't have no record of this search
24 warrant ever being issued or executed.

25 Also, this search warrant is in violation of

1 South Carolina Rules of Criminal Evidence. They did
2 not -- they have no filing marks. They have no way
3 to prove or verify what time and date this was
4 actually done. Anytime an order or anything that
5 gets done through the courts, it has to be filed and
6 placed on record. You have no record of this.

7 Not only that, they violated statute 17-13-150,
8 which I have the body cam footage to prove. During
9 the execution of this warrant, I was never presented
10 with a search warrant at no time. And I asked for
11 one, where is the search warrant? Where's the search
12 warrant? You know what the officers kept telling me,
13 oh, we're not here for no reason. If we didn't have
14 one, we would have -- but they never presented it.
15 So I'm like, can I see the search warrant? Y'all
16 snatched me out the car, drew guns on me. Can I see
17 a search warrant or anything related to any type of
18 reason why you're here? And they never showed me
19 that. They took the key out my pocket, just forced
20 the whole -- which was a government intrusion. They
21 never presented me with a search warrant, which is
22 another violation.

23 THE COURT: So first argument you have, we
24 discussed about what's in the -- you said the
25 affidavit was improper. And now, you have gone to

1 the argument that they didn't keep record of the
2 search warrant; is that correct?

3 MR. KENNEDY: Yeah, they didn't keep record of
4 the search warrant.

5 THE COURT: Or they didn't show you the search
6 warrant, is that what you saying?

7 MR. KENNEDY: No, they did both. They didn't
8 keep record of the search warrant and they didn't
9 show me a search warrant, which is two different
10 statute codes of violation.

11 THE COURT: All right, Mr. Grounsell, on that --
12 those issues?

13 MR. GROUNSELL: Your Honor, I don't know if you
14 remember, but we had a motion to compel argument in
15 front of you, I guess, it was on July 15th, 2022.
16 And we went over some of this as far as 17-13-141.
17 It's just a ministerial record. It's actually
18 everything within that -- what that record requires
19 to be kept is within the affidavit itself. If you
20 look at what the property is to be seized, the
21 affidavit, the description of the property, when it
22 was sworn to, sworn by, the date that it was sworn
23 by, the return, also, the date on there. So
24 everything is complied with, the search warrant
25 itself contains all that information that statute 141

1 requires.

2 As to statute 150, Your Honor, it is my
3 understanding that a search warrant was left at his
4 residence that contained not only the search warrant,
5 but, also, the return as well from what they took
6 from his house.

7 THE COURT: Who is that from?

8 MR. GROUNDSELL: What was that, Your Honor?

9 THE COURT: Law enforcement --

10 MR. GROUNDSELL: Investigator McWhite is our lead
11 investigator. He would have been the one that would
12 have, presumably, left the search warrant.

13 THE COURT: All right. Mr. Kennedy.

14 MR. KENNEDY: Like I was saying, Your Honor, you
15 know, according to Section 17-13-141, which clearly
16 is statute code that is put in place by legislature.
17 Nobody has the authority or power to change the
18 definition of plain using of words, which clearly
19 states that a ministerial record provided every
20 judicial officer keeps record authorized to issue
21 search warrants to keep records reflecting among
22 others, the reason for issuing the search warrant.

23 There was no way to prove -- I even asked in my
24 motion to compel discovery, I asked for the State to
25 provide me with the magistrate judge's search warrant

1 log, which a log that is kept by, you know,
2 ministerial judges -- I mean, magistrate judges for
3 ministerial record purposes to prove or verify time
4 and date, when a search warrant was actually issued,
5 all this information. Which is, you know, should
6 have been given to me because it cannot reveal the
7 CI, confidential informant. So, basically -- which
8 he stated that the State doesn't have. Not only is
9 it a fine for the judge, it's also grounds to void
10 the search warrant if I can prove that it prejudiced
11 me any type of way.

12 THE COURT: All right. Anything else on that
13 matter? On that issue? So that's 140 --

14 MR. KENNEDY: 141.

15 THE COURT: 140 and 141; is that right?

16 MR. KENNEDY: Yeah, Section 17-13-141 and, I
17 want to say, 150. Basically, stating that whenever a
18 search warrant is executed, me, being a property
19 owner, should have been provided and shown a copy of
20 the search warrant because you're searching my house.
21 So if you don't show me this, that means you,
22 basically, just doing what you want to do at the time
23 and you're not authorized because you didn't show me
24 anything. I don't know what you got going on.

25 And I was there and present and there was no

1 reason why they couldn't have shown me that because I
2 was handcuffed up, detained, really in compliance.
3 You know, body cam footage will show there wasn't an
4 issue, there wasn't a reason why they couldn't show
5 it to me. It just shows them forcibly -- you know,
6 basically, forcing me out my car at gunpoint,
7 handcuffing me and just going in my pockets and doing
8 whatever they want to do before they actually show me
9 any type of search warrant, any type of
10 documentation, any type of paperwork, anything. They
11 just pulled on me and just, you know.

12 THE COURT: All right. Anything else on that
13 issue?

14 MR. KENNEDY: Specifically, that issue about
15 ground number one --

16 THE COURT: Well, you've already argued, looks
17 like, grounds six and seven on the 17-13-140.

18 MR. KENNEDY: Yes, sir.

19 THE COURT: And 17-13-141.

20 MR. KENNEDY: Yes, sir. I mean, specifically,
21 like, you know, all my arguments pertain to really
22 every ground to the motion. So, specifically, on
23 that ground, ground number one, nah, but ground
24 number two --

25 THE COURT: It sounds like all these arguments

1 are related to ground number one; is that right?

2 MR. KENNEDY: I mean, it's all about probable
3 cause, you know, illegal search and seizure, searches
4 being issued without probable cause.

5 THE COURT: All right. What are the arguments?
6 Let's get it on the record. I want to make sure I
7 know what your arguments are.

8 MR. KENNEDY: Okay. I go back from where I left
9 off, the good faith exception. The court will not
10 defer to a warrant based on the affidavit that does
11 not provide the magistrate with substantial basis for
12 the determination of existence of probable cause.

13 Also, State vs. Johnson 302 S.C. 243, 395 S.E.2d
14 at 167, The good faith exception did not apply when
15 the affidavit did not provide the magistrate with
16 information as to the reliability, credibility,
17 status or basis of knowledge of the confidential
18 informant. Supreme Court states without any
19 information concerning the reliability of the
20 confidential informant, the inference that's from the
21 facts which leads to the complaint will be drawn not
22 by neutral detached magistrate as the Constitution
23 requires, but as stated by a police officer engaged
24 in --

25 THE COURT REPORTER: Sir, please slow down.

1 THE COURT: Mr.~Kennedy, you need to slow down.
2 The court reporter has to take down everything that
3 we all say in here.

4 MR. KENNEDY: Okay.

5 THE COURT: So you need to slow it down so she
6 can hear everything you say. All right.

7 MR. KENNEDY: Okay. But as the Constitution
8 requires, but instead by a police officer engaged in
9 often competitive enterprise of fettering out crime
10 on a case by unidentified informant. The reviewing
11 courts will not defer to a search warrant that did
12 not provide sufficient info to the Judge to make his
13 determination independent because this action cannot
14 be a mere ratification of mere conclusions of others.
15 The Judge will be forced to guess whether the events
16 described in the affidavit actually occurred. Leon,
17 specifically, states that The Court will not defer to
18 any affidavit that contains a false statement or
19 falsity or whether the magistrate acted merely as a
20 rubber stamp for law enforcement.

21 State vs. McKnight 287 S.C. 167, 337 S.E.2d 208,
22 and United States vs. Williams 80, L.3d, 116 Fourth
23 Circuit, states and held that The good faith
24 exception does not apply when the affidavit contains
25 a knowing reckless falsity.

1 United States vs. Laury 985 F.2d 1293 at 122
2 held that The good faith exception does not apply in
3 cases where the police failed to corroborate the
4 confidential informant's tip. And the only evidence
5 presented to the issuing magistrate was the officer's
6 affidavit, which was also held in United States vs.
7 Leake 998 F.2d 1359; United States vs. Baxter 889
8 F.2d 731 and United States vs. Jackson 818 F.2d 345.

9 Your Honor, the Fourth Amendment guarantees the
10 right of people to secure from unreasonable searches
11 and seizures, which is parallel with the protection
12 of laws of the South Carolina Constitution, which
13 also provides safeguards against unlawful searches
14 and seizures. State vs. Forrester 343 S.C. 637, 541
15 S.E.2d 837. South Carolina Constitution Article one
16 through ten states, The evidence that is obtained in
17 violation of the Fourth Amendment is inadmissible in
18 state and federal court.

19 A magistrate may only issue a search warrant
20 based on probable cause. State vs. Bellamy 336 S.C.
21 140, 519 S.E.2d 347 states, That this determination
22 requires the magistrate to make a practical common
23 sense decision under whether given the totality of
24 circumstances, including the status, the veracity and
25 basis of knowledge of the person supplying hearsay

1 information.

2 The State vs. Dupree 354 S.C. 676 held that The
3 magistrate should only base probable cause on all the
4 information available to him at the time the warrant
5 was issued. The affidavit must contain underlying
6 facts and circumstances upon which the magistrate can
7 make an independent determination of probable cause.

8 State vs. Philpot 317 S.C. 458, 454 S.E.2d 905,
9 which is a Court of Appeals, and the Supreme Court in
10 Illinois vs. Gates 462 U.S. 213, 103 Supreme Court
11 2317, 76 L.Ed.2d 527 states, That the task for the
12 magistrate is to make a practical common sense
13 decision under given the totality of the
14 circumstances set forth in the affidavit. Practical
15 common sense decision is, basically, facts in
16 evidence being presented so the issuing magistrate
17 does not have to guess whether the events actually
18 occurred because the determination of probable cause
19 cannot be based on mere affirmance or mere conclusion
20 of others.

21 United States vs. Anderson 887 F.2d 727, the
22 courts decision of totality of circumstances also
23 recognizes the value of corroborating the details of
24 informant's tip by independent police work. State
25 vs. Baccus --

1 THE COURT REPORTER: Sir, please slow down.

2 THE COURT: You need to slow down.

3 MR. KENNEDY: Okay.

4 State vs. Baccus 625 S.E.2d 216, The affidavit
5 must set forth particular facts and circumstances
6 underlying the existence of probable cause to allow
7 the magistrate to make an independent determination
8 of the matter.

9 State vs. Smith 301, Where the warrant was held
10 defective because the affiant didn't present facts or
11 evidence to the Judge and found that mere
12 conclusionary statements gave the magistrate no basis
13 to establish probable cause.

14 State vs. Adolphe 314 S.C. 89, 441 S.E.2d held
15 That no probable cause was established because there
16 were no facts or evidence to establish probable cause
17 under the totality of circumstances. There was no
18 showing of the confidential informant's reliability
19 and the informant's allegations were never
20 corroborated or proven by anyone.

21 State vs. Baccus, Without affiant investigation
22 or corroboration of a confidential informant's tip
23 about a residence shows that there is no veracity of
24 the person supplying the information. And without an
25 explicit detailed description of the alleged

1 wrongdoing, not describing when, where or what
2 actually took place or any firsthand knowledge of the
3 residence, shows no basis of the informant's
4 knowledge.

5 State vs. Gore 408 S.C. 237 --

6 THE COURT: Mr.~Kennedy, looking at the
7 affidavit, it looks like it's pretty detailed with a
8 pretty detailed factual basis to support the search
9 warrant. What is the argument that the affidavit is
10 not sufficient from a factual standpoint? I
11 understand the case law, but from a factual
12 standpoint, in this particular case?

13 MR. KENNEDY: It says according to this
14 informant, he or she has witnessed, not bought or
15 purchase, Michael Kennedy sell drugs on multiple
16 occasions in recent months. I mean, if you ask me,
17 Your Honor, there's nothing explicit or detailed
18 about that allegation. It's actually boilerplate
19 language, which the Supreme Court has already ruled
20 in numerous cases that without mentioning time,
21 where, what actually happened, being able to identify
22 what the residence actually looks like, how could you
23 say that somebody -- anybody could say that because
24 anybody would just -- I mean, I have the law to
25 support what I'm saying.

1 THE COURT: What is the information, though,
2 that is misleading? What is the factual information
3 in the affidavit that's either not true or misleading
4 or defective?

5 MR. KENNEDY: I mean, if you want to ask me,
6 Your Honor, I would say all of it. The reason I
7 would say all it is --

8 THE COURT: What I need, though, specifically
9 what evidence do you have that this search -- I mean,
10 that this affidavit is misleading, defective or does
11 not contain sufficient information? What is the
12 evidence that you have?

13 MR. KENNEDY: Okay. Once again, Your Honor, a
14 fact is something that is supported by evidence.
15 Whenever you go to a magistrate -- or I could come to
16 you with a piece of paper and say hey, look, this is
17 what happened. There's nothing factual about that.
18 And the Fourth Amendment clearly states that probable
19 cause can only be based on facts and circumstances
20 presented to the issuing magistrate.

21 THE COURT: And they did present it to the
22 magistrate. I'm looking at the affidavit.

23 April, we'll mark the affidavit as Court's
24 Exhibit No. 1 or Defendant's Exhibit No. 1.

25 I'm looking at the affidavit. It looks pretty

1 detailed. What in the affidavit is insufficient or
2 misleading?

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification only.)

5 MR. KENNEDY: The fact that this affiant, you
6 know, Investigator Jonathan McWhite stated that he
7 has a statement from the confidential informant.
8 Also, where he stated that he has audio and video
9 surveillance of this alleged controlled buy. And not
10 only that, that the informant identified me out of a
11 six-person lineup. He has no documentation to prove
12 that. There was nothing furnished to me upon my Rule
13 5 Brady to prove that any of this -- so all of this
14 is just an assertion. There's nothing factual about
15 this.

16 If you can't present, you know, a statement from
17 a CI that you say that you have, which is clear in
18 the preliminary hearing, which I gave you the
19 transcripts to, he was asked, Do you have anything
20 documented about your investigation? Anything
21 documented pertaining to the information given to you
22 by confidential sources? Where he stated, Not at the
23 time. I'm not sure. I certainly don't have it here.
24 You, basically, saying that everything that you say
25 you have that's under this sworn search warrant

1 affidavit during another sworn occasion, which is a
2 preliminary hearing, you stated that you don't
3 have -- you don't have any of this.

4 THE COURT: Yes, sir.

5 MR. GROUNDSELL: Your Honor, just briefly.
6 Again, we hashed this out about the confidential
7 informant in front of you a month ago, a month and a
8 half ago. There is information that exist in a CI
9 file, but he is not entitled to that. He is not here
10 to be tried on a distribution case. He is here to be
11 tried on the result of a search warrant. So I think
12 we came to the conclusion and on your order that that
13 confidential information, he is not entitled to.
14 That is why he does not have that information.

15 THE COURT: Do you understand that, Mr. Kennedy,
16 when we had you here before --

17 MR. KENNEDY: Yeah, I understand that my motion
18 to compel was denied because I asked specifically to
19 see electronically-stored information, like video and
20 audio of the alleged controlled buy. That can be
21 revealing of the confidential informant, but to show
22 a redacted statement of somebody saying this is CI
23 number such and such, I wouldn't know who that was.
24 CI number such and such, at this time and day, I
25 purchased this amount of drugs from Michael Kennedy,

1 boom, boom, boom, this is how it happened, and get
2 into specific details on how it happened and not
3 reveal the CI's identity.

4 Not only that, I mean, like you don't have
5 nothing to support nothing that you ever say that you
6 had. It's all unsupported assertion. Nothing they
7 have -- the State has no evidence to prove that
8 anything ever occurred. No documentation to prove
9 that they went and signed out government funds in
10 order to purchase drugs from me. The State has not
11 furnished any evidence to support anything that they
12 have ever stated on record. It is clear that he lied
13 on numerous occasions. He committed acts of perjury.

14 THE COURT: All right, Mr. Grounsell.

15 MR. GROUNSELL: Your Honor, investigators that
16 are involved in CI cases that we have prelims on,
17 they're instructed not to give any information
18 relevant to the CI. Also, they are -- sort of what's
19 instructed is not to, in the affidavit, give exact
20 times and dates if they do something that has a
21 confidential informant because that would reveal who
22 the confidential informant would be. So within 72
23 hours, that is why that language is there. The State
24 would certainly argue that is fresh probable cause
25 and gives a time range for which this transaction

1 took place.

2 THE COURT: All right.

3 Mr.~Kennedy, let me hear your arguments. Go
4 ahead and finish your argument on this issue. Let's
5 get this on the record.

6 MR. KENNEDY: All right. State vs. Robinson
7 held That because there was no controlled buy
8 conducted from the residence and the CI never stated
9 what they witnessed, then the CI cannot provide any
10 firsthand information regarding past sales or the
11 residence they allege purchased drugs at or witness
12 anything that proves that, you know, no veracity,
13 no -- you know, this is all, you know, fabricated
14 information.

15 Illinois vs. Gates and United States vs.
16 Anderson 851 F.2d 727, cites That bare bones
17 statements, which is the statement that was given
18 inside of my search warrant affidavit, which is a
19 bare bones statement to say that oh, yeah, this
20 person sell drugs, I witnessed him sell drugs around
21 his apartment in recent months is a bare bones
22 statement.

23 The officials must have sufficient facts and
24 circumstances because the magistrate's determination
25 cannot be a mere ratification [indiscernible] of

1 others. And when --

2 THE COURT REPORTER: Sir, please slow down.

3 MR. KENNEDY: Okay.

4 The affidavit is absent of exquisite details of
5 an informant's statements lets the magistrate know
6 that the tip is no more than just a casual rumor
7 circulating in the underworld or an accusation based
8 merely on the accused general reputation.

9 United States vs. Wallgale [ph] F.2d 1388, As
10 long as there is substantial basis for crediting the
11 hearsay information, it may be sufficient to
12 establish probable cause. However, Jones vs. United
13 States 362 U.S. 257, 80 Supreme Court 7254 L.Ed.2d
14 697 held That there must be information offered to
15 the magistrate from which he can independently assess
16 the informant's reliability, credibility or veracity.
17 And there must be a statement of the circumstances
18 underlining the manner in which the information was
19 gathered or, at the very lease, a detailed
20 description of the alleged wrongdoing.

21 For somebody to say oh, I witnessed them sell
22 drugs. How did you witness it? What was you doing?
23 Where was you at? What puts you in a situation to
24 witness me distribute narcotics? How did you ever
25 see this? Were you buying drugs? Were you around

1 just hanging out? Was you a passenger in a car?
2 Without that information being gathered, the
3 magistrate cannot conclude that the information is
4 coming from somebody who's actually participated or
5 witnessed me indulge in criminal activity.

6 Also, that -- this is also stated inside of
7 United States vs. Harriett 582 F.2d 329, which is
8 also a Fourth Circuit case. United States vs. Miller
9 925 F.2d 695, which is also a Fourth Circuit case,
10 where it states, That an informant's tip is rarely
11 adequate on its own to support a finding of probable
12 cause.

13 United States vs. DeQuasie 373 F.3d 509, The
14 right of privacy of one's home is the most important
15 interest in protecting the Fourth Amendment. And
16 where an unnamed, which is my situation, in an
17 untested, which is also my situation, informant
18 provides a nonspecific allegation -- a nonspecific
19 is, basically, like saying oh, yeah, I witnessed him
20 sell drugs from around his apartment. That is
21 completely nonspecific. Provides a nonspecific
22 allegation about criminal activity in a residence,
23 officers must have more than a minimal and relevant
24 cooperation to establish probable cause.

25 United States vs. Perez 393 F.2d 457 held That

1 the informant's mention of drugs was vague and did
2 not mention any package details or even the location
3 of the residence where he claimed to have saw drugs.
4 The government did not show and find, you know, you
5 know, the circumstances to create probable cause.

6 So, basically, I'm stating that, you know, like,
7 even -- I mean, I got numerous cases that prove that.

8 THE COURT: Tell me the facts. Give me your
9 arguments on the facts. Get that on the record.

10 MR. KENNEDY: I mean, the fact is that the only
11 thing and the only information credited to this
12 confidential informant is that -- this is, you know,
13 coming from the affiant's mouth. Within the past
14 month, I received a tip from a confidential informant
15 that the subject, Michael Kennedy, was selling heroin
16 from and around his Greenville apartment. According
17 to this informant, he or she has witnessed Michael
18 Kennedy sell drugs on multiple occasions in recent
19 months.

20 There is nothing specific about that. I would
21 consider it boilerplate language. There's nothing
22 specific about it at all. Anybody can say that.
23 Anybody that just see you on the news, yeah, yeah,
24 yeah, I heard he did this. It could be third party
25 hearsay. It could be anything.

1 So to state that oh, I witnessed him do this,
2 anybody can say that. Anybody that don't like me can
3 say that. There's nothing specific about that. A
4 specific detailed description of alleged wrongdoing
5 would be like on this day, I participated -- I drove
6 up with a partner of mine. We went to Mr.~Kennedy's
7 residence located here on this time. I walked inside
8 his house. I know his mirror is on the wall. He had
9 a small dog. He went into the bedroom, grabbed this,
10 came out, went inside the cabinet, did this. That is
11 an explicit detailed description enough to make
12 somebody believe that okay, you may know what you are
13 talking about.

14 But just to say oh, yeah, I witnessed him sell
15 drugs from and around his apartment is completely
16 boilerplate language and it's nonspecific. There's
17 nothing specific about that. Specific is detailed.
18 A detailed description is like how somebody writes a
19 book and it has a narrative to explain every aspect
20 of it. Outside of that, there's nothing specific
21 about that. There's nothing specific about that or
22 factual about somebody else's assertion.

23 And the officer, investigator never corroborated
24 this tip by any means. It's your job -- if you're an
25 officer and somebody gives you a tip about drugs

1 being sold from my house, you're supposed to go and
2 buy drugs from my house. Why can't you make them do
3 that? If somebody gave you a tip and they're
4 watching me do this for months and you have a
5 confidential informant, why did they just now inform
6 you about what was going on? So what was they doing
7 for a month? Or what was they doing for months,
8 recent months in the past? What were they doing?
9 But you have a confidential informant.

10 I mean, it's just clear, like, you know,
11 everything gets fabricated. It's a fabricated
12 narrative. And I have, you know, whatever it takes
13 to prove that as well. I'll get into that later.
14 But at the end of the day, there's nothing specific
15 about it, Your Honor, you know what I'm saying? If
16 anybody in this courtroom can find any specifics --
17 you know, specificity out of I witnessed Mr.~Kennedy
18 -- not even bought, not even -- you witness, how
19 could you prove what you witnessed? How did you
20 witness this? What did you witness? Once again,
21 what circumstances put you in the situation to
22 actually witness me sell drugs from and around my
23 apartment? How do you know I wasn't doing anything?
24 Which it's all fabricated because nobody even know
25 where I'm staying at anyway. I'm just saying,

1 though.

2 THE COURT: What other factual grounds do you
3 have?

4 MR. KENNEDY: I mean, besides -- there's nothing
5 really to go off of. Only thing it says is two --
6 it's only two lines credited to the information from
7 the confidential informant, which state that Michael
8 Kennedy was selling heroin from and around his
9 Greenville apartment. According to this informant,
10 he or she has witnessed Michael Kennedy sell drugs on
11 multiple occasions in recent months. I don't
12 understand like -- I mean, there's nothing else --
13 The State didn't state anything factual. It's all
14 boilerplate language. It's all nonspecific.

15 The Supreme Court has already ruled that if, you
16 know, the magistrate was not given information on how
17 this information was gathered. How did you obtain
18 this information? How did you know this? What put
19 you in circumstances to understand and find this
20 information out? And if you knew about it months
21 before, why didn't you then inform law enforcement
22 about it if you're a confidential informant?

23 I mean, it's just clear, Your Honor. I'm not --
24 you know, I don't have the power to change the
25 definition of words and what words mean. You know,

1 my understanding of specific is, you know, a very
2 detailed description of what's going on. I mean,
3 it's just like -- a victim could give you an explicit
4 detailed description of how they were, you know,
5 assaulted. They could give you an explicit detailed
6 description. Or somebody that actually indulged in a
7 specific type of activity could tell you specifically
8 what happened. What time, when and where it
9 happened.

10 This confidential informant couldn't even tell
11 you where I stayed at. They don't know where I
12 stayed at. They don't know nothing. They don't know
13 nothing, whether I have a dog. They don't know my
14 girlfriend's name. They don't know nothing. They
15 knew me by Michael Kennedy. Said I'm just going
16 around selling drugs. Hey, I'm Michael Kennedy. I
17 stay around here, I'm selling drugs. What, man, like
18 -- it's just obvious that the police are the ones who
19 put this together.

20 THE COURT: All right, what else?

21 MR. KENNEDY: I mean, just, you know, getting
22 into ground number two. I mean, it's all really the
23 same, like -- it's all really the same, Your Honor.

24 Like, State vs. Dupree held That sufficient
25 underlying facts are presented when the affiant

1 conducted a controlled buy from the residence and
2 drugs were purchased at the place he sought to
3 search, giving the magistrate an independent
4 determination of probable cause.

5 Without that being done and without the
6 magistrate ever being presented with facts -- like,
7 here, look, Your Honor, here's a video of Mr.~Kennedy
8 distributing narcotics through confidential
9 informant. Those are facts. Underlying, underlying
10 is something that can't be, you know, refutable.
11 Something that can't be -- it's undeniable. It's
12 undeniable discovery, it's undeniable information
13 being presented. It's clear on record that there's
14 no record of a search warrant ever being filed, so
15 there's no way they gave anybody any type of oral
16 supplemented testimony. You already stated on record
17 that you did not present anything, document or any
18 type of evidence to the issuing Magistrate Judge.
19 The only thing you presented was a search warrant
20 affidavit.

21 I mean, just getting into, you know, like State
22 vs. Smith 301 S.C. 392, S.E.2d 182, Mere
23 conclusionary statements give the magistrate no basis
24 to make a judgment as to probable cause. How could
25 you independently make a determination of probable

1 cause if you weren't shown or given anything? The
2 only thing you went off of was a piece of paper,
3 which the Supreme Court has already held that they
4 would not defer or go along with a case where the
5 only thing that was presented to the issuing
6 magistrate was a piece of paper, which is a search
7 warrant affidavit.

8 This is a piece of paper. I could write
9 anything on that piece of paper right now. It
10 doesn't make it factual. Just because an officer
11 says it under testimony doesn't mean that this is
12 factual. This is an assertion and unproven
13 testimony. This is what this is. A fact is being
14 presented with evidence and it's established by
15 evidence according to the legal term dictionary.

16 THE COURT: All right. What else?

17 MR. KENNEDY: Okay. The fact that they allege
18 that a controlled buy was conducted and that they
19 followed me back to my residence, the courts have
20 already ruled that that's not enough. Zurcher vs.
21 Stanford Daily 436 U.S. 547, 98 Supreme Court 1970
22 through '77 56 L.Ed.2d. held That there was no
23 cooperation with the key components of the
24 informant's tip to search the premises, that drugs
25 were allegedly being sold or stored at the place to

1 be searched. The constitutional requirement for
2 probable cause can be based on hearsay information,
3 but must set forth underlying facts and circumstances
4 that enable the magistrate to make an independent
5 determination of probable cause.

6 The sole purpose of the Fourth Amendment is that
7 an officer may not properly issue a search warrant to
8 search a private dwelling unless he has probable
9 cause from facts and circumstances presented to him.
10 Mere affirmance, belief or suspicion is not enough.
11 According to the search warrant affidavit, that is
12 the only thing they are trying to use against me,
13 mere affirmance where the officer states oh, this
14 happened, this is what happened. This is what
15 happened. Belief is when he stated that oh, yeah,
16 based on my training and experience, I know drug
17 dealers to keep drugs at their house. He never
18 stated that oh, yeah, I seen him -- you know, I
19 watched him engage in activity that's even seemingly
20 like he's conducting drug activity from and around
21 his residence.

22 Suspicion, once again, you know, this whole
23 search warrant affidavit is based on mere affirmance,
24 which is something that is stated or asserted by
25 somebody that is unproven. That's mere affirmance.

1 Belief and suspicion is not enough. The sole purpose
2 of the Fourth Amendment of the Constitution states
3 that this is not enough. It's just not enough.

4 I mean, I've pretty much got into all of them
5 besides, like, ground five specifically, which is the
6 nexus requirement, you know. And there's one of four
7 corners of the affidavit -- which is one of four
8 corners of the affidavit. United States vs. Lalor
9 996 F.2d 1578, which is a Fourth Circuit case, states
10 That The Court found that there was no nexus where
11 the affidavit failed to describe circumstances that
12 indicate such evidence of drug activity was likely to
13 be found at Lalor's residence. There was no direct
14 or indirect link. State vs. Kinlaw also stated that
15 the trial Judge relied on Gentile, State vs. Gentile
16 646, where the recovered drugs cannot be linked back
17 to the residence.

18 In my situation, Your Honor, you know, this
19 affiant stated that he, you know, conducted
20 controlled buy and drugs were, you know, received
21 from me. There was no way to connect those drugs to
22 my residence by any means.

23 Also, in Lalor, the Supreme Court has cautioned
24 the police the need to specify time and warrant
25 applications. The Court finds the affidavit is

1 devoid of any basis from which a magistrate could
2 infer that the evidence or items to be seized will be
3 found in a particular location. Nor does the
4 affidavit explain a geographical relationship between
5 the area where the drug sell occurred and the
6 residence.

7 As you can see inside the search warrant
8 affidavit, he stated the drugs were sold somewhere
9 else. He never gave any type of, you know,
10 information that could, you know-- or orally, any
11 type of oral supplemental testimony that could, you
12 know, at least, give the magistrate the ability okay,
13 a drug sell happened around the corner or anything
14 like that. You never gave any of this.

15 So with that being said, you know, they say that
16 a magistrate can draw inference from proximity on
17 where a sell occurs. But when the record, which is
18 the search warrant affidavit and there's no oral
19 supplemented testimony, no record of a search warrant
20 ever being found, so there's no record, contains no
21 evidence or testimony of the distance of where the
22 sale occurred, you know, that you cannot draw
23 plausible connection.

24 Also, State vs. Thompson, South Carolina case
25 stated That surveillance of a suspect conducting a

1 transaction immediately upon leaving a residence
2 could raise inference.

3 So, basically, saying that if they stated that
4 they observed me leaving my residence to conduct a
5 controlled buy, you could draw inference from those
6 facts. But because neither statement independently
7 or together demonstrated specific indications that
8 the drugs Thompson was selling were being assessed at
9 his residence, cannot draw plausible connection to
10 connect my residence to drug activity.

11 Also, using Zurcher vs. Stanford Daily, The
12 crucial element for a search is not based on the
13 defendant committing a crime, but that the items of
14 the crime are located in a place sought to be
15 searched. United States vs. Williams also held that.

16 Once again, like the courts will not defer to a
17 warrant that -- the courts will not defer to a case
18 where the only thing presented to the magistrate was
19 a take my word for it affidavit showing the
20 magistrate acted merely as a rubber stamp for law
21 enforcement. You signed off on something that you
22 don't know -- you had to guess whether or not this
23 actually happened. You just had to take my word.
24 Yeah, you put it on paper, so I'm just going to --
25 just because you're an officer I'm going to believe

1 it happened. That's what you did. If somebody ever
2 actually did sign off on a search warrant. There's
3 no record of it, so it's kind of like how did
4 somebody sign off on something and didn't keep a
5 record of what they signed off on.

6 United States vs. Brown 828 F.2d 375, Sixth
7 Circuit. The affidavit supporting a search must
8 demonstrate a nexus, which is a connection of
9 evidence sought and the place to be searched. And
10 the connection between the criminal activity and the
11 residence must be specific and concrete, not vague
12 and generalized. Your belief and your suspicion is
13 vague and generalized.

14 THE COURT: You're saying the affidavit is
15 vague?

16 MR. KENNEDY: No, no, no, no, no, the officers
17 training-based experience, knowledge and him saying
18 that -- I mean--

19 THE COURT: How is that vague?

20 MR. KENNEDY: I mean, vague, it's like it's
21 open. It's a gap right there. There's nothing --

22 THE COURT: Pretty detailed to me, it's the
23 background.

24 MR. KENNEDY: Oh, yeah, yeah, his background.
25 But, you know, I also will get into that as well.

1 Vague and generalized, the affiant did not produce or
2 present anything to the magistrate that anything of
3 criminal activity took place at the residence or
4 evidence that any distribution took place there.

5 Peffer vs. Stephens 880 F.3d 256, The
6 allegations that a defendant is a drug dealer is
7 insufficient to tie alleged criminal activity to the
8 residence, nor can the government establish a
9 nonfactor by showing one incident of the defendant
10 allegedly dealing drugs away from his residence;
11 which is also cited in United States vs. McCoy 905
12 F.3d 409, United States vs. Frazier F.3d 526 and
13 United States vs. White 874 F.3d 490. Which also
14 states, That a single sell in a driveway or other
15 place itself does not demonstrate the kind of ongoing
16 drug activity that authorizes the search of a
17 seller's home.

18 United States vs. Savoca 761 F.2d 292 and
19 Illinois vs. Gates, Supreme Court, A magistrate's
20 role given is that a fair probability of drugs or
21 evidence of crime will be found in a particular
22 place.

23 In other words, there must be a nexus between
24 the place searched and the evidence sought under the
25 totality of circumstances. There was no evidence

1 presented to the judge that there was drugs inside
2 the residence, so the search was issued without
3 probable cause.

4 Also, using United States vs. McPherson 469 F.3d
5 518 stating, That a defendant drove home after a
6 transaction, without more, cannot establish probable
7 cause to search the residence. Also, citing the
8 Commonwealth vs. Pina 902 N.E.2d 917, 453 Mass 438.

9 Once again, to continue on, United States vs.
10 Williams 548 F.3d 311, The courts state more
11 specifically, the court deemed affidavits to be
12 fatally bare bones in two ways. When an affidavit is
13 devoid of any specific events and evidence suggesting
14 how the place could be searched as connected and
15 related to criminal activity, courts have also
16 rejected an officer's training and experienced-based
17 knowledge only leaving the government with evidence
18 of drug trafficking. There was nothing factual that
19 anything took place at the residence. Viewing only
20 evidence of drug trafficking unconnected to the
21 target premises, the Supreme Court deemed the
22 affidavit to be fatally bare bones.

23 In my situation, Your Honor, you know, it seems
24 like, you know, he used a vague and boilerplate, you
25 know, like, nonspecific, you know, assertion by a

1 confidential informant to say that drugs were being
2 sold at my residence. And not only that, it seemed
3 like the only thing he used was his credentials.
4 And, you know, based on his training and experience;
5 which the Supreme Court has already ruled. Because
6 the sole purpose of the Fourth Amendment is that
7 searches may not be based on mere affirmance, belief
8 or suspicion. Because your experience, what does
9 that mean? That doesn't have anything to do with
10 probable cause, honestly. So with that being said,
11 you know, like the Supreme Court has already ruled,
12 your training and experienced-based knowledge ain't
13 got nothing to do with what's going on right here,
14 right now.

15 And, Your Honor, you know, just based on those
16 facts, you know, the case law and the rulings of
17 higher courts, you know, probable cause is not
18 established, you know what I'm saying? And just to
19 protect -- you know, the protection of the Fourth
20 Amendment, you know, discovery of that should be
21 suppressed. It should be excluded from trial. You
22 cannot use it because clear on record that you didn't
23 present a fact because according to this dictionary
24 right here, you know what I'm saying, you know,
25 everybody finished school, everybody, you know,

1 understand the definition of words, a fact is
2 something that is to be established by evidence. You
3 stating something is not a fact. There's nothing
4 factual about that at all. You cannot twist that and
5 make that a fact because it's not a fact.

6 THE COURT: All right. Thank you. Anything
7 else?

8 MR. KENNEDY: I have other motions. Not only
9 that --

10 THE COURT: No, on this motion.

11 MR. KENNEDY: On this motion, I would like to
12 get into the seizure aspect--

13 THE COURT: No just on the suppression of the
14 affidavit.

15 I'm going to turn to Mr. Grounsell to respond to
16 Mr. Kennedy's arguments on the suppression of the
17 motion regarding the affidavit of the search warrant.

18 MR. GROUNSELL: Yes, Your Honor, I'm going to
19 hand up your order denying the defendant's motion to
20 compel. I think it might be important to enter as an
21 exhibit. Maybe a Court's Exhibit because it's your
22 order, Your Honor. Some of the things that he's
23 alleging that we didn't turn over. It's not that
24 they don't exist, it's that we weren't compelled to
25 actually turn them over.

1 In regards to the suppression based on the
2 search warrant, probably the State's most recent case
3 is State vs. Thompson, South Carolina Supreme Court.
4 And in that case, it cites Zurcher vs. Stanford
5 Daily, In determining whether a search warrant is
6 supported by probable cause, the crucial element is
7 not whether the target of the search is suspected of
8 a crime, but whether it was reasonable to believe
9 that the items to be seized will be found in the
10 place to be searched.

11 That case also cites State v. Tench, The
12 judicial officer asked to issue a search warrant must
13 make a practical, common sense decision concerning
14 whether, under the totality of the circumstances set
15 forth in the affidavit, there's a fair probability
16 that the evidence of a crime will be found in the
17 particular place to be searched.

18 Now, State vs. Thompson also says The appellate
19 courts of this state have routinely held that
20 information contained in an affidavit providing a
21 timely and direct nexus between the contraband sought
22 and the locations to be searched, inter alia,
23 specific details of surveillance of a suspect
24 conducting a drug transaction immediately upon
25 leaving their residence is sufficient to support a

1 search warrant.

2 Your Honor, in this case, the first standard of
3 reasonable to believe that the items to be seized
4 will be found in the place to be searched, the search
5 warrant was sought within 72 hours of the controlled
6 buy where Mr.~Kennedy was surveilled during and after
7 the buy. He returned immediately to his apartment
8 from the sale and was witnessed by DEU investigators
9 walking into the building that contained his
10 apartment. Agent McWhite sworn in his affidavit
11 through his experience investigating criminal cases,
12 he knows illegal drug dealers keep the items listed
13 in the description of property bought section in
14 their homes and vehicles. It will be completely
15 reasonable to believe that the drugs would be found
16 in the apartment that Mr.~Kennedy returned to
17 immediately after a controlled buy. It would be more
18 than reasonable to search a vehicle from which he was
19 operating during the time of the controlled buy.

20 The other standard, Your Honor, fair probability
21 that evidence of the crime will be found at the
22 particular place to be searched. Investigators know
23 from their own eyes that Mr.~Kennedy was driving a
24 specific car listed to be searched during a
25 controlled buy. It certainly would be a fair

1 probability that evidence of the crime could be found
2 in that vehicle.

3 Investigators also noted that Mr.~Kennedy
4 returned to his apartment right after this sale and
5 witnessed that themselves. McWhite's experience
6 showed that dealers often keep their main supply of
7 drugs within their residence and not in the vehicle
8 for safety concerns of their product. It would be
9 reasonable to say that both the car and apartment
10 would, at the very least, have a fair probability of
11 evidence of the crime contained therein.

12 A timely and direct nexus between the contraband
13 sought and the location to be searched. PC provided
14 them this affidavit was within the past 72 hours of
15 it being issued, that would certainly be timely. The
16 Defendant returned immediately home after a
17 controlled buy and was under constant surveillance
18 from the time of the buy until he arrived back at his
19 apartment. The apartment was leased to Mr.~Kennedy.
20 It's not leased through a third party. The
21 controlled buy is direct evidence that Mr.~Kennedy
22 was selling drugs. This is not third-party hearsay.
23 The officer provided the CI was reliable. As I said,
24 they could buy from him and did buy from him at the
25 direction and surveillance of DEU.

1 So, Your Honor, for those reasons, The State
2 feels that the search warrant was certainly
3 reasonable and that the Magistrate Judge certainly
4 had probable cause to issue this.

5 THE COURT: Let me ask you, Mr.~Kennedy's
6 argument, the defense's argument, about the
7 confidential informant as far as reliability on the
8 issue of the confidential informant. What does the
9 State respond on that?

10 MR. GROUNSELL: The State would respond that the
11 affidavit itself proves that the confidential
12 informant was reliable. This confidential informant
13 gave information, gave tips and said they could buy
14 from Mr.~Kennedy. And then within the affidavit, it
15 tells how they actually made the buy. That is what
16 establishes reliability of the confidential
17 informant. So The State feels that anything -- the
18 confidential informant was reliable in that sense,
19 Your Honor.

20 MR. KENNEDY: I would like to say something,
21 Your Honor.

22 THE COURT: Hold on just a minute unless he's
23 finished.

24 Mr. Grounsell, let me just ask on the
25 reliability, is there any argument supporting

1 Mr.~Kennedy's argument that the reliability has to be
2 set forth in the affidavit of the confidential
3 informant?

4 MR. GROUNSELL: Your Honor, like I said, I
5 believe within the affidavit itself, that is what
6 proves its reliability. Now, I don't know -- it
7 doesn't spell out necessarily that this confidential
8 informant has to prove reliable, but by the very
9 basis of what it says within the affidavit itself
10 shows that the confidential informant was reliable.
11 They said that they were purchasing drugs from
12 Mr.~Kennedy. They then go buy drugs from Mr.~Kennedy
13 at the direction and surveillance of DEU.

14 THE COURT: All right, anything else from The
15 State?

16 MR. GROUNSELL: No, Your Honor.

17 THE COURT: All right, Mr.~Kennedy, anything
18 else in response?

19 MR. KENNEDY: Okay. You know, according to the
20 reliability of the confidential informant, it's clear
21 on record that the affiant, Jonathan McWhite, stated
22 that he received information from multiple sources.
23 So it's not clear on record that the same person that
24 said that they witnessed me sell drugs from my house
25 is the same person that -- it doesn't say that here.

1 It clearly states that, you know, I received
2 information from a confidential informant that
3 Michael Kennedy was selling drugs from around his
4 apartment. Also, informed me they witnessed him sell
5 drugs in recent months.

6 Coming down to paragraph number three, it says,
7 Within the past month, I conducted an undercover
8 operation where the subject, Michael Kennedy,
9 distributed a quantity of heroin to a confidential
10 informant.

11 It's not even saying that this is the same
12 confidential informant. It's already clear on record
13 that you stated that, you know, you received --
14 allegedly received information from multiple sources.
15 Who are those multiple sources? Because there's
16 nothing else credited to these people, attributed to
17 these people, any type of evidence or anything that
18 you can prove that can verify these people even
19 exists.

20 I mean, it's just clear, Your Honor, that, you
21 know, like everything about this search warrant is
22 completely fabricated. Like, you know, I have
23 documentation to prove that I was illegally harassed
24 by officers. The same officers who conducted the
25 search warrant are the same officers who, you know,

1 pulled me over at a traffic violation a month before.
2 I have the documentation, the incident reports. I
3 have the -- I have the tickets, the blue tickets.
4 And I can show you a video, body cam footage, an
5 officer who participated in this traffic violation
6 walked up to me and say, Hey, you remember me from
7 the other night?

8 All this stems from these officers harassing me,
9 which they harassed me for an hour and a half.
10 They stripped everything. They took the speakers out
11 my car, the six by nine -- the indoor speakers, they
12 took that out the car, stalled me out for an hour and
13 a half to just not find anything. Harass me.
14 [indiscernible] me and told me, Oh, we know you're a
15 drug dealer. They flatten the tire on my car, towed
16 my car.

17 These are the same officers who may be, could
18 be, the people who gave this officer the tip and said
19 hey look -- they probably was like, hey, look, we got
20 a guy right now. We pulled him over. He had a large
21 amount of money on him. We know he's a drug dealer.
22 He has [indiscernible] on his car, he had jewelry on.

23 THE COURT: All right, anything on the motion to
24 suppress? I've heard your arguments on that. You
25 said you have another motion?

1 MR. KENNEDY: Oh, yes, sir, motion for Franks
2 evidentiary hearing.

3 THE COURT: On what basis?

4 MR. KENNEDY: Okay. The motion for a Franks
5 evidentiary hearing is based on the following
6 grounds. My motion for a Franks evidentiary hearing
7 is based on the following grounds. The search
8 warrant was issued in violation -- no, the search
9 warrant was issued in violation of the Fourth
10 Amendment. And the 14th Amendment gives me, the
11 accused, the right to challenge the veracity of
12 search warrant affidavit.

13 Ground two, the search warrant affidavit
14 contains a reckless disregard for truth and
15 deliberate acts of perjury associated with the
16 affiant's sworn statements and testimony with
17 intentions to mislead the issuing Magistrate Judge.

18 Ground three, the search warrant contains
19 omissions of material facts associated with the
20 affiant's statements and testimony with intentions to
21 mislead the issuing magistrate and deprive the
22 magistrate the ability to exercise an independent
23 determination of probable cause and assess under the
24 totality of circumstances regarding the information
25 credited to a confidential informant and probable

1 cause based on hearsay.

2 The fourth ground is this hearing is requested
3 through, you know, constitutional violation on behalf
4 of affiant's false statements made in the written
5 portions of the search warrant affidavit and
6 preliminary hearing transcripts, which is two sworn
7 cases where he gave two completely testimonies and
8 said two completely different things.

9 Summarize and getting into that motion, the
10 factual background of that motion is on October 2nd,
11 2020, DEU officers executed a search warrant based on
12 a written affidavit made by affiant, Jonathan
13 McWhite, which was sworn to Jonathan McWhite
14 September 24, 2020, which contained deliberate acts
15 or perjury and omissions of exculpatory material --

16 THE COURT: What evidence do you have it's
17 perjury?

18 MR. KENNEDY: Say what, sir?

19 THE COURT: What evidence do you have that it
20 was perjury?

21 MR. KENNEDY: The preliminary hearing
22 transcripts, the audio of the preliminary hearing,
23 lease statement paperwork, which --

24 THE COURT: What's the proof that's perjury?
25 What is the proof?

1 MR. KENNEDY: I was going to get into it, but
2 the proof is that this -- on September 24th, he sworn
3 to a search warrant affidavit where he stated that,
4 you know -- everything in here perjury, to be honest
5 with you. I was going to specifically point it out
6 inside the motion, but everything is perjury.

7 But, specifically, you know, what I can prove
8 from my preliminary showing is that, you know, he
9 stated during the sworn occasion, you know, which is
10 the affidavit, which is several sworn occasions and
11 sworn testimony that he had me on video and audio,
12 you know, while he conducted the controlled buy and
13 that he has a statement from a CI and that he has a
14 six-person lineup.

15 Which on another occasion, he stated outside of
16 the preliminary hearing that I cannot be seen on
17 video, which is clearly misleading. If you read the
18 search warrant, it will clearly -- paragraph --
19 Paragraph 3, you will believe that I was on video.
20 So if you a magistrate and I bring this to you and I
21 say yeah, Your Honor, I have him on video with visual
22 surveillance, you will believe -- after you stated
23 that you equipped a confidential informant with this
24 technology that can capture audio and video of a
25 controlled buy, you said that you had me on, but you

1 never had me on.

2 Not only that, he stated that he received
3 information within the past month from somebody about
4 me selling drugs from a place I haven't even occupied
5 that long. In my motion to compel discovery, I asked
6 for lease statement documents from Woodside 11
7 Apartments, which was, you know, The State put inside
8 of the order that they complied with the motions, but
9 that was nothing on this paper that I was given. And
10 The State hasn't furnished anything according to this
11 motion to compel. The State hasn't given me
12 anything, lease statement paperwork, physical
13 corroborating evidence that was used to supplement
14 the affidavit. The magistrate does the search
15 warrant, documents to prove that the officers
16 actually have documents to verify that they signed
17 out government funds in order to purchase drugs from
18 me. And, of course, which was denied
19 electronically-stored information, video and audio of
20 controlled buy.

21 I mean, it's just clear, like, you know, all of
22 this is fabricated --

23 THE COURT: All right. I got your argument,
24 it's fabricated. What else on that particular
25 motion?

1 MR. KENNEDY: Okay. On October 2nd, 2020, DEU
2 officer executed a search warrant based on a search
3 warrant affidavit made by the affiant that contains
4 deliberate acts of perjury and the reckless disregard
5 for truth and omissions of exculpatory material with
6 intentions to mislead the issuing magistrate's
7 determination of probable cause by false information
8 and undiscoverable information.

9 Franks vs. Delaware, 438 United States 89,
10 Supreme Court 2674 held That the Supreme Court states
11 that the Fourth and the 14th Amendment gives the
12 accused the right of certain circumstance to
13 challenge the veracity of a search warrant affidavit
14 --

15 THE COURT: I recognize what Franks says, I'm
16 familiar with Franks, but what is the evidence that
17 you have?

18 MR. KENNEDY: Okay. Supporting facts. I really
19 just wanted to state it on the record just in case,
20 you know, somebody didn't know what it was. But my
21 supported facts is on two sworn occasions, first
22 being September 24th, 2020, and the other being
23 during the preliminary hearing and -- you know,
24 preliminary hearing transcripts where the affiant,
25 Investigator Jonathan McWhite, gave two completely

1 different testimonies and sworn statements to
2 mitigate act of perjury and statements of a reckless
3 regard for truth. The affiant also omitted factors
4 that would show the informant's reliability and
5 credibility or any indicia of reliability --

6 THE COURT: How did he commit perjury?

7 MR. KENNEDY: Because according to the search
8 warrant affidavit, he said that he had me on camera.
9 And according to those transcripts that I gave you of
10 my preliminary hearing, I cannot be seen on camera,
11 which is two totally different things. Before you
12 made the search warrant affidavit, you knew whether
13 or not you had me on camera. But you went on ahead
14 and said that you had me on video and audio
15 conducting a controlled buy and then inside of my
16 preliminary hearing, you don't have it. Because you
17 know you didn't have it. So you intentionally
18 included all this information inside of this search
19 warrant affidavit to make somebody believe -- you
20 know, to mislead the magistrate judge, to make him
21 believe that you had evidence on me that you didn't
22 have. That's how he committed the act of perjury.

23 He also committed the act of perjury by saying
24 that somebody -- no, he committed a reckless
25 disregard for truth. So if somebody did tell you

1 that yeah, I witnessed Michael Kennedy sell drugs
2 from around his apartment, just, logically, if you
3 really just didn't have a reckless disregard for what
4 was the truth or not, you would have known that okay,
5 hold on, I went inside this office. The management
6 confirmed that Michael Kennedy was the leaseholder,
7 which is also inside the search warrant affidavit
8 since September the 7th. So you conducted a
9 controlled buy on the 22nd and you stated within
10 weeks and days that somebody told you that I been
11 selling drugs from around this place. They also
12 stated I had been selling drugs around this place
13 within recent months in the past. That's impossible.

14 How could you witness me sell drugs from a place
15 I haven't even occupied? The lease statement
16 paperwork will prove -- the State said they didn't
17 have the documentation for the lease statement
18 paperwork inside of my motion to compel, but inside
19 of those pictures I have where they took a picture of
20 the actual lease statement paperwork that will prove
21 and verify that the lease agreement -- I cannot move
22 -- if I did the lease statement paperwork on the 7th,
23 I could not really actually move into this residence
24 until like a couple days later. Not because of me
25 moving, just, you know, a problem with moving, but

1 because the lease statement paperwork clearly states
2 that I have to have lights and I have to have these
3 bills established inside my name before I can even
4 move here, not including just actually having some
5 movement. I didn't move into the residence until
6 like -- just being honest, maybe the 11th through the
7 13th. I would say the 13th when I got settled inside
8 this residence.

9 So how can somebody tell you weeks before then
10 that I was selling drugs from and around this
11 apartment that nobody's ever been to? You don't have
12 no evidence to prove. Nobody can give you any type
13 of, you know, specific indications or information
14 about what's going on in this residence, how it look,
15 what the couches look like. You don't know nothing
16 about my residence.

17 THE COURT: All right. Anything else on that?

18 MR. KENNEDY: You talking about just on the
19 first ground?

20 THE COURT: What else entitles you to a Franks
21 evidentiary hearing?

22 MR. KENNEDY: Oh, the fact that the affiant
23 omitted factors that would show the informant's
24 credibility and reliability or any indicia of
25 reliability or unreliability. The affiant also

1 failed to include time and date of the occurrence of
2 criminal activity alleged which was a violation of
3 State vs. Winburn. The omission of this stated
4 information is intentional to mislead the issuing
5 magistrate and depriving The Judge the ability to
6 make an independent determination of probable cause
7 based on hearsay under the totality of circumstances
8 [indiscernible].

9 Illinois vs. Gates Supreme Court and in State
10 vs. Bellamy, 336 S.C. 140, 19 S.E.2d, which held that
11 withholding this information is material. State vs.
12 Missouri held that this challenge may be based on
13 false information being included or exculpatory
14 material being omitted.

15 In my situation, Your Honor, this affiant
16 included false information and he omitted exculpatory
17 material information. Also, held in United States
18 vs. --

19 THE COURT: What exculpatory information did he
20 omit?

21 MR. KENNEDY: He omitted the time and date of
22 the facts alleged, which the Supreme Court has
23 already ruled that that is a violation of State vs.
24 Winburn.

25 THE COURT: The affidavit says within the past

1 72 hours and it's dated September 24th, 2020.

2 MR. KENNEDY: Okay. He also --

3 THE COURT: What's your next argument?

4 MR. KENNEDY: Okay. Also, held in United States
5 vs. Rumney 867 F.2d 714, United States vs. Belton 424
6 F.Supp.2d 100 stated, Omitted material can deprive
7 the magistrate ability to independently access an
8 informant's reliability as well as unreliability.

9 United States vs. Hall, 171 F.3d 1133, 8th
10 Circuit Court found That an informant's full criminal
11 history, use of alias is material to the issuing of
12 magistrate's determination of probable cause to
13 credit and establish probable cause based on hearsay
14 information. The magistrate would not have known if
15 the informant was a model citizen or not. These
16 omissions were misleading or made with a reckless
17 disregard of whether they could be misleading held in
18 United States vs. Colkley, 899 F.2d 300.

19 State vs. Gore and State vs. Lynch held That the
20 omission of date and time of facts alleged criminal
21 activity inside the affidavit --

22 THE COURT REPORTER: Sir, please slow down.

23 MR. KENNEDY: Okay.

24 State v. Gore and State vs. Lynch held That the
25 omission of time and date of facts alleged criminal

1 activity inside of the affidavit violated Winburn.
2 Supreme Court held that if the affidavit failed to
3 state the time and date of the facts alleged is
4 insufficient to establish probable cause.

5 The affiant, investigator, included false
6 information inside the affidavit as well. My
7 preliminary showing is based on the same search
8 warrant affidavit and preliminary hearing transcripts
9 and audio. It's clear in the search warrant
10 affidavit second paragraph. The affiant stated
11 within the past month, so, at least, weeks, if not
12 more, that he received a tip from a confidential
13 informant that I, The Defendant, was selling heroin
14 from and around my apartment. Also, according to
15 this confidential informant, they witnessed me sell
16 drugs from this place in recent months in the past,
17 they witnessed me sell drugs recent months in the
18 past.

19 Also, stated in Paragraph 4, the affiant stated
20 that I was allegedly followed back to Woodside 11
21 from my residence. The affiant confirmed through
22 apartment management that I, Michael Kennedy, was --
23 the accused was the current leaseholder of this
24 apartment 1304 as of September 7th, 2020. Which is
25 my offer of proof to validate a deliberate act of

1 perjury and their reckless disregard for truth made
2 by the affiant to intentionally mislead the issuing
3 magistrate.

4 It is impossible, Your Honor, to receive
5 information about me selling drugs from a place I
6 haven't even resided longer than this alleged tip was
7 given, you know, which was received weeks before the
8 actual statement was sworn to on September 24th,
9 which itself is less than two weeks from the date
10 that I actually moved inside this residence. It is
11 impossible to receive valid and truthful information
12 about me residing, let alone committing illegal
13 activity from and around this location I haven't even
14 occupied long enough to violate this accusation or
15 the assertion that I was selling drugs from and
16 around this place.

17 It's also stated that they witnessed me indulge
18 in activity within recent months in the past as well,
19 making this reckless and untruthful. My offer of
20 proof is valid using the officer's written portion of
21 the search warrant affidavit, you know, lease
22 statement paperwork, audio and transcripts from the
23 preliminary hearing. But I didn't even move in until
24 like the 13th of September due to the apartment
25 management agreement and moving my belongings there.

1 I haven't even stayed there two weeks from the date
2 the affiant sworn on the affidavit that somebody
3 witness me sell drugs from around this place I was at
4 and just moved there.

5 Also, stated in Paragraph 3 related to the
6 fabricated controlled buy that the confidential
7 informant that was used in this controlled buy
8 provided a statement of this event, which was never
9 shown or given to the magistrate and which the State
10 has not furnished still to this day that is
11 consistent with audio and video surveillance and that
12 accused was possibly identified in a six-person
13 lineup.

14 My offer of proof to show the officers
15 deliberate act of perjury comes from a preliminary
16 hearing held from the above-referenced warrant
17 numbers, which is also recorded, which was two
18 different occasions where Investigator Jonathan
19 McWhite was sworn and by oath gave two different
20 statements sworn to be truthful.

21 When he was asked by my representation what all
22 did the control buy consist of, he stated that he was
23 not sure and he'd have to double check. Then he
24 stated there was video footage. When my
25 representation asked him what does the video contain,

1 the affiant, Jonathan McWhite, stated that I, the
2 subject, The Defendant, could not be seen in a video,
3 which is clearly not consistent with an alleged
4 written statement from a CI. And he never
5 acknowledged, you know, any audio of this event as
6 well. It's all together contradictory to the search
7 warrant affidavit where he stated he possesses video
8 and audio of an alleged controlled buy and a
9 statement from a CI.

10 Also, during this preliminary hearing, Jonathan
11 McWhite was asked by my representation, does he have
12 any proof or investigative notes or information
13 pertaining to the confidential informant, which you
14 have up there with you right now, where he stated
15 that he doesn't have anything documented. He doesn't
16 have any notes. He doesn't know what time and date
17 that this investigation allegedly occurred. He don't
18 have nothing, like, you up here just making
19 assertions, which is the complete opposite of the
20 sworn search warrant affidavit. All of this is act
21 of perjury and a false statement.

22 He was also asked under oath did he present
23 anything evident or documented to the magistrate
24 pertaining to the controlled buy -- the CI controlled
25 buy or his investigation, where he stated no, he

1 didn't present anything documented or any type of
2 form of evidence to the magistrate judge. He stated
3 that the only thing that he presented to the
4 magistrate was a search warrant affidavit, which is
5 clearly -- you know, like, it's two sworn occasions
6 where you stated something.

7 If you read this search warrant affidavit,
8 anybody in here read this search warrant affidavit,
9 if they read it, they would believe that I was on
10 camera. So if anybody in here was acting and playing
11 a judge, if they read it, they would be, like, okay,
12 this investigator has Mr.~Kennedy on camera
13 distributing narcotics and audio. Yeah, okay, got
14 the statement from the CI and he have video and -- I
15 mean, then he has the confidential informant agreeing
16 to it, circle him out of a formal lineup. Oh, yeah,
17 yeah, yeah, I'm going to go ahead and sign off on
18 this. But when you lie and you include false
19 information inside of this, it automatically -- you
20 know, it takes your credibility --

21 THE COURT: All right. I've heard enough.
22 You've said about the lies. What else? What other
23 evidence do you have?

24 MR. KENNEDY: I mean, besides him, he is my
25 evidence, everything that he stated. I'm using what

1 he said. I'm not rehearsing anything. I don't have
2 anything to do. I don't have any type of video that
3 I can cut, edit, anything I can do anything to. I
4 used him as my evidence. He is my evidence.

5 THE COURT: All right, anything else on that,
6 other than him being the evidence? Anything that
7 you've already said?

8 MR. KENNEDY: I mean, like honestly, Your Honor,
9 I really don't have anything really just besides the
10 fact that he stated, you know -- everything that he
11 stated inside the search warrant, he, basically, said
12 the opposite inside the preliminary hearing. That's
13 it.

14 THE COURT: All right, Mr. Grounsell.

15 MR. GROUNSELL: Yes, Your Honor. The State
16 feels there really hasn't been a preliminary showing
17 of omission or wrong. The mandate in evidentiary
18 hearing challenge must attack more than just
19 conclusory and must be supported by more than a mere
20 desire to cross-examine. There must be allegations
21 of deliberate falsehood or reckless disregard for the
22 truth and those allegations must be accompanied by an
23 offer of proof. Allegation of negligence or innocent
24 mistake are insufficient.

25 There hasn't been put forth anything, Your

1 Honor, that The state feels was omitted or wrong.
2 His argument about the audio and video, the CI was
3 equipped with audio and video equipment. That audio
4 and video equipment was placed into a situation where
5 it did not capture video, but the audio certainly
6 captured. This whole transaction was viewed by DEU
7 investigators in this parking lot. So there's
8 nothing deliberately false or reckless about that
9 statement.

10 THE COURT: All right. Anything else on that
11 from The State?

12 MR. GROUNDSELL: No, Your Honor.

13 THE COURT: All right, Mr. Kennedy, any other
14 motions?

15 MR. KENNEDY: I mean, just according to the
16 affidavit, I mean, it's clear, man, you know, like,
17 it says that anytime that an affiant includes false
18 information or exculpatory material. The false
19 information clearly comes from a sworn affidavit.
20 When you stated that you had something that you
21 didn't have, which is another -- which you stated on
22 another sworn occasion. These are two sworn
23 occasions when you are not supposed to lie. And if
24 you do say anything different, that is an act of
25 perjury. There's where the act of perjury comes from

1 --

2 THE COURT: You're talking about the video?

3 MR. KENNEDY: No, no, no, not specifically the
4 video, just -- I mean, everything is --

5 It says, Reckless disregard for truth or an act
6 of perjury or exculpatory material.

7 Which my situation, my case, fits every aspect
8 of why the Franks hearing should be granted and the
9 motion should be -- I mean, the evidence should be
10 suppressed because my case fits every aspect of it.

11 If I can prove that you lied and I can prove
12 that you left out certain things, I mean, it's just
13 clear I can prove you have nothing besides -- my
14 entire case is based on hearsay. Everything about my
15 case is based on assertions. He stated this, he said
16 this. But when I used what he said against him, it's
17 like oh, well, you can't, you know, what is that. I
18 mean, I'm saying I'm trying to figure out -- I'm just
19 trying to figure out how --

20 THE COURT: Mr. Grounsell, on the Franks
21 hearing, what is your response to Mr. Kennedy's
22 argument that there is a prima facie case in evidence
23 to go to forward with a Franks hearing?

24 MR. GROUNSELL: The State doesn't feel that he's
25 reached that burden. I don't know the showing that

1 he has done to show that, that there has been
2 something that has been wrong or omitted for the
3 purpose of misleading a magistrate judge.

4 THE COURT: How about the argument about the
5 preliminary hearing testimony and -- the difference
6 in the preliminary hearing testimony and the
7 affidavit?

8 MR. GROUNSELL: Your Honor, I haven't been
9 provided anything that Mr.~Kennedy is talking about
10 in regards to -- I can't tell you what about the
11 preliminary hearing he's saying versus what the
12 testimony is that would show this clear thing that
13 he's talking about.

14 MR. KENNEDY: I can play the audio for you right
15 now. It's only like nine minutes long.

16 THE COURT: Hold on, Mr.~Kennedy. What is the
17 argument that supports your argument about the
18 difference in the preliminary hearing and the
19 affidavit for the search warrant?

20 MR. KENNEDY: I mean, my argument is that on two
21 sworn occasions, once again, that you cannot lie and
22 you are under oath, that you have to be 100 percent
23 truthful, you stated two completely totally different
24 things--

25 THE COURT: What are the two things?

1 MR. KENNEDY: He stated that he had me on video
2 and he didn't have me on video. In the search
3 warrant affidavit, he states that I'm on video, which
4 is misleading to somebody. If I gave this to
5 anybody, they would read this and they would think
6 that I was on video. But when you go back in the
7 preliminary hearing and you clear up your lies and
8 you state that I'm not on video -- it's in Paragraph
9 Four in the preliminary hearing transcript, on Page
10 6, I think 14 and 20 where you can see where he --

11 MR. GROUNDSELL: Your Honor, the statement I'm
12 reading, the informant provided a statement of the
13 events which was consistent with audio and visual
14 surveillance. That's exactly what happened. I don't
15 know what the falsity is in that. They have the
16 audio of it. DEU was visually in contact with this
17 thing the whole time.

18 Even if we were to argue about the video and
19 just say we were buying that argument that he said
20 video and audio, that's the case. They were equipped
21 with video and audio equipment. But because of where
22 that camera was placed, it was unable to actually
23 capture him on video. It only captured the audio. I
24 don't see where there has been a deliberate omission
25 or a wrong anywhere in the affidavit regarding that.

1 THE COURT: What Mr.~Kennedy is arguing is that
2 in the preliminary hearing, the officer was asked was
3 the -- so the CI was wearing a video and audio
4 device? The answer is, Let me double check on that.
5 The answer, In this particular incident, we always
6 have tried to get audio and video, particular. The
7 way the surveillance device was situated, didn't
8 capture video of the defendant, but we did have
9 visual contact throughout the whole thing. We also
10 followed Mr.~Kennedy back to his apartment in his
11 white Mustang with red racing stripes, back to his
12 apartment and observed him from that location step
13 out of his car and walk toward his apartment,
14 positively ID'ing him during that incident.

15 MR. GROUNSELL: I guess that's -- the State's
16 argument to you is that that is not a lie and neither
17 is anything in the affidavit. The affidavit says the
18 informant and his property was searched. The
19 informant provided a statement of the event, which
20 was consistent with audio and visual surveillance.
21 That is exactly what he said in the preliminary.
22 There's no --

23 THE COURT: And you're referring to the
24 testimony that said, We did have visual contact
25 throughout the whole thing?

1 MR. GROUNDSELL: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. KENNEDY: Your Honor, I would like to say
4 something.

5 THE COURT: Yes, sir.

6 MR. KENNEDY: So if you were reading this, where
7 it states that, you know, I was -- that CI was given
8 video and audio -- yeah, video and visual
9 surveillance equipment, video equipment -- because in
10 here, it says surveillance equipment. So when you
11 say surveillance, it's still the same thing. Visual
12 or video is, basically, saying the same thing.

13 When you stated that you gave this person this
14 technology and these devices that could capture
15 somebody selling something and you could hear exactly
16 what they're doing inside the video and then you come
17 down here and you put that is consistent, you said
18 that you have a statement of the event, which is
19 consistent with audio and visual surveillance, that
20 would force anybody to believe that I was on video.
21 You didn't state there oh, yeah -- you didn't correct
22 and go back and try to conduct another controlled buy
23 where you could capture me on video because you know
24 there was no video to be captured. You know there
25 was no controlled buy to be conducted. All of this

1 is completely fabricated. That's why I'm not charged
2 with distribution of an illegal drug because I
3 didn't distribute any drug to anybody and The State
4 doesn't have anything to prove that. The State
5 doesn't have anything to prove that. Why would you
6 let me out?

7 So you're saying, basically, like, oh, I sold
8 something to somebody, but if you had came to my
9 house and didn't find anything, I just would have got
10 out and selling some to somebody. You didn't charge
11 me. I was never charged. I'm not here facing
12 charges for distribution of illegal substance,
13 clearly proving that The state knew that they could
14 not furnish and this investigator knew that they
15 could not produce anything to prove that I sold
16 something to a confidential informant. If anybody
17 read this -- if that's the case, you should have put
18 it inside of here that well, he wasn't seen on
19 camera, but we did have this. Just by reading this,
20 you would think that I was on camera, anybody would
21 think that. It's impossible for somebody not to
22 think that I was on camera once you say we equipped
23 the confidential informant with video and audio
24 surveillance --

25 THE COURT: All right. I hear your argument.

1 Yes, sir.

2 MR. GROUNSELL: Your Honor, Mr.~Kennedy has a
3 dictionary over there. The difference between saying
4 audio and video surveillance and audio and visual
5 surveillance, I don't know what the argument is
6 about, he hasn't lied about it either way.

7 MR. KENNEDY: I don't think there's no
8 difference.

9 THE COURT: Next argument, Mr.~Kennedy.

10 MR. KENNEDY: You know, it's just clear, man.
11 You know, like, I'm not -- I'm here representing
12 myself. I don't have the means to really prove --
13 the only thing I can do is prove based on what I've
14 been given. The State has proven based on what they
15 say. I've been given, you know, documentation and,
16 you know, evidence that I can use to my defense and
17 that can help me out.

18 The only thing The State -- my entire case, once
19 again, is based on hearsay. The State has not
20 furnished anything beside what I ask and seek for in
21 the motion to compel. You don't have nothing to
22 prove or validate nothing that you say occurred or
23 happened. Once again, it's all unproven testimony
24 and assertion by officers.

25 THE COURT: Well, that's --

1 Yes, sir.

2 MR. GROUNSELL: Your Honor, they surveilled this
3 whole situation. DEU was along, they watched -- they
4 pulled into the parking lot. They watched him deal
5 drugs, they followed him back to his house. I don't
6 -- there hasn't been any --

7 THE COURT: Mr. Kennedy, next argument. You've
8 gone into detail about your argument. Is there
9 anything else you want to add on that one?

10 MR. KENNEDY: Also, as well, inside of the
11 search warrant affidavit, he stated that he had video
12 and audio -- I mean, not video and audio, my bad, my
13 bad. He stated that he had, you know, a statement
14 from a confidential informant and he stated that he
15 had a six-person lineup.

16 According to this preliminary hearing
17 transcript, I don't know if I gave you a copy of that
18 part or not, but I may have -- yeah, I gave it to
19 you. I think it's on Page, I want to say, 8, it's on
20 Page 8. He was asked did he have anything documented
21 pertaining to his investigation? What he stated is
22 that he doesn't have it, he doesn't believe that he
23 withheld anything and that he didn't present anything
24 documented to The Judge because he didn't have it.

25 It clearly disproves that where he stated that

1 he had a statement from a CI or a six-person lineup.
2 How do you say you don't know for sure if you have it
3 with you? He said, I certainly don't have it with me
4 and I don't know that I've withheld anything. You
5 don't have nothing documented about nothing that you
6 say you have which is documented evidence. It's not
7 in the search warrant affidavit. It's made to
8 believe that you have documented evidence as well.

9 Not only did you say that you had video
10 surveillance, but you stated that you had documented
11 evidence to support your search warrant affidavit.
12 Inside a preliminary hearing, you didn't provide --
13 and you stated on record that you don't have anything
14 documented pertaining to your case. You don't have
15 anything documented --

16 THE COURT: All right, Mr. Grounsell.

17 MR. GROUNSELL: Your Honor, all that is
18 documented. I don't know what -- and a preliminary
19 hearing is a probable cause hearing for the actual
20 warrant for which he is charged and which we are here
21 today. Part of that hearing shouldn't include
22 anything to do with the search warrant because that's
23 not what the probable cause is based off of, it's for
24 the warrant they actually drew on that day.

25 So if I was the attorney in that preliminary

1 hearing, I would have shut down any line of
2 questioning about that and I would have instructed
3 them not to answer any information about CI
4 information. You can't give that out during a
5 preliminary hearing.

6 THE COURT: All right.

7 Mr.~Kennedy, what's your next argument?

8 MR. KENNEDY: There's a specific hearing called
9 a camera hearing where anything that he feel that he
10 doesn't want to disclose to me inside the courtroom,
11 I can step outside the courtroom and he can show it
12 to the courtroom. He can show a statement from a CI.
13 Because you're saying you withholding this
14 information. I'm trying to figure out -- he said he
15 got it over there, I'll step outside the courtroom
16 right now. He can show it to The Court. Me stepping
17 outside this courtroom would not reveal the
18 confidential informant at all. Show him anything,
19 show him a video, show him a video of somebody
20 walking up to my car. Show him anything. You don't
21 have this. You don't have a statement from the CI.
22 You don't have a six-person lineup where a
23 confidential informant circled me out and stated that
24 yeah, I purchased drugs from this person with an
25 affidavit. If he did, I'll step outside this

1 courtroom.

2 THE COURT: So what is your argument? What
3 argument are you making?

4 MR. KENNEDY: I mean, the argument that I'm
5 making is they don't have it. He stated he has
6 documented --

7 THE COURT: They don't have what?

8 MR. KENNEDY: He don't have a statement from the
9 CI. He don't have a six-person lineup. He don't
10 have documentation to prove that he signed out
11 government funds to buy or purchase drugs from me.
12 They don't have none of this that you've stated -- or
13 that you should have. How could you not have nothing
14 --

15 THE COURT: We're talking about a search
16 warrant. We're talking about the search warrant.

17 MR. KENNEDY: You have to show it.

18 THE COURT: All right, anything else?

19 Yes, sir, Mr. Grounsell.

20 MR. GROUNSELL: I don't have anything right now,
21 Your Honor.

22 THE COURT: Mr.~Kennedy, next -- what other
23 arguments --

24 MR. KENNEDY: I mean, at this point, to verify
25 and prove what I'm saying, I'm requesting a camera

1 hearing. I'm requesting a camera hearing. A camera
2 hearing is, basically, where I step outside the
3 courtroom and the State has to furnish and show the
4 courtroom what you have against me that you say that
5 you don't want to show. It's called an in-camera
6 hearing. It's attached --

7 THE COURT: I'm familiar with it.

8 MR. KENNEDY: It's attached to a Franks hearing.
9 He can do that. I'll step outside the courtroom.
10 Show people. Show people what you say that you have
11 that you don't want me to see so bad to reveal the
12 confidential informant. I don't think The State
13 cares that much about who tells or who don't tell. I
14 ain't never seen that. I ain't never seen that.

15 THE COURT: All right, what's your next motion
16 in this case?

17 MR. KENNEDY: A motion in limine.

18 THE COURT: What's your motion in limine?

19 MR. KENNEDY: My motion in limine is based on,
20 you know, The State violating warrant statute,
21 section --

22 THE COURT: Violated what?

23 MR. KENNEDY: Warrant statute, search warrant
24 statute, which is Section 17-13-140. Ground two, The
25 State as additional officers failed to act in

1 accordance with South Carolina Code and warrant
2 statute 17-13-141. And ground three, the affiant and
3 the executing officers failed to comply with South
4 Carolina Code Warrant Statute 17-13-150.

5 THE COURT: What are your grounds for the record
6 on that, on those, 17-13-140 and 141 and 17-13-150?

7 MR. KENNEDY: Okay. My grounds on that is,
8 basically, the following evidence should be
9 suppressed and the search warrant should be voided.
10 Because the magistrate failed to act in accordance
11 and, you know, The State has failed to act in
12 accordance with every aspect of warrant statute.
13 They violated every aspect of what they should have
14 did, but didn't do.

15 Section 17-13-141 clearly states that the
16 magistrate ministerial record should provide every
17 judicial officer and keeps records of authorized --
18 keeps records authorized to issue search warrants and
19 records reflecting among the officer's reason for
20 issuance of a search warrant, which, you know, is
21 attached to the magistrate judge's search warrant
22 law. That doesn't have any information about the
23 confidential informant or who the confidential
24 informant is. The State has already stated that they
25 don't have that documentation.

1 State vs. Wise, 272 S.C. 384, 252 S.E.2d 294
2 held That the failure to fulfill a statutory
3 ministerial record does not void the search warrant
4 unless the defendant can demonstrate and show
5 prejudice.

6 State vs. Sheldon, 344 S.C. 340 also states That
7 the exclusionary rules should apply based on
8 constitutional grounds, but not statutory
9 violations, but where a defendant can demonstrate
10 prejudice at trial resulting from failure to follow
11 statutory procedures.

12 You know, it's clear, Your Honor, that -- you
13 know, like, my demonstration of prejudice comes from
14 that, you know, the magistrate failed to act in
15 accordance with a statute that would prove that they
16 actually had probable cause to search my residence.
17 Without that documentation, it's easy to believe --
18 which me knowing that everything is fabricated, it's
19 to know that these officers conducted a warrantless
20 search. At the time they searched my house and the
21 time they searched my residence, they did not have a
22 warrant. Because even --

23 I can show you on body cam footage and I can
24 show you on video right here that I have in front of
25 me that I repeatedly asked to see a copy of the

1 search warrant numerous times and they failed to show
2 me the search warrant, which is a violation of the
3 warrant statute. That means you could easily just go
4 in somebody's house and be like, hey, look, I'm
5 fixing to run in this house, we're not going to show
6 them nothing, we're going to act like we found
7 something, put something, whatever they do and
8 they're going to draw a search warrant up together
9 and say hey, look, this is the search warrant that we
10 had.

11 It's clear, Your Honor -- I've got the copy of
12 my search warrant. There's no copy, original stamp,
13 no filing marks, anything to verify, to prove that
14 these people actually had a search warrant before
15 they entered my home. The search warrant is bare.
16 There's nothing on it. You could have did this at
17 any time. I have a copy of the search warrant here.
18 But yeah, there's no proof that any of this was ever
19 done, filed on record, none of that. But that's not
20 a legitimate search warrant. That's something
21 anybody could put together. They could have put that
22 together last week if I wouldn't have had it before
23 then.

24 THE COURT: What is the violation that you're
25 arguing that they committed with the search warrant?

1 You said they didn't provide with a copy, is that
2 what your argument --

3 MR. KENNEDY: Yeah, they didn't present the
4 search warrant? Also, the ministerial -- you know,
5 the magistrate judge did not keep record of the
6 search warrant ever been issued pertaining to my
7 case, my residence. That search warrant up there is
8 missing number roll, filing marks, which is also a
9 violation of South Carolina Rules of Criminal
10 Evidence. How can The State present an actual search
11 warrant against me and it's a violation of
12 documentation? The State cannot present that. So if
13 that's what they try to use, which they furnished to
14 me a copy of, they can't use it because it's in
15 violation of the South Carolina Rules of Criminal
16 Evidence. How can the State produce or use something
17 against me and say it's valid and you don't have the
18 -- you cannot prove that this is valid? It wasn't
19 never done properly.

20 THE COURT: All right. What's the State's
21 response?

22 MR. GROUNSELL: Your Honor, the State's
23 response, part of that is in the motion to compel,
24 some of these things he tried to compel discovery on
25 and it was denied by Your Honor. It is a ministerial

1 record statute. And The State would argue even if
2 there was a violation, which I have a copy of the
3 Greenville County Sheriff's Office, Tyler Workman
4 left a copy of the search warrant inside the
5 apartment once the search was complete. So a copy
6 was provided to him.

7 THE COURT: All right, Mr.~Kennedy, The State
8 says that a copy was provided and that an officer
9 left it --

10 MR. GROUNSELL: At his residence.

11 THE COURT: At your residence.

12 MR. KENNEDY: At the time the warrant was
13 executed, I was present and should have been shown
14 and presented a copy of the search warrant before you
15 touched me, before you did anything. Before you
16 proceeded to go into my property, search my vehicle,
17 handcuff me, do any of that, I should have been
18 provided with a copy of the search warrant. Because
19 if not, basically, the State conducted a warrantless
20 search. Leaving something there that can't even be
21 used -- once again, that search warrant is not valid.

22 The search warrant has -- you cannot use
23 documentation or court orders against somebody that
24 wasn't filed or placed on record. It's a violation
25 of South Carolina documents. It's a violation of

1 South Carolina Rules of Criminal Evidence. Once
2 again, you got the copy of it. The search warrant
3 doesn't have anything on it. An officer could have
4 went straight to his car and just typed up something
5 and put something together.

6 Every search warrant that I've ever seen from,
7 you know, just past cases and just viewing other
8 peoples have always had copy stamps, original stamps,
9 filing marks, number rolls with my case number, all
10 the -- all the specific attributes about this search
11 warrant that will validate and prove that this search
12 warrant was actually valid. They don't have none of
13 these. They don't got none. You came in my house.
14 You put the search warrant together. It's clear you
15 violated every aspect. It's not hard to see, like,
16 you violated everything. Everything that you were
17 supposed to do as law enforcement in the state, you
18 failed to do that. Everything that you say you have
19 against me, you don't have none of it.

20 I'm saying what else I got to do? What else I'm
21 supposed to do? Only thing I can do is present what
22 I have in front of me today. I don't have any
23 evidence. Everything else y'all got is words, words,
24 he said this, he said this, this is what he's saying
25 now. And none of that happened.

1 THE COURT: All right, Mr. Grounsell, what is
2 your argument in relation to 17-13-150, which says, A
3 person served a search warrant shall be furnished a
4 copy of the warrant and supporting affidavit. When
5 any person is served with a search warrant, such
6 person shall be furnished with a copy of the warrant
7 along with the affidavit upon which such warrant was
8 issued.

9 MR. GROUNSELL: It was served upon his
10 residence. I can testify directly that, obviously, I
11 wasn't the one there. It would have to be one of the
12 DEU investigators. I don't know if it was brought
13 down to the jail or just left on the property. The
14 State would argue just leaving one at his residence
15 would suffice.

16 MR. KENNEDY: Your Honor, I can show you body
17 cam footage where I repeatedly asked the officer --
18 it's a cordial encounter. You know, they hopped out,
19 put guns on me, violated the seizure aspect of my
20 Fourth Amendment right and everything because, at
21 that time, there were no traffic violations committed
22 or warrants for my arrest. The police illegally
23 blocked my car in.

24 To effectuate an encounter, the only thing
25 you're supposed to do is just hey, hey, sir, look, at

1 this time -- in his preliminary hearing, the
2 transcript, he stated that he -- I can't remember the
3 exact words, but he's saying -- let me -- let me -- I
4 don't want to say anything that's false. He stated
5 that he -- you got it up there, my bad.

6 But he, basically, said that he confronted me.
7 That's what he said, he confronted me. I mean, to
8 confront somebody is like hey, look, Mr.~Kennedy, I'm
9 Officer Jonathan McWhite, I'm here today based on
10 this, boom, boom, boom. I have a search warrant to
11 search your house and your residence. That's a
12 confrontation -- that's a confront. But when you hop
13 out -- when I pull into my parking spot and you blue
14 light my car with three or four other vehicles, you
15 blue light my car and not only that, you hop out with
16 show of authority and draw guns on me, that is not --
17 that's not a -- that's not how you confront somebody
18 in order to conduct a search warrant.

19 And I have the video that's right here to prove
20 that during this encounter on different body cam
21 footages that I continuously asked to be presented
22 with the search warrant. I continuously asked why
23 are you here? I just moved here. Ain't nothing
24 going on at my house. What you got going on? Oh,
25 oh, don't worry about that. If we didn't have reason

1 to be here, we wouldn't be here. But I continuously
2 asked for them to present me --

3 After they detained me and put cuffs on me, Your
4 Honor, the entire encounter was cordial. I'm talking
5 about it was so cordial and so calm that you could
6 easily, out of respect for me, you could easily man,
7 here you go, Mr.~Kennedy. Look, man, it's a search
8 warrant, boom, boom, boom, boom.

9 And not only that, with the body cam footage, I
10 can also prove me and the investigator had a cordial
11 conversation. And I asked him, yeah, did somebody --
12 what's going on, man, somebody told you I had
13 something going on in my house --

14 THE COURT REPORTER: Sir, slow down.

15 THE COURT: Yeah, you need to slow down,
16 Mr.~Kennedy.

17 MR. KENNEDY: Okay.

18 Well, he denied it. He was like, no, you just
19 have a distinctive car. We've seen you stop numerous
20 places. So he really denied me selling something to
21 somebody. He denied all of this. And I have the
22 body cam footage to prove all of this. I don't know
23 if you want to see it. I could show it to you. But
24 all -- it's five or six videos. Each and every last
25 one of these videos would prove that, you know,

1 everything that I've stated inside of this courtroom.

2 Not only that, it's just, you know, like I got
3 him plain as daylight, you know, like, where he
4 stated -- where I stated, Could you show me the
5 search warrant? Man, where the warrant is? I even
6 stated on camera, body cam, y'all probably typing it
7 up right now because I ain't seen nothing. Where the
8 search warrant at? Nobody ever showed me a search
9 warrant no time during this entire encounter. It was
10 just here, leaving it after everything is done after
11 you've illegally intruded somebody's residence. Of
12 course, it's nothing to get a piece of paper and type
13 it up. You can't prove when those documents were
14 ever done.

15 With that being said, you violated South
16 Carolina Rules of Criminal Evidence. You using
17 documentation papers against me that are in violation
18 of South Carolina Rules of Evidence so in accordance
19 to South Carolina Rules of Evidence, that is not
20 evidence, so there's no search warrant. You don't
21 have no search warrant. That's what's going on.

22 THE COURT: Mr. Grounsell.

23 MR. GROUNSELL: Your Honor, one, The State
24 doesn't plan to introduce the affidavit as any type
25 of evidence in this trial. But the statute does not

1 require that he be served upon his person. You don't
2 know have to give it to him. He is furnished with a
3 copy. And leaving it at his residence, at his house
4 is furnishing him with a copy of that. I can
5 understand he's upset that he didn't get it right
6 then when he wanted it, but there is no requirement
7 to do so.

8 And even if there was a requirement to do so,
9 The State would say he was not prejudiced in any way.
10 I mean, the search warrant, they had it. It was a
11 valid search warrant to go there. It was issued by a
12 magistrate. They were going to be able to search
13 regardless, whether he had it in his hand or didn't
14 have it in his hand.

15 THE COURT: When was the -- according to The
16 State, when was the search warrant left in his
17 residence?

18 MR. GROUNSELL: Investigator Workman, who's
19 here, he left it when they pretty much wrapped up
20 their investigation for the night. He was the
21 scribe, so he packed up the evidence and left and he
22 left the search warrant behind because he was the one
23 who was tasked with drafting the return.

24 THE COURT: All right. That's Investigator who?

25 MR. GROUNSELL: Investigator Workman.

1 THE COURT: All right.

2 MR. GROUNDSELL: He's right here behind me, Your
3 Honor.

4 THE COURT: Let me ask you this before we go any
5 further. It's 1:30 right now. I understand you have
6 more motions; is that right, Mr. Kennedy?

7 MR. KENNEDY: Only motions that I actually have,
8 the motion to suppress the evidence, the motion for a
9 Franks evidentiary hearing and the motion in limine.
10 If we going to continue, I don't know if I can come
11 back with one motion. I don't know about what's
12 going on.

13 THE COURT: Now, it's your time to submit any
14 motions, pretrial motions that you have. The reason
15 I'm asking that is it's 1:30 and I wanted to give
16 everybody a lunch break. And if there's going to be
17 more pre-trial motions, then we would resume after
18 lunch and delay in picking a jury. I mean, from a
19 time aspect, I want to make sure that we have that
20 time. I don't want the jury sitting down there.
21 They already been sitting down there this morning. I
22 don't think a jury has been picked in the other case.
23 Logistically, I was just trying to figure out what we
24 have left. It's 1:30 now. We need to take a lunch
25 break. Give everybody a lunch break.

1 So my thought -- what motions -- do you have
2 some motions as well? I'm not tying you down, trying
3 to pin you down, but I'm just trying to get an idea
4 from a time perspective.

5 MR. GROUNSELL: Your Honor, like I stated at the
6 beginning, depending on how you rule on these
7 motions, obviously, will dictate what motions we have
8 to put forth. I believe that there potentially needs
9 to be a Jackson v. Denno hearing on some statements
10 that were made and then the State would have a couple
11 motions that would be in response to however you
12 rule.

13 THE COURT: Well, my inclination now is that
14 we've got some other issues that we have to handle
15 pretrial from both sides. And I don't want to have
16 the jury sitting down there all afternoon. Again,
17 it's 1:30, we do need to take a break. Everybody
18 working here needs to have a break, lunch as well.
19 Maybe we resume back in an hour or so. And my --
20 again, my inclination is maybe just go forward and
21 may have a Jackson v. Denno hearing. So that may
22 take up some time this afternoon depending on the
23 rulings here.

24 My thought is go ahead maybe and break for lunch
25 now.

1 And real quickly, though, Mr.~Kennedy, the
2 motion in limine was your last one?

3 MR. KENNEDY: Yes, sir, but I was -- there was
4 other things that I want to state inside that motion.

5 THE COURT: All right. I'm not trying to rush
6 you, how long --

7 MR. KENNEDY: It won't take long.

8 THE COURT: It won't take long to get on the
9 record?

10 MR. KENNEDY: Probably five minutes.

11 THE COURT: I'll let you put those on the record
12 and then we'll break for lunch and then resume back
13 here. So I'll hear from you.

14 MR. KENNEDY: Okay. You know, just based on,
15 you know, like, Section 17-13-141, the recordkeeping,
16 you know, the magistrate judge, The State doesn't
17 have any record of a search warrant ever being found,
18 which is, you know -- it's really -- you know, it's
19 substantial to support what they say they have
20 against me. And the fact that, you know, I was never
21 presented with a search warrant kind of verifies and
22 proves that it's not a record of a search warrant
23 because when you conducted a search warrant, there
24 wasn't a search warrant.

25 You know, I could see if you violated one

1 aspect, but you violated every aspect of warrant
2 statute. You violated every last aspect of warrant
3 statute. I mean, it's kind of like, okay, we slipped
4 up and made a mistake on one, all right. I could
5 take that, but when you violated every aspect of the
6 warrant statute. You don't have a record of it and
7 you didn't present it to me when you conducted it
8 proves that there wasn't a warrant. You conducted a
9 warrantless search.

10 I also have a demonstration of prejudice coming
11 from, you know, the same officers who conducted the
12 search warrant were the same officers who conducted
13 the traffic violation harassing me a month before.

14 THE COURT: Well, let's -- what does that have
15 to do with -- what kind of motion is that?

16 MR. KENNEDY: I mean, it's not specifically a
17 motion, it's just to show that these same people come
18 from another situation where they harassed me and
19 targeted me based on, I guess, my appearance and how
20 I look because that's what the officer kept telling
21 me. I know you sell something. You look like you
22 sell drugs. I mean, just to prove that these people,
23 you know, came together and was like, look, man, we
24 got this dude through the mobile microphone counting
25 a large amount of money. He's probably selling

1 something. Let's just go in his house without a
2 warrant. He probably don't know the law, so let's
3 just do this. You know, that's what I believe
4 happened.

5 And not only that, the search warrant that was
6 left at the apartment and furnished to me inside my
7 Brady discovery motion didn't contain the original or
8 copy stamps that is usually placed on search
9 warrants.

10 THE COURT: What are you talking about there?

11 MR. KENNEDY: You know, when a search warrant is
12 issued and executed, they have stamps on them, which
13 may say original and copy or copy -- it's always
14 going to have original on it. It don't have none of
15 those marks on it. It has no marks to prove that
16 this is original or a copy of something or just the
17 only thing we came up with, here it is right here.
18 There's no proof of that.

19 And not only that, it also didn't contain any
20 electronic filing marks or electronic number rolls
21 that are used to verify the time and date that
22 documents were signed, dated and issued by a
23 magistrate, which is another violation of South
24 Carolina Rules of Criminal Evidence, Rule 104 and
25 Rule 103. Where a duplicate is admissible to the

1 original unless the authenticity of the document that
2 is shown is at question.

3 In this situation, that document is at question
4 because you don't have no way to prove or verify that
5 these documents -- that this is the actual document
6 that has been filed. The warrant was allegedly
7 issued on September 24th. It was executed on October
8 the 2nd. Why -- you don't have no reasonable
9 explanation of why this was never placed on record or
10 filed or have anything on it. If this was issued
11 September the 24th by a Judge and signed and dated,
12 why eight days later you can't prove that this was
13 ever done? You just come with a just a piece -- he
14 should have just wrote it on a piece of notebook
15 paper. That's, basically, what you did. You wrote
16 it on a piece of notebook paper. That's what you did
17 and said oh, yeah, we had a search warrant.
18 Illegally intruded my residence.

19 I mean, they violated every statute, warrant
20 statute. I mean, it's -- I mean, it's clear. It's
21 blatant, you know what I'm saying, to not honor
22 respect. What's going on here is just, you know,
23 it's an abuse of discretion, man, against me because
24 everything they have stated has been unsupported.
25 I'll present it, show facts, show they lied, show

1 where they violated every statute. Ain't nothing
2 else I can do. I'm just going by the law. That's
3 the only thing I have to go off of. That's the only
4 thing I'm doing. I'm going off the law. If I was
5 guilty of something, I would have been took my time.
6 I would have took it. I'm not running from prison,
7 I'm running from -- I'm trying to be, you know,
8 treated fairly. I'm a victim in this situation. I'm
9 not saying I'm a victim just because oh, I'm perfect
10 or I'm just some perfect type individual. I'm a
11 victim of police brutality. These individuals
12 violated my rights, illegally targeted me. That's
13 what happened. That's my whole situation.

14 THE COURT: What other evidence do you have?
15 What other evidence?

16 MR. KENNEDY: I mean, the videos. You want to
17 watch the videos?

18 THE COURT: What do you say the videos are going
19 to show?

20 MR. KENNEDY: The videos are going to show me
21 continuously asking to be presented -- and I have the
22 time, so we don't have to go through all of it. I
23 have the times written down where I continuously
24 asked to be presented with the search warrant
25 affidavit. The videos will also show, you know, how

1 they conducted the search, which was a violation of
2 the Constitution, you know, my Fourth Amendment, the
3 seizure aspect. It's going to show the same officer
4 tried to bribe me into cooperating. He was willing
5 to sweep everything under the rug as long as I --

6 THE COURT: Wait a minute, you're telling the
7 Court that your video shows he's trying to bribe you?

8 MR. KENNEDY: Most definitely.

9 THE COURT: In what way?

10 MR. KENNEDY: If you're willing to cooperate,
11 we -- none of this -- basically, sweep it up under
12 the rug. What you want to do be a CI? And I was
13 like, no, I ain't with it. I don't even know why you
14 at my house. That's exactly what I told him. You
15 can ask him right now.

16 Did you or did you not ask me that?

17 THE COURT: You don't direct anything to anybody
18 except me.

19 MR. KENNEDY: My bad. My bad. He shook his
20 head yeah, but my bad.

21 THE COURT: All right, anything else?

22 MR. KENNEDY: Once again, Your Honor, only thing
23 I got is everything I got.

24 THE COURT: I'm giving you the opportunity to
25 make sure that you make a record and put anything on

1 the record and make any arguments that you got. So I
2 want to make sure that you're making all of your
3 arguments.

4 MR. KENNEDY: I mean, I could do this for days,
5 but I already know, like, there's nothing else I
6 could actually say the same thing over and over and
7 over again. That's only thing I can do.

8 THE COURT: All right. What we're going to do
9 is we're going to take break until 1:45. I do want
10 The State to just respond to 17-13-140, 141, then
11 17-13-150. The Defendant's argument about the video,
12 I do want to hear argument on that, but I do want to
13 take a break for lunch right now.

14 I think due to the additional pretrial motions,
15 what I'm hearing, I think the best thing to do is
16 probably just finish the pretrial motions this
17 afternoon when we come back. I don't think we'll
18 have time to pick a jury. We'll handle the pretrial
19 motions this afternoon and then we will start the
20 trial tomorrow by picking the jury.

21 All right. We'll be in recess until 2:45.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: All right, let me tell you from a
24 time logistics, what I want to do, go ahead and
25 select the jury this afternoon. In fact, go ahead

1 and get that done now, get that taken care of. And
2 if there are any other additional motions, then I can
3 excuse the jury, let them -- go ahead and pick the
4 jury, excuse them until in the morning and we can
5 handle any other pretrial matters this afternoon.
6 Then we can start first thing tomorrow morning. All
7 right.

8 MR. GROUNSELL: That works.

9 THE COURT: All right. And I have --
10 Y'all may sit down.

11 I have reviewed all The Defendant's motions. I
12 have reviewed the case law, reviewed the arguments by
13 The Defendant on the issues regarding his motion to
14 suppress and motions in limine. And as to the motion
15 to suppress, I deny those motions at this time as
16 well as the motions in limine based on the totality
17 of the circumstances and the lack of prejudice as
18 well. On all issues those motions are denied.

19 Your motions are noted, though, for the record
20 and/or preserved.

21 All right. Before the jury gets up here, again,
22 for timing purposes, what motions will The State
23 have, if any, this afternoon?

24 MR. GROUNSELL: Your Honor, I believe there
25 needs to be a Jackson v. Denno hearing regarding some

1 of the statements he made after being Mirandized.

2 THE COURT: Okay.

3 MR. GROUNSELL: There is a body cam worn by
4 Officer Franco, who was here today who captured a lot
5 of that. And Officer Franco was present along with
6 Investigator McWhite on several of those statements.
7 So they're kind of just littered throughout this body
8 cam. So I don't know, Your Honor, if you want me to
9 cut the specific clips that we think are relevant
10 with regards to Jackson v. Denno and have you listen
11 to them along with their testimony. Or however you
12 want to do that.

13 THE COURT: I think that's probably -- if you
14 can cut to the clips where -- because I'm assuming
15 that you're talking about a fair amount of time on
16 those?

17 MR. GROUNSELL: Yes, Your Honor. I think we can
18 probably narrow it down probably to about 20 minutes.
19 It's kind of hard to, you know, just right to the
20 exact statement. There has to be some sort of
21 context to give it to you so there will be a little
22 bit on each one of the statements so you can
23 understand what was being said and what was being
24 done.

25 THE COURT: So you want me to review it before

1 you put testimony up?

2 MR. GROUNSELL: I think we'll put the testimony
3 up and if we want to supplement with the videos as
4 well. Because I can't tell you -- I don't have
5 transcribed every exact statement he makes. He makes
6 several just along the way. So it might just be
7 easier to play it for you and you hear it and be able
8 to know exactly what the statement was.

9 THE COURT: Okay, we'll do that.

10 MR. GROUNSELL: Also, The State -- granted
11 giving your motions and how you ruled on his motions,
12 The State would make a motion to exclude The
13 Defendant from discussing the search warrant in the
14 case in chief. The search warrant is a matter of
15 law, Your Honor. And I believe it would be confusing
16 to a jury if he's allowed to go on challenging the
17 search warrant to a jury when Your Honor has already
18 ruled, as a matter of law, that it was a valid search
19 warrant.

20 THE COURT: All right, Mr.~Kennedy.

21 MR. KENNEDY: I just want to say, so you denied
22 all my motions?

23 THE COURT: Yes, sir, that's correct. Your
24 arguments are preserved for appeal. And, by the way,
25 these are your -- I believe, these may be your

1 documents. I want to return those back to you.

2 MR. KENNEDY: To present -- accept the search
3 warrant -- to say that it's legal, to accept it, I
4 mean, the documents -- as I've already stated, those
5 documents are in violation of South Carolina Rules of
6 Criminal Evidence. How could you -- how can
7 documents in violation of--

8 THE COURT: Mr. Kennedy, that's been ruled upon.
9 Now, you're entitled to cross-examine -- when
10 witnesses are put on the stand, you're certainly
11 entitled to use the powers of cross-examination. But
12 you can't refer to the search warrant itself or make
13 any reference, I've ruled on that issue. So as far
14 as what happened at the apartment or wherever it was,
15 you're certainly entitled to cross-examine witnesses
16 on what they did and did not do at that time.

17 MR. KENNEDY: So you're saying, basically,
18 during the trial, I cannot mention or bring up the
19 search warrant?

20 THE COURT: Well, it depends on you how you
21 bring it up. That's -- I'll have to rule upon that.
22 I don't know what you intend to do or how you intend
23 to bring it up.

24 I assume The State -- sounds like The State's
25 motion is that The Defendant cannot bring up the

1 illegality of the --

2 MR. GROUNSELL: The illegality of it and
3 challenging what was in -- the context of what was
4 inside the search warrant. Your Honor, you ruled
5 that probable cause existed within the search
6 warrant. Him being able to attack that probable
7 cause really would be just confusing to the jury.
8 It's been ruled that it is a valid search warrant, so
9 any discussion about that would be confusing to them.
10 They would think that they were -- it was a matter
11 for them to decide.

12 THE COURT: Mr.~Kennedy, as I just said a little
13 while ago, you can cross-examine witnesses as far as
14 what happened that particular day or night, whenever
15 it was, but as far as challenging the probable cause
16 of the search warrant, I've already ruled on that, on
17 that issue. So again, you are certainly entitled to
18 cross-examine witnesses on what happened that night,
19 but not as to the legality or lack of probable cause
20 as to the search warrant and the affidavit.

21 MR. KENNEDY: So my entire case is based on a
22 search warrant that I just -- I'm not supposed to be
23 able to mention the search warrant? I mean, I don't
24 understand why would that be -- I mean, I can
25 understand what he's saying it could be confusing,

1 but I don't think -- seems like, you know, the law is
2 not being respected and honored. I've already given
3 you the law and it's like, you know, my motions are
4 deliberately being denied as abuse of discretion
5 because just seems like you just want to do it.

6 THE COURT: No, Mr.~Kennedy, my rulings are
7 based on the law and the facts and the law applying
8 the facts on your legal arguments there. And that's
9 what -- I'm not going to just be doing it. I'm
10 certainly taking your arguments seriously, analyzed
11 your arguments and reviewed the case law and made the
12 decision. It is not something that I am doing at all
13 just to be doing it. I'm certainly listening to your
14 arguments, taking your arguments into consideration
15 and making the ruling based on those arguments and
16 the law as it applies to those arguments.

17 MR. KENNEDY: Okay. So you, you know, acting in
18 due diligence as a neutral party, you got into
19 whether time and date of something, you know,
20 basically, practice law from the bench for The State,
21 on behalf of The State --

22 THE COURT: Mr.~Kennedy, we're not going to --

23 MR. KENNEDY: -- of The State. They never made
24 those arguments.

25 THE COURT: Mr.~Kennedy, we're not going to get

1 into that. That's not true at all. I heard you
2 extensively on your arguments. I heard you very
3 extensively on your arguments where some may not have
4 allowed you to argue as much as you did, but I did.
5 I allowed you to complete your arguments to every
6 bit, gave you every opportunity. And so I'm not
7 making any argument or -- I'm not doing anything for
8 The State, in favor of The State or in favor of you.
9 I'm doing my job as it relates to what the law is in
10 this case.

11 That is my sole job in the case is determine the
12 law and instruct the jury -- making decisions on the
13 evidence and instruct the jury on the law. That is
14 my sole responsibility and that is one that I take
15 seriously and that is one that I will do here in this
16 trial. I'll give you every opportunity to present
17 your case. I have ruled base on the arguments that
18 were presented before me.

19 And again, you argued very extensively this
20 morning and into the afternoon. So I gave you ample
21 opportunity to make those arguments, which you did.
22 And so I have ruled on those arguments as far as your
23 motion to suppress the evidence and those have been
24 denied.

25 MR. KENNEDY: Motion for a Franks hearing and a

1 motion in limine.

2 THE COURT: That's correct. Now, you certainly
3 are entitled to cross-examine witnesses and proceed
4 in the defense of your case and do whatever you need
5 to do to defend yourself and present your defense.
6 You're entitled to do whatever you need to do.

7 MR. KENNEDY: I mean, this jury trial is based
8 on persuasion. You know, I have already presented
9 the law and rulings and those have just been
10 blatantly disregarded. Like, all --

11 THE COURT: I'm just telling you this, I don't
12 blatantly disregard anything. Not in my judicial
13 role or anything else, I don't blatantly disregard
14 anything. I listen to all arguments. Again, which I
15 have listened to you extensively this morning and
16 went into the afternoon and allowed you to present
17 all of your arguments on the motions. So it is not a
18 situation where I blatantly disregard anything. I
19 apply the law as the law is set forth and make those
20 decisions based on that.

21 MR. KENNEDY: So if, you know, I can't touch the
22 basis on the search warrant. So if, you know, South
23 Carolina Rules of Criminal Evidence say documents
24 and, you know, things that are done in court
25 proceedings, anything like that, you know, that's

1 issued has to be filed, placed on record, you know,
2 things of that nature, and if it wasn't, what is
3 that? What would you consider that?

4 THE COURT: Mr.~Kennedy, I've made the ruling,
5 so --

6 MR. KENNEDY: I understand, I understand. I
7 understand the appeal. It's all right.

8 THE COURT: All right.

9 Anything else from The State?

10 MR. GROUNSELL: Your Honor, just one more quick
11 one. Motion to exclude The Defendant from discussing
12 offers, sentencing ranges or the amount of time he's
13 been incarcerated in front of the jury as well, Your
14 Honor.

15 THE COURT: All right, Mr.~Kennedy.

16 MR. KENNEDY: I don't understand what he saying.
17 What's the offer and sentencing range? Oh, you
18 talking about State offered me --

19 THE COURT: Any plea offers.

20 MR. KENNEDY: Oh, okay.

21 THE COURT: I assume that's what you're talking
22 about, Mr. Grounsell?

23 MR. GROUNSELL: Yes, Your Honor, plea offers and
24 sentencing ranges for what these charges carry and
25 the amount of time that he's been incarcerated

1 awaiting trial. I think it's inappropriate and would
2 be potentially prejudicial to The State and they have
3 no relevance in this matter.

4 THE COURT: All right, Mr.~Kennedy, your
5 response?

6 MR. KENNEDY: I don't feel like me stating how
7 long I been incarcerated or, you know, any offers the
8 State has been willing to offer me could prejudice
9 The State in any type of way. I'm the only one here
10 that's really being prejudiced. I'm being -- I'm the
11 only one here that's going through that. The State
12 is not going through nothing. They going home going
13 to sleep every night. They going to continue to do
14 it. How does that prejudice them? I don't have
15 somebody here saying that I've harmed them or they're
16 threatened by me or anything like that. You talking
17 about people who trying to -- The State justifying
18 bad acts of over individuals is not -- how could that
19 be prejudice anybody? I don't think you could lose
20 any sleep about that. I'm trying to figure out how
21 that could be prejudice when I'm facing 25, 30 years.
22 You can say oh, well, this prejudice me. It puts me
23 in a bad spot. You ain't in no bad spot, you go home
24 and relax. Like the reason why y'all trying to
25 exclude me from mentioning --

1 THE COURT: What is your argument against the
2 motion to exclude discussing plea offers, sentencing
3 ranges and time served so far?

4 MR. KENNEDY: The State has no legitimate reason
5 of how it can prejudice The State. The same way I
6 have to prove The State prejudice me, why doesn't The
7 State have to prove how does it prejudice them?

8 THE COURT: All right, Mr. Grounsell.

9 MR. GROUNSELL: Your Honor, even if we go on and
10 have this argument on prejudicial, it's not relevant
11 for the jury to hear all of that.

12 THE COURT: All right, Mr.~Kennedy, that's what
13 the issue is. What is the relevance of any of those
14 issues?

15 MR. KENNEDY: I mean, the relevance is because
16 whenever you -- you know, you paint a picture for
17 people or you're trying to get people to understand
18 what's going on in your situation, your
19 circumstances, I feel like they should hear every
20 aspect of what's going on. I'm facing 25 to 30,
21 years. How would presenting -- me bringing up a
22 search warrant, me bringing up anything, how officers
23 did this, how officers illegally did this, how is
24 that hurting anybody?

25 The State is willing -- I mean, able to bring up

1 whatever they claim they had against me, how is it
2 damaging -- I mean, how is it prejudice to them for
3 me to bring up every aspect and circumstances of my
4 case so my peers, allegedly my peers, can
5 determine -- have a, you know, a clear picture of
6 what's going on, you know, in the circumstances in my
7 case?

8 THE COURT: Well, to be admissible into
9 evidence, the evidence has to be relevant. So that's
10 the issue here. So those issues or those pieces of
11 evidence would not be relevant to the issues in this
12 case. The issues in this case are whether or not you
13 committed the crime. The State has the burden of
14 proof. They've got to prove you guilty for each one
15 of them beyond a reasonable doubt, which is a high
16 burden, as you know. So that is their burden of
17 proof, so it's got to be -- the evidence that is
18 admissible in court has to be relevant. And those
19 issues are not relevant.

20 MR. KENNEDY: Okay. So --

21 THE COURT: What is the relevance of your plea
22 offers or what the sentencing range is or how much
23 time you've been in jail?

24 MR. KENNEDY: I mean, it's all relevant because
25 it applies to my situation. How I feel personally, I

1 feel like every aspect of what I been going through
2 and what I been dealing with is relevant to my
3 situation. I mean, it's like -- I don't know, you
4 know, I'm saying, like, how can I actually -- you
5 know, even though I wasn't even intending on really
6 just using my plea offer -- I'm trying to figure out
7 not being able to mention it or how long I've been
8 locked up or incarcerated, how is that in any type of
9 way -- people been sitting in the county jail for
10 five years.

11 THE COURT: Evidence that is put forth on the
12 stand and admitted into evidence has to be relevant
13 under the rules of evidence, South Carolina Rules of
14 Evidence. And so that's why I'm asking you, what is
15 the relevance of any of those issues?

16 MR. KENNEDY: It's my entire situation, the
17 circumstances, everything I been dealing with. All
18 right, I'm going to say this, so to prove the
19 necessary elements of trafficking, knowingly and
20 possession with intent to distribute, manufacture,
21 The State would be able to bring up something that
22 completely is fabricated and ain't have nothing to do
23 with oh, yeah, you sold this to somebody, which is
24 not -- how is that --

25 THE COURT: We will see what evidence comes up

1 and I'll rule on it at that time.

2 Now, is the jury out there?

3 THE BAILIFF: Yes, sir, Your Honor.

4 THE COURT: Okay. What I want to do is hold the
5 motions in abeyance right now. And let's go ahead
6 and have the jury in here. Let's select the jury.
7 Then we will continue.

8 (WHEREUPON, the jury venire entered open court
9 at approximately 3:05 p.m.)

10 JURY QUALIFICATION/SELECTION

11 THE COURT: All right, good afternoon, ladies
12 and gentlemen. Good to see all of you again. We are
13 about to start the trial of The State of South
14 Carolina vs. Michael Justin Kennedy. Before we
15 select the jury, I have some more questions that I
16 need to ask you that are particular to this specific
17 case.

18 First of all, I want to read to you the
19 indictments that Mr.~Kennedy, who is the Defendant in
20 this case, has been charged with. And let me tell
21 you this, these are only indictments. This is not
22 evidence. This does not mean that Mr.~Kennedy is
23 guilty of any of these indictments that I am going to
24 read to you. This is purely the way that cases are
25 brought into court. And it is just an indictment and

1 that is all. It is not evidence and does not mean
2 anything relating to Mr.~Kennedy's guilt in this
3 case.

4 All right. The indictments read as follows:
5 The possession of a controlled substance with intent
6 to distribute, which alleges that Michael Justin
7 Kennedy did in Greenville County on or about the 2nd
8 of October 2020, possess with intent to distribute or
9 aid, abet, conspire to possess with the intent to
10 distribute, a quantity of a schedule II controlled
11 substance, Carfentanil.

12 MR. GROUNDSELL: Carfentanil.

13 THE COURT: Carfentanil? Carfentanil.

14 Such possession not having been authorized by
15 law in violation of 44-5-53370. Also, trafficking
16 methamphetamine, it alleges that Michael Justin
17 Kennedy did in Greenville County on about the 2nd day
18 of October 2020, knowingly sell, manufacture, deliver
19 or bring into the State of South Carolina or did
20 knowingly provide financial assistance or otherwise
21 aid, abet or attempt or conspire to sell,
22 manufacture, deliver or bring into the state or was
23 knowingly in actual possession -- actual or
24 constructive possession of 28 grams or more, but less
25 than 100 grams of methamphetamine in violation of

1 Section 44-53-375 South Carolina Code of Laws.

2 Also, indictment for trafficking heroin, that
3 Michael Justin Kennedy did in Greenville County on or
4 about the 2nd day of October 2020, knowingly sell,
5 manufacture, deliver or bring into the State of South
6 Carolina or did knowingly provide financial
7 assistance or otherwise aid, abet, attempt or
8 conspire to sell, manufacture, deliver or bring into
9 the state or was knowingly in actual or constructive
10 possession of 14 grams or more, but less than 28
11 grams or more of heroin in violation of section
12 44-53-370 of South Carolina Code of Laws.

13 Also, three indictments for possession of a
14 weapon during the commission of a violent crime,
15 alleges that on October 2nd, 2020, that the defendant
16 did possess or visibly display a FN9 millimeter
17 handgun during the commission or attempted commission
18 of a violent crime, to-wit: trafficking heroin, in
19 violation of 16-23-490 of the South Carolina Code of
20 Laws.

21 And also on October 2nd, 2020, the indictment
22 for possession or visibly displaying a Ruger AR 556
23 during the commission or attempted commission of a
24 violent crime, to-wit: trafficking heroin, in
25 violation of 16-23-490 in South Carolina Code of

1 Laws.

2 Finally, that on or about October 2nd, 2020,
3 that he did possess or visibly display a Ruger .380,
4 during the commission or attempted commission of a
5 violent crime, to-wit: trafficking heroin in
6 violation of Section 16-23-490 of the South Carolina
7 Code of Laws. Again, as I told you, these are only
8 indictments. This is not evidence or proof of any
9 guilt of The Defendant in this case.

10 All right. Has anyone ever been related by
11 blood or marriage to Michael Justin Kennedy?

12 Mr.~Kennedy, if you would, please stand for the
13 jury. All right, thank you, sir.

14 (There was no response.)

15 THE COURT: Has anyone ever had a close personal
16 or social relationship with Michael Justin Kennedy?
17 If so, please stand.

18 (There was no response.)

19 THE COURT: All right, ladies and gentlemen, the
20 following is a list of potential witnesses in the
21 case. Gilberto Franco of the Greenville Police
22 Departement; Mauricio Andres Reyes of the Greenville
23 Police Departement; Jonathan McWhite of SLED; Tyler
24 Zach Moore, DEU; Scott Heath of the DEU; Chris
25 Montgomery, DEU; Tyler Workman, also DEU; Kathy

1 Lance; Sean Collins; and Shameka Johnson.

2 Has anyone ever been related by blood or
3 marriage to any of these people I have just listed or
4 has anyone ever had a close personal or social
5 relationship with any of these potential witnesses?
6 If so, please stand.

7 Yes, ma'am, if you would, please stand and your
8 name and number?

9 PROSPECTIVE JUROR: Michelle Adams, No. 2.

10 THE COURT: All right. What is your
11 relationship?

12 PROSPECTIVE JUROR: Tyler Workman, my daughter
13 dated him in high school.

14 THE COURT: The fact that your daughter dated
15 him back in high school, would that have any effect
16 -- could you still be fair to both The State and The
17 Defendant in this case?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: All right, thank you, ma'am.

20 All right, if attorneys for The State would
21 introduce themselves to the jury.

22 MR. GROUNSELL: My name is Clark Grounsell, I'm
23 an assistant solicitor here in Greenville.

24 THE COURT: All right. Mr. Kennedy, if you
25 would introduce yourself to the jury.

1 MR. KENNEDY: I'm Michael Kennedy, I'm The
2 Defendant.

3 THE COURT: All right. Has any member of the
4 jury panel ever been represented by counsel,
5 Mr. Grounsell? Anybody ever been represented by him
6 and his practice?

7 (There was no response.)

8 THE COURT: All right. Has anyone ever been
9 related by blood or marriage or have a close personal
10 or social relationship with Mr. Grounsell or, of
11 course, Mr.~Kennedy, as The Defendant?

12 (There was no response.)

13 THE COURT: All right. Has any member of the
14 jury panel or their family or any family member had a
15 serious drug addiction or died from a drug overdose?
16 If so, please stand.

17 Let's just start right here. Your name and
18 number?

19 PROSPECTIVE JUROR: It's Jo Mazur, 132. My
20 nephew.

21 THE COURT: All right, thank you.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: Stephanie Bray, No. 20, my
24 cousin.

25 THE COURT: Yes, sir.

1 PROSPECTIVE JUROR: Shad Slade, 190, my dad
2 committed suicide.

3 THE COURT: Thank you, sir.

4 PROSPECTIVE JUROR: Laura Noonkesser, 156, my
5 brother passed away.

6 THE COURT: All right. Thank you.

7 PROSPECTIVE JUROR: Charles Joyce, 112, my
8 mother.

9 THE COURT: Yes, ma'am.

10 PROSPECTIVE JUROR: Angela Burnside, 25, my
11 aunt.

12 THE COURT: Okay. Thank you.

13 All right. Has any member of the jury panel
14 formed or expressed an opinion about any issue or
15 matter involved in this case?

16 (There was no response.)

17 THE COURT: Is any member of the jury panel
18 aware of any bias or prejudice towards either The
19 State or Defendant in this case?

20 (There was no response.)

21 THE COURT: Is there any member of the jury
22 panel that was a member of the grand jury which
23 issued the indictment in this case?

24 (There was no response.)

25 THE COURT: All right. Is there any member of

1 the jury panel who is a member of or contributor to
2 any group which has as its primary concern the
3 promotion of law enforcement or victim's rights?
4 These groups would include, not limited to MADD,
5 Mothers Against Drunk Drivers; SADD, which used to be
6 Students Against Drunk Drivers;, CAVE, which is
7 Citizens Against Violent Crime.

8 (There was no response.)

9 THE COURT: All right. Does any member of the
10 jury panel know of any reason whatsoever why he or
11 she should not serve as a juror in this case with
12 particular emphasis being placed on your ability to
13 be fair and impartial to both The State and The
14 Defendant?

15 (There was no response.)

16 THE COURT: All right. Any additional questions
17 from The State?

18 MR. GROUNSELL: No, Your Honor.

19 THE COURT: All right. Anything from The
20 Defendant, Mr.~Kennedy?

21 MR. KENNEDY: No, sir.

22 THE COURT: All right. The strikes in this case
23 will be five. The State gets five and Mr.~Kennedy,
24 you get five. How many alternates? One alternate,
25 okay?

1 MR. GROUNSELL: Yes, Your Honor that works for
2 The State.

3 THE COURT: All right. Mr.~Kennedy, is that
4 fine, one alternate?

5 MR. KENNEDY: Yes, sir.

6 THE COURT: For the alternate, you will get two
7 strikes. The State gets one on the alternate. So
8 each of you get five strikes for the first 12.

9 All right, ready to proceed.

10 THE CLERK: When I call your name, if you'll
11 please stand up and wait for further instructions.

12 Juror 106, Jermaine D. Johnson.

13 (Jermaine D. Johnson, a black male, came
14 forward.)

15 THE CLERK: What says The State?

16 MR. GROUNSELL: Please seat this juror.

17 THE CLERK: What says The Defendant?

18 MR. KENNEDY: Seat the juror.

19 THE CLERK: If you will please gather your
20 things and have a seat in the jury box.

21 Juror 222, Page C. Watson.

22 (Page C. Watson, a white female, came forward.)

23 THE CLERK: What says The State?

24 MR. GROUNSELL: Please seat the juror.

25 THE CLERK: What says The Defendant?

1 MR. KENNEDY: Strike.

2 THE CLERK: You may be seated, please, thank
3 you.

4 Juror 132, Joseph P. Mazur.

5 (Joseph P. Mazur, a white male, came forward.)

6 THE CLERK: What says the State?

7 MR. GROUNSELL: Please seat the juror.

8 THE CLERK: What says the defendant?

9 MR. KENNEDY: Strike.

10 THE CLERK: Juror 208, Ashley W. Timms.

11 (Ashley W. Timms, a white female, came forward.)

12 THE CLERK: What says The State?

13 MR. GROUNSELL: Please seat the juror.

14 THE CLERK: What says The Defendant?

15 MR. KENNEDY: Seat the juror.

16 THE CLERK: Thank you. If you'll gather your
17 things and make your way to the jury box.

18 Juror 216, Thomas J. Volz.

19 (Thomas J. Volz, a white male, came forward.)

20 THE CLERK: What says The State?

21 MR. GROUNSELL: Please seat the juror.

22 THE CLERK: What says The Defendant?

23 MR. KENNEDY: Strike.

24 THE CLERK: Juror No. 20, Stephanie L. Bray.

25 (Stephanie L. Bray, a white female, came

1 forward.)

2 THE CLERK: What says The State?

3 MR. GROUNSELL: Please seat the juror.

4 THE CLERK: What says The Defendant?

5 MR. KENNEDY: Seat the juror.

6 THE CLERK: Thank you.

7 Juror No. 15, David E. Bell.

8 (David E. Bell, a Hispanic male, came forward.)

9 THE CLERK: What says The State?

10 MR. GROUNSELL: Please strike the juror.

11 THE CLERK: Juror No. 164, Michael S. Partridge,

12 II.

13 (Michael S. Partridge, II, a white male, came
14 forward.)

15 THE CLERK: What says The State?

16 THE COURT: Please strike the juror.

17 THE CLERK: Juror 51, Roselyn Douglas.

18 (Roselyn Douglas, a black female, came forward.)

19 THE CLERK: What says The State?

20 MR. GROUNSELL: Please seat the juror.

21 THE CLERK: What says The Defendant?

22 MR. KENNEDY: Seat the juror.

23 THE CLERK: Ma'am, if you'll gather your things,
24 please.

25 Juror No. 2, Michelle Adams.

1 (Michelle Adams, a white female, came forward.)

2 THE CLERK: What says The State?

3 MR. GROUNSELL: Please seat the juror.

4 THE CLERK: What says The Defendant?

5 MR. KENNEDY: Strike.

6 THE CLERK: Juror 45, Sarah D. Denslow.

7 (Sarah D. Denslow, a white female, came
8 forward.)

9 THE CLERK: What says The State?

10 MR. GROUNSELL: Please seat the juror.

11 THE CLERK: What says The Defendant?

12 MR. KENNEDY: Seat the juror.

13 THE CLERK: Ma'am, if you'll get your things
14 together, have a seat in the jury box.

15 Juror 175, Ambir S. Raines.

16 (Ambir S. Raines, a white female, came forward.)

17 THE CLERK: What says The State?

18 MR. GROUNSELL: Please seat the juror.

19 THE CLERK: What says The Defendant?

20 MR. KENNEDY: Seat the juror.

21 THE CLERK: Ma'am, get your things together,
22 have a seat in the jury box.

23 Juror 116, Tammy C. Kelly.

24 (Tammy C. Kelly, a white female, came forward.)

25 THE CLERK: What says the State?

1 MR. GROUNSELL: Please seat the juror.

2 THE CLERK: What says the Defendant?

3 MR. KENNEDY: Strike.

4 THE CLERK: Juror 173, Jason E. Prescott.

5 (Jason E. Prescott, a white male, came forward.)

6 THE CLERK: What says The State?

7 MR. GROUNSELL: Please seat the juror.

8 THE CLERK: What say The Defendant?

9 MR. KENNEDY: Strike.

10 THE COURT: Mr.~Kennedy, you've already
11 exercised five, so that juror will be seated.

12 THE CLERK: Juror No. 62, Emmanuel A. Fajardo.

13 (Emmanuel A. Fajardo, an Asian male, came
14 forward.)

15 THE CLERK: What says The State?

16 MR. GROUNSELL: Please seat the juror.

17 THE CLERK: What says The Defendant?

18 MR. KENNEDY: Seat the juror.

19 THE CLERK: Sir, if you'll get your things
20 together, have a seat in the jury box.

21 Juror 104, Kevin R. Johnas.

22 (Kevin R. Johnas, a white male, came forward.)

23 THE CLERK: What says The State?

24 MR. GROUNSELL: Please seat the juror.

25 THE CLERK: What says The Defendant?

1 MR. KENNEDY: Can't strike, can I?
2 THE CLERK: No, you cannot.
3 MR. KENNEDY: Seat the juror.
4 THE CLERK: Juror 195, Tammy M. Smith.
5 (Tammy M. Smith, a white female, came forward.)
6 THE CLERK: What says The State?
7 MR. GROUNSELL: Please excuse the juror.
8 THE CLERK: You may be seated.
9 Juror 23, Carson J. Bryson.
10 (Carson J. Bryson, a white female, came
11 forward.)
12 THE CLERK: What says The State?
13 MR. GROUNSELL: Please seat the juror.
14 THE CLERK: Juror 129, Amanda K. Marullo.
15 (Amanda K. Marullo, a white female, came
16 forward.)
17 THE CLERK: What says The State?
18 MR. GROUNSELL: Please seat the juror.
19 THE CLERK: Juror 185, Danielle M. Sanderson.
20 (Danielle M. Sanderson, a white female, came
21 forward.)
22 THE CLERK: What says The State?
23 MR. GROUNSELL: Please seat the juror.
24 THE COURT: All right. Alternates, The State
25 gets one and Mr.~Kennedy, you get two, two strikes on

1 the alternate.

2 THE CLERK: Juror 207, Jonathan E. Tillman.

3 (Jonathan E. Tillman, a white male, came
4 forward.)

5 THE CLERK: What says The State?

6 MR. GROUNSELL: Please seat the juror.

7 MR. KENNEDY: Strike.

8 THE CLERK: Juror 158, Douglas J. Oliver.

9 (Douglas J. Oliver, a white male, came forward.)

10 THE CLERK: What says The State?

11 MR. GROUNSELL: Please strike the juror.

12 THE CLERK: Juror 113, Pablo D. Juan.

13 (Pablo D. Juan, a Hispanic male, came forward.)

14 THE CLERK: What says The State?

15 MR. GROUNSELL: Please seat the juror.

16 THE CLERK: What says The defendant?

17 MR. KENNEDY: Seat the juror.

18 THE CLERK: If you'll -- please be seated in the
19 jury box.

20 THE COURT: All right. Any motions from The
21 State on selection of the jury?

22 MR. GROUNSELL: No, Your Honor.

23 THE COURT: All right. Any motions from The
24 Defendant on selection of the jury?

25 MR. KENNEDY: No, sir.

1 THE COURT: All right, ladies and gentlemen, you
2 are selected for this jury. We will start first
3 thing in the morning. We have some pre-trial matters
4 that we will be dealing with this afternoon. So we
5 will see y'all -- we will start at 9:30. Maybe try
6 to get here about 9:15 or so, get here a little bit
7 early so we will be ready to go. Now, we will swear
8 you in at that time.

9 Please do not discuss this case. I'm going to
10 give you these instructions throughout this trial,
11 but I ask you to not discuss the case. I know you
12 have not heard any evidence yet. You have not been
13 sworn in, but you've now been selected. That would
14 include do not Google, do not try to go on the
15 internet, do not look for anything. I know we all
16 live in this world and we all want to pick up that
17 phone and look and Google everything. But I ask that
18 -- actually request and order you not to look up any
19 of the lawyers, The Defendant, anything about the
20 facts of this case. And do not discuss it among
21 yourselves. Even when you go back in the jury room
22 for a break or anything like that, or for lunch, do
23 not discuss the case. The only time that you can
24 discuss the case is at the end when I tell you that
25 you can do so. That will be after all the evidence

1 is in and I have charged you the law. Then I will
2 tell you that you can then, at that point, discuss
3 the case.

4 So please don't discuss it until I tell you to.
5 And we will see you back here tomorrow morning and
6 we'll start the case. I hope all of you have a good
7 night. Thank you.

8 (WHEREUPON, the jury left open court at
9 approximately 3:29 p.m.)

10 THE COURT: All right, ladies and gentlemen,
11 those of you remaining, I have been instructed to
12 tell you to report back downstairs for further
13 instructions. So if you're not selected on this
14 case, I ask that you go back down and they will tell
15 you what you need to do. Thank you.

16 (WHEREUPON, the jury venire left open court at
17 approximately 3:30 p.m.)

18 THE COURT: All right, y'all ready to go ahead
19 and proceed?

20 MR. GROUNSELL: Yes, Your Honor.

21 THE COURT: All right, yes, sir.

22 MR. GROUNSELL: Your Honor, I think, at this
23 time, would be the Jackson v. Denno hearing. That's
24 really the only motion left to hear today.

25 THE COURT: All right, I'll hear from you.

1 MR. GROUNSELL: The State would call
2 Investigator McWhite to the stand.

3 THE COURT: All right, Officer, come up to be
4 sworn.

5 THE CLERK: Place your left hand on the Bible
6 and raise your right hand.

7 JONATHAN MCWHITE, after being duly
8 sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Thank you. If you will please have
11 a seat. If you could please state your name for the
12 record.

13 THE WITNESS: Jonathan McWhite.

14 THE COURT: I think you're going to have to step
15 up to that microphone or pull it closer to you so the
16 court reporter can hear and everyone else can hear
17 you.

18 THE WITNESS: Jonathan McWhite.

19 DIRECT EXAMINATION - (IC)

20 BY MR. GROUNSELL:

21 Q Investigator McWhite, were you on scene October
22 2nd, 2020, at the onset of this search warrant execution?

23 A Yes, sir.

24 Q All right. Did you give Mr.~Kennedy his Miranda
25 rights?

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL (IC)

1 A I did.

2 Q Were those rights read to him fully?

3 A Yes, sir.

4 Q How did you give him those rights?

5 A I read them directly from the card.

6 Q So you have a card that has them listed and you
7 just read directly from it?

8 A Yes, sir, an advisement of rights.

9 Q Okay. Did he acknowledge he understood those
10 rights?

11 A He did.

12 Q Who was present when you were giving those?

13 A In addition to Mr.~Kennedy, there were several
14 officers on scene, Greenville City and DEU officers,
15 Investigator Moore and Workman, who are seated here.

16 Q And Mr.~Kennedy was in investigative detention
17 at that time?

18 A That's correct.

19 Q So did he appear to waive his rights freely and
20 voluntarily?

21 A He did.

22 Q Did he talk with you specifically?

23 A He did.

24 Q Did you or any other officer coerce Mr.~Kennedy
25 into making any statements?

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL (IC)

1 A No, sir.

2 Q Did you make any promise of leniency given if
3 Mr.~Kennedy would make any admissions?

4 A No, sir.

5 Q Did Mr.~Kennedy sound or appear like he was
6 under the influence of any drug?

7 A He did not.

8 Q Did he seem of sound mind?

9 A He did.

10 Q Did he appear in good physical health?

11 A Yes, sir.

12 Q What time of day did this arrest happen?

13 A It was midday, full daylight, clear weather.

14 Q How long were you on scene with him?

15 A I can't say exactly, but I would say more than
16 an hour, my best estimate.

17 Q Okay. How long do you think you questioned him
18 for?

19 A I spoke with him for several minutes downstairs
20 when he was initially placed in investigative detention
21 and then again just outside his apartment.

22 Q Were any threats or promises made in exchange
23 for any statements?

24 A No, sir.

25 Q Did he talk -- did he also just talk sometimes

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL (IC)

1 -- were there times where he was unprompted that he was
2 just giving you -- discussing things about what was
3 around?

4 A Yes, he did.

5 Q Okay.

6 MR. GROUNSELL: Your Honor, I have a disk from
7 Officer Franco. Would you like to hear for him first
8 before we start playing some of this?

9 THE COURT: I would, unless this witness -- is
10 he going to have any testimony related to the disk?

11 MR. GROUNSELL: I will sort of set the scene.
12 Officer Franco's sole purpose, really, of being on
13 the scene was for his body cam and stayed with
14 Mr.~Kennedy throughout. So he captures -- Mr. Franco
15 captures a lot of Investigator McWhite's conduct on
16 the scene, almost all of their conduct together. So
17 that's kind of where we're sort of in the of who do
18 we put up first. He's kind of giving sort of the
19 blanket go round. We can do the same with Officer
20 Franco and play the camera.

21 THE COURT: All right.

22 MR. GROUNSELL: Like I said, I don't have the
23 specific statements necessarily typed out verbatim.
24 I'm just going to skip to them on the disk so that
25 way, you'll be able to understand what we're talking

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL (IC)

1 about.

2 THE COURT: All right.

3 BY MR. GROUNSELL:

4 Q Deputy McWhite, I'm going to have you step down
5 for a minute and have Officer Franco step in.

6 THE CLERK: If you'll please place your left
7 hand on the Bible and raise your right hand.

8 GILBERTO FRANCO, after being duly
9 sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Please be seated. Would you please
12 state your name for the record?

13 THE WITNESS: Gilberto Franco.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION - (IC)

16 BY MR. GROUNSELL:

17 Q Officer Franco, were you on scene October 2nd,
18 2020?

19 A Yes, sir.

20 Q And you were there from the very beginning?

21 A Yes, sir.

22 Q Did you hear Investigator McWhite give
23 Mr.~Kennedy his Miranda rights?

24 A Yes, sir.

25 Q Were those rights read to him fully?

GILBERTO FRANCO-DIRECT BY MR. GROUNDSELL (IC)

1 A Yes, sir.

2 Q And did he acknowledge he understood those
3 rights?

4 A Yes, sir.

5 Q Did he appear to waive his right and freely and
6 voluntarily talk with Investigator McWhite, yourself and
7 other officers on scene?

8 A Yes, sir.

9 Q And you were wearing a body camera that day?

10 A Yes, sir.

11 Q Did it capture Mr.~Kennedy making statements
12 about claiming anything illegal was his and not his
13 girlfriend?

14 A Yes, sir.

15 Q Did he mention how his girlfriend didn't know
16 his business and that she was not part of anything he had
17 going on?

18 A Yes, sir.

19 Q Did Mr.~Kennedy make any admissions to the drugs
20 in the car to Investigator McWhite?

21 A Yes, sir.

22 Q Did you or any other officer coerce Mr.~Kennedy
23 into making any statements?

24 A No.

25 Q Were any promises of leniency made if

GILBERTO FRANCO-DIRECT BY MR. GROUNDSELL (IC)

1 Mr.~Kennedy would make any admissions?

2 A No, sir.

3 Q Did Mr.~Kennedy sound or appear like he was
4 under the influence of any drugs?

5 A No, sir.

6 Q Did he seem of sound mind?

7 A Yes, sir.

8 Q Did he appear in good physical health?

9 A Yes, sir.

10 Q And this arrest happened during the daytime?

11 A Yes, sir.

12 Q And y'all were only on scene for about an hour;
13 is that correct?

14 A Yes, sir.

15 Q Did Mr.~Kennedy make a lot of statements
16 unprompted by any questions?

17 A Yes, sir.

18 Q I'm going to hand you this disk, tell me if you
19 recognize it. I don't have it marked yet. But for these
20 purposes, do you recognize this disk?

21 A I do.

22 Q What is that disk?

23 A The disk with my body cam footage.

24 Q How do you recognize this as yours?

25 A It's got my initials on it.

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL (IC)

1 MR. GROUNSELL: Your Honor, we're going to play
2 some clips from this.

3 THE COURT: All right.

4 (WHEREUPON, a video was played.)

5 MR. GROUNSELL: Your Honor, we'll have to share
6 the screen, I believe, so he can see it as well.

7 THE COURT: Is it run through the system here?

8 (WHEREUPON, a video was played.)

9 MR. GROUNSELL: Your Honor, that would be the
10 first statement. He said, I had something in that
11 bag.

12 That is where the narcotics are located in the
13 car.

14 (WHEREUPON, video was continued to be played.)

15 MR. GROUNSELL: Your Honor, that's the next
16 admission, Anything that's illegal is mine.

17 (WHEREUPON, video was continued to be played.)

18 MR. GROUNSELL: Your Honor, again, Whatever you
19 find is mine.

20 Would be another one of the admissions.

21 (WHEREUPON, video was continued to be played.)

22 MR. GROUNSELL: Again, Your Honor, Everything
23 else is mine, she don't know my business.

24 Again, The State feels that is an admission.

25 (WHEREUPON, video was continued to be played.)

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL (IC)

1 MR. GROUNSELL: The rest of that, I'll take
2 that, it is what it is.

3 (WHEREUPON, video was continued to be played.)

4 MR. GROUNSELL: Your Honor, that concludes it,
5 If anything illegal is mine, I'll take that.

6 Like he's telling his girlfriend, she's leaving,
7 that he's taking claim to anything illegal. So that
8 would be another one of the admissions.

9 I just have one more clip, Your Honor.

10 (WHEREUPON, video was continued to be played.)

11 MR. GROUNSELL: Your Honor, that would be one of
12 the bigger ones, it talks about the police getting
13 behind him, Took everything and put inside my bag
14 because I was going to go out. I knew I had
15 something on me, that's just what it is. Can't
16 dispute that. Ain't nobody got nothing on me. They
17 don't know whether it's there. It's nobody else's.

18 (WHEREUPON, video was continued to be played.)

19 MR. GROUNSELL: Your Honor, those are the clips,
20 at least, the most pertinent clips as far as
21 admissions made by Mr.~Kennedy while on the scene
22 after being Mirandized and in custody. The State
23 would move to be able to admit those statements
24 during the trial.

25 THE COURT: All right.

GILBERTO FRANCO-CROSS BY MR. KENNEDY (IC)

1 Mr.~Kennedy, like cross-examination, questions?

2 MR. KENNEDY: Yes, sir.

3 THE COURT: Now, are you going to bring

4 Mr. McWhite back up?

5 MR. GROUNSELL: For cross-examination, that's
6 fine, Your Honor.

7 THE COURT: I'm going to allow Mr.~Kennedy to
8 cross-examine both if he wants to.

9 All right, if wants to cross-examine.

10 MR. KENNEDY: Okay.

11 CROSS-EXAMINATION - (IC)

12 BY MR. KENNEDY:

13 Q Officer Franco, when I did say that I claim
14 anything illegal or that anything you find illegal, I
15 claim, did I specify and say exactly what I claim or what
16 was there?

17 A No.

18 Q Okay. So is it possible that anything could
19 have been placed there? Any type of possibility that
20 anything could have been placed there?

21 A Not to my knowledge.

22 Q So it's not possible that anything that was
23 found or allegedly found inside the residence could have
24 been put there by somebody else?

25 MR. GROUNSELL: Your Honor, objection,

GILBERTO FRANCO-CROSS BY MR. KENNEDY (IC)

1 speculation.

2 THE COURT: I'll overrule. I'll allow it.

3 BY MR. KENNEDY:

4 Q So it's not -- you know what I'm saying, you,
5 basically, saying that there is no way nothing could have
6 been placed there by anybody else, another officer? I'm
7 sure you couldn't, you know, have control over every
8 corner of the house. Is there any possible way that
9 anything could have been placed there by another officer?

10 A I wasn't inside the apartment, so I wouldn't
11 know.

12 Q Okay.

13 I really don't have any questions for him
14 -- hold on. Hold on one second.

15 Officer Franco, on September the 7th, did
16 you and other officers participate in a traffic violation
17 that I was involved in where my vehicle was pulled over
18 and my vehicle was searched for over a hour and a half?
19 Were you one of those officers?

20 A No.

21 Q So you didn't participate in the search of my
22 vehicle on September 7th?

23 MR. GROUNSELL: Your Honor, I would object to
24 the relevancy to the admissions that we're here for,
25 Your Honor.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 THE COURT: I'll allow him on this. Overruled.

2 THE WITNESS: I don't recall ever stopping you
3 or being involved in a traffic stop.

4 MR. KENNEDY: I have no further questions.

5 THE COURT: Any redirect, Mr. Grounsell?

6 MR. GROUNSELL: No, Your Honor.

7 THE COURT: All right, Mr.~Kennedy, would you
8 like to question Officer McWhite?

9 MR. KENNEDY: Yes, sir.

10 THE COURT: Come back. You're still under oath.
11 Thank you, Officer Franco, you may step down.

12 CROSS-EXAMINATION - (IC)

13 BY MR. KENNEDY:

14 Q Officer McWhite, after I was Mirandized and I
15 did state to claim anything illegal that may have been
16 found or could have been found inside the residence, did I
17 specify any type to what exactly I was claiming to, that I
18 was claiming?

19 A I don't remember you specifically enumerating
20 drugs, just that you acknowledge -- when I said looks like
21 we found a little bit of heroin, you did shake your head
22 as to confirm that.

23 Q I didn't -- so it is possible that I could have
24 just been referring to claiming marijuana instead of other
25 illegal items?

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 A I don't know what you were specifically
2 referring to.

3 Q I was asking is it possible that I could have
4 been referring to claiming marijuana outside of other
5 illegal items that was allegedly, you know, found?

6 A Sure.

7 Q During the execution of the warrant, for the
8 majority of the timeframe, you were outside with me;
9 correct?

10 A Yes, sir.

11 Q So it is possible that anything extra or
12 anything else that was found could have been placed there
13 by officers?

14 A I'll say I wasn't upstairs at the time of the
15 search, but I was with them pre, before executing the
16 search warrant. I didn't see anybody running up with kilo
17 presses or the rifles or anything remotely -- nothing
18 evidentiary. So from my perspective, I don't have
19 anything to substantiate that claim. I was not there at
20 the time that those items were located.

21 Q So you're saying the only thing that you didn't
22 see somebody carrying was a kilo press or rifles, correct?

23 A I'm saying I didn't see them clearing any
24 evidence before, during the execution of the search
25 warrant.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 Q To own a hydraulic press, is that illegal?

2 A No, sir.

3 Q All right. When we was, you know, conversating
4 during that interview, you know, body cam footage and all
5 that, did you ever ask me if I was willing to cooperate?

6 A Yes, sir.

7 Q And work as a confidential informant in order to
8 make it seem like none of this ever happened?

9 A No, absolutely, I did not use those words. What
10 I did say was -- because at the time, it was our first
11 interaction. You didn't threaten our safety. I like to
12 give everyone the same equal fair opportunity to
13 cooperate. Those things can be taken into consideration
14 as to the disposition of your charges. Also, at the time
15 I said that, the only thing I knew we had was marijuana
16 and I think my statement was if you had El Chapo's phone
17 number that's going to have something to do with this
18 little dope charge. Of course, a little bit of marijuana,
19 yes, if you'd been willing to cooperate, sure, I would
20 have taken that into consideration. You said you didn't
21 want to talk about those kind of things. We went on to
22 talk about trafficking weight drugs and that was the end
23 of that conversation.

24 Q So you're stating that you never mentioned that
25 if I was willing to cooperate, you could make all my

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 charges go away and act like none of this ever happened?

2 A Absolutely, I never used those words. What we
3 just saw on the video.

4 Q So out of the interview that was just shown, you
5 know, when me and you had a conversation right in front of
6 the front door, how long was that encounter, initially?

7 A I don't remember an exact timeframe.

8 Q The one I seen was nine minutes. The one that
9 just showed was two minutes and that was the point where
10 you actually asked me if I was willing to cooperate that
11 you would -- you know, I could get rid of all of this and
12 make it seem like none of this ever happened. But that
13 was clipped out. I'm just saying based on what was shown,
14 that was taken out of it. I remember.

15 A I can't substantiate anything you're saying
16 right now.

17 Q All right. You know when we were conversing,
18 you know, we were speaking, I asked you about anything,
19 you know, any type of drugs, anybody ever -- you know,
20 anything illegal ever going on at my residence or you
21 observing any type of activity, anything of that nature
22 and you denied that anything ever happened at my residence
23 or a controlled buy?

24 A I never said or confirmed that there was a
25 controlled buy that took place at your residence, no, I

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 did not.

2 Q But you did deny the fact that nothing illegal
3 ever happened at my residence; correct?

4 A What I do know what I said was something to the
5 effect I'm not going to be charging you with distribution
6 of drugs.

7 Q Yes, that's correct. But you also stated,
8 clearly, that when I asked you about anything happening at
9 my residence, you shook your head like no, nothing --
10 like, no, you're right, nothing happen there.

11 A Is that a question?

12 Q Yeah, that's a question I'm asking. Is that
13 what was said?

14 A Well, you just said I shook my head and now
15 you're asking me what I said. I'm not following your line
16 of questioning.

17 Q Okay. So in the search warrant affidavit, when
18 you stated that you had video and visual surveillance of a
19 controlled buy, did you know that -- did it give you any
20 type of reason to believe that the way that you stated
21 this could make somebody believe that you had me on video?

22 A If I had you on video, I would have stated you
23 were clearly identified through video surveillance. You
24 were clearly identified through visual surveillance, which
25 is what I wrote. I was very specific with my wording.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 Using my vision, not video.

2 Q According to the legal term dictionary,
3 Surveillance can be considered anything as oversight or
4 supervision in criminal law as investigative process by
5 which police gather evidence by crimes of suspected crime
6 through continued observation of persons or places,
7 wiretapping, electronic observation, which is video,
8 visual surveillance -- visual and video. There's no
9 distinguishing difference between what is visual or
10 whether it's a video, tailing or shadowing of examples of
11 this type of law enforcement procedure.

12 Does that sound, you know, foreign to you?

13 A Definition makes sense to me, but you're saying
14 things that aren't in the definition, such as vision and
15 video mean the same thing; which, clearly, they do not.

16 Q So if you were a judge and, you know, I came to
17 you and I said that I equipped a confidential informant
18 with electronic surveillance equipment and audio and U.S.
19 currency from the Greenville County procurement fund.
20 Fast forward, I present the search warrant to you. You're
21 the judge and I say okay, Judge McWhite, I have video and
22 visual surveillance a controlled buy conducted and I have
23 a statement from the CI and a six-person lineup, would you
24 believe that that visual surveillance would be video
25 surveillance?

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 A No, I would believe it would be visual
2 surveillance.

3 Q Okay. Legal term dictionary called them the
4 same. All right. Well, outside of that, like, you know,
5 during the preliminary hearing, you stated that, you konw,
6 you have -- you don't have anything documented or any
7 investigative notes pertaining to the investigation; is
8 that correct?

9 A So I have to listen back through that. I
10 believe, if I'm not mistaken, you were asking if I had
11 written record of the initial tip that I received. That
12 is a separate incident from the controlled purchase.

13 Q That wasn't that. Were you asked if you had
14 anything documented about investigative notes or anything
15 pertaining to the information given to you by confidential
16 sources?

17 MR. GROUNSELL: Objection, Your Honor, we're
18 going back down this whole search warrant route
19 again. And I just don't see how it's relevant
20 towards a Jackson v. Denno and the admissions.

21 THE COURT: I agree.

22 I'm going to allow you to kind of wrap it up
23 because you're getting down the road that deals with
24 the affidavit. I'm going allow you -- I'm going to
25 allow you just a little bit of leeway here, but

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 that's about it, okay.

2 BY MR. KENNEDY:

3 Q You know, Mr. McWhite, when you stated in the
4 preliminary hearing that you received information from
5 confidential sources, what do you have pertaining to the
6 information given to you credited to these confidential
7 sources? Who are these confidential sources?

8 MR. GROUNSELL: Objection, Your Honor.

9 THE COURT: I sustained. What was the ground
10 for the record?

11 MR. GROUNSELL: Your Honor, again, I just don't
12 think it's relevant for this case. It's also been
13 ruled upon, Your Honor, that the CI information would
14 not be disclosed.

15 THE COURT: All right, sustain that objection.

16 BY MR. KENNEDY:

17 Q I mean, anything outside of, you know, the
18 investigation when you stated that -- you also stated that
19 I didn't specifically own up to anything or say yeah, I
20 have heroin here or I have methamphetamine. Is it clear
21 that I did not state that I have specifically ownership of
22 specific drugs?

23 A I don't believe you ever specifically enumerated
24 which type of drugs you were in possession of at the time
25 of the search warrant.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 Q Okay. So is it any way possible that those
2 drugs could have been placed there by somebody else?

3 A Is there a possibility? Like I said, based on
4 -- I was there, I was there during the briefing. I can't
5 speak to something I wasn't there. I do know the team
6 members I have and that is not something they would do. I
7 know they never had of these items going into your
8 residence. So based on my limited knowledge, because I'm
9 outside at this time, based on my limited knowledge and my
10 interaction with them prior to the search and me working
11 with these individuals, I would say no. Given the
12 circumstances and facts I know, no, they could not have
13 been taken into there. I would have seen it with my eyes
14 if I had team members carrying evidentiary items into your
15 apartment.

16 Q So before you answer, you know, a place that you
17 plan on searching, do y'all search each other, do y'all go
18 into each other's pockets and pat each other down,
19 anything of that nature?

20 A No, sir. I'm not aware of any law enforcement
21 entity that gives each other pat down searches or clothing
22 searches prior to executing search warrants.

23 Q All right. So initially, when you got the
24 search warrant, normally, how long does it take once a
25 controlled buy is conducted to seek to actually go to

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 retrieve government funds?

2 A I'm sorry, what are you asking?

3 Q If you conduct a controlled buy when government
4 funds are used, normally, how long does it take for you --
5 speaking of you, to normally go back to retrieve those
6 traceable funds?

7 A It depends on the investigation. Are you asking
8 how long it -- how long would it -- I'm not quite
9 following you, but if you're asking how long it would be
10 before we go look for those funds, every investigation is
11 different. We rarely, for the safety of the informant,
12 are going to go looking for the funds immediately after
13 the operation because that would put the informant in
14 jeopardy.

15 Q Okay. So you're saying -- so when you executed
16 the search warrant, did you find me in possession of any
17 controlled bills, anything that was traceable funds,
18 anything use in the controlled buy?

19 A Not to my knowledge, no, did not recover any
20 government funds. It has been nine days since issuance of
21 the search warrant. That's pretty common --

22 Q Is that why you waited nine days to execute the
23 search warrant?

24 A Every case is different. Sometimes we are
25 looking to do more buys. Sometimes we establish probable

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 cause after one buy and other information that we gather.
2 There are a lot of variables that come into play when
3 deciding to execute a search warrant. When I obtain a
4 search warrant, I don't already have it made up in my mind
5 when it's going to be executed. It's a fluid situation.

6 Q All right, sir. So during this month-long
7 investigation y'all conducted, one control buy?

8 A So I never said it's a month-long investigation.
9 I do say in my affidavit that within the past month, I
10 obtained some information. But within a month could be a
11 day, a week, two weeks, three weeks, a month. It could be
12 any time within that timeframe.

13 Q So y'all only conducted one controlled buy?

14 MR. GROUNSELL: Your Honor, objection. I still
15 don't see how this is relevant.

16 THE COURT: Yeah, sustained.

17 Move on, Mr.~Kennedy.

18 BY MR. KENNEDY:

19 Q I mean, you know, normally when you issue search
20 warrants, do you file them, are they placed on record, do
21 you give any type of oral testimony to support these? I
22 mean, like, what do you do, just type them up in the car?

23 A You asked me a lot of questions, but when I
24 write a search warrant, I take it to a magistrate, in this
25 case, the Greenville County Law Enforcement Center. It's

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 sworn before a magistrate, who signs and dates and puts
2 the time that it was signed. And then the court, the bond
3 court, where I would have obtained the search warrant, has
4 their own method for keeping track of those things. So,
5 typically, we write down the information, make a copy and
6 leave it with the judge. Then I take a copy and the
7 original and I go serve that warrant, and take the
8 original back to the judge once a return is complete.

9 Q All right. So whenever the warrant was executed
10 and, you know, some kind of controlled substance were
11 allegedly found, could you tell me why certain things were
12 listed to be controlled substances, but came back not to
13 be controlled substances?

14 A In the search warrant, we're going to seize
15 anything we believe to be actual -- in a drug case, actual
16 drugs, instrumentalities of drug sales. And that could be
17 cutting agents, it could be tools, such as bags, scales,
18 in this case, blender, presses. There were some items
19 that we plainly saw here in the video. I didn't
20 immediately recognize them, so you weren't charged with
21 anything because I had no probable cause to believe what
22 it was at the time. I mean, positive field test for
23 heroin and methamphetamine.

24 So when we came across a substance that we
25 did not know what it was, as is our standard operating

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 procedure, we submit those things to the drug lab and
2 allow a trained chemist to tell us exactly what it was
3 that we seized.

4 Q Okay. What is a presumption test?

5 A Typically, it could be administered differently,
6 but a field test of some sort. They make portable kits,
7 called Nyquists [ph]. There are machines called TruNarc
8 machine that gives a presumptive test. Also, there have
9 been plenty of cases -- this one could have been one of
10 those where I take a sample to the laboratory and the
11 chemist right there on the spot takes a very small sample
12 and runs a presumptive test. So I'm not a chemist, I
13 can't testify to all of the procedures they could go into
14 conclusively identifying drugs, but in this case, it would
15 have been one of those means.

16 Q All right. So what about the Carfentanil, item
17 number TW8, on the police report, it's list as
18 inconclusive. Why would that be?

19 MR. GROUNSELL: Objection, Your Honor. We're
20 still straying --

21 THE COURT: Yeah, sustained.

22 MR. GROUNSELL: -- from the purpose of this
23 hearing.

24 THE COURT: Mr.~Kennedy, this is what we call
25 Jackson v. Denno hearing. It's to determine whether

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 or not your statements -- whether you were properly
2 Mirandized. And if so, whether your statements were
3 voluntarily given. That's the purpose of this
4 hearing. So you need to -- I've let you -- I've
5 given you some leeway a little bit, but you need to
6 have your questions related to those issues.

7 So sustain the objection.

8 BY MR. KENNEDY:

9 Q I mean, you know, the only thing that I can
10 really just, you know, utilize is the fact, you know, that
11 I did say oh, yeah, that will be fine, I'll take it. It's
12 mine. I didn't specify and say, oh, yeah, I have heroin
13 here. I have a hydraulic press that day, referred to as a
14 kilo press machine. I didn't say none of that. I didn't
15 say specifically what I claimed. It could have been a
16 firearm. It could have been a gram of weed. It could
17 have been anything. I never specified and said what I
18 claimed. Only thing I said was yeah, whatever you find,
19 you know, charge me with it, I claim it, basically. I
20 didn't specify and say yeah, I got this in my bag, I got
21 that. This is what I had, I have this amount of this. I
22 never specified and said any of that. And in accordance
23 say, you know, legal materials it different weights. This
24 is missing, this was this. It was never this. This
25 showed up as this, but, you know, scientist say that it's

JONATHAN MCWHITE-CROSS BY MR. KENNEDY (IC)

1 something different.

2 So whatever, you know, I mean, like I'm
3 saying whatever, you know, find, I didn't claim possession
4 of specific things. Specific things I don't even know
5 what they are. So whatever it was, you know, allegedly
6 found had to be placed there by somebody else even it
7 wasn't Mr. McWhite.

8 THE COURT: Mr.~Kennedy, you need to ask
9 questions now. You're cross-examining him, so you
10 need to ask him questions.

11 MR. KENNEDY: Pretty much already asked him
12 everything, but.

13 THE COURT: All right, any other questions?

14 MR. KENNEDY: No, sir.

15 THE COURT: Any on redirect?

16 MR. GROUNSELL: No, Your Honor.

17 THE COURT: All right, you may step down.

18 All right, any additional witnesses?

19 MR. GROUNSELL: No, Your Honor.

20 THE COURT: All right, I'll hear from you.

21 MR. GROUNSELL: Your Honor, the two witnesses
22 that we've had come forward, we've heard and also
23 what we heard on the video is that Mr.~Kennedy's
24 Miranda warnings were fully given while he was in
25 custody. He was told he was in investigative

1 detention. He wasn't free to go. There wasn't
2 really truly a strong interrogation. Most of these
3 statements were merely voluntary. He was offering
4 them up. The State feels it would be appropriate for
5 those to be admitted for the jury to be able to see.

6 THE COURT: All right, Mr. Kennedy. This is in
7 relation to admitting the statement, what is your
8 argument?

9 MR. KENNEDY: I mean --

10 THE COURT: Whether or not it was proper under
11 Jackson vs. Denno. You've done a lot of research, so
12 you may have researched that one as well, but what
13 are your arguments as far as whether these statements
14 should be admitted?

15 MR. KENNEDY: I mean, Your Honor, I'm charged
16 with numerous drug offenses. You know, drugs I don't
17 even know what they are. I didn't specifically claim
18 any of those drugs. I just said you're going to
19 charge me with it anyway, go ahead and charge me with
20 it to exclude, you know, anybody else from being
21 hindered in the situation. Because that is my
22 residence, that is my vehicle.

23 But for -- you know, for that to be admitted and
24 to say that I just oh, yeah, I claimed everything. I
25 claimed that -- anything. I didn't say oh, I claimed

1 anything. I just said that whatever you find, I
2 claim. It is what it is. I didn't say specifically
3 I have Carfentanil or heroin or ice. I didn't say
4 none of that. I didn't say any of that. I didn't
5 specifically claim anything. So I could have just
6 been claiming something as simple as a gram of weed,
7 a gram of marijuana. I could have been just claiming
8 that. I didn't specifically claim and say -- so to
9 say that oh, yeah, he admitted to those being his is
10 not --

11 THE COURT: Well, the issue here -- and those
12 are certainly arguments that you can make in your
13 defense as to the drugs were not yours. But as far
14 as this issue here is whether or not under Jackson
15 vs. Denno, whether the statements were whether you
16 were properly Mirandized; and if so, were they freely
17 and voluntarily given. That's the issue for purposes
18 of this hearing. Those other issues that you
19 mentioned, those are certainly questions that you can
20 ask in cross-examination in the trial and make your
21 arguments to the jury. But as far as this issue, do
22 you have any additional questions?

23 MR. KENNEDY: No, sir.

24 THE COURT: Any additional arguments?

25 MR. KENNEDY: No, no, sir.

1 THE COURT: All right. Anything from The State?

2 MR. GROUNSELL: No, Your Honor, not with regards
3 to Jackson v. Denno.

4 THE COURT: Okay. All right. Based upon my
5 review of the totality of the circumstances, the
6 statements and the evidence and testimony presented,
7 I find that the statement on October the -- is it
8 October the 2nd, 2020?

9 MR. GROUNSELL: Yes, Your Honor.

10 THE COURT: Okay, that's what I have in my
11 notes. October 2nd, 2020 was voluntarily, freely and
12 intelligently given. I do find that a custodial
13 interrogation occurred, that the Miranda warnings
14 were properly given to The Defendant. I do find that
15 based on the testimony and the video that Mr.~Kennedy
16 was not coerced into making any statements. He was
17 not threatened, nor was he pressured or deceived in
18 making statements. There were no threats of violence
19 or any promises of leniency. There were no direct or
20 implied promises of any kind made to The Defendant.
21 The demeanor of all parties involved was not
22 coercive. The statements were not [indiscernible].
23 I find that there was no coercion due to the
24 location. I find that there was no evidence of any
25 mental or physical deficiency. I find that

1 Mr.~Kennedy was not under the influence of any drugs,
2 alcohol or medication that would impair his ability
3 to understand.

4 The court's standard is a preponderance of the
5 evidence and it is determined from a perspective of
6 The Defendant. But as I said, based on my review of
7 the totality of the circumstances, I do find that
8 statements given on that day were voluntarily, freely
9 and intelligent given.

10 All right, is there anything else?

11 MR. GROUNSELL: Your Honor, just briefly. For
12 the trial tomorrow, when we're actually direct
13 examining and we're actually in the case and some of
14 these questions regarding -- and we can certainly go
15 down that route of the search warrant stuff and
16 objecting, is that the stuff we had discussed earlier
17 about being limited during the trial?

18 THE COURT: Well, I'm going hear Mr.~Kennedy's
19 questions and I'll address it at that time. He can
20 certainly cross-examine the officers on their search
21 and what they did and the manner it took place. And
22 his arguments that he has made here, he certainly can
23 pursue questioning down that route.

24 What I am preventing Mr.~Kennedy from doing is
25 arguing, making any legal argument or any argument

1 that there wasn't any probable cause based on the
2 search warrant.

3 Mr.~Kennedy, you can certainly question them and
4 cross-examine them on what took place and the
5 surrounding circumstances. But what you're not able
6 to bring up is whether or not there was probable
7 cause and -- that ruling has been made. You can
8 certainly question and cross-examine them on the
9 circumstances of the search and what took place on
10 that day.

11 Anything else?

12 MR. GROUNDSELL: Nothing from the State, Your
13 Honor.

14 THE COURT: Anything from The Defendant?

15 MR. KENNEDY: No, sir.

16 THE COURT: All right. As I told the jury,
17 we'll start at 9:30. Opening statements -- swear the
18 jury, then have opening statements and we'll go from
19 there.

20 (WHEREUPON, the proceedings were concluded for
21 the day to be reconvened on August 30, 2022.)

22

23

24

25

1 August 30, 2022

2 (WHEREUPON, State's Exhibits Nos. 1-5 were
3 marked for identification only.)

4 THE COURT: All right, anything before we bring
5 the jury in?

6 Anything from The State?

7 MR. GROUNSELL: Your Honor, just very quickly.

8 I don't know if Mr.~Kennedy plans to have any
9 witnesses testify later on in this trial, if he does,
10 if they can be sequestered at this time.

11 THE COURT: All right, Mr.~Kennedy, do you
12 intend to call any witnesses? If you do intend to
13 call any witnesses, we need to make sure all
14 witnesses are sequestered. Meaning, they are not
15 allowed to sit in the courtroom during the testimony
16 until they testify.

17 MR. KENNEDY: No, the only witnesses I was going
18 to call to testify were officers whose name is not on
19 the witness list that they gave me. I don't know if
20 I can request that other officers be called to
21 testify as well. But I was just going based off the
22 witness list that they gave me. I thought that was,
23 you know, my option and their option.

24 THE COURT: Well, if you have any witnesses that
25 you're going to call and if they're in this courtroom

1 right now, they need to be sequestered.

2 All Mr. Grounsell's officers will be sequestered
3 as well. That's your motion, to sequester all
4 witnesses?

5 MR. GROUNSELL: Yes, Your Honor. The only one
6 that I would ask is the chief investigating officer
7 stays.

8 THE COURT: He is -- under the rules, he is
9 allowed to stay.

10 All right. Anything, Mr. Kennedy? Stand -- any
11 time you talk, please stand.

12 MR. KENNEDY: Yeah, I -- Officer Reyes, Officer
13 Moore, Officer Workman, Sean Collins. I don't know
14 if Sean Collins is in the courtroom or not. But I
15 request, you know -- you know, him to be a witness as
16 well for my case.

17 THE COURT: All right. How many -- I see
18 Officer Reyes is listed on the witness list. Who are
19 the others?

20 MR. KENNEDY: Sean Collins.

21 THE COURT: All right, he's on there.

22 MR. KENNEDY: Tyler Moore.

23 THE COURT: All right, he's on there.

24 MR. KENNEDY: Mauricio Reyes.

25 THE COURT: He's on there.

1 MR. KENNEDY: Tyler Workman.

2 THE COURT: All right, he's on there as well.

3 All right. Any witnesses intend to be called
4 are sequestered until they testify.

5 MS. SHANKLE: Judge, just a practical matter, is
6 it okay if I provide Mr.~Kennedy a pen and pad?

7 THE COURT: Yes. Yes.

8 Ms. Morgan, you don't need to ask me permission
9 if you need to pass up anything to him or talk to him
10 or anything, you don't need to ask permission. You
11 are free to do so.

12 MS. SHANKLE: Thank you, Judge.

13 THE COURT: All right, anything else before we
14 bring the jury?

15 MR. GROUNSELL: No, your Honor.

16 THE COURT: All right.

17 From you, Mr.~Kennedy?

18 MR. KENNEDY: No, sir.

19 THE COURT: All right, let's bring them in,
20 Mrs. Fryer.

21 (WHEREUPON, the jury entered open court at
22 approximately 9:44 a.m.)

23 THE COURT: Thank you, Mrs. Fryer.

24 Good morning, ladies and gentlemen, I hope you
25 all had a good night.

1 Madam Forelady, I believe you have been
2 selected. So you will sit in that chair each time
3 you come in.

4 The alternate, you, sir, will sit in that chair
5 as well.

6 Madam Forelady, you will be sort of the -- you
7 will --

8 The Foreperson has no more of a vote or weight
9 of vote than any of the rest of you. She is simply
10 going to be the communication person for the jury
11 that will communicate with me or if there are any
12 issues that come up, she will be the one that will
13 communicate. And she will coordinate the jury
14 deliberations when we get to that point.

15 I also understand that you have asked if you
16 could take notes. I don't allow the notes, and
17 here's why. What I have found in my experience
18 through the years is that note taking can be good,
19 but sometimes when you're taking the notes, you're
20 not hearing the testimony. And in a trial, the
21 testimony, every bit of testimony is very important.
22 And if you are concentrating on writing something,
23 you may miss a very important part of the testimony.
24 So I have always felt it's just a good idea not to do
25 that, so I don't allow that. And I expect -- I know

1 all of you will pay very good attention.

2 All right. Mary, let's swear the jury in, or
3 Jimmy.

4 THE CLERK: All right, if you could please stand
5 and raise your right hand. The correct response to
6 the oath is I will.

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK: Thank you.

9 THE COURT: All right. Ladies and gentlemen, we
10 are about to start the case of The State vs. Michael
11 Justin Kennedy. And before we begin the trial, I
12 just want to tell you that this trial will be
13 different from what you may expect. Many people have
14 not had an opportunity to sit on a jury. I don't
15 know if any of you have, this may be your first time.
16 But it is -- this is real life, it is not on TV.
17 It's not as you see like it is on TV or watch any
18 movies or even reading books.

19 Movie and TV trials are full of high drama,
20 intense action, riveting circumstances and all that
21 may be true here in this case, it's not for
22 entertainment. It's a fundamental part of our
23 democracy and it's an effort to make sure that
24 justice is done between the parties before the court.
25 On TV, it's an hour show, there's an arrest, there's

1 trial and it's all over in an hour. So that's not
2 the way it works here. And so, I hope you don't
3 think that's going to happen and I know you won't.

4 It's -- your effort is to make sure that justice
5 is done. And making sure that justice is done is
6 often slow and deliberate and sometimes repetitive
7 and it's the opposite of what you have seen on TV and
8 in the movies.

9 I want to thank you again for accepting this
10 important responsibility of jury service and for your
11 contribution today to our justice system. What I
12 will now say is intended to serve as an introduction
13 to the trial of this case. These remarks are not a
14 charge on the law in this case. I will instruct you
15 on the law that's applicable to this case at the end
16 of the trial before you retire to consider your
17 verdict. This is merely an explanation of the
18 procedure that we will follow in this trial so that
19 you may better understand what may be happening.

20 The Defendant, as you heard the clerk read out
21 the indictments, is charged, under those indictments
22 for those charges. The elements of those charges
23 will be explained to you later. And as I told you
24 yesterday when you all came up here, the
25 indictment -- or these indictments are simply the

1 charges by which the case is brought to court. And
2 it is not in any sense evidence of any of the
3 allegations that they contain.

4 The Defendant has pled not guilty to these
5 indictments. And The State, therefore, as a result
6 of that, has the burden of proving each of the
7 elements of each of the indictments beyond a
8 reasonable doubt. And it will be your duty, ladies
9 and gentlemen, to decide whether The State has met
10 that burden.

11 Your purpose as jurors is to find and determine
12 the facts. You're the sole judges of the facts. And
13 if any time I make any comment during this trial
14 regarding the facts, you must disregard it. You are
15 to determine the facts from the testimony you hear
16 from this witness stand right here and the other
17 evidence that may be introduced in court during the
18 trial. It is up to you to determine the inferences
19 which you feel may be properly drawn from the
20 evidence. It is especially important that you
21 perform your duty of determining the facts diligently
22 and consciously because ordinarily there is no way to
23 correct an erroneous determination of facts by a
24 jury.

25 On the other hand and with equal emphasis, the

1 law -- the same law that makes you the judges of the
2 facts makes me the judge of the law. The law as
3 given by the court and by me at the end of this case
4 is the only law you may consider. You must accept
5 and follow it even though you may disagree with it.
6 I cannot tell you what the facts are in this case and
7 you cannot disagree with me about what the law is or
8 should be. Your job is to take the law as I give it
9 to you and apply it to the facts as you find them
10 from the testimony of the witnesses and any other
11 evidence that is introduced in this trial. After
12 doing that, you will render your verdict, a true and
13 just verdict under the solemn oath that you took as
14 jurors.

15 Until I advise you to begin deliberations, you
16 may not discuss the case with anyone. And that
17 includes your fellow jurors, any friends, any family
18 members or anyone involved in the case. This
19 includes any kind of discussions face-to-face,
20 telephone, text, blog, anything on the internet, any
21 use of your telephone to try to investigate or talk
22 to somebody about the case. As I talked to you last
23 night before we parted, you can use your phones when
24 we have breaks for lunch and during the breaks
25 overnight, if necessary. You can, of course, use

1 those devices, but please do not use those devices to
2 investigate the case or any of the parties or any of
3 the witnesses that may testify. Please don't -- I
4 don't believe there's going to be any news on this
5 case, but if you see something that comes up on it,
6 please do not look at it.

7 Now, after the case is submitted to you, you
8 must discuss it only in the jury room with your
9 fellow jurors. The attorneys and the parties in this
10 case have been advised that they are not to talk to
11 you at all. So if you see anyone in the hallway and
12 they don't really acknowledge or speak to you, that
13 is because they are instructed not to do so. So do
14 not think or take anything from that, that is my
15 instruction to them that they are not to have any
16 kind of interaction with you. It's nothing personal
17 at all. But we -- I just want to make sure there's
18 no contact with y'all.

19 It is very important, ladies and gentlemen, to
20 keep an open mind and not decide any issue in this
21 case until all of the evidence has been presented,
22 the parties have made their closing arguments and
23 then I have instructed you on the law in this case.
24 It is your solemn responsibility to determine the
25 guilt or innocence of The Defendant and your verdict

1 must be based solely on the evidence as it is
2 presented to you in this trial and the law as I
3 instruct you at the close of this trial.

4 In just a moment, The Solicitor will make what
5 is called an opening statement, in which The
6 Solicitor will explain to you the issues in this case
7 or, at least, what The Solicitor thinks the issues
8 are in the case. The Defendant may make an opening
9 statement as well, following that, although, he is
10 not required to do so.

11 What is said during the opening statement by
12 either The Solicitor or The Defendant, himself, is
13 not evidence in the case. It is only their
14 contention as to what the issues are in this case.
15 The evidence in this case will be presented to you by
16 the testimony of sworn witnesses from this witness
17 stand right here and any exhibits that may be
18 introduced into evidence.

19 All right, from time to time during this trial,
20 you may hear objections to certain testimony or
21 evidence that is admitted or attempted to be
22 admitted. And there may be times where there may be
23 a question of law that I have to discuss with The
24 Solicitor and The Defendant. There may be some times
25 where I have to excuse you from the courtroom for a

1 short while so I can discuss it with The Solicitor
2 and The Defendant.

3 The reason for this is because you are the
4 judges of the facts in the case and sometimes when
5 I'm discussing matters of law with the parties, it
6 may be necessary for me to make some comment in
7 handling a legal issue that I -- or in connection
8 with a ruling that I do not want y'all to hear
9 because y'all are the judges of the facts.

10 Ladies and gentlemen, there may be some times
11 where I can just do a possible bench conference with
12 y'all in here. Do not feel that we are ignoring you.
13 Sometimes I can do it in a little bit more efficient
14 way and I don't have to send you out. But there may
15 be times where I have to send you out to discuss a
16 matter with The Solicitor and The Defendant in this
17 case.

18 So in determining the facts -- as I said, you
19 are the judges of the facts, the sole judges of the
20 facts. And in determining those facts, you must
21 determine whether or not the testimony of the
22 witnesses is believable. It will be my
23 responsibility to rule as a matter of law as to
24 whether certain testimony is admissible at all or
25 not. But once the testimony is admitted into

1 evidence, whether or not you believe it is solely for
2 you to determine.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of any
5 witness, the bias of any witness, the prejudice of
6 any witness, the opportunity of the witness to have
7 seen the matters or things about which the witness
8 may testify and the way the witness acts on the
9 witness stand. You have a right to consider anything
10 in the record that will help you evaluate the
11 testimony of the witnesses.

12 That means that it is your duty to pay close
13 attention to these witnesses, to observe the
14 witnesses, to listen to the witnesses and to pay
15 close attention to The Solicitor and The Defendant in
16 this case. Do not let your thoughts wander. I know
17 it gets tough sometimes. All of us have our thoughts
18 wander, but please do not -- try in this case very
19 hard not to let that happen. And please give strict
20 attention to the testimony in the case so that at the
21 end of all the testimony, when we're finish with the
22 trial this week, and after the arguments of The
23 Solicitor and The defendant and after the charge of
24 the law by me, then you will be in a position to
25 determine what the true facts are and to apply the

1 law to those facts and then render a true and just
2 verdict.

3 As I said, Madam Forelady, you will be the
4 spokesperson for the jury. And once I do give the
5 case to you to deliberate and once you come up with a
6 verdict, you will be the one that will -- there will
7 be a verdict form and I'll have you sign it at the
8 conclusion of the case.

9 All right. Before we begin, anything further
10 from The Solicitor? Any objection?

11 MR. GROUNSELL: No, Your Honor.

12 THE COURT: Anything from The defendant?

13 MR. KENNEDY: No, sir.

14 THE COURT: All right, ladies and gentlemen,
15 we're about to start the trial of the case, so pay
16 close attention, I know you will.

17 I recognize The State.

18 OPENING STATEMENT

19 MR. GROUNSELL: We are here today because of the
20 choices of Mr.~Kennedy. Mr.~Kennedy chose to be part
21 of a drug gang. Mr.~Kennedy chose to have
22 trafficking weight drugs in his car. Mr.~Kennedy
23 chose to have trafficking weight drugs alongside guns
24 in his apartment. And Mr.~Kennedy has chosen not to
25 accept responsibility for that. That is why we are

1 here today. It's The State's job to hold him
2 accountable for that.

3 It was also his choice to be dressed out in an
4 orange jumpsuit today. Despite having the
5 opportunity to put on regular street clothes and
6 despite the warning that it may prejudice him, it was
7 his choice to dress this way because he wants to make
8 himself a victim. Mr.~Kennedy is not a victim in
9 this case.

10 Mr.~Kennedy also has chosen to represent himself
11 in this case. Now, he also had an attorney early on
12 in the process, but decided to do this himself. The
13 State has no problem with that. I've had multiple
14 conversations with Mr.~Kennedy. I think Mr.~Kennedy
15 is an intelligent man. I think he's more than suited
16 to handle this himself, but he is unfamiliar with the
17 rules of court and he's unfamiliar with the rules of
18 evidence. So there are going to be times in this
19 case where I make objections. I'm not trying to
20 silence Mr.~Kennedy. I'm not trying to get in his
21 way. But he has to play by the same rules and I have
22 to hold him accountable as I would hold a defense
23 attorney for some of the things that he may say or
24 try to introduce into evidence.

25 Now, what are we actually here today for? What

1 is the basis of this case? Well, on October 2nd,
2 2020, in Greenville County, the Greenville County
3 Multi-jurisdictional Drug Enforcement Unit and the
4 Criminal Response Team with the Greenville Police
5 Department had a valid search warrant for
6 Mr.~Kennedy's car and his apartment. And as
7 Mr.~Kennedy pulled into his apartment complex in his
8 car, those officers pulled in behind him, blocked him
9 out with guns drawn and ordered him very loudly to
10 get out of the car. And to Mr.~Kennedy's credit, he
11 cooperated with doing so.

12 Once out, that is why we're here today. It is
13 the fruits of that search of that car and that house
14 that we found trafficking weight methamphetamine,
15 trafficking weight heroin. He also had possession
16 with intent to distribute Carfentanil and he had
17 three counts of possession of a weapon during the
18 commission of a violent crime. Now, I know what
19 you're probably thinking, what is the violent crime?
20 Well, the violent crime is trafficking. In South
21 Carolina, trafficking drugs is considered a violent
22 crime.

23 You may also be thinking trafficking. You're
24 probably thinking about what you see on TV, big time
25 drug traffickers moving trucks full of drugs, that's

1 not the case. In South Carolina, trafficking
2 methamphetamine begins at 10-grams. There's a 10 to
3 28 range, a 28 to 100 grams, a 100 to 200 range, 200
4 to 400 range, and a 400 range and above. There's
5 trafficking heroin, heroin starts at four grams.
6 It's four to 14 grams, 14 to 28 grams and then 28
7 grams or more. Those are the trafficking weights in
8 South Carolina. That's what it means to traffick
9 drugs.

10 The common theme amongst all these charges is
11 possession. Mr.~Kennedy had to be in possession of
12 these things. The possession of the guns, possession
13 of trafficking weight because that is the theory that
14 The State is moving forward under. The trafficking
15 statute in South Carolina, Mr.~Kennedy merely has to
16 possess that amount of weight to be considered
17 trafficking.

18 So what does possession mean in South Carolina?
19 Well, there is actual possession and there is
20 constructive possession. Actual possession means the
21 drugs were on his person, in a pocket, in a sock, in
22 a backpack that he's wearing. That's not the case.
23 This is constructive possession. And what does
24 constructive possession mean? Well, South Carolina
25 Supreme Court has kind of defined the rules and The

1 Judge will give you the law on that later on in the
2 case, and I will, also.

3 But I will go ahead and inform you what it is so
4 you have it in your mind as you're hearing this
5 testimony and evidence. And that is that The
6 Defendant had to have the right or power to exercise
7 control over the drugs and he must have knowledge of
8 the drugs and an intent to control their disposition
9 or use. Again, right or power to exercise control
10 over the drugs. He must have knowledge of the drugs
11 and the intent to control their disposition or use.

12 Now, it's The State's job to prove that to you
13 beyond a reasonable doubt. There are few things in
14 this world that are absolute certain, but there would
15 have to be some sort of reasonable doubt for you not
16 to hold him accountable for possessing these drugs.

17 Now, we're going to get there through the
18 testimony of witnesses. You're going to hear from
19 multiple law enforcement officers. You're going to
20 also hear from the crime lab. And as you hear from
21 them and their testimony, you're also going to have
22 evidence that's presented to you. You're going to be
23 able to digest that evidence and that testimony. And
24 I think at the end of this trial, you're going to
25 come to the same conclusion that The State has come

1 to.

2 I do appreciate your time and attentiveness to
3 this matter. It's important to The State. It's also
4 important to Mr.~Kennedy. So we appreciate your
5 being here and listening to everything we have to say
6 today. At the end of this trial, I plan to come to
7 you and ask you to return a verdict of guilty. Thank
8 you.

9 THE COURT: All right, Mr.~Kennedy, you are
10 recognized.

11 OPENING STATEMENT

12 MR. KENNEDY: Can I approach the jury?

13 My name is Michael Kennedy. I'm from Columbia,
14 South Carolina. I was raised in Greenville, South
15 Carolina since the age three. I'm not a saint, I'm
16 not a perfect person, but, today, I am here to prove
17 to you all, as being my peers, that I am a victim of
18 police brutality. Greenville County may not shoot
19 unarmed people or anything like that, but all around
20 the country, these incidents where officers do things
21 that are illegal.

22 You know, I'm only asking for you all as, you
23 know, educated people, as educated individuals and as
24 my peers and as citizens to have an open mind, you
25 know, towards my situation and ask you, you know,

1 exercise fundamental fairness regarding everything
2 that is presented.

3 He is correct that I am -- you know, I did want
4 to present myself in an orange jumpsuit because I
5 haven't been free. So I don't feel, you know, that
6 me dressing up and trying to seem or trying to make
7 my circumstances fit, you know, any type of way to
8 play mind games to make you believe that I'm not
9 incarcerated because I am. And I've been
10 incarcerated.

11 You know, today is a matter of, you know,
12 possessing illegal substances, drugs, firearms, but
13 today is also a matter of whether or not there is a
14 probability that anything could have been put there,
15 placed there, mishandled. There was numerous
16 officers at the scene who executed, you know, a
17 search warrant, you know. My rights were violated at
18 that point, at that time, which I will get into
19 later.

20 I'm charged with trafficking 14 to 28 grams of
21 heroin, 28 to 100 grams of methamphetamine,
22 possession with intent to distribute Carfentanil.
23 The necessary elements for trafficking is, you know,
24 knowing, with the intention to distribute,
25 manufacture, sell and things of the nature. Not use,

1 but to sell, manufacture and, you know, to reap
2 profitable gains off of these illegal substances.

3 I mean, you know, like he said, you know, pretty
4 much everything he stated was accurate to a degree
5 according to the law and what the law says about the
6 situation. But as far as the situation at hand, you
7 know, how everything was conducted, what was done,
8 things I went through, things I been going through.
9 You know, I been told that I cannot present certain
10 things and certain circumstances of my situation that
11 would -- you know, as we being citizens would, you
12 know, make y'all lean more towards my side. So I was
13 told I couldn't present certain arguments and certain
14 things to y'all.

15 Today, the only thing I ask is, you know, y'all
16 being peers and y'all being citizens to be openminded
17 and, you know, look at me based on what officers say
18 because that's their job to arrest people because
19 it's probable. You know, the government benefits off
20 tax dollars by arresting people for, you know, what
21 they claim to be illegal substances, which it's only
22 illegal when you don't have a license to handle it.
23 Everything -- it all comes from the earth, basically.

24 But I'm going to prove today that some of things
25 that they say that I had, I didn't have. I didn't

1 have no knowledge of those things being there.
2 They're going to show you videos that make it seem
3 like, you know, that I may have claimed illegal
4 things because, like I said, once again, I'm not a
5 saint and I accept responsibility for the things that
6 I know that I did have and I did possess.

7 And I also made those statements because my
8 girlfriend was -- you know, she was an occupant of my
9 residence at that time in order to prevent -- you
10 know, me being a man, in order to prevent her from
11 being, you know, caught up in it. Because when law
12 enforcement come, they don't care, they'll lock up
13 everybody but a kid. If they could lock a child up,
14 I'm sure they would do that too.

15 So the only reason why I did claim certain --
16 only reason why I claimed that anything that y'all
17 find just, you know, charge me with it is to prevent
18 her from being hindered or caught up in my situation.
19 I'm sure they're going to show you videos and you're
20 going to see on the video that my whole entire -- you
21 know, the deal was to protect the belongings that I
22 had that belonged to her and to prevent her from
23 caught in this situation.

24 Once again, like the only thing I have to
25 present today is the things that they will allow me

1 to present. I plan to do so. You know, I just ask
2 for y'all, as my peers, to be openminded, really,
3 just look at every circumstance. Like The Judge
4 said, you know, examine the witnesses and how they
5 present and what they say because all this is, you
6 know, detrimental to my case, you know. I'm facing
7 25 to 30 years for what they consider to be
8 trafficking of illegal substances. I don't have
9 anybody here as a victim to say Mr.~Kennedy done this
10 to me, Mr.~Kennedy manipulated me, not even that I
11 sold them drugs or distributed them any type of
12 illegal substance. I'm just asking for y'all to be
13 openminded about the situation. That's all I'm
14 asking.

15 THE COURT: All right. State call the first
16 witness.

17 MR. GROUNSELL: Your Honor, may I approach
18 briefly?

19 THE COURT: Yes.

20 (WHEREUPON, an off-the-record bench conference
21 was held in the presence of the jury but out of
22 the hearing of the jury.)

23 THE COURT: All right. The State has a matter?

24 MR. GROUNSELL: Yes, Your Honor. Mr.~Kennedy
25 during his open brought up sentencing in this case.

1 I don't think that's appropriate. I think it's been
2 ruled upon before. And if Your Honor can just make a
3 curative instruction on that.

4 THE COURT: All right, ladies and gentlemen, as
5 you heard in Defense opening statement, he mentioned
6 about a range or a sentence that he possibly could
7 receive. That is not part of this case. That is not
8 evidence whatsoever and is not to be considered by
9 you for any reason in this case.

10 As I told you in my opening instructions, the
11 only evidence that you are to use to decide and reach
12 your verdict is the evidence that comes from the
13 witness stand and the documents or exhibits that may
14 be admitted into evidence.

15 So I'm going to ask you to disregard that
16 statement about range of sentence or what sentence he
17 could receive. It is not to be a part of your
18 consideration or deliberations in this case.

19 MR. GROUNDSELL: The State calls Officer Gilberto
20 Franco to the stand.

21 THE CLERK: Place your left hand on the Bible
22 and raise your right.

23 GILBERTO FRANCO, after being duly sworn,
24 testified as follows:

25 THE CLERK: Thank you, please be seated. Would

1 you please state your name for the record?

2 THE WITNESS: Gilberto Franco.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. GROUNSELL:

6 Q Officer Franco, who do you work for?

7 A Greenville City Police Department.

8 Q How long have worked for Greenville Police
9 Department?

10 A Nine years, going on ten.

11 Q And do you have any other law enforcement or
12 military experience prior to that?

13 A No, sir.

14 Q And what is your role with Greenville Police
15 Department?

16 A I work for the Crime Response Team through the
17 crimes unit.

18 Q Is that the role you were in at the time of this
19 incident?

20 A Yes, sir.

21 Q Can you explain a little bit about what the
22 Crime Response Team is and what they do?

23 A Yes. So we focus on community complaints, drug
24 investigations, things of that nature.

25 Q Y'all work along side other agencies within the

GILBERTO FRANCO-DIRECT BY MR. GROUNDSELL

1 county?

2 A Yes, sir.

3 Q And October 2nd, 2020, what agency were you all
4 working with?

5 A Working with DEU, the Drug Enforcement Unit.

6 Q Is that the countywide task force?

7 A Yes, sir.

8 Q Is that -- were you briefed by DEU about the
9 plan and execution of the search warrant?

10 A Yes, sir.

11 Q Were you in the lead car that initially blocked
12 in Mr.~Kennedy?

13 A Yes, sir.

14 Q All right. Do you recognize Mr.~Kennedy here
15 today?

16 A Yes, sir.

17 Q Can you point him out for the record?

18 A (The witness points to The Defendant.)

19 Q Did you have a specific role to play once
20 contact was made with Mr.~Kennedy?

21 A Yes, sir, visual control of the individual.

22 Q I skipped over this, but this apartment, this
23 all went down in Greenville County; is that correct?

24 A Yes, sir.

25 Q Okay. Through the course of this incident, was

GILBERTO FRANCO-DIRECT BY MR. GROUNDSELL

1 Mr.~Kennedy's demeanor calm?

2 A Yes, sir.

3 Q And was he cooperative?

4 A Yes, sir.

5 Q Did you hear Investigator McWhite give

6 Mr.~Kennedy his Miranda warnings --

7 A Yes, sir.

8 Q -- while in investigative detention? Did it
9 appear that Mr.~Kennedy waived those rights and talked
10 freely and voluntarily?

11 A Yes, sir.

12 Q Okay. Did Mr.~Kennedy appear to be of sound
13 mind?

14 A Yes, sir.

15 Q Did he appear in good health?

16 A Yes, sir.

17 Q Did he appear to be under the influence of
18 anything?

19 A No, sir.

20 Q Did anyone coerce him to make any statements?

21 A No, sir.

22 Q Would you say that Mr.~Kennedy was pretty
23 talkative?

24 A Yes, sir.

25 Q And were a lot those times unprompted?

GILBERTO FRANCO-DIRECT BY MR. GROUNDSELL

1 A Yes, sir.

2 Q Was it your impression he was taking
3 responsibility for the alleged drugs in the car?

4 A Yes, sir.

5 Q Did he make any statements that anyone else was
6 involved?

7 A Statements -- no, that it was just him.

8 Q Okay. Did he specifically say his girlfriend in
9 the apartment had nothing to do with anything that illegal
10 was found?

11 A Yes, sir.

12 Q So he was claiming anything and saying that it
13 was not hers?

14 A Correct.

15 Q Were you wearing a body-worn camera during the
16 course of the execution of the search warrant?

17 A Yes, sir.

18 Q Again, so you were, basically, tasked with being
19 around him the whole entire time that you all were on
20 scene; is that correct?

21 A Yes, sir.

22 Q All the way until, basically, he got to jail; is
23 that correct?

24 A Yes, sir.

25 Q Okay. I'm handing you what has been previously

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL

1 marked as State's Exhibit 1, do you recognize this disk?

2 A I do.

3 Q How do you recognize it?

4 A My initials are on it.

5 Q Did you have an opportunity to view it prior to
6 trial?

7 A Yes, sir.

8 Q And has it been altered in any way?

9 A No, sir.

10 Q Is it a clear and accurate depiction of the
11 events that day?

12 A Yes, sir.

13 MR. GROUNSELL: The State moves to enter State's
14 Exhibit No. 1 into evidence, Your Honor, and publish
15 it to the jury.

16 THE COURT: All right, any objection,
17 Mr.~Kennedy?

18 MR. KENNEDY: No, sir.

19 THE COURT: All right, State's Exhibit No. 1
20 admitted into evidence without objection.

21 (WHEREUPON, State's Exhibit No. 1 was admitted
22 into evidence.)

23 MR. GROUNSELL: Your Honor, for the sake of
24 time, I'm going to play clips of this video.

25 THE COURT: All right.

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL

1 (WHEREUPON, State's Exhibit No. 1 was published
2 for the jury.)

3 BY MR. GROUNSELL:

4 Q You said he had something in that bag. Do you
5 know where those substances were located?

6 A I believe in this bag, initially.

7 Q Was that bag in that car?

8 A Yes, sir.

9 Q Was it in the passenger seat?

10 A I believe so.

11 Q Okay.

12 (WHEREUPON, State's Exhibit No. 1 was continued
13 to be published.)

14 BY MR. GROUNSELL:

15 Q Do you know how much money was found in that
16 bag?

17 A Not off the top of my head.

18 Q But the money was found along side those
19 substances in the bag?

20 A I believe so, yeah.

21 Q Okay.

22 (WHEREUPON, State's Exhibit No. 1 was continued
23 to be published.)

24 BY MR. GROUNSELL:

25 Q When he said, Whatever you find is mine. What

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL

1 did you think he was referring to?

2 A The items we're going to be finding in his car
3 and in his house.

4 Q Okay.

5 (WHEREUPON, State's Exhibit No. 1 was continued
6 to be published.)

7 BY MR. GROUNSELL:

8 Q He referred a couple of times in there that She
9 don't know my business. What do you think he was
10 referring to?

11 A Illegal activity.

12 Q Okay.

13 (WHEREUPON, State's Exhibit No. 1 was continued
14 to be published.)

15 BY MR. GROUNSELL:

16 Q When he was talking about stimulus money, she
17 shook her head no; is that what you saw?

18 A Yes, sir.

19 Q Okay. He also claimed in that video that
20 anything illegal was his, that he was keeping it from her?

21 A Correct, he was keeping it away from her and the
22 kids.

23 (WHEREUPON, State's Exhibit No. 1 was continued
24 to be published.)

25

GILBERTO FRANCO-DIRECT BY MR. GROUNSELL

1 BY MR. GROUNSELL:

2 Q Did he appear to know exactly what Investigator
3 McWhite was talking about when he was talking about that
4 glove?

5 A Yes, sir.

6 (WHEREUPON, State's Exhibit No. 1 was continued
7 to be published.)

8 BY MR. GROUNSELL:

9 Q Those statements he just made, was he referring
10 to back to when the police got behind him in the parking
11 lot? Is that what your impression was, that he put
12 everything in the bag?

13 A Yes, sir.

14 Q Okay.

15 (WHEREUPON, State's Exhibit No. 1 was continued
16 to be published.)

17 BY MR. GROUNSELL:

18 Q Officer Franco, did you feel Mr.~Kennedy knew or
19 had knowledge about the drugs in the car and in the
20 apartment?

21 A Yes, sir.

22 Q And after rewatching those clips, do you still
23 feel Mr.~Kennedy was accepting responsibility for the
24 illegal items in both the car and apartment?

25 A Yes, sir.

GILBERTO FRANCO-CROSS BY MR. KENNEDY

1 Q Did you see anyone else around the car or house
2 that could have possibly owned these alleged drugs or
3 guns?

4 A No, sir.

5 Q Did Mr.~Kennedy make a statement alleging that
6 someone else owned the illegal items seized from his car
7 or his house?

8 A No, sir.

9 MR. GROUNSELL: The State has nothing further
10 for you. Please answer any questions that
11 Mr.~Kennedy has for you.

12 THE COURT: All right, Mr. {FLUSH}Kennedy,
13 cross-examination.

14 CROSS-EXAMINATION

15 BY MR. KENNEDY:

16 Q Officer Franco, right?

17 A Yes, sir.

18 Q Are you a part of the GPD Crime Response Team?

19 A Yes, sir.

20 Q What officers can you remember that are part of
21 the Crime Response Team that were present during the
22 search?

23 A That would be me, Officer Reyes, Officer Miller,
24 Officer Sigmon. Had some change around, I think, may have
25 been possibly Officer Lapek, Officer Tyler Miller, Officer

GILBERTO FRANCO-CROSS BY MR. KENNEDY

1 Hardy and Officer Cameron.

2 Q Okay. So did you participate in a traffic
3 violation that occurred September the 7th where I was
4 pulled over and searched by multiple officers, like
5 Officer Lapek, Officer Miller, Officer Franco and two or
6 three other unidentified officers that I cannot identify?

7 A No, sir.

8 Q So you didn't participate in the traffic
9 violation where I was pulled over on September 7th?

10 A No, sir.

11 Q A month before the execution of the search
12 warrant?

13 A No.

14 Q By any chance, do you know why Officer Miller,
15 Officer Lapek, Officer Sigmon aren't present here today as
16 witnesses?

17 A I don't know.

18 MR. GROUNSELL: Objection, Your Honor, calls for
19 speculation. How would he know?

20 THE COURT: Sustained.

21 MR. KENNEDY: Okay.

22 BY MR. KENNEDY:

23 Q But you did participate in this with Officer
24 Miller, Officer Lapek, Officer Franco, Officer Sigmon; is
25 that correct?

GILBERTO FRANCO-CROSS BY MR. KENNEDY

1 A Can you repeat your question?

2 Q So it is true that you participated in this --
3 the execution of the search warrant with Officer Lapek,
4 Officer Miller, Officer Franco -- well, you are Franco,
5 Officer Reyes; is that correct?

6 A For the execution of the search warrant, yes, I
7 was there.

8 Q Okay. You participated with these other
9 officers?

10 A At the execution of the search warrant, yes.

11 Q Okay. Did your body cam footage capture exactly
12 where the illegal drugs were located?

13 A No.

14 Q So your body cam didn't capture you specifically
15 grabbing something out of a specific area, illegal
16 substances?

17 A No.

18 Q Did you find marijuana inside the vehicle?

19 A I don't recall searching the car.

20 Q Okay. Did you find marijuana inside the
21 residence?

22 A I never went into the apartment.

23 Q Is it possible that when I claimed anything
24 illegal, I could have been just been referring to
25 marijuana?

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 A Possibly, yes.

2 Q Okay. Whenever I made the statement that she --
3 that my girlfriend wasn't in my business, could I have
4 been referring to smoking marijuana on probation?

5 A Possibly, yes.

6 MR. KENNEDY: I have no further questions for
7 Officer Franco.

8 THE COURT: Any redirect?

9 MR. GROUNSELL: No, Your Honor.

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

12 THE WITNESS: Thank you.

13 THE COURT: All right, next witness.

14 MR. GROUNSELL: State calls Officer Reyes to the
15 stand.

16 MAURICIO ANDRES REYES, after being duly sworn,
17 testified as follows:

18 THE CLERK: Please be seated. Officer, for the
19 record, could you please state your name?

20 THE WITNESS: Mauricio Andres Reyes.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. GROUNSELL:

24 Q Officer Reyes, who do you work for?

25 A Greenville Police Department.

MAURICIO REYES-DIRECT BY MR. GROUNDSELL

1 Q How long have you been there?

2 A Next month will be 14 years.

3 Q Any law enforcement or military experience prior
4 to that?

5 A No.

6 Q Okay. What is your role with the Greenville
7 Police Department?

8 A As of right now?

9 Q Now and what you were at that point?

10 A Been 11 and a half years on uniform patrol. The
11 last two and a half years or so, I been on the Crime
12 Response Team.

13 Q That was your role at the time of this incident,
14 you were on the Crime Response Team?

15 A Correct.

16 Q CRT for short?

17 A Yes.

18 Q Okay. On October 2nd, 2020, were you present at
19 the execution of the search warrant?

20 A I was.

21 Q Once Mr. Kennedy was removed from the vehicle,
22 what role did you play?

23 A Essentially, began to search the vehicle, his
24 vehicle.

25 Q Okay. Did you have a body-worn camera on at

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 that time?

2 A I did.

3 Q Okay. I'm handing you what has been previously
4 marked as State's Exhibit 2, do you recognize this disk?

5 A Yes, sir.

6 Q How do you recognize this disk?

7 A By my initials.

8 Q Has it been altered in any way?

9 A No, sir.

10 Q Have you had an opportunity to view it?

11 A Yes, sir.

12 Q And the only parts that would have been altered
13 would be anything that was necessary to mute for court
14 purposes; is that correct?

15 A Correct.

16 Q That's correct, okay. But it's a clear and
17 accurate depiction of the day; is that correct?

18 A Yes, sir.

19 Q Okay.

20 MR. GROUNSELL: The State moves to enter State's
21 Exhibit 2 into evidence, Your Honor, and publish to
22 the jury.

23 THE COURT: All right, Mr.~Kennedy, any
24 objection?

25 MR. KENNEDY: No, sir.

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 THE COURT: All right, Exhibit No. 2 is admitted
2 into evidence without objection -- State's Exhibit
3 No. 2 is admitted into evidence without objection.

4 MR. KENNEDY: Your Honor, I take that back.

5 THE COURT: Yes, sir, what's your objection?

6 MR. KENNEDY: My objection is based on the way
7 that the initial encounter was effectuated. The
8 Fourth Amendment protects all citizens' right to be
9 protected from unreasonable searches and seizures.
10 These officers violated the --

11 THE COURT: I need your objection to be succinct
12 and not go into explanation. What's your objection
13 to the admission of the disk?

14 MR. KENNEDY: That it was illegally obtained. I
15 was illegally obtained by these officers.

16 THE COURT: All right, anything from The State?

17 Objection overruled, it's been authenticated
18 under the rules of evidence. Exhibit No. 2, State's
19 Exhibit No. 2 is admitted in evidence over objection.

20 (WHEREUPON, State's Exhibit No. 2 was admitted
21 into evidence.)

22 MR. GROUNSELL: Thank you, Your Honor.

23 THE COURT: But your objection is noted on the
24 record, Mr. Kennedy.

25 (WHEREUPON, State's Exhibit No. 2 was

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 published.)

2 BY MR. GROUNSELL:

3 Q Officer Reyes, do y'all's cameras have a
4 30-second delay before it picks up audio?

5 A It's around that, yes, sir.

6 Q Okay.

7 (WHEREUPON, State's Exhibit No. 2 was continued
8 to be published.)

9 BY MR. GROUNSELL:

10 Q Is your body cam on mute from then on out?

11 A Yes, sir.

12 Q All right. And so what all did you find in that
13 bag?

14 A Methamphetamine, heroin, along with a little bit
15 of marijuana and money as well.

16 Q And the money was in that bag?

17 A Yes.

18 Q I'm handing you what's been marked previously as
19 State's Exhibit No. 3 for identification, do you recognize
20 this bag?

21 A I do.

22 Q What is it?

23 A It's the backpack that was in the front seat.

24 Q And when did you first see it?

25 A Immediately as we were taking Mr.~Kennedy into

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 custody?

2 Q And is it materially and substantially the same
3 condition on October 2nd, 2020 as it is here today?

4 A Yes, sir.

5 THE COURT: Officer, could you pull that
6 microphone a little bit to you so everybody can hear
7 you?

8 MR. GROUNSELL: Your Honor, I ask that State's
9 Exhibit 3 be admitted into evidence.

10 THE COURT: Mr.~Kennedy, any objection?

11 MR. KENNEDY: Yes, sir.

12 THE COURT: All right, what's the grounds?

13 MR. KENNEDY: My objection is based on Fourth
14 Amendment Constitution that any items that are seized
15 illegally cannot be introduced into evidence in a
16 state or federal trial. The way the initial
17 encounter was effectuated, these officers --

18 THE COURT: You're not allowed to go into all
19 the detail. Your objection is based on those ground;
20 is that correct?

21 MR. KENNEDY: Correct.

22 THE COURT: All right, objection overruled.
23 Exhibit No. 3 is admitted into evidence over
24 objection.

25 (WHEREUPON, State's Exhibit No. 3 was admitted

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 into evidence.)

2 BY MR. GROUNSELL:

3 Q So the substance, were they found in this bag?

4 A In the -- the majority was in the main
5 compartment of it. I do recall, I think, the marijuana
6 was in one of the small pockets.

7 Q Okay. I'm handing you what's been marked as
8 State's Exhibit 4 and 5 for identification purposes. Are
9 these the crystal and brown powder substances that were
10 inside the bag?

11 A Yes, sir.

12 Q Did they appear to be altered or tampered with
13 in any way?

14 A No.

15 Q Did you tamper or alter them in any way?

16 A Did not.

17 Q Did you keep them secure while in your
18 possession?

19 A Yes, sir.

20 Q Do you know who took possession of them from
21 you?

22 A Began with Officer Sigmon and then we handed it
23 over to one of the DEU agents.

24 Q Okay. Thank you. I'm going to play for you a
25 brief clip from Officer Franco's body worn camera and see

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 if you recognize Officer Sigmon in that video.

2 (WHEREUPON, a video was published.)

3 BY MR. GROUNSELL:

4 Q Is that Officer Sigmon and you walking away from
5 the car?

6 A Correct. I'm right beside the front driver's
7 side of the vehicle, and then Sigmon's on the right of me.

8 Q Okay. At that point, that bag is still in the
9 front seat of that car; is that correct?

10 A Yes. Yes.

11 (WHEREUPON, a video was continued to be
12 published.)

13 BY MR. GROUNSELL:

14 Q Is that Officer Sigmon walking back towards the
15 car?

16 A Yes, sir.

17 Q Okay.

18 (WHEREUPON, a video was continued to be
19 published.)

20 BY MR. GROUNSELL:

21 Q Is that the red bag in his hand?

22 A Yes, sir.

23 Q Does that still contain the substances and the
24 money?

25 A Correct.

MAURICIO REYES-DIRECT BY MR. GROUNSELL

1 (WHEREUPON, a video was continued to be
2 published.)

3 BY MR. GROUNSELL:

4 Q Who does he hand that bag to?

5 A It appears to be Officer Moore, Detective Moore?

6 Q Okay.

7 (WHEREUPON, a video was continued to be
8 published.)

9 BY MR. GROUNSELL:

10 Q Is that Officer McWhite now with the bag?

11 A Yes.

12 Q So it went from Sigmon to Moore --

13 A Yes.

14 Q -- McWhite in the past five seconds?

15 A Correct.

16 Q Okay.

17 (WHEREUPON, a video was continued to be
18 published.)

19 BY MR. GROUNSELL:

20 Q It appears that Officer Sigmon tampered or
21 altered with the substance in the bag?

22 A No.

23 Q Do you remember approximately how much money was
24 in that bag?

25 A I do not, but I know it was well over 2,000.

MAURICIO REYES-CROSS BY MR. KENNEDY

1 Q Okay. Did Mr.~Kennedy claim the money was his?

2 A He made a remark as to some of it belonging to
3 his girlfriend.

4 Q Did Mr.~Kennedy ever deny the alleged drugs?

5 A No.

6 Q Did it appear anyone else could have owned that
7 bag or drugs in the vehicle?

8 A No, it was just him in the vehicle.

9 Q Was it clear to you that he would have had
10 knowledge of the bag and contents of the bag?

11 A Yes.

12 Q Did he know approximately how much money was in
13 the bag?

14 A I don't recall.

15 MR. GROUNSELL: I don't have anything further
16 for you. Please answer any questions Mr.~Kennedy has
17 for you.

18 THE COURT: All right, cross-examination,
19 Mr.~Kennedy.

20 CROSS-EXAMINATION

21 BY MR. KENNEDY:

22 Q So, Officer Reyes, are you a part of the
23 Greenville Police Department Crime Response Team?

24 A Yes, sir.

25 Q What other officers, can you remember, are a

MAURICIO REYES-CROSS BY MR. KENNEDY

1 part of the Crime Response Team that were present during
2 the execution of this search warrant?

3 A I know it was me, Officer Sigmon, Officer Ryan
4 Miller, I believe on a normal day Officer Lapek would be
5 there as well. But other than that, I'm not 100 percent.

6 Q Did you participate in a traffic violation that
7 occurred on September the 7th where I was pulled over and
8 searched by multiple officers like Officer Lapek, Officer
9 Miller, Franco and any other identify officers?

10 A I don't recall that, no, sir.

11 Q Okay. Did your body cam footage capture exactly
12 where the illegal drugs came from?

13 A Yes, sir.

14 Q So you saying that you could see on body cam
15 where you put your hands inside of a bag and pulled drugs
16 out of the bag?

17 A No, sir. What I'm saying is that you can -- my
18 body camera clearly shows the red bag in the front seat
19 and when I removed that, that's where the contents were.

20 Q Okay. So you can't see on camera where you
21 pulled drugs out of the bag?

22 A Correct. You can hear me giving a description
23 of what was inside the bag when I do pull it out.

24 Q Did you find marijuana inside the car?

25 A In the backpack.

MAURICIO REYES-CROSS BY MR. KENNEDY

1 Q Inside the backpack?

2 A Yes, sir.

3 Q What did you place on the hood, initially?

4 A The hood?

5 Q Yeah, whenever you took something and put it on
6 top to the hood, it was --

7 A On the top of the vehicle?

8 Q Yeah.

9 A It was a bag of methamphetamine that was inside
10 of the backpack that was inside the vehicle.

11 Q Okay. Is there any specific reason why your
12 body cam didn't capture exactly where the drugs were
13 located and exactly where they came from?

14 A Probably because of the angle. We wear it right
15 here on our right side. Unfortunately, they're not 360
16 cameras where you can see everything. However, it does
17 show the majority of what we do during our contact with
18 people.

19 Q So when you came in contact with the red bag,
20 you were aware that body cam would not show exactly what
21 came from the bag?

22 A Correct, that's why I removed it and I put it on
23 top of the vehicle so it could be seen.

24 Q How big would you say the bag of drugs was that
25 you claim to have taken out of the bag?

MAURICIO REYES-REDIRECT BY MR. GROUNSELL

1 A It was, at least, trafficking weight of
2 methamphetamine, which is about ten grams.

3 Q Could you give me like the size?

4 A Baseball to a little bit smaller.

5 Q Is that small enough to fit in the pocket
6 without being noticed?

7 A No, if I put a baseball in my pants right now,
8 it would be very evident that I had a baseball inside
9 there.

10 Q So you said it was ten grams.

11 A At least, yes, sir. I'm not saying
12 approximately, I'm just staying, at least, ten grams.

13 Q Do you have any explanation as to why your body
14 cam went on mute?

15 A It's pretty normal for us to do when we're
16 talking about the investigation. When it doesn't pertain
17 to anything else that we are just simply talking, we tend
18 to mute our body cameras. But once we make contact with
19 him or anybody of significant nature, it will be unmuted.

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

22 THE COURT: All right, any redirect?

23 MR. GROUNSELL: Yes, just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. GROUNSELL:

MAURICIO REYES-REDIRECT BY MR. GROUNSELL

1 Q The questions are kind of implied, but were the
2 drugs there?

3 A Absolutely.

4 Q Did you put the drugs there?

5 A I did not.

6 Q Okay. And that marijuana he mentioned was along
7 side the other substances inside the bag?

8 A Correct.

9 Q And you were the first one to the passenger seat
10 to search that side of the car; is that correct?

11 A Yes, I was.

12 Q So it would have been you if someone were to
13 plant the drugs, it would have been you; is that correct?

14 A Correct.

15 Q Okay. What would happen if you did something
16 like that?

17 A I would be charged and I would also be on trial
18 most likely.

19 Q What would you do if you saw someone do that and
20 you didn't report something like that?

21 A Same thing. I would be terminated and charged.

22 Q Is your 14-year career worth risking over this
23 one case?

24 A Absolutely not.

25 MR. GROUNSELL: Nothing further.

MAURICIO REYES-REDIRECT BY MR. GROUNSELL

1 THE COURT: All right, thank you, sir, you may
2 step down.

3 All right, ladies and gentlemen, let's take our
4 morning break here. Please don't discuss the case.
5 And we'll take a little break, give you a chance
6 stretch, use the restroom, bring you back out and
7 we'll proceed.

8 (WHEREUPON, the jury left open court at
9 approximately 11:10 a.m.)

10 THE COURT: We'll stand in recess.

11 (WHEREUPON, a short break was taken.)

12 (WHEREUPON, State's Exhibits Nos. 6-18 were
13 marked for identification only.)

14 THE COURT: Mr.~Kennedy, let me just mention one
15 thing before we bring the jury back in. On that
16 objection, whenever I rule, you're allowed to make
17 whatever objection you have. And you made your
18 objection illegal search and seizure Fourth
19 Amendment. What our rules don't allow is that you
20 start talking about why and start talking about this
21 officer did this or this happened. You're protected
22 as long as you make your objection as to whatever
23 grounds it is. We just can't have what we call
24 speaking objections. So your objections are noted.
25 Just make the objection on whatever grounds that you

MAURICIO REYES-REDIRECT BY MR. GROUNSELL

1 feel you need to.

2 All right, anything before we bring the jury in?
3 Anything from The State?

4 MR. GROUNSELL: No, Your Honor.

5 THE COURT: Anything from you, Mr.~Kennedy?

6 MR. KENNEDY: Yes, sir. I would like to also
7 make an objection, which I know it's too late because
8 the jury has already seen a video, but objection to
9 Officer Reyes' body cam footage because, you know,
10 before this trial, I was never shown this video. I
11 was only shown a couple of these videos. I was never
12 shown this video. So it deprived me my right to a
13 fair trial to prepare for a defense for this video in
14 violation of Brady vs. Maryland. I was never -- this
15 was never given to me. I was never shown this video.

16 THE COURT: All right, Mr. Grounsell.

17 MR. GROUNSELL: Your Honor, The State has turned
18 over everything we have in discovery, including the
19 video.

20 THE COURT: The complete video?

21 MR. GROUNSELL: Yes, your Honor.

22 THE COURT: All right.

23 All right, Mr.~Kennedy, The State's indicated
24 they have turned over everything to you.

25 MR. KENNEDY: I mean, it's fine, but I'm just

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 stating for the record that this was added to the --
2 I never seen this video.

3 THE COURT: All right, I'll note your objection
4 on the record.

5 MR. KENNEDY: Okay.

6 THE COURT: And overruled.

7 All right, Mrs. Fryer, bring them on in.

8 (WHEREUPON, the jury entered open court at
9 approximately 11:36 a.m.)

10 THE COURT: All right, call your next witness.

11 MR. GROUNSELL: The State calls investigator
12 McWhite to the stand.

13 JONATHAN MCWHITE, after being duly sworn,
14 testified as follows:

15 THE CLERK: Thank you, have a seat, please.
16 Investigator, could you please state your name for
17 the record?

18 THE WITNESS: Jonathan McWhite.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. GROUNSELL:

22 Q Investigator McWhite, who are you currently
23 employed with?

24 A The South Carolina Law Enforcement Division or
25 SLED.

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL

1 Q Before SLED, any law enforcement experience?

2 A Yes, sir. In 2012, I began work for the Greer
3 Police Department as a uniform patrol officer. I was
4 given the opportunity to take the position as a detective
5 in narcotics. I was promoted in that position when I was
6 a unit supervisor. When the county drug enforcement
7 started, I was assigned as a team lead investigator for
8 one of the teams of the DEU.

9 Q What sort of training have you had generally and
10 specifically to drug enforcement?

11 A I've had a lot of training, over more than 10
12 years of law enforcement experience. Of course, I
13 graduated the criminal justice academy. I have two
14 criminal justice degrees. Then over the years, I've
15 obtained hundred of hours of training for general
16 investigations, basic narcotics investigations, undercover
17 investigations. Mainly, I've trained large scale drug
18 operations.

19 Q Who teaches those courses?

20 A They're taught some by The State, some are
21 taught by private organizations that are -- hire
22 instructors who are either actively working in the field
23 or they recently retired and they're considered specialist
24 in their craft.

25 Q At the time of this investigation, what was your

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 role and who were you employed with?

2 A I was an investigator with Greenville County
3 Multiple-jurisdictional Drug Enforcement Unit.

4 Q Who is that made of? What is that unit made of?

5 A DEU is -- consist of all the narcotics
6 investigators in Greenville County, the sheriff's office,
7 all municipalities which include the Greer Police
8 Department and myself.

9 Q What is the goal of having the DEU for the
10 county?

11 A DEU was designed to target large scale drug
12 traffickers, to go after more complex cases, to
13 investigate more complex cases and ones that go beyond --
14 you know, working for the City of Greer, we would often
15 run into situations where someone is found using, selling,
16 possessing drugs. And for us to take that investigation
17 to the next level, we may have to go outside the City of
18 Greer. So each municipality runs into situation, so we
19 came together as one countywide task force and it allows
20 us to work larger cases.

21 Q Who were you investigating back in September,
22 early October of 2022?

23 A Michael Kennedy.

24 Q Or 2020, sorry.

25 A Michael Kennedy.

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL

1 Q Do you recognize him here today?

2 A Yes, sir.

3 Q Can you point him out?

4 A Yes, sir. He's The Defendant in the orange
5 jumpsuit.

6 Q Okay. What did your investigation lead to?

7 A Eventually, led to obtaining a search warrant
8 for his vehicle and his residence and serving that search
9 warrant on October 2nd.

10 Q So you were the case agent or lead investigator
11 during this case?

12 A That's correct.

13 Q What day was this search warrant issued?

14 A September 24th, 2020, I believe.

15 Q What day was it executed?

16 A October 2nd.

17 Q Okay. Is that a normal timeframe?

18 A Yes, sir.

19 Q A few days in between?

20 A Search warrant allows up to 10 days to execute
21 the search warrant.

22 Q Okay. What type of preparations were made
23 leading up to the execution of that search warrant?

24 A So we went to great lengths to identify our
25 suspect, identify his residence, vehicle, then items that

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 we were going to be searching for. Then planning as far
2 as meetings with assisting officers and agencies so the
3 drug enforcement unit -- of course, we have officers from
4 every municipality in the county, but this particular
5 instance, it was in the City of Greenville. We often work
6 with CRT. They have vast knowledge of working with kind
7 of dynamic situations where they're having to jump out and
8 do traffic stops or something, not just an investigative
9 group. So we call them for tactical assistance.

10 Q Did you confirm that Mr.~Kennedy owned the
11 vehicle?

12 A Yes, sir.

13 Q Did you confirm Mr.~Kennedy leased the
14 apartment?

15 A Yes, sir.

16 Q Okay. And you were present during the search
17 warrant?

18 A That's correct.

19 Q And how did y'all initiate the execution of the
20 search warrant?

21 A So we waited at the apartment building for
22 Mr.~Kennedy to arrive because we did have a search warrant
23 for the apartment, but we don't want to serve a search
24 warrant on an apartment and not also have the vehicle
25 which the search warrant covered, so we waited at the

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 apartment for the return of his vehicle. Once we saw it
2 was him -- you've seen the video, a pretty conspicuous
3 vehicle with a license plate registered to him. So as
4 soon as we saw him park and we knew it was safe to do so,
5 we had a vehicle park behind him and that's when we
6 started giving commands. We took him right into
7 investigative detention in the most safe practical best
8 practice way that we do that.

9 We have officers that serve on SWAT teams
10 and they receive specific training on how to do these --
11 you might call them a -- a traffic stop, felony traffic
12 stop, this wasn't a traffic stop, this was investigative
13 detention. So we got out, identified ourselves, gave him
14 loud strong commands to which he complied, placed him in
15 handcuffs and investigative detention, which is customary,
16 and then let him know that he was, in fact, in
17 investigative detention and not free to leave.

18 Q Okay. That apartment was in Greenville County;
19 right?

20 A Yes, that's correct.

21 Q Okay. So you're taught to approach a situation
22 like that?

23 A Yes.

24 Q Okay. Were there any other occupants in that
25 vehicle with Mr.~Kennedy?

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 A No, sir.

2 Q After Mr.~Kennedy was removed from the vehicle,
3 was he -- you said he was placed in investigative
4 detention, was he Mirandized?

5 A Yes, sir.

6 Q At that time?

7 A Yes, sir.

8 Q How do you give Miranda warnings?

9 A So I gave Miranda from a card that I'm provided
10 with that says clearly someone doesn't have to speak with
11 me at that time and has a right to counsel and such.

12 Q Was he willing to speak to you after those
13 warnings?

14 A Yes.

15 Q Did he appear to freely and voluntarily waive
16 his rights and talk with you?

17 A Yes.

18 Q Did you coerce Mr.~Kennedy into making any
19 statements?

20 A No.

21 Q Was he promised anything if he made any
22 admissions?

23 A No, sir.

24 Q Did he appear of sound mind and good physical
25 health?

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 A He did.

2 Q Was there a lengthy interrogation of
3 Mr.~Kennedy?

4 A No, sir. I would describe it as pretty
5 conversational.

6 Q Okay. He didn't appear under the influence of
7 anything?

8 A No, sir.

9 Q A lot of his statements were unprompted?

10 A That's right.

11 Q What was found inside of the car, inside the
12 vehicle?

13 A Inside the vehicle, of which Mr.~Kennedy was the
14 sole occupant in, was a red bag, which we've seen. Inside
15 that red bag was green plant material, brown powder
16 substance, white crystal substance that we recognize as
17 drug investigators as potential evidence.

18 Q Do you know what the weight of those crystal
19 substances or brown substances were at that time?

20 A I believe the lab weight came back as 5.75
21 grams.

22 Q That was for the heroin?

23 A Yes, sir.

24 Q How about the methamphetamine?

25 A I believe it was 55.55 grams.

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 Q Okay. At least, approximately in that range?

2 A Yes, sir.

3 Q Okay. When does trafficking weight heroin
4 begin?

5 A Four grams.

6 Q For methamphetamine?

7 A Ten grams.

8 Q So well over on the methamphetamine and just
9 over on the heroin?

10 A That's correct.

11 Q Okay. I'm going to go ahead and hand you what's
12 been previously marked as State's Exhibit 4 and 5 for
13 identification purposes. Are these the crystal and brown
14 powder substances that were inside of the bag?

15 A Yes, sir.

16 Q And through your training and experience, you
17 said you suspected these substances were heroin --

18 A Heroin --

19 Q -- and methamphetamine?

20 A Methamphetamine, yes, sir.

21 Q Did you alter them in any way?

22 A No, sir.

23 Q Did they appear altered or tampered with in any
24 way?

25 A No, sir.

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 Q Did you see Officer Sigmon or anyone else tamper
2 with them?

3 A No, sir.

4 Q Did you keep them secure while in your
5 possession?

6 A Yes, sir.

7 Q Who took possession of them from you?

8 A From me, so I -- you've seen the video, I
9 carried the bag upstairs. Then we have a process at DEU
10 and it's pretty common and we'll assign -- I, as the case
11 agent, will assign a scribe. That's the person who's
12 going to be responsible for taking all evidence, making a
13 list of everything seized during the execution of the
14 search warrant and that person is responsible for seeing
15 that those items are safely transported to property and
16 evidence department for lab analysis and for evidence for
17 trial. So I would turn that over to the scribe in this
18 case, which is Investigator Tyler Workman.

19 Q Did Mr.~Kennedy give you an explanation for
20 having such a large sum of money?

21 A At the time, he said that it was his
22 girlfriend's back paid stimulus check.

23 Q All right. Had there been recent stimulus back
24 then?

25 A No. There was no second stimulus that he

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 referred to at that time and his girlfriend did not
2 corroborate his story.

3 Q And his girlfriend was Ms. Shameka Johnson?

4 A That's correct.

5 Q All right. So after conversing with her and
6 Mr.~Kennedy, your investigation revealed as to what about
7 the money?

8 A That the money was not what he said, that it
9 belonged to her. You can see in the video, you know, I
10 think he makes a statement he just came from the bank.
11 Well, that sum of cash was random denominations and in a
12 big clump. Based on my law enforcement training and
13 experience drug investigations, it was much more -- and it
14 was found in close proximity to drugs, I believed these to
15 be the actually proceeds of drug sales. So, therefore,
16 like is commonplace, any items we believe to be the
17 proceeds of drug sales or evidence of drug sales, we seize
18 the cash.

19 Q Okay. Was the search warrant also executed on
20 the apartment?

21 A Yes, sir.

22 Q Can you explain kind of how that's done, how a
23 search warrant is executed on an apartment.

24 A So in this circumstances, we knew we had the
25 primary suspect in custody. You hear me ask on the video,

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL

1 is there anybody in the apartment? Regardless of what
2 anyone says, our utmost concern is life. Search warrant
3 executions are inherently dangerous, so before we go run
4 up there, we wanted to make sure -- we had him safely
5 secured, we wanted to make sure that we weren't going to
6 be running into a dangerous situation or that we were
7 going to put anyone in a dangerous situation.

8 He says his girlfriend and his two children
9 were up there. So they would have gone up there with a
10 team, what we call the entry team. They made entry, no
11 damage or anything like that. They entered the apartment,
12 secured Ms. Johnson and her two children. She was not
13 handcuffed. She was free to kind of move about the
14 breezeway. We made sure the kids were safe and able to
15 hang around mom.

16 Anyways, once we clear the apartment, so
17 the apartment is clear, there's nobody in there, now the
18 search team begins. The search team consist of my
19 investigators of the Drug Enforcement Unit, my team folks
20 that I work with everyday. They each take a room or two
21 people will take a room, they break up in the rooms and
22 they start searching. If they find something of
23 evidentiary value, they will call the photographer. The
24 photographer will come over and take a picture, then I
25 will be taking to the scribe. The scribe will log it down

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 on the search warrant and it is packaged and transported
2 to property and evidence.

3 Q As the case agent, do you have a specific area
4 that you search or are you just overseeing the operation?

5 A No, my primary concern is to delegate as the
6 case agent and then conduct interviews, which I did.

7 Q Was it just DEU investigators actually
8 performing the search?

9 A Performing the search was just the DEU and then
10 again, the exterior [indiscernible] control of the vehicle
11 was Greenville CRT.

12 Q Were you able to view the apartment in its
13 entirety?

14 A Yes, sir.

15 Q I'm handing you what's been marked State's
16 Exhibits 6, 7, 8, 9, 10 and 11 for identification
17 purposes. Do you recognize these pictures?

18 A I do.

19 Q Do you want to go through each one and make
20 sure?

21 A (The witness complies.) I recognize each of
22 these.

23 Q Did you view these areas yourself prior to being
24 photographed?

25 A No, they would have been photographed before I

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 would be in the apartment.

2 Q But you were able to see all these things in the
3 positions that they were in in these pictures?

4 A Yes.

5 Q Are they a fair and accurate depiction of what
6 was found in the apartment that day?

7 A Yes, sir.

8 Q Have they been altered in any way?

9 A No.

10 MR. GROUNSELL: State moves to introduce
11 Exhibits 6 through 11 into evidence and publish to
12 the jury, Your Honor.

13 THE COURT: All right, any objection from The
14 Defendant?

15 MR. KENNEDY: Yes, sir, I review the previous
16 objection -- renew the previous objection.

17 THE COURT: All right, on illegal search?

18 MR. KENNEDY: Illegal search and seizure.

19 THE COURT: All right, objection noted,
20 objection is overruled.

21 So Exhibits 6, 7, 8, 9, 10 and 11 are admitted
22 into evidence over objection.

23 (WHEREUPON, State's Exhibits Nos. 6-11 were
24 admitted into evidence.)

25

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 BY MR. GROUNSELL:

2 Q All right, what is this a picture of?

3 A That's the entry door to Mr.~Kennedy's
4 apartment, apartment 1304. See the keys in the doorway.
5 Just kind of reiterate you think search warrant, you know,
6 dynamic entry of broken doors. You see we took the time
7 to get Mr.~Kennedy's key and open it without causing any
8 damage.

9 Q Okay. And this picture right here?

10 A Mr.~Kennedy's bedroom.

11 Q Okay. And that's the master bedroom?

12 A Yes, sir.

13 Q Okay. To the upper corner, is that a mirror?

14 A It is.

15 Q Is that a picture of that mirror?

16 A It is.

17 Q Okay. Do you know where the drugs were located
18 in that apartment?

19 A I know there were drugs located on the window
20 sill behind this dresser here.

21 Q Once those drugs are pulled out -- you didn't
22 see where they were beforehand, you came into the
23 apartment, is this what was laid out?

24 A Yes, sir.

25 Q And that is what was found?

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 A That is, yes, sir.

2 Q Can you explain a little bit about what some of
3 these things are that we're seeing in this picture?

4 A Sure. So you see on the -- starting on the top
5 left, that would have been a substance that we believed
6 to, potentially, be heroin. The next item over is what we
7 recognize as methamphetamine. The next brown powder
8 substance, typically, what we would recognize as heroin.
9 There's a wax-type substance inside a glove that we were
10 unable to immediately recognize. Some tablets. Another
11 bag of white powder on the far right. There's an empty
12 piece of plastic below there, which I recognize based on
13 my experience as a drug investigator, to be where drugs
14 are commonly packaged in the corner of a bag and pulled
15 away and tied up and that's the remnants of that bag.

16 In the bottom left corner is what looks
17 like U.S. currency, it was actually found to be
18 counterfeit currency, which we routinely find just based
19 on the illegal nature of the drug business. We located
20 this counterfeit currency, seized it. I believe it was
21 eventually turned over to Secret Service, as is customary.

22 Q The middle picture, you said that's a rubber
23 glove, right?

24 A That's right.

25 Q Okay. And inside of that, there's a substance

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 that you did not know what it was at that time?

2 A That's correct.

3 Q Okay. Is that a picture of the inside of that
4 substance?

5 A It is.

6 Q How big would you say that substance -- would
7 you show the jury about how big it was?

8 A I'd say about this size.

9 Q Okay. There's this picture as well. Can you
10 tell us little bit about what's in that picture?

11 A So this would have been in the top drawer that
12 contained green plant material that I, based on my
13 training and experience, recognized as marijuana and
14 digital scale, which appears to be operable, possibly
15 illuminated in that picture. Also, it appears to be men's
16 boxer briefs alongside that marijuana.

17 Q Okay. I'm going to play you a clip from Officer
18 Franco's body-worn camera. It's already in evidence,
19 State's Exhibit 1, and ask you some questions after we
20 watch that clip.

21 (WHEREUPON, State's Exhibit No. 1 was
22 published.)

23 BY MR. GROUNSELL:

24 Q So you were asking very specifically about that?

25 A Correct.

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 Q His response was that -- your impression that he
2 knew exactly what you were talking about?

3 A Yes, sir.

4 Q That glove was found alongside these other
5 substances?

6 A That's right.

7 Q That's expected methamphetamine and heroin?

8 A That glove was found tightly wrapped inside the
9 same container as the meth and the heroin.

10 Q All right. Do you know the weights of those
11 substances?

12 A I believe the heroin, it was around 22 grams.
13 And I don't remember the weight on the meth off the top of
14 my head.

15 Q All right. I'm going to pass that up to refresh
16 your recollection. Maybe you can tell us by looking at
17 the report.

18 A Okay. Approximately -- one bag approximately 28
19 grams of crystal substance, that would be methamphetamine.
20 262.3 grams of a white powder substance, which would turn
21 out to be Carfentanil. 22.6 grams of a bag with gray
22 powder and another bag with gray powder in it.

23 Q Okay. Agent McWhite, what do you know about
24 Carfentanil?

25 A Carfentanil, you've probably heard Fentanyl.

JONATHAN MCWHITE-DIRECT BY MR. GROUNSELL

1 Carfentanil is another synthetic opioid. It's extremely
2 dangerous. According to the DEA, it's about 100 times
3 more potent than Fentanyl. Fentanyl has medical uses and
4 are highly regulated. Carfentanil was designed as a
5 tranquilizer for elephants. And it is used as a cheap
6 substitute, very small amount can be added as a cutting
7 agent to be sold as heroin. And you can imagine the end
8 result.

9 Q What other items were seized as a result of the
10 search warrant that were of interest to the DEU?

11 A So we seized a quantity of drugs, counterfeit
12 money, hydraulic press, which we recognize to be used
13 commonly in these sort of -- first, I'll tell you, you
14 need to understand with this opioid business, this is a
15 mixture of all different kinds of chemicals. When drugs
16 come across the border, a lot of times, they will come in
17 these kilos. It's hard pressed powder. So as these
18 chemicals are distributed and sold and cut down in weight,
19 of course, they lose their rock-like appearance and they
20 turn into more of a powder. So what -- based on my
21 experience, what drug dealers will do is they will take
22 any kind of substances, mix a small amount of a potent
23 drug and they will actually rerock that substance.

24 So rerocking is just a common term we use.
25 As a matter of fact, we've brought drugs before and we'll

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1 go oh, that's rerock. And for someone in the drug
2 industry, they understand this to mean that that powder
3 substance was taken, mixed, then repressed to make it
4 appear as it just came fresh off the brick, which is how
5 your customers would look for a pure product.

6 So the hydraulic press was found with a
7 bottle jack. Bottle jacks are commonly used to, you know,
8 change a tire or maybe construction work. But this
9 particular press, we recognize as -- commonly, we call
10 that a kilo press. It makes a block about this size. And
11 it was found in close proximity to other items that were
12 seized, such as a blender.

13 Now, everyone probably has a blender in
14 their home. I have a blender in my kitchen. This blender
15 was found in the bedroom. I think Mr.~Kennedy said it was
16 used for smoothies, but this had white powder in it. So,
17 again, we recognize this to be instrumentality of the drug
18 trade. These substances are ground and mixed and then can
19 be pressed to appear to be purer drugs.

20 We also seized three firearms. So in the
21 picture we looked at earlier of the window sill, there was
22 a pistol. That was that seized. There was another pistol
23 found in the bedroom, bedroom closet and then there was an
24 AR-15 style riffle. Anytime that we find drugs in close
25 proximity to guns, in close proximity to drugs, we're

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL

1 going to seize those items as evidence of the trade
2 because they're commonly possessed by drug dealers for the
3 sole purpose of protecting their stash or their
4 investment.

5 Q Did you also find scales?

6 A Yes, sir.

7 Q And cutting agents?

8 A Yes, sir.

9 Q Are these items consistent with someone
10 trafficking or distributing drugs?

11 A They are.

12 Q Do you feel that Mr. Kennedy intended to
13 distribute those drugs?

14 A Yes, sir.

15 Q I know we mentioned her earlier, but
16 Ms. Johnson, just to clarify, she was in the apartment
17 when y'all got there?

18 A Yes, sir.

19 Q Her kids were with her?

20 A They were.

21 Q Did she claim any of the alleged drugs or guns
22 or items seized?

23 A She claimed to have no knowledge of anything
24 illegal or any illegal activity or any illegal substances
25 or cash, as well.

JONATHAN MCWHITE-DIRECT BY MR. GROUNDSELL

1 Q Did Mr.~Kennedy make any statements in regards
2 to Ms. Johnson or the children having been involved in
3 what was found?

4 A He just said she didn't have anything to do with
5 his business and that anything illegal, he claimed.

6 Q During your investigation, did you determine if
7 anyone else had control of Mr.~Kennedy's car or residence
8 that could have been the owner of these drugs or weapons?

9 A No, sir.

10 Q Based on Mr.~Kennedy's statements to you, was
11 there any doubt that he was the person in possession of
12 the drugs and guns?

13 A No, sir.

14 Q Do you feel he had knowledge of the drugs and
15 guns in both the car and apartment?

16 A I do.

17 Q Do you feel he had the right and power to
18 exercise control over those drugs and guns in both the car
19 and apartment?

20 A I do.

21 Q Do you feel he had the intent to control there
22 disposition or use?

23 A I do.

24 Q And did you request or someone at your direction
25 request that these substances be tested by Greenville

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 County crime lab?

2 A Yes, sir.

3 Q Did the requests include 13 different
4 substances?

5 A Yes, sir.

6 Q Did they all come back as narcotics?

7 A No, not all of them.

8 MR. GROUNDSELL: I have nothing further for you.

9 Answer any questions Mr.~Kennedy has.

10 THE COURT: All right, Mr.~Kennedy,
11 cross-examination.

12 CROSS-EXAMINATION

13 BY MR. KENNEDY:

14 Q During this encounter, when the execution of the
15 search warrant was being executed, did I state that I
16 claimed whatever you found was mines and didn't belong to
17 my girlfriend?

18 A Yes, sir.

19 Q At either time where I claimed anything illegal,
20 did I specify to what those items were?

21 A The only mention I recall is at the very
22 beginning, you said something about some weed. And then
23 when I questioned you in the breezeway, I said, Looks like
24 we found some weed, some heroin. And instead of having
25 any kind of shock or surprise, you nodded your head, as we

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1 saw on the video.

2 Q Did I claim to possess heroin, methamphetamine
3 or Carfentanil or firearms at any time?

4 A You never verbalized any of those substance, no,
5 sir.

6 Q Was marijuana found in my vehicle?

7 A I believe so.

8 Q Was marijuana found inside my residence?

9 A Yes, sir.

10 Q Is it possible that when I claimed that illegal
11 items, I could have been referring to marijuana?

12 A It's possible.

13 Q What led you to believe that I was engaged in
14 drug activity?

15 A Well, we had conducted an investigation prior to
16 this search warrant, if I'm able to go into those details.
17 But ultimately, it accumulated in probable cause to search
18 your vehicle and your apartment. So it was a thorough
19 drug investigation, which resulted in a search warrant
20 signed by the magistrate.

21 Q So did you have an actual search warrant to
22 search my vehicle and residence?

23 A Absolutely. Signed on September 24th, 2020 by
24 Greenville County Magistrate.

25 Q Okay. Inside of the search warrant affidavit,

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 what is used to be a reason for why you are, you know,
2 seeking to get a search warrant or got the search warrant,
3 did you state that I sold drugs to a confidential
4 informant?

5 MR. GROUNSELL: Objection, Your Honor. Probable
6 cause has already been established in the search
7 warrant.

8 THE COURT: Yeah, what your -- probable cause
9 has been established. I'll allow you a little bit of
10 leeway.

11 MR. KENNEDY: Okay. Could I play the body cam
12 footage from the interview for me and McWhite?

13 THE COURT: If you want to play the video, I'll
14 let you play it subject to any objections that may be
15 made.

16 MR. GROUNSELL: Your Honor, before he plays it,
17 I want to go on the record. I, obviously, don't have
18 any control over what video he's about to play. We
19 made redactions on the State's end, so anything that
20 he's playing would be his own will and would be a
21 separate disk or whatnot. Do you understand what I'm
22 --

23 THE COURT: Ladies and gentlemen, I'm going to
24 need to take up a matter with the lawyers. I'm going
25 to excuse you for a little bit, I'll call you back

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1 in.

2 (WHEREUPON, the jury left open court at
3 approximately 12:00 p.m.)

4 THE COURT: All right, Mr.~Kennedy, what are you
5 intending to play?

6 MR. KENNEDY: I'm intending to play, you know, a
7 video. Can I show it -- since the jury is out, can I
8 play it now?

9 THE COURT: Yeah, that's why I dismissed them.
10 I want to know what you intend to play.

11 MR. KENNEDY: I'm just intending to show that,
12 you know, this officer's credibility is really, you
13 know, is questionable because as he just stated, you
14 know, on record that he stated that, you know, that,
15 you know, he has a controlled buy or that I sold
16 something to somebody. But it's clear in this video
17 when I asked, I was like, So it's not like you're
18 saying that I sold anything to anybody, he agreed and
19 said, Right. So he's, basically, admitting that I
20 didn't sell anything to anybody, which was the basis
21 for why he used to get the search warrant because he
22 alleged that I was engaged in criminal activity and
23 sold something to somebody.

24 THE COURT: Which video is that?

25 MR. KENNEDY: It will be interview search

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 warrant execution. I don't know specifically -- I
2 don't have the time to actually sit here and study.
3 It was brought to me at the county jail for 30
4 minutes. I don't have the time, but I know it's on
5 here, though. And it was just actually played. It's
6 the same video that was just played.

7 THE COURT: That was my question, is it not the
8 same video?

9 MR. GROUNSELL: If it's the same video, that's
10 fine. But, Your Honor, when we introduced the body
11 cam into evidence, we introduced the whole thing. We
12 played clips of it, but we introduced the whole
13 thing. The thing that we introduced has parts that
14 are muted that The State feels would have been
15 prejudicial to Mr. Kennedy because we weren't going
16 to put that into the record, particularly about stuff
17 with the confidential informant going on and those
18 questions regarding that. There would be times it
19 would be muted on that disk. And that was asked of
20 Officer Franco when he was on the stand. So as long
21 as he's just playing the clip that we've already
22 shared, I have no objection to that.

23 THE COURT: If the video is in evidence, he's
24 entitled to play whatever part is in evidence.

25 MR. GROUNSELL: But what we put into evidence

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1 has parts that are muted, have been redacted. If
2 he's playing from that disk, if he's playing from our
3 disk and not necessarily what was turned over in
4 discovery because the redaction part of it.

5 THE COURT: Mr.~Kennedy, you're entitled to play
6 the video that's in evidence.

7 MR. KENNEDY: The part that was not muted, it
8 was nothing blocked, it wasn't redacted, there was
9 nothing taken away from it. It was actually just
10 played in front of the jury, the same exact video.

11 MR. GROUNSELL: Then I would just request that
12 we use the disk that's actually in evidence and that
13 way we know.

14 THE COURT: Yes, that's the better process.
15 We've got the disk that's already in evidence, let's
16 just use the disk that's already in evidence, which
17 is the proper thing to do anyway.

18 Mr.~Kennedy will be entitled to play whatever --
19 What exhibit number is that?

20 MR. GROUNSELL: It's State's Exhibit No. 1.

21 Now, obviously, because this line of questioning
22 seems to be going down the route of the CI here and
23 was the basis of the search warrant, I just wanted to
24 maybe --

25 THE COURT: Yeah, Mr.~Kennedy, the search

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1 warrant has already been determined that there was
2 probable cause.

3 MR. KENNEDY: Right, right, right. I'm just,
4 basically, showing that, you know, this officer's
5 credibility is questionable. Nothing about this will
6 reveal the confidential informant or, you know,
7 really challenge the probable cause and I'm not going
8 to get into the probable cause.

9 THE COURT: I'll allow you to question him on
10 any kind of credibility issues and I'll allow you to
11 play the video, which is exhibit --

12 You said No. 1?

13 MR. GROUNSELL: Yes, Your Honor, State's Exhibit
14 No. 1.

15 THE COURT: Okay.

16 MR. KENNEDY: I don't know specifically if
17 that's the right one, but I have to pull it up and
18 actually look at it and see.

19 MR. GROUNSELL: Thank you, Your Honor. He
20 absolutely is entitled to play whatever is in
21 evidence. I just wanted to make sure he wasn't
22 playing from a separate disk or file. And going down
23 this route about the CI and he's being asked
24 questions about it, can he respond to what the
25 question is?

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1 THE COURT: Mr.~Kennedy, you can't ask him
2 questions about the CI. But I understand you're not
3 intending to do that.

4 MR. KENNEDY: Not challenge probable cause --
5 the only thing I was told yesterday is that, you
6 know, I couldn't challenge the probable cause issue
7 about the search warrant and, you know, things of
8 that nature. It wasn't necessarily specific about
9 what I could ask him pertaining to, you know, what
10 led to this. I'm not specifically challenging --

11 MR. GROUNSELL: He asked him directly, Did you
12 conduct a buy from him with a CI? That's prejudicial
13 to his own self in some sense. I just want to make
14 sure that Investigator McWhite can answer that. I
15 don't want to get into this --

16 THE COURT: If Mr.~Kennedy asks that question,
17 the witness can answer it. It's up to Mr.~Kennedy
18 whether he wants to ask that question. And if he
19 asks that question, the witness can answer it.

20 Now, I'm not going to allow any identification
21 of the CI or anything like that. But if Mr.~Kennedy
22 wants to ask that question, then the witness can
23 respond.

24 MR. GROUNSELL: I just wanted to make sure we're
25 opening up that door if that's where we're headed.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 THE COURT: Mr.~Kennedy, you just want to play
2 it through?

3 MR. KENNEDY: I just want to, you know, play a
4 specific part, Your Honor.

5 MR. GROUNSELL: If they want to watch it real
6 quick and give me the specific times, we'll be happy
7 to start it and stop it when he ask us to do that.

8 MR. KENNEDY: From five seconds to nine seconds.

9 MR. GROUNSELL: Five seconds to nine seconds,
10 okay. Are you going to have any other clips that
11 you're going to want to play?

12 THE COURT: Let's handle that while the jury is
13 out. If there are any other clips that you want to
14 play, let's go ahead and take care of that now so we
15 don't have to send the jury back out.

16 All right, why don't we play, just before the
17 jury comes in, just to make sure it's where
18 Mr.~Kennedy wants it.

19 (WHEREUPON, a video was played.)

20 THE COURT: Is that it, Mr.~Kennedy?

21 MR. KENNEDY: Yeah, but it goes further than
22 that. It may have run into like 15.

23 MR. GROUNSELL: To 15.

24 THE COURT: All right, let's do this, let's play
25 it one more time five to 15.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 (WHEREUPON, a video was played.)

2 THE COURT: All right, is that it, Mr.~Kennedy?

3 MR. KENNEDY: Yes, sir.

4 THE COURT: All right, Ms. Fryer, please bring
5 them back in.

6 (WHEREUPON, the jury entered open court at
7 approximately 12:20 p.m.)

8 THE COURT: All right, Mr.~Kennedy, you may
9 proceed.

10 MR. KENNEDY: Can I approach the bench?

11 THE COURT: All right.

12 BY MR. KENNEDY:

13 Q So, Agent McWhite, are you familiar with the
14 document that I presented?

15 A Yes, sir. It's got a lot of extra writing on
16 it, but I believe this is my affidavit for the search
17 warrant that we executed that day.

18 Q You know, just so the jury can understand, could
19 you state what the affidavit is used for?

20 A Sure. So the affidavit is the probable cause
21 statement in a search warrant that explains to a Judge the
22 set of facts that led to the affiant's belief that that is
23 certain items to be seized located in a certain area. So
24 with the full search warrant, you've got a cover page and
25 then you've got items to be searched for, items to be

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 seized, description of property sought. Then you got a
2 description of property to be searched.

3 So, in this case, I'm looking for evidence
4 of drug sales at this apartment and this vehicle. Then
5 there is what's called the affidavit where I go on to
6 talk -- I talk about who I am, my training, my experience
7 and the facts that led to -- the facts that were gathered
8 during this investigation which led to my probable cause
9 to request a search warrant. I take these set of facts to
10 the judge and that judge reviews these set of facts and
11 determines if there is probable cause. If there is, then
12 they sign the search warrant, which needs to be served
13 within ten days of issuance.

14 Q So in that search warrant, did you state --
15 which is sworn testimony, sworn statement, did you state
16 that I sold drugs to somebody or anything of that nature?

17 A In this affidavit, there is a summation of an
18 event which took place which you sold heroin to a
19 confidential informant, correct.

20 MR. KENNEDY: Okay. I would like to play the
21 video for The Court -- for the jury.

22 (WHEREUPON, a video was published.)

23 THE COURT: What did you say, Mr. Kennedy?

24 MR. KENNEDY: I was asking could he rewind it
25 back and play it again.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 (WHEREUPON, a video was published.)

2 BY MR. KENNEDY:

3 Q So when I ask you, you know, your reason for
4 being at my house, was it based on like you saying that I
5 sold something to anybody or anything of that nature, you
6 replied and said, Right. Like you agreed to me not
7 selling anything or, you know --

8 A So this second clip was part of a long
9 conversation that started in the parking lot. Came up to
10 the breezeway where he repeatedly asked me questions about
11 facts that led to the issuance of this warrant that I was
12 not required to turn over at that time for the safety of
13 all parties involved. Eventually, those items -- that
14 information was requested and turned over. That's a
15 process. On scene, while he's in handcuffs and waiting to
16 go to jail, there's certain evidence and information I
17 don't have to turn over to him. Again, that's for the
18 safety of all parties involved.

19 So when I say right, that's a culmination
20 of our conversation, which is questions like, did you
21 actually buy it from me at this apartment, specifically?
22 He asked me about whether he's going to be charged with
23 selling drugs from that apartment, specifically. My
24 response could have been more clear, but this is the end
25 of a long conversation when I say right. And I choose my

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 words very carefully, I am not charging you at this time
2 with selling drugs or distribution. Just like I didn't
3 charge him with possessing marijuana. I didn't charge him
4 with distribution of heroin. There's investigatory
5 reasons for that. There's safety concerns that are
6 involved in the weighing of that -- making that decision.

7 So I do say right. That's the end
8 conclusion of a conversation when I say right. You're not
9 being charged with anything except what we found in your
10 car and in your apartment. Does that answer your
11 question?

12 Q So when you say right, you're saying that you
13 said right, you know, with regards to me asking you
14 whether I sold some to an informant. What I asked --
15 basically, I stated did you -- it's not like that I sold
16 drugs to anybody? And you agreed with me saying right.
17 Is that correct?

18 A I said right in response to a series of
19 questions that you asked about your charges and the fact
20 that led up to the execution of the search warrant. So my
21 first word out of my mouth was right. This is seven
22 seconds of a very long conversation. I'm explaining to
23 you right, we didn't buy it from you here and I'm not
24 charging you with distribution.

25 Q Was government money allegedly used in a buy or

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 purchase any drugs from me?

2 A Yes, sir.

3 Q That's also what you stated inside your search
4 warrant affidavit, right?

5 A That's correct.

6 Q On October 2nd when the first warrant was
7 executed, did you find me to be in possession of any
8 government bills, any traceable funds or anything of that
9 nature?

10 A No, sir. When these buys take place, there is a
11 window of time when a search warrant can be applied, then
12 there's a window of time when it can be served. Over ten
13 years of doing this job, the vast majority of
14 circumstances, we don't recover our money. A lot of folks
15 say well, why didn't you get him right away? You can
16 imagine, the police send an informant to buy from somebody
17 and we immediately arrest that person, what kind of
18 jeopardy that would put that individual in.

19 So for that reason, we wait. We wait
20 because we know that oftentimes drug traffickers sell to
21 multiple people. And if we give them a window of time,
22 then it's going to be harder for the defendant to
23 determine who did I sell to this particular time.

24 So we gave a window of time. We all know
25 the word of cash. Drug is largely a cash enterprise and

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 you know how fast cash changes hands. You guys saw the
2 big stack of cash that was found on him. We looked
3 through the numbers, didn't recover ours. That is -- I
4 would say 89 percent of the time we don't recover
5 government funds because most people take that money and
6 go buy whatever with it, often reup, get more drugs. So
7 there was several, multiple days between the incident he's
8 talking about and us seizing the money and the drugs.

9 So to answer his question, we did not
10 recover any recorded or marked bills from the
11 distribution.

12 Q So on October 2nd when the search warrant was
13 executed, did I have any warrants for my arrest at that
14 time or did I commit any traffic violations?

15 A The reason you were detained is because we had a
16 search warrant for your vehicle and your property. And
17 you were in the vehicle at the time of the search warrant,
18 so you were detained as incident to the service of the
19 search warrant.

20 Q Did unmark police vehicles initiate blue lights
21 and park directly behind my vehicle and block my right to
22 exit?

23 A So you were in investigative detention. You
24 were in custody at that time. We're not going to allow
25 for a police chase. I think we all know how dangerous

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 police chases can be. So, absolutely, we made sure you
2 were in a safe place and we made sure officers were in a
3 safe place. And an unmarked police vehicle parked behind
4 you so you could not flee the scene and put anyone's life
5 at risk, including your own.

6 Q Did you find any firearms inside my vehicle?

7 A No, sir.

8 Q You say no, sir?

9 A I didn't search your vehicle, but, no, I did not
10 find any firearms inside your vehicle.

11 Q Were any firearms found inside my vehicle?

12 A I believe the only three firearms that were
13 seized were located in your bedroom.

14 Q During your investigation, did you ever observe
15 or have any confidential sources state that they have
16 witnessed me carry a firearm or seen any located at my
17 apartment?

18 A I don't believe so.

19 Q Where was I detained?

20 A You were detained in the parking lot of your
21 apartment complex and removed from your vehicle.

22 Q So where were the firearms located again?

23 A In your apartment, which is leased to you, which
24 you claimed.

25 Q Could you explain the distance between where I

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 was detained and the place the firearms were located?

2 A I would say you were in one of the very closest
3 parking spots to your apartment. It was not on the first
4 floor, had to climb a couple flights of stairs. But you
5 were parked right there at the bottom of your apartment
6 building.

7 Q So is it safe to say that the firearms were not
8 in arms reach or easily assessable due to three flights of
9 stairs and being locked behind the door?

10 A No, I don't believe you could have assessed them
11 from the vehicle in the parking lot. Of course, we didn't
12 know whether you were armed or not at the time of your
13 detention.

14 Q Any time during this encounter, did you offer me
15 a chance to cooperate, to be a confidential informant to
16 make all the charges disappear and seem like nothing ever
17 happened?

18 A I never would ever use the words make all the
19 charges disappear. So there's a process and I'll explain
20 this. So been working drug investigations for quite a
21 while. Confidential informants are a crucial part of this
22 business. It's much easier -- well, I won't get into
23 that. But we need confidential informants. We need
24 tipsters. We need good citizens who volunteer
25 information.

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 So as you saw on the video earlier, this
2 has kind of been my rule as I became an experienced
3 investigator -- and I'll give you some context. I said
4 something to the effect that anyone that doesn't run from,
5 shoot at or fight with the police, I give them an
6 opportunity to cooperate. That's from years of learned
7 experience. I have learned that people who run from the
8 police, fight with the police, shoot at the police, they
9 have a blatant disregard for human life. If you're okay
10 running from the police, then you're probably okay
11 breaking the law and putting everybody in jeopardy.
12 That's how I preface it.

13 Now, I said something to the effect of
14 would you be willing to cooperate? Now, at the time, we
15 knew he admitted to marijuana. I knew that he may or may
16 not be charged with that. He wasn't charged with it,
17 ultimately. He said he didn't want to cooperate and he
18 still wasn't charged with marijuana. Again, we're a drug
19 trafficking organization. We're not targeting people that
20 smoke marijuana recreationally.

21 So, at the time, the facts I'm given, we're
22 having a cordial conversation -- and this is some context,
23 too. When someone indicates yes, I want to work for
24 you -- and trust me, there's been plenty of times when
25 somebody's in handcuffs and they're like, I can get

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 something for you right now. Protocol changes. Now,
2 they're a cooperating individual. Maybe we don't want
3 this on body camera because we don't ever want a jury to
4 see that this person was giving information about someone
5 else.

6 So I always throw that out there, is there
7 any chance you want to cooperate because it could make a
8 difference. You know, if you have a direct line to the
9 Cartel, yeah, I've had jokingly, tongue and cheek, say, if
10 you have El Chapo's phone number in your phone, that might
11 make a difference on his dope charges. Well, certainly,
12 if he was willing to cooperate and he had a direct line to
13 the drug cartel and we're looking at some marijuana, I'm
14 going to give him the opportunity to cooperate just like I
15 would anyone who's cooperative. That's just how I work.

16 He said he didn't want to cooperate. I
17 said I don't take it personally. I respect a man who is
18 willing to take responsibility for his actions. And so
19 that was kind of the end of the conversation. So I said
20 what I said.

21 Q Does any body cam footage show exactly where
22 illegal items were allegedly located and found?

23 A So as Officer Reyes said, his body camera
24 clearly shows the backpack and where it was located, but
25 as he's already answered, no. His view -- you've got to

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 understand, too, body cameras are situated for the worst
2 case scenario. You're dealing with people. You can
3 imagine if something tragic happened and the body cam was
4 pointing down the whole time and we're missing everything
5 going on out there. This is what they're for, to protect
6 the public.

7 His body camera was situated -- we just
8 took this man into investigative detention. That's a
9 situation that could turn any certain way, so we want to
10 make sure we preserve that evidence. So his camera was
11 pointing straight ahead as if worst case scenario happens,
12 we have a situation we need to record, preserve evidence,
13 that's how his camera was facing. Because he knew where
14 it was situated -- you've got to understand, these things
15 are mounted on clothes, on equipment, they're not just
16 something you can just stick on. Because he knows how the
17 body camera -- he knows how his equipment works, he takes
18 it out and puts it on the roof of the car. He explained
19 that and I don't think he could have done any better job
20 explaining why that worked. We do see exactly the parcel
21 that it was found in, the vehicle it was that found in. I
22 wish it captured his hand going into the bag, but it
23 didn't. I think he answered that question, too.

24 Q Okay. So for the officers who entered the
25 apartment while I was detained outside, was there any body

JONATHAN MCWHITE-CROSS BY MR. KENNEDY

1 cam footage of where they located illegal items,
2 allegedly?

3 A No, sir. At this time, we were not issued body
4 camera. Plain clothes units, undercover units, there was
5 not -- no one was issued body cameras at that time.
6 That's why photographs are taken to preserve evidence.
7 But the body cams were only issued to and activated on
8 members of Greenville CRT and all that you've seen.

9 Q Have you ever heard of police brutality?

10 A I've heard of it. I have not seen any in
11 anything you've shown us.

12 Q Could misplacing evidence, tampering or altering
13 evidence be a form of police brutality?

14 A If that's your definition of it.

15 Q So when officers entered the apartment, is it
16 likely that -- or it is possible that something could have
17 been misplaced, altered or tampered with because there was
18 no body cam footage to prove exactly where anything was
19 located or what was found?

20 A So understand, again, we see the argument trying
21 to be made here. My team, highly devoted group of
22 professionals, experienced professionals with careers on
23 the line, not to mention their freedom if they would break
24 that kind of law. I work with these men and women every
25 day. I was with these men and women prior to us taking

JONATHAN MCWHITE-REDIRECT BY MR. GROUNSELL

1 him into custody. Do I believe there's any possibility
2 that my team ran in there with heavy hydraulic presses,
3 with rifles, with bag after bag of controlled substances
4 and uncontrolled substances, no.

5 MR. KENNEDY: I have no further questions for
6 Officer McWhite.

7 THE COURT: All right, any redirect?

8 MR. GROUNSELL: Yes, just briefly.

9 REDIRECT EXAMINATION

10 BY MR. GROUNSELL:

11 Q You ever planted narcotics on someone?

12 A No, sir.

13 Q How many drug dealers have you arrested over
14 your career?

15 A Hundreds.

16 Q Would this particular arrest have helped you in
17 any way in your career?

18 A No, sir, just more paperwork.

19 Q Did you charge Mr. Kennedy with any sort of
20 distribution charge?

21 A I did not.

22 Q Did you condition the offer for him to cooperate
23 with him making that any sort of admissions about what was
24 found on the search warrant?

25 A Can you say that one more time?

JONATHAN MCWHITE-REDIRECT BY MR. GROUNSELL

1 Q Did you condition the offer for him to cooperate
2 with him making any statements about what was found in the
3 apartment? Did you require him to tell you anything about
4 what was actually in his apartment or his car?

5 A No, I didn't compel him or say he had to or.

6 Q At the time of that offer, you didn't
7 necessarily know what exactly was found up in the
8 apartment?

9 A That's true.

10 MR. GROUNSELL: Okay, nothing further.

11 THE COURT: All right, thank you, sir, you may
12 step down.

13 All right, ladies and gentlemen, I believe it's
14 a good time to stop and take our lunch break. Why
15 don't you be back here at 2:00. That should give
16 y'all almost an hour and a half for lunch. Why don't
17 y'all come back here at 2:00. We'll see you then.
18 Again, please do not discuss the case. Thank you,
19 hope you have a good lunch.

20 (WHEREUPON, the jury left open court at
21 approximately 12:40 p.m.)

22 THE COURT: All right, we'll be in recess for
23 lunch.

24 (WHEREUPON, a lunch break was taken.)

25 (WHEREUPON, State's Exhibits Nos. 19-21 were

JONATHAN MCWHITE-REDIRECT BY MR. GROUNSELL

1 marked for identification only.)

2 THE COURT: All right, before we bring the jury
3 back in, anything from the State?

4 MR. GROUNSELL: No, Your Honor. This is just
5 merely for the lineup of our witnesses, trying to get
6 people here on time. Do you have any idea how long
7 we'll try to go to this afternoon?

8 THE COURT: Normally, I try to shoot for around
9 five o'clock, but if there's a witness that needs
10 to -- you need to put him up, we can go a little bit
11 past. How many witnesses you got?

12 MR. GROUNSELL: We have six witnesses. I don't
13 think we're going to get through all --

14 THE COURT: Six more witnesses?

15 MR. GROUNSELL: Yeah, six more witnesses. So I
16 don't think we'll get through them all today. I'm
17 just trying to tell who we're going to kick till
18 tomorrow and who we're keeping.

19 THE COURT: Well, we'll shoot for five o'clock.

20 MR. GROUNSELL: Okay, sounds good.

21 THE COURT: All right, Mr.~Kennedy?

22 MR. KENNEDY: No, sir.

23 THE COURT: All right. Bring them in.

24 (WHEREUPON, the jury entered open court at
25 approximately 2:13 p.m.)

TYLER MOORE-DIRECT BY MR. GROUNSELL

1 THE COURT: I hope everybody had a good lunch.

2 And we're ready to proceed.

3 Call your next witness.

4 MR. GROUNSELL: State calls Investigator Moore
5 to the stand.

6 TYLER MOORE, after being duly sworn,
7 testified as follows:

8 THE CLERK: Thank you, please be seated.

9 Investigator, if you could please state your name for
10 the record.

11 THE WITNESS: Tyler Moore.

12 THE CLERK: Thank you very much.

13 THE WITNESS: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. GROUNSELL:

16 Q Investigator Moore, who do you work for?

17 A I work for the Greenville Police Department.

18 I'm also attached to the Greenville County Drug

19 Enforcement Unit.

20 Q How long have you been in law enforcement?

21 A Since 2011.

22 Q What was your role at the time of this incident?

23 A I was an investigator with the Drug Enforcement
24 Unit.

25 Q What sort of training have you had, generally,

TYLER MOORE-DIRECT BY MR. GROUNDSELL

1 and specific to drug enforcement?

2 A I have both formal and informal training through
3 narcotics investigations surveillance, federal and state
4 investigations, street level narcotics and other various
5 narcotic training.

6 Q Okay. Were you present at the beginning of the
7 execution of this search warrant?

8 A Yes, sir, I was.

9 Q Were you driving the car that blocked
10 Mr.~Kennedy in?

11 A Yes, I was.

12 Q And y'all had been waiting on his return to the
13 apartment?

14 A Yes.

15 Q After Mr.~Kennedy was secured, what did you do?

16 A I moved up to his apartment and began knocking
17 and announcing our presence because we had a search
18 warrant for the residence.

19 Q Did anyone answer the door?

20 A No.

21 Q So how did you gain entrance into the apartment?

22 A With the key.

23 Q How did you get the key?

24 A From Mr.~Kennedy's possession.

25 Q Once inside the apartment, who was inside?

TYLER MOORE-DIRECT BY MR. GROUNDSELL

1 A It was a female. I don't recall her name.

2 Q Okay. Were there any kids in the apartment, as
3 well?

4 A There was. There was one in her arms, then she
5 was making movements through the bedrooms, basically, gave
6 the indication that she was going to get her other child.

7 Q And you didn't take them into custody, did you?

8 A No.

9 Q After the apartment was secured, what role did
10 you have?

11 A I was given the task of helping search the
12 residence there.

13 Q Okay. Where did you locate the bulk of the
14 alleged drugs?

15 A It was identified as the master bedroom. It had
16 a bathroom inside and a closet and main living area.

17 Q Was there a firearm in close proximity to that
18 bag?

19 A Yes.

20 Q How close would you say it was?

21 A It was within reaching distance.

22 Q Okay. I'm handing you what's been previously
23 marked for identification purposes as State's Exhibit 12;
24 have you seen this before?

25 A Yes, I have.

TYLER MOORE-DIRECT BY MR. GROUNSELL

1 Q And when did you first see this?

2 A When I began going inside the room and began my
3 search.

4 Q Okay. Where did you first see it?

5 A It was on the ledge behind the dresser in the
6 master bedroom.

7 Q Okay. Is that pistol, substantially, in the
8 same condition and appearance as it was on the day of
9 October 2nd, 2020? Is it still in the same condition?

10 A Yes.

11 MR. GROUNSELL: Your Honor, State moves to
12 introduce State's Exhibit 12 into evidence.

13 THE COURT: All right, any objection from The
14 Defendant?

15 MR. KENNEDY: Same objection I've already made.

16 THE COURT: All right, objection is overruled.
17 State Exhibit No. 12 is admitted into evidence over
18 objection.

19 (WHEREUPON, State's Exhibit No. 12 was admitted
20 into evidence.)

21 BY MR. GROUNSELL:

22 Q Investigator Moore, in your training and
23 experience, do you find firearms are particularly
24 associated with trafficking and distribution of narcotics?

25 A Yes, I do.

TYLER MOORE-DIRECT BY MR. GROUNDSELL

1 Q How so?

2 A Safekeeping. It's typical for narcotics
3 distributors to be robbed or their person protection
4 inside their home or their person.

5 Q So do you feel the gun was so close to the bag
6 as a means of protecting the drugs in the apartment?

7 A Yes.

8 Q Inside the bag, next to the gun, what was found?

9 A Various narcotics.

10 Q Okay. I'm handing you what has been previously
11 marked as State's Exhibit 13, 14 and 15 for identification
12 purposes.

13 A Yes, 13, 14 and trying to find 15. There we go.

14 Q Are these the crystal white powder and gray
15 powder substances that were inside the bag?

16 A Yes.

17 Q In your training and experience, what did you
18 expect some of these substances were?

19 A One of the substances, the clear crystalize
20 substance was believed to be methamphetamine. The white
21 powder could have been various narcotics, cocaine, cutting
22 agents, et cetera. And number 15, it's a gray powder
23 normally associated with Fentanyl.

24 Q Okay. Do they appear to be altered or tampered
25 with in any way?

TYLER MOORE-DIRECT BY MR. GROUNDSELL

1 A No, they weren't.

2 Q Did you tamper with them in any way?

3 A No, I did not.

4 Q And did you keep them secure while in your
5 possession?

6 A Yes, I did.

7 Q And who took possession of them from you?

8 A Investigator Workman.

9 Q Thank you. When you find an item of relevance
10 on a search warrant, what is sort of the procedure?

11 A Our standing operating procedures are we will --
12 basically, before a search warrant is executed, we will
13 have an individual that takes photographs of the residence
14 or anywhere that we're going to be searching. They'll
15 take a before picture of its entirety and anything that's
16 in plain view. Plain view meaning anything where it's
17 observed without being disturbed. We'll take photographs
18 of anything of importance out in plain view. Then when we
19 begin searching, we will photograph that item in place and
20 then if it needs to be further examined, such as in a book
21 bag or another bag, we will open its contents and
22 photograph those further.

23 Q All right. I'm handing you pictures that's been
24 marked as State's Exhibits 16, 17 and 18.

25 A Yes.

TYLER MOORE-DIRECT BY MR. GROUNSELL

1 Q Do you recognize these pictures?

2 A Yes, I do.

3 Q Are they a fair and accurate depiction of what
4 was found in the apartment that day?

5 A Yes.

6 Q And have they been altered in any way?

7 A No.

8 MR. GROUNSELL: The State moves to introduce
9 State's Exhibit 16, 17 and 18 into evidence and
10 publish to the jury.

11 THE COURT: All right, any objection from The
12 Defendant?

13 MR. KENNEDY: Same objection.

14 THE COURT: All right, objection is overruled.
15 And State's Exhibits 16, 17 and 18 are admitted into
16 evidence over objection.

17 (WHEREUPON, State's Exhibits Nos. 16-18 were
18 admitted into evidence.)

19 BY MR. GROUNSELL:

20 Q I'm now handing you what's been marked as
21 State's Exhibit 19 for identification purposes.

22 A It is a -- looks like a latex glove with a hard
23 rock-like substance in it.

24 Q Do you recognize it from that day?

25 A Yes.

TYLER MOORE-DIRECT BY MR. GROUNSELL

1 Q And when did you first see it?

2 A In the bag with the rest of the items that were
3 just shown.

4 Q And it came back as no controlled substance; is
5 that correct?

6 A I don't have the labs, but.

7 Q Is it materially and substantially in the same
8 condition as it was on October 2nd, 2020?

9 A Yes, it is.

10 MR. GROUNSELL: Your Honor, I ask that State's
11 Exhibit 19 be admitted into evidence.

12 THE COURT: Any objection from The Defendant?

13 MR. KENNEDY: Same objection.

14 THE COURT: All right, Exhibit No. 19 -- State's
15 Exhibit 19 admitted into evidence over objection.

16 (WHEREUPON, State's Exhibit No. 19 was admitted
17 into evidence.)

18 BY MR. GROUNSELL:

19 Q To be clear -- you know, I want to publish these
20 pictures first, too. I'm going to show you a few
21 pictures, Investigator Moore. Let me make sure I get them
22 all before we start. Investigator Moore, do you recognize
23 that picture?

24 A Yes.

25 Q Investigator Moore, can you explain this picture

TYLER MOORE-DIRECT BY MR. GROUNDSELL

1 a little bit for us?

2 A Yes. This was in the master bedroom that I
3 searched. The item to the left is a dresser. Behind the
4 dress was a ledge where the window is. There's a firearm,
5 it's black and tan with somewhat of a light laser
6 combination type device and bag. And so, just above it
7 that I located during the search.

8 Q Okay. That's from a different angle. Is that
9 the same bag, same gun in the picture?

10 A Yes.

11 Q What was found inside that bag?

12 A Several items suspected to be narcotics, items
13 that were just presented in the exhibit. It was items
14 that looked like meth, white powder and a gray substance
15 along with the bag.

16 Q Was that glove with the rock-like substance
17 found in that bag, as well?

18 A Yes, it was.

19 Q And that's a picture of the contents of that
20 bag?

21 A Yes.

22 Q That's the rubber glove in the middle?

23 A Yes, it is.

24 Q And that's the same exhibit that we entered into
25 evidence?

TYLER MOORE-DIRECT BY MR. GROUNSELL

1 A Yes.

2 Q All right. And that's another picture of that
3 substance?

4 A Yes.

5 Q And that's just another picture of what was in
6 the bag?

7 A Yes.

8 Q I just want to be clear, that glove with the
9 rock-like substance was found in the same bag as the other
10 substances that were believed to be heroin?

11 A Yes.

12 Q And methamphetamine?

13 A Yes.

14 Q Did you find any other rubber latex gloves
15 located with substance inside of it?

16 A Not to my knowledge.

17 Q Did your search -- did you find any evidence or
18 belongings of others that lived in the apartment other
19 than Mr.~Kennedy and his girlfriend and kids?

20 A Not that I recall.

21 Q Were you the one that confirmed it was
22 Mr.~Kennedy on the lease prior to the search warrant?

23 A Yes, I did.

24 Q Had you been doing any surveillance on
25 Mr.~Kennedy prior to the execution of the search warrant?

TYLER MOORE-CROSS BY MR. KENNEDY

1 A Yes, sir.

2 Q And you personally confirmed, watched him,
3 Mr.~Kennedy, walk into his apartment?

4 A Yes.

5 Q You feel that Mr.~Kennedy had knowledge of the
6 drugs and guns in the apartment?

7 A Yes, I do.

8 Q Do you feel Mr.~Kennedy had the right and power
9 to exercise control over those drugs?

10 A Yes, I did.

11 Q Do you feel Mr.~Kennedy had the intent to
12 control their disposition or use?

13 A Yes.

14 MR. GROUNSELL: I have no further questions.
15 please answer any questions that Mr.~Kennedy has for
16 you.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. KENNEDY:

20 Q Investigator Moore, how did you obtain the key
21 to my residence?

22 A From your possession -- or from when they had
23 the key from the arrest, or the detention.

24 Q Did you have on the body cam?

25 A I do not. I'm not issued a body cam.

TYLER MOORE-REDIRECT BY MR. GROUNSELL

1 Q Is it routine for officers around the country to
2 have body cam footage during arrests, search warrants or
3 any police and citizen encounters?

4 A It depends on if their department issues them
5 one or not.

6 Q Did you state inside your police report that you
7 were the first -- one of the first officers to enter
8 inside the apartment and locate illegal items?

9 A I was one of the first persons to enter the
10 apartment. And when we began a search, we search the
11 residence as a whole. And during that search, I did find
12 items.

13 Q So being the first person inside the apartment
14 or one of the first officers inside the apartment, you
15 didn't have on any body cam device to show exactly where
16 these items were allegedly found or located?

17 A There were other officers, I believe, that had
18 body cams in and around the residence. Also, we take
19 photos of the evidence, where it's at and when we collect
20 it to document that evidence.

21 MR. KENNEDY: I have no further questions.

22 THE COURT: All right, any redirect?

23 REDIRECT EXAMINATION

24 BY MR. GROUNSELL:

25 Q Investigator Moore, you didn't see anyone bring

TYLER MOORE-REDIRECT BY MR. GROUNSELL

1 in any substances into his apartment, did you?

2 A No.

3 Q You didn't see anyone bring guns into the
4 apartment and put them in the apartment?

5 A No.

6 Q Okay. You didn't see someone bring a hydraulic
7 press into the apartment?

8 A No.

9 Q You didn't see anyone bring blenders into the
10 apartment?

11 A No.

12 Q Did you see anyone bring drug scales into the
13 apartment?

14 A No.

15 MR. GROUNSELL: Nothing further.

16 THE COURT: All right, thank you, sir, you may
17 step down.

18 MR. GROUNSELL: Thank you.

19 The State calls Investigator Heath to the stand.

20 THE CLERK: If you could please place your left
21 hand on the Bible, raise your right hand.

22 SCOTT HEATH, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you, please be seated. And
25 could you please state your full name for the record?

SCOTT HEATH-DIRECT BY MR. GROUNSELL

1 THE WITNESS: Jeffrey Scott Heath.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. GROUNSELL:

5 Q Investigator Heath, who do you work for?

6 A Currently employed by the Greenville County
7 Sheriff's Office.

8 Q And how long have you been in law enforcement?

9 A Be ten years in December.

10 Q What is your role with the Greenville County
11 Sheriff's Office?

12 A I'm a master deputy that's assigned to the
13 multi-jurisdictional Drug Enforcement Unit.

14 Q Is that the role you were in at the time of this
15 incident?

16 A It is.

17 Q What sort of training have you had, generally,
18 and specific to drug enforcement?

19 A I've had specific classes on opioids and
20 Fentanyl, lab processing. And going all the way back to
21 the police academy, they teach classes about drug use,
22 packaging, what things look like. At the DEU, had classes
23 on interdiction, how things are transported, how things are
24 commonly made, sold.

25 Q Were you present at the execution of the search

SCOTT HEATH-DIRECT BY MR. GROUNDSELL

1 warrant on October 2nd?

2 A Yes, I was.

3 Q Did you help secure Mr.~Kennedy once he arrived
4 at the apartment complex?

5 A Yes.

6 Q And after Mr.~Kennedy was secured, what did you
7 do?

8 A I made my way upstairs to the apartment to see
9 what needed to be done as far as searching rooms or
10 whatever job needed to be done that wasn't already being
11 done. So I ended up assisting in the search in one of the
12 closets off of the main bedroom.

13 Q Did you find anything of evidentiary value?

14 A Yes. I found a Ruger AR 556 rifle, which was
15 loaded, and a hydraulic press that is commonly used to
16 package narcotics.

17 Q Okay. I'm handing you a Ruger AR556 bearing
18 serial number 85421352 marked for purposes of
19 identification as State's Exhibit 20. Have you seen --
20 you want to pull it out?

21 A (The witness complies.)

22 Q Have you seen this before?

23 A I have.

24 Q When did you first see this rifle?

25 A When I went into the closet off of the main

SCOTT HEATH-DIRECT BY MR. GROUNSELL

1 bedroom to begin my search.

2 Q Where in the closet did you find it?

3 A It was to the right of the chest of drawers,
4 standing dresser.

5 Q Is that rifle substantially in the same
6 condition and appearance now as it was when you first saw
7 it?

8 A Yes.

9 MR. GROUNSELL: Your Honor, The State moves to
10 introduce State's Exhibit 20 into evidence.

11 THE COURT: Any objection from The Defendant?

12 MR. KENNEDY: Same objection.

13 THE COURT: All right, Exhibit No. 20 -- State's
14 Exhibit No. 20 is admitted into evidence over
15 objection.

16 (WHEREUPON, State's Exhibit No. 20 was admitted
17 into evidence.)

18 BY MR. GROUNSELL:

19 Q Investigator Heath, in your training and
20 experience, do you find firearms are particularly
21 associated with the trafficking and distribution of
22 narcotics?

23 A Yes.

24 Q And how so?

25 A Utilized to protect supply. If you keep drugs

SCOTT HEATH-DIRECT BY MR. GROUNSELL

1 within your vicinity, to keep from someone trying to rob
2 you of that or the money that you've made from selling it.
3 Typically, firearms are used for that purpose, for
4 protection.

5 Q Handing you what's been marked as State's
6 Exhibit 21 for identification. Do you recognize it?

7 A Yes.

8 Q What is it?

9 A So this is what we would commonly refer to a
10 kilo press. It was located in the closet in a backpack
11 right in front of the drawers.

12 Q When did you first -- so you first saw it when
13 you went into the closet?

14 A Yes.

15 Q Is it materially and substantially in the same
16 condition as it was on October 2nd, 2020?

17 A Yes.

18 MR. GROUNSELL: Your Honor, The State asks to
19 move State's Exhibit 21 into evidence.

20 THE COURT: Any objection, Mr.~Kennedy?

21 MR. KENNEDY: I do, same objection.

22 THE COURT: All right, State's Exhibit 21 is
23 admitted into evidence over objection.

24 (WHEREUPON, State's Exhibit No. 21 was admitted
25 into evidence.)

SCOTT HEATH-DIRECT BY MR. GROUNSELL

1 BY MR. GROUNSELL:

2 Q All right. Investigator Heath, you mentioned
3 that this is often in the narcotics world referred to as a
4 kilo press?

5 A Yes.

6 Q Okay. Can you explain -- maybe you can step
7 down and explain a little bit to the jury about how this
8 thing actually works.

9 A Sure. So how I have seen it demonstrated,
10 marketed in the context of narcotics, this would be your
11 bottle jack. You would center it, so that these -- center
12 it on the bottom. I'll try to speak up so everybody can
13 hear. So these are your pieces. This little mark right
14 here would correspond to the top of this jack. You would
15 want this to be centered right there in the middle so that
16 everything gets compressed appropriately and structurally.
17 But this would go down inside of there, remove this.
18 Commonly with powder narcotics. You pour them down in
19 there. Make sure you have leveled them, somewhat, the
20 best that you can. This piece sits down in there. This
21 goes on top. You would sit here for a good long while
22 until that bottle jack comes centered on this piece right
23 here and it would compress.

24 Sometimes, you may take this, flip it
25 upside down in boiling water, get it really hot while the

SCOTT HEATH-CROSS BY MR. KENNEDY

1 product is inside helping to compress it, making sure that
2 water doesn't flow down from the top while it's flipped
3 upside down. And then you would cool it, put it in some
4 ice water or whatever, let it cool until you release the
5 pressure. You would take this top off, push this up.
6 Then sitting on top of this would, basically, be your
7 brick product that you could Saran Wrap or however you're
8 going to package it. It would sit on top of this metallic
9 plate.

10 Q Put that back in there.

11 A (The witness complies.)

12 Q So in your experience and training as a
13 narcotics officer, this is commonly use for drug
14 trafficking?

15 A Yes.

16 MR. GROUNSELL: Nothing further. Please answer
17 questions Mr.~Kennedy has for you.

18 THE COURT: All right, cross-examination.

19 CROSS-EXAMINATION

20 BY MR. KENNEDY:

21 Q Officer Heath, were you equipped with any body
22 cam footage from whenever you entered the residence?

23 A No, I was not.

24 Q Is it routine for, you know, law enforcement
25 around the country to be equipped with body cam footage

SCOTT HEATH-CROSS BY MR. KENNEDY

1 whenever they're executing arrests, search warrants or any
2 other interaction with citizens?

3 A It would be routine depending on your job
4 assignment.

5 Q Is it illegal to own a hydraulic press?

6 A No, it is not.

7 Q Was there any drug residue or anything found on
8 the hydraulic press?

9 A I cannot speak to that. When it was located, I
10 gave it to the scribe and the evidence custodian.
11 Typically, any sort of field testing of any items or
12 whatever would have occurred by that individual and maybe
13 the lead investigator.

14 Q Okay. So, you know, with me having a
15 distinctive car that has 26-inch rims on it with Z71 tires
16 and, you know, hydraulic shocks, is there any way possible
17 that that hydraulic press could have been used for that
18 automobile?

19 A I have never seen a press in that form marketed
20 for the automotive market. I have seen many hydraulic
21 presses use in mechanic shops that are typically about
22 five to six feet tall. Typically, operated by air so that
23 it's quicker and more powerful, and not a bottle jack such
24 as that.

25 MR. KENNEDY: I have no further questions.

CHRIS MONTGOMERY-DIRECT BY MR. GROUNSELL

1 THE COURT: Any redirect?

2 MR. GROUNSELL: No, Your Honor.

3 THE COURT: All right, you may step down. Thank
4 you, sir.

5 All right, next witness.

6 MR. GROUNSELL: State calls Investigator
7 Montgomery to the stand.

8 THE CLERK: If you would please put your left
9 hand on the Bible, raise your right hand.

10 CHRIS MONTGOMERY, after being duly sworn,
11 testified as follows:

12 THE CLERK: Please be seated. Could you please
13 state your full name for the record?

14 THE WITNESS: Christopher Montgomery.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. GROUNSELL:

18 Q Investigation Montgomery, who do you work for?

19 A Greer City Police Department and Greenville
20 County Drug Enforcement Unit.

21 Q Do you have any prior law enforcement
22 experience?

23 A Yes.

24 Q How long have you been with Greer Police
25 Department?

CHRIS MONTGOMERY-DIRECT BY MR. GROUNSELL

1 A About ten years.

2 Q Before that, anywhere?

3 A Kansas City, Missouri.

4 Q Okay. What was your role at the time of this
5 incident with the Greer Police Department?

6 A Narcotics investigations.

7 Q And what sort of training have you had,
8 generally, and specifically in drug enforcement?

9 A Just various training classes as far as
10 investigations, how to run informant buys and how to
11 conduct surveillance.

12 Q Were you present at the execution of the search
13 warrant at this house?

14 A I was.

15 Q What was your role in the execution of the
16 search warrant?

17 A Initially, surveillance and then to photograph
18 the scene and any evidence found.

19 (WHEREUPON, State's Exhibit No. 22 was marked
20 for identification only.)

21 BY MR. GROUNSELL:

22 Q I'm handing you a Ruger 380 pistol bearing
23 serial number 380-05-8489 marked for the purpose of
24 identification as State's Exhibit 22. Have you seen this
25 before?

CHRIS MONTGOMERY-DIRECT BY MR. GROUNSELL

1 A Yes, sir.

2 Q When did you first see this pistol?

3 A When we executed the search warrant, it was
4 inside the bedroom.

5 Q Was it in the closet?

6 A Yes, sir, on the shelf.

7 Q And is the pistol, substantially, in the same
8 condition and appearance as it was when where you first
9 saw it?

10 A Yes.

11 MR. GROUNSELL: Your Honor, State moves to
12 introduce State's Exhibit 22 into evidence.

13 THE COURT: All right, Mr. Kennedy?

14 MR. KENNEDY: Same objection.

15 THE COURT: All right, State's Exhibit 22 is
16 admitted into evidence over objection.

17 Gun locks are on all three of those?

18 MR. GROUNSELL: Yes, sir, Your Honor, there's
19 lock on all three of them.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibit No. 22 was admitted
22 into evidence.)

23 BY MR. GROUNSELL:

24 Q Investigator Montgomery, in your training and
25 experience, do you find firearms particularly associated

CHRIS MONTGOMERY-DIRECT BY MR. GROUNSELL

1 with trafficking and distribution of narcotics?

2 A Yes.

3 Q How so?

4 A They're typically used to protect the product
5 that they're trying to sell or money that they may
6 acquire, cash they may acquire and hold on to.

7 Q Okay. Did you take any pictures of any
8 property, letters or statements that associated Michael
9 Kennedy with this apartment?

10 A Yes.

11 (WHEREUPON, State's Exhibit No. 23 was marked
12 for identification only.)

13 BY MR. GROUNSELL:

14 Q Hand you what's been marked as State's Exhibit
15 23, do you recognize this picture?

16 A Yes.

17 Q Would you have been the one to have taken it?

18 A Yes, sir.

19 Q Is it a fair and accurate depiction of what was
20 found in the apartment that day?

21 A Yes.

22 Q Has it been altered in any way?

23 A No.

24 MR. GROUNSELL: Your Honor, State moves to
25 introduce State's Exhibit 23 into evidence and

CHRIS MONTGOMERY-DIRECT BY MR. GROUNSELL

1 publish to the jury.

2 THE COURT: All right, any objection,
3 Mr.~Kennedy?

4 MR. KENNEDY: Same objection.

5 THE COURT: State's Exhibit 23 is admitted into
6 evidence over objection.

7 (WHEREUPON, State's Exhibit No. 23 was admitted
8 into evidence.)

9 BY MR. GROUNSELL:

10 Q What is this we're looking at?

11 A It appears to be a rent statement for that unit
12 number, as well as, looks like, trash and water payments
13 for that apartment.

14 Q Okay. Is that the move-in date? Sorry, I'm not
15 zoomed out enough for you to even see what we're talking
16 about. Is that the move-in date, September 7th, 2020?

17 A That's what it says according to the document.

18 Q Up in the top corner of the move-in statement
19 says, Justin Kennedy?

20 A Correct.

21 Q And is the Defendant's name Michael Justin
22 Kennedy?

23 A Yes.

24 Q Did you notice any other personal effects of
25 Mr.~Kennedy's in the apartment while you were there?

CHRIS MONTGOMERY-CROSS BY MR. KENNEDY

1 A Yes.

2 MR. GROUNSELL: I have nothing further for you.

3 Answer any questions that --

4 THE COURT: All right. Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. KENNEDY:

7 Q Whenever you entered the dwelling to execute the
8 search, did you have a body cam on?

9 A I don't recall.

10 Q Okay. Is it routine for officers to normally
11 have on a body cam whenever they conduct arrests, search
12 warrants or anything of that nature?

13 A If they're issued one, yes.

14 Q Okay. Are you familiar with the second
15 amendment?

16 A Yes, sir.

17 Q Will you recite what the amendment is?

18 A Generally, you have the right to bear arms.

19 Q Okay. So just because firearms are located in a
20 specific area, is that automatic grounds to connect those
21 firearms to drug activity because those firearms were at a
22 residence?

23 A Can you restate your question? I'm not
24 following.

25 Q Is the presence of firearms automatic grounds to

CHRIS MONTGOMERY-CROSS BY MR. KENNEDY

1 connect drugs allegedly found in a similar proximity to
2 say those firearms were used to further the offense or
3 possess a firearm during the commission of a violent
4 crime?

5 MR. GROUNSELL: Your Honor, I object. This is
6 like a matter of law for a law student.

7 THE COURT: I'll allow it. I'll overrule it.

8 THE WITNESS: Just based off my experience and
9 training, it's common to see firearms associated in
10 the presence of illegal substances or illegal drugs
11 and those that sell illegal drugs.

12 BY MR. KENNEDY:

13 Q But the second amendment gives citizens the
14 right to bear arms; correct?

15 A Within certain parameters, yes.

16 MR. KENNEDY: I have no further questions, Your
17 Honor.

18 THE COURT: All right, any redirect?

19 MR. GROUNSELL: No, Your Honor.

20 THE COURT: All right, you may step down. Thank
21 you.

22 THE WITNESS: Thank you.

23 MR. GROUNSELL: State calls Investigator Workman
24 to the stand.

25 THE CLERK: If you could, please place left hand

TYLER WORKMAN-DIRECT MR. GROUNSELL

1 on the Bible, raise your right hand.

2 TYLER WORKMAN, after being duly sworn, testified
3 as follows:

4 THE CLERK: Please be seated. If you could,
5 please state your full name for the record.

6 THE WITNESS: Tyler Workman.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GROUNSELL:

10 Q Sorry, Investigator Workman, I just need a
11 second to organize some things over here.

12 A Okay.

13 Q Investigator Workman, who are you currently
14 employed by?

15 A Greenville County Sheriff's Office?

16 Q Before the Greenville County Sheriff's Office,
17 who were you employed with, anyone law enforcement wise?

18 A Yes, I'm assigned to the DEU as a task force
19 officer.

20 Q Okay. How long have you been in law
21 enforcement?

22 A Since 2016.

23 Q What sort of training have you had,
24 specifically, with drug enforcement?

25 A I've been to TFO school, money laundering

TYLER WORKMAN-DIRECT MR. GROUNSELL

1 classes, several different classes. I can't name them all
2 off the top of my head.

3 Q At the time of this investigation, what was your
4 role? Who were you employed by?

5 A I was assigned to vice and narcotics working
6 with the DEU.

7 Q During the execution of the search warrant, what
8 was your role?

9 A I was assigned to be the scribe.

10 Q Can you explain a little bit about what a scribe
11 does, what a scribe's role is?

12 A Sure. A scribe, basically, documents the items
13 that we're seizing from the residence or wherever we're
14 searching. So evidence would be brought to me inside the
15 residence and I would document on the return to the search
16 warrant. And then started prepackaging it to get it
17 transported to property and evidence where it's stored.

18 Q So your job is to collect all the evidence from
19 all the other investigators, they bring it to you?

20 A Yes.

21 Q And then you document it?

22 A Yes.

23 Q Okay. I'm handing you what's been marked as
24 State's Exhibit 4 and 5. Are these the crystal and the
25 brown powder substances that were inside the vehicle that

TYLER WORKMAN-DIRECT MR. GROUNDSELL

1 were brought to you by Investigator McWhite?

2 A Yes.

3 Q Do they appear to be altered or tampered with in
4 any way?

5 A No.

6 Q Did you tamper or alter them in any way after
7 McWhite gave them to you?

8 A No.

9 Q Did you keep them secured while in your
10 possession?

11 A Yes.

12 Q I'm handing you also what's been marked as 16,
13 17, 18 for identification purposes. Are these the crystal
14 white powder and gray powder substances that were inside
15 of the apartment that Investigator Moore brought to you?

16 A Yes.

17 Q Do they appear to be tampered or altered in any
18 way?

19 A No.

20 Q Did you tamper with them in any way?

21 A No.

22 Q Did you keep them secure while in your
23 possession?

24 A Yes.

25 (WHEREUPON, State's Exhibit No. 25 marked for

TYLER WORKMAN-DIRECT MR. GROUNSELL

1 identification only.)

2 BY MR. GROUNSELL:

3 Q Investigator Workman, what is this?

4 A I like to call it a Magic Bullet.

5 Q Do you recognize it?

6 A Yeah, blender or mixer.

7 Q Do you recognize it from the scene on October
8 2nd, 2020?

9 A Yes.

10 Q Was this brought to you by one of the
11 investigators in the apartment?

12 A Yes.

13 Q Do you know where it was located?

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

15 Q Is it materially and substantially in the same
16 condition as it was on October 2nd, 2020?

17 A Yes.

18 MR. GROUNSELL: Your Honor, I ask that State's
19 Exhibit 25 be admitted into evidence.

20 THE COURT: All right, any objection,
21 Mr.~Kennedy?

22 MR. KENNEDY: Same objection.

23 THE COURT: All right, State's Exhibit 25
24 admitted into evidence over objection.

25 (WHEREUPON, State's Exhibit No. 25 was admitted

TYLER WORKMAN-DIRECT MR. GROUNSELL

1 into evidence.)

2 BY MR. GROUNSELL:

3 Q Mr. Workman, does that appear to have some sort
4 of powder residue in the bottom of it?

5 A Yes.

6 Q Okay. I'm handing you what is going to be
7 marked, hopefully, as State's Exhibit 26. Do you
8 recognize these, Investigator Workman?

9 A Yes.

10 Q What are these?

11 A Digital scales.

12 Q When did you first see them?

13 A When they were brought to me at the evidence
14 table when I was assisting inside the residence.

15 Q Are they materially and substantially in the
16 same condition as October 2nd, 2020?

17 A Yes.

18 MR. GROUNSELL: Your Honor, I ask that State's
19 Exhibit 26 be admitted into evidence.

20 THE COURT: All right, any objection from the
21 Defendant?

22 MR. KENNEDY: Same objection.

23 THE COURT: All right, State's Exhibit 26 is
24 admitted into evidence over objection.

25

TYLER WORKMAN-DIRECT MR. GROUNDSELL

1 (WHEREUPON, State's Exhibit No. 26 was marked
2 for identification and received into evidence.)

3 BY MR. GROUNDSELL:

4 Q Investigation Workman, in your training and
5 experience as a narcotics officer, are blenders and scales
6 common items that drug traffickers keep in and around
7 their place?

8 A Yes.

9 Q How are they commonly used?

10 A The blender would be used to mix different
11 powders. Dealers, typically, do what we call cut their
12 products to make them weaker and make them last longer, so
13 they make more money off the product they're selling.
14 Digital scales are used, obviously, to repackage and
15 weight the substance to the proper amount they wish to
16 sell it for.

17 Q After all the evidence was collected in the car
18 and apartment, what did you do next?

19 A I collect it all up, then we transport it down
20 to property and evidence.

21 Q Do you fill out certain forms when you go down
22 to the P&E?

23 A Yes, sir.

24 Q Do those forms document what was found?

25 A Yes.

TYLER WORKMAN-DIRECT MR. GROUNDSELL

1 Q Do you know if items TW-26, TW-27, TW-7, TW-8,
2 TW-9 were documented on those forms?

3 A They should have been.

4 Q I'm going to hand it up just for your
5 recollection.

6 A Okay.

7 Q Are those the proper forms, TW-7?

8 A Yeah, these are the proper forms, TW-7, yes.

9 Q And what is it listed as on there?

10 A It's a bag with a crystal substance.

11 Q TW-8.

12 A TW-8 is listed as a bag with white powder.

13 Q TW-9?

14 A TW-9 is a bag with gray powder.

15 Q TW-26?

16 A Bag with gray powder -- oh, I'm sorry, 26, bag
17 with crystal substance.

18 Q And TW-27?

19 A 27 is a bag with brown powder.

20 Q Where did you place all these items once they
21 were at property and evidence?

22 A I gave them to the evidence custodian.
23 According to this form, it was Ms. Lance.

24 Q Okay. What date were they checked in P&E?

25 A On October 2nd.

TYLER WORKMAN-DIRECT MR. GROUNSELL

1 Q At what time?

2 A At 1630.

3 Q What time does Kathy Lance sign off on?

4 A Ten o'clock. So, I would have put them in a
5 locker. I would have put them in the locker.

6 Q So what is the evidence locker?

7 A So the evidence locker is from when property and
8 evidence is closed. So we got there around 1630, so 4:30,
9 they were about to go, about to go home at five o'clock,
10 so they would tell us to put it in the locker storage.
11 These lockers are -- you can lock them, but you cannot
12 unlock them unless you have a key, which only the evidence
13 custodian has. So we placed all the items into the
14 locker. It gets locked by a button on the outside and
15 nobody else can access that locker until property and
16 evidence comes in.

17 Q Do you do anything to the individual items when
18 you put them into the locker?

19 A So the substances will be heat sealed in plastic
20 bags. That's for safety so it doesn't leak everywhere
21 with different substances. Put the guns in the proper
22 boxes. Other than that --

23 Q So you're the one who originally heat seals
24 them?

25 A Yes. You see the initials.

TYLER WORKMAN-CROSS BY MR.. KENNEDY

1 Q So when you left that afternoon, all the items
2 were secured?

3 A Yes.

4 MR. GROUNSELL: Answer any questions that
5 Mr.~Kennedy has for you.

6 THE WITNESS: Certainly.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. KENNEDY:

10 Q Officer Tyler Workman, are familiar with what
11 those documents are?

12 A Looks like an incident report and a drug
13 analysis report.

14 Q Are you the one who made the incident report?

15 A Yes.

16 Q Okay. What exactly is a presumption test?

17 A Presumptive tests are tests done on scene or it
18 can be taken to the lab. They're, typically -- we have
19 several different ways we do it. There's a Trunarc
20 machine that we use. There are test kits that we are
21 given. And the lab sometimes does a spot test.

22 Q Okay. If you could say -- give a percentage of
23 how accurate those tests are, what would you say they are?

24 A Depends on the substance. A lot of times with
25 heroin or Fentanyl, they're being cut so much that

TYLER WORKMAN-CROSS BY MR. KENNEDY

1 sometimes those test kits don't pick it up because it
2 could be more cut in the substance than actually the
3 substance that we're trying to find.

4 Q Okay. So that's the police report you made,
5 right?

6 A Yeah, looks like half of it, but, yes.

7 Q Okay. For item number TW-10, item number TW-25,
8 where you listed, those items came back as for heroin and
9 Fentanyl mix. Would there be any legitimate reason as to
10 why once they went to the lab, they came back for no
11 controlled substance detected.

12 A That I can't answer. The chemist could tell
13 you, but I can only tell you what I observed.

14 Q But did you state inside of your police report
15 that those items were a Fentanyl and heroin mixture?

16 A Yes, I said that the presumptive test told me
17 that, yes.

18 Q Okay. So in the forensic criminal analysis
19 report that you have in front of, did you state what those
20 items came back as, TW-10 and TW-25?

21 A You want what the lab told me?

22 Q Yeah, what the lab stated that those items came
23 back as?

24 A TW-10, bag containing chunk of powder substance.
25 The results were no controlled substances detected.

TYLER WORKMAN-CROSS BY MR. KENNEDY

1 TW-25, bag containing chunks of powder substance. Results
2 were no controlled substance detected.

3 Q So, basically, that would be the opposite of
4 what you put inside of your police report, correct?

5 A It's just different than what the presumptive
6 test told me. The presumptive test, what I observed is --
7 I was told and, actually, we did the -- yeah, I met with
8 criminologist, Sean Collins, who did the presumptive tests
9 for me, so he advised me of these results. So it wasn't
10 like a kit or anything. I actually took it to the lab and
11 he did a spot test.

12 Q So no controlled substance detected, basically,
13 means there was no illegal substance inside of those
14 mixtures?

15 A Inside TW-10 or TW-25, according to this lab
16 report, yes.

17 Q Okay. According to item number TW-8, inside of
18 the police report that you made?

19 A The police report?

20 Q Yeah, what did that come back as?

21 A I was advised that it spot tested inconclusive.

22 Q For the jury, what does inconclusive mean?

23 A That's what I was told by the lab analysis, Sean
24 Collins, that the spot test he wasn't able to determine
25 what that substance was. It was inconclusive, he didn't

TYLER WORKMAN-CROSS BY MR. KENNEDY

1 know.

2 Q Inconclusive means that it was no illegal
3 substance, correct?

4 A No, it just means it's inconclusive. He can't
5 tell us what it is or not. It needs further testing.

6 Q Okay. Would there be any legitimate reason, you
7 know, why once it, you know, made it to the lab or once it
8 was retested again, it came back as 263 grams of
9 Carfentanil?

10 A Yes. He does whatever he does. I don't really
11 know how they actually test these things because I'm not
12 there when it happens, but when he spot tested it, he told
13 me the results were inconclusive. He couldn't tell me on
14 the spot.

15 Q All right. Is a blender illegal to possess or
16 have inside your residence?

17 A No.

18 Q Okay. So when you stated that powder residue
19 or, you know, whatever was allegedly supposed to have been
20 on the blender or inside the blender, did you test that
21 substance to see if it was drug residue?

22 A I did not.

23 Q So it could be anything?

24 A Could be.

25 Q Is it illegal to possess digital scales?

TYLER WORKMAN-REDIRECT BY MR. GROUNSELL

1 A No.

2 Q When you came in contact with these scales, did
3 you test them to see if they had any type of trace of any
4 illegal substance on them at that time?

5 A I have not.

6 MR. KENNEDY: I have further questions.

7 THE COURT: All right, any redirect?

8 REDIRECT EXAMINATION

9 BY MR. GROUNSELL:

10 Q Investigator Workman, y'all send all substances
11 that you come in contact with to the lab; is that correct?

12 A Correct.

13 Q And these presumptive tests are not an official
14 documentation about what the substance actually is, it's
15 just so you can presume what it might be?

16 A Correct.

17 Q And only until we have actually had the crime
18 lab test something by a real means of test, by the testing
19 process, do we know what the substance actually is?

20 A Correct.

21 Q Okay.

22 Nothing further.

23 THE COURT: All right, thank you, sir. You may
24 step down.

25 Your next witness, sir.

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 MR. GROUNSELL: The State calls Kathy Lance to
2 the stand.

3 THE CLERK: If you please make your way to the
4 witness stand. Place your left hand on the Bible,
5 raise your right hand.

6 KATHY LANCE, after being duly sworn, testified
7 as follows:

8 THE CLERK: Thank you, please be seated. Would
9 you please state your full name for the record?

10 THE WITNESS: Katherine Elizabeth Lance.

11 DIRECT EXAMINATION

12 BY MR. GROUNSELL:

13 Q Ms. Lance, who do you work for?

14 A I work for Greenville County Department of
15 Public Safety.

16 Q And what area, specifically, do you work for the
17 Department of Public Safety?

18 A I work in the forensic department in property
19 and evidence.

20 Q How long have you been in property and evidence?

21 A Eleven years.

22 Q What is your role within property and evidence?

23 A I'm an administrative specialist.

24 Q Can you explain a little bit about the process
25 of property and evidence?

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 A I open up every morning. We take in evidence
2 that the officers leave during the night or over the
3 weekend, depending when I go in. And we're on call after
4 hours for anything that is needed to be done after that
5 time. We put that into the computer and we package it and
6 store it for trial.

7 Q Okay. Are you record custodian for property and
8 evidence?

9 A No, sir.

10 Q Okay. On October 15th, 2020, did you take
11 property and evidence into -- or in from the evidence
12 locker in this case?

13 A I would not know that unless I saw the P&E
14 sheet.

15 Q All right. I'm going to hand you the P&E sheet
16 right now.

17 A Yes, sir, that is correct.

18 Q And those drugs were placed in the evidence
19 locker on October 2nd?

20 A They were.

21 Q Or substances were placed in there. How does
22 the evidence locker work?

23 A The officers come in and they place it in there,
24 push the little lock on it, they lock it. When I arrive
25 in the mornings, I have a key and I unlock it, take it to

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 my desk and put it in the computer system.

2 Q Was the evidence locker secured when you took
3 the substance out of there?

4 A Yes, sir, it was.

5 Q And were the individual items in the locker
6 secured?

7 A They were.

8 Q How so, particularly the substances?

9 A Drugs or anything like that is packaged is
10 sealed with the case number, time, date, whenever they put
11 in it. The P&E sheet also list the time and date that
12 they drop it. I also sign it, the time and date I take it
13 out and put it into the computer.

14 (WHEREUPON, State's Exhibit No. 27 was marked
15 for identification only.)

16 BY MR. GROUNSELL:

17 Q Okay. I'm handing you what's been marked as
18 State's Exhibit 27 for identification purposes. Do you
19 recognize these reports?

20 A I do, this is our chain of custody report.

21 Q Is a report done for each piece of evidence
22 taken into P&E?

23 A Yes, sir, it is.

24 Q Are the records done in the ordinary course of
25 business for property and evidence? Meaning, do you do

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 this every time you get something to come in?

2 A Every time somebody touches it, looks at it,
3 takes a picture of it, anything that's done, it is signed
4 out whether by computer if they're looking at it or if
5 they're looking at it at our desk, we have a book that
6 they sign.

7 Q Okay. Are these particular reports that you
8 have here for items TW-26, 27, 7, 8, and 9?

9 A They are.

10 MR. GROUNSELL: And that corresponds with
11 State's Exhibit 4, 5, 16, 17, and 18 for the record.
12 BY MR. GROUNSELL:

13 Q And are they a fair and accurate depiction of
14 what the property and evidence that was taken from the
15 locker?

16 A Yes, sir, it is.

17 Q Have they been altered in any way?

18 A No, sir.

19 MR. GROUNSELL: The State moves to introduce
20 State's Exhibit 27 into evidence and publish to the
21 jury.

22 THE COURT: All right, any objection from The
23 Defendant?

24 MR. KENNEDY: Same objection.

25 THE COURT: All right, State's Exhibit 27 is

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 admitted into evidence over objection.

2 (WHEREUPON, State's Exhibit No. 27 was admitted
3 into evidence.)

4 BY MR. GROUNSELL:

5 Q So what do these forms show us? Do they show us
6 every time that some -- this is what you're talking about,
7 every time something is done, it's put on an entry into
8 this --

9 A Right, a date and time is put in, when I took it
10 in, when I put it on the shelf, when I put it in the
11 computer, when it's checked out for drug testing or any
12 kind of testing or viewing and when it's brought back.

13 Q Okay. On what date was it checked out to go to
14 the crime lab?

15 A This particular item, TW-26 was checked out on
16 10-13-2020 at 3:55 by Sean Collins.

17 Q Is that consistent for all the other ones as
18 well that you have in that stack?

19 A Yes, sir, it is.

20 Q And were they brought back -- those same items
21 brought back to property and evidence?

22 A They were.

23 Q Okay. I'm going to hand you what has been
24 marked as State's Exhibit 4, 5, 16, 17 and 18 for
25 identification purposes. Their item numbers are TW-7, 8,

KATHY LANCE-DIRECT BY MR. GROUNSELL

1 9, 26 and 27. I'll hand it to you.

2 A TW-26, 27, 7, 8, 9, 10.

3 Q Is that them?

4 A It is.

5 Q The substances that were inside the evidence
6 locker?

7 A Yes, sir.

8 Q Do they appear to be altered or tampered with in
9 any way?

10 A The only alteration from when I had them is Sean
11 reseals them once they're tested and he seals over the top
12 of what I sealed.

13 Q They were secured while they were in property
14 and evidence's possession?

15 A They were, yes, sir.

16 Q You already said these substances were sent to
17 the crime lab to be tested?

18 A Yes, sir.

19 Q Then they were returned and they were secure?

20 A Yes, sir.

21 Q Have they been in P&E's possession until this
22 trial?

23 A They have. They were brought back on 10/25 by
24 Sean and placed back in the drug vault on 10/23.

25 MR. GROUNSELL: Nothing further, answer any

KATHY LANCE-CROSS BY MR. KENNEDY

1 questions Mr.~Kennedy has for you.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. KENNEDY:

5 Q Yes, ma'am, how do you normally receive drug
6 evidence?

7 A The officers bring it in either over the counter
8 when we're there during the day or after hours, it's put
9 into a locked locker.

10 Q Are you familiar with chain of custody?

11 A I am, sir.

12 Q Could you explain what chain of custody is?

13 A Chain of custody is when we first take a hold of
14 the evidence, it tells the custodian who puts it in in the
15 office. And it tells what shelf it was put on at a later
16 date, who packaged it. If it goes out for any testing,
17 that's noted on there. If it's checked out for court, if
18 it's checked out for that, if it's a discovery for the
19 lawyer before it goes to court, that's on there, also.

20 Q Okay. Does a proper chain and custody prevent
21 evidence from being tampered or altered?

22 A Yes. By just the course that it goes, that it
23 follows, yes, it does.

24 Q Okay. Is it possible that evidence may have
25 been tampered with or altered before it reached the locker

KATHY LANCE-CROSS BY MR. KENNEDY

1 that you have access to?

2 A No, sir.

3 Q So it's not possible that before drugs reach the
4 law enforcement center and reach the locker, the officers
5 who package these drugs could have done anything with
6 these drugs?

7 A They're under camera when they're packaging that
8 to put it into the locker, so, no, sir.

9 Q No, I'm saying before it reaches the law
10 enforcement center or the locker?

11 A I can't say whether that happens or not.

12 Q Okay. Is it possible that the wrong time can be
13 put on an evidence package or placed any time after the
14 time was put on the package? So, basically, I'm asking
15 could officers put a certain time on the package and put
16 it inside of the evidence locker, but turn in it
17 afterwards?

18 A They have to put the time on this sheet of
19 paper, also, and they're under camera once they're in our
20 property and evidence department.

21 Q Okay.

22 MR. KENNEDY: I have no further questions.

23 THE COURT: All right, redirect?

24 MR. GROUNSELL: No, Your Honor.

25 THE COURT: All right, thank you, ma'am, you may

KATHY LANCE-CROSS BY MR. KENNEDY

1 step down.

2 All right, ladies and gentlemen, we're going to
3 take our afternoon break. And so, again, ask you
4 please don't discuss the case. We'll take our break
5 and I'll bring you back. Thank you.

6 (WHEREUPON, the jury left open court at
7 approximately 3:33 p.m.)

8 THE COURT: All right, we'll take our break.
9 From a housekeeping standpoint, one more witness?

10 MR. GROUNDSELL: That's right, Your Honor.

11 THE COURT: All right. So looks like we may be
12 able to finish our testimony. My thought is finish
13 up our testimony and if Mr.~Kennedy calls any
14 witnesses, we'll finish that up today, then maybe
15 argue and charge tomorrow.

16 MR. GROUNDSELL: Your Honor, some of the officers
17 that were here today, I think he plans to recall at
18 some point. Some of them have left to go do other
19 things. I can try to get them back here this
20 afternoon if we believe that we're going to have time
21 to do so. I can't make any guarantees on every one
22 of them, but I can certainly reach back out to them.
23 I think the thought was we were going to progress
24 into tomorrow on that.

25 THE COURT: If that does pose a logistical

1 problem, we can wait until tomorrow.

2 Mr.~Kennedy, what -- do you, in fact, intend to
3 recall some of these witnesses?

4 MR. KENNEDY: Yes, Officer Franco, Officer
5 Reyes, the criminalist, Sean Collins.

6 THE COURT: I don't know if that's male or
7 female.

8 MR. GROUNSELL: It's a male.

9 THE COURT: Well, he's getting ready to testify
10 right now. All right. So Franco, Ray, Collins,
11 those three?

12 MR. GROUNSELL: It's my understanding he's going
13 to call them in his case in chief?

14 MR. KENNEDY: Right.

15 MR. GROUNSELL: Mr. Collins is here, so he can
16 certainly be available today. As to the other two,
17 I'm not sure because they testified this morning.

18 THE COURT: We'll take our break, then
19 Mr. Collins can testify. And if we go into the
20 Defendant's case, the Defendant decides to call
21 witnesses and Mr. Collins is still here, then we can
22 probably put him up and the rest in the morning.

23 MR. GROUNSELL: Thank you.

24 THE COURT: All right.

25 (WHEREUPON, a short break was taken.)

1 THE COURT: All right, anything from The State?

2 MR. GROUNSELL: No, Your Honor.

3 THE COURT: All right.

4 Anything from The Defendant?

5 MR. KENNEDY: No, sir.

6 THE COURT: All right, bring them on in.

7 (WHEREUPON, the jury entered open court at
8 approximately 3:45 p.m.)

9 THE COURT: All right, call your next witness.

10 MR. GROUNSELL: Sorry, Your Honor, one second, I
11 think I misplaced something.

12 THE COURT: That's all right, take your time.

13 MR. GROUNSELL: State calls Sean Collins to the
14 stand.

15 SEAN COLLINS, after being duly sworn, testified
16 as follows:

17 THE CLERK: Thank you, please be seated. Could
18 you please state your full name for the record?

19 THE WITNESS: Sean Franklin Collins.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. GROUNSELL:

23 Q Mr. Collins, where are you employed?

24 A I'm employed by the Greenville County Department
25 of Public Safety in the crime laboratory in the drug

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 analysis section.

2 Q What is your educational background?

3 A I have a Bachelor of Science Degree in chemistry
4 from Clemson University.

5 Q What other types of training or certifications
6 do you have?

7 A I have attended the drug enforcement
8 administration forensic chemist seminar. I've completed
9 several classes in the equipment we use in the analysis of
10 controlled substance. And I've received over 700 hours of
11 specialized training in the area of drug identification.

12 Q Do you do anything to stay current on
13 developments in your field?

14 A Yes, sir, we have continuing education that is
15 available.

16 Q Approximately how many drug analysis have you
17 conducted in your career?

18 A Over 10,000.

19 Q Have you ever testified in court before?

20 A Yes, sir, I've testified as an expert witness in
21 the area of drug identification 168 times.

22 MR. GROUNSELL: The State moves to admit
23 Mr. Collins as an expert in drug analysis, Your
24 Honor.

25 THE COURT: All right, Mr.~Kennedy, do you have

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 any objection or do you want to voir dire the
2 witness?

3 MR. KENNEDY: No, go ahead with it.

4 THE COURT: You have no objection?

5 MR. KENNEDY: No objection.

6 THE COURT: All right, the witness is classified
7 as an expert in the area of drug analysis.

8 Ladies and gentlemen, normally, a witness can
9 only testify as to what they observed and are not
10 allowed to give opinions. However, under our rules,
11 if an expert has been qualified, he or she can give
12 an opinion based on their education, their experience
13 in a particular field that they are in. So they are
14 qualified as an expert and they are allowed to give
15 an expert opinion. However, it's to be given no
16 greater weight than that of any other witnesses just
17 because they are an expert witness. And you do not
18 have to accept the expert's opinion just because they
19 are experts. You can give it any weight that you see
20 fit, just like you give the weight to any other
21 witnesses.

22 Yes, sir.

23 BY MR. GROUNSELL:

24 Q Mr. Collins, generally speaking, how does a
25 substance that needs to be tested come into your

SEAN COLLINS-DIRECT BY MR. GROUNDSELL

1 possession?

2 A It would be requested by the officer that was in
3 charge of the case. And that request goes to the property
4 and evidence room where the drugs are stored. Those items
5 that are requesting for analysis are staged and presented
6 to one of the chemist when they need cases to work.

7 Q Generally speaking, when an item comes to you in
8 a heat sealed bag, what do you do with them?

9 A Confirm that it's properly sealed, then I would
10 open it, perform my analysis, weigh the sample, if
11 necessary, and conduct whatever analysis was requested.

12 Q So you cut the bag open?

13 A Yes, sir, and initial and date the opening of
14 it.

15 Q Okay. You take the substance out of the
16 original packaging?

17 A Yes, sir, that's correct.

18 Q And test it?

19 A Yes, sir.

20 Q All right. Then you put it back into the
21 original package; is that correct?

22 A Yes. And then we would typically seal it in
23 another new bag.

24 Q Okay. Mr. Collins, please tell the jury what
25 scientific methods or examinations can you use to

SEAN COLLINS-DIRECT BY MR. GROUNDSELL

1 determine whether or not a particular substance is a
2 controlled substance?

3 A The confirmative analysis we use in the crime
4 laboratory in Greenville are the Gas Chromatography Mass
5 Spectrometer and infrared spectrometer.

6 Q Generally speaking, how does each one of those
7 tests work?

8 A In general, the GCMS, which is what I primarily
9 used in this case, will separate compounds based on their
10 boiling point. Once the compounds are separated, the mass
11 spectrometer identifies them by fragmentation patterns it
12 creates. It's a unique produced compound.

13 Q And after you conduct these various tests, do
14 you document the results of those tests in some type of
15 report?

16 A Yes, sir, we prepare a report of our findings.

17 Q And in this case, did you conduct any
18 examinations of or material at the request of Investigator
19 McWhite?

20 A Amidulla [ph] was the name on the request. I'm
21 sorry, McWhite and Amidulla are listed as the officer.
22 Amidulla is the officer that signed it.

23 Q Okay. I'm handing you what's been marked as
24 State's Exhibit No. 4, also, marked as TW-26; do you
25 recognize this item?

SEAN COLLINS-DIRECT BY MR. GROUNDSELL

1 A Yes, sir, I do.

2 Q What is it?

3 A TW-26 was a bag containing crystal substance
4 that I found to be methamphetamine with the weight of 55.5
5 grams.

6 Q Okay. When did you receive this item?

7 A I received the evidence on October 13th, 2020.

8 Q And was it in a heat sealed bag?

9 A Yes, sir, it would have been sealed in this
10 inner bag.

11 Q All right. Did it appear to have been tampered
12 with?

13 A No, sir.

14 Q Why are heat sealed bags used when items first
15 are checked in?

16 A That's just a good way to secure the evidence.
17 Typically, they're clear plastic that allows you to still
18 see it while being sealed.

19 Q Now, it looks like there's two plastic bags
20 inside the outer bag. Is that what you previously
21 discussed about how you repackage something after testing?

22 A Yes, sir, the evidence was in this bag. It was
23 sealed in this smaller rectangular-shape and the outer
24 bag, I placed it all in.

25 Q And so you did a test, what was that type of

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 test that you performed on it?

2 A Gas Chromatography Mass Spectrometer.

3 Q And it came back as methamphetamine?

4 A Yes, sir, that's correct.

5 Q At 55.55 grams.

6 A Fifty-five, yes, sir.

7 MR. GROUNSELL: State moves to introduce State's
8 Exhibit 4 into evidence.

9 THE COURT: Any objection, Mr. Kennedy?

10 MR. KENNEDY: Same objection.

11 THE COURT: All right. State's Exhibit No. 4 is
12 admitted into evidence over objection.

13 (WHEREUPON, State's Exhibit No. 4 was admitted
14 into evidence.)

15 BY MR. GROUNSELL:

16 Q Mr. Collins, you also have in front of you
17 State's Exhibit No. 5, also, marked as TW-27. Do you
18 recognize this item?

19 A Yes, sir, I do.

20 Q When did you receive this item?

21 A Same date, October 2nd -- I'm sorry, that's the
22 incident date. October 13th, 2020.

23 Q Was it in a heat sealed bag?

24 A Yes, sir, that's correct.

25 Q Had it been tampered with?

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 A No, sir.

2 Q And when you received this item, what did you do
3 with it?

4 A Same testing, I opened the package, weighed the
5 item, tested the substance. Once it was completed, I
6 sealed it in the outer package.

7 Q What was this substance?

8 A TW-27 was a bag containing chunks of powder
9 substance, which I found to be heroin with a weight a 5.75
10 grams.

11 MR. GROUNSELL: The State moves to introduce
12 State's Exhibit No. 5 into evidence, Your Honor.

13 THE COURT: All right, Mr.~Kennedy, any
14 objection?

15 MR. KENNEDY: Yes, sir, same objection.

16 THE COURT: All right. State's Exhibit No. 5 is
17 admitted into evidence over objection.

18 (WHEREUPON, State's Exhibit No. 5 was admitted
19 into evidence.)

20 BY MR. GROUNSELL:

21 Q Mr. Collins, you have also in front of you what
22 is State's Exhibit 16, also, marked as TW-7. Do you
23 recognize this item?

24 A TW-16?

25 Q State's Exhibit 16, but TW-7 on the package?

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 A That's 13 there.

2 Q You're right, sorry. State's Exhibit 13?

3 A Yes, sir.

4 Q Do you recognize this item?

5 A Yes, sir, I do.

6 Q When you received it, was it in a heat sealed
7 bag?

8 A Yes, sir, it was sealed in the inner rectangular
9 plastic.

10 Q Does it appear to have been tampered with?

11 A No, sir, it was not.

12 Q What type of test did you run on this?

13 A Same instrument analysis.

14 Q After conducting the test, what did it come back
15 as?

16 A Found TW-7 to be methamphetamine with a weight
17 of 21.71 grams.

18 MR. GROUNSELL: Your Honor, The State moves to
19 introduce State's Exhibit 13 into evidence.

20 THE COURT: All right, Mr.~Kennedy, any
21 objection?

22 MR. KENNEDY: Same objection.

23 THE COURT: All right. State's Exhibit No. 13
24 is admitted into evidence over objection.

25 (WHEREUPON, State's Exhibit No. 13 was admitted

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 into evidence.)

2 BY MR. GROUNSELL:

3 Q Mr. Collins, I'm handing you now item TW-9,
4 State's Exhibit 14, I believe?

5 A Yes, sir -- oh --

6 Q Oh, sorry.

7 A TW-8 is State's Exhibit 14.

8 Q Somehow I've got my numbers all crossed up. Do
9 you recognize this item?

10 A Yes, sir, I do.

11 Q When did you receive this item?

12 A The same date, October 13th, 2020.

13 Q It was also in a heat sealed bag?

14 A Yes, sir, it was.

15 Q Did it appear to be tampered with?

16 A No, sir, it had not.

17 Q And what type of scientific test did you run on
18 it?

19 A Same instrumental analysis.

20 Q What did that material come back as?

21 A I found it to be a substance called Carfentanil
22 with a weight 254.67 grams.

23 MR. GROUNSELL: All right. The State moves to
24 enter State's Exhibit 14 into evidence.

25 THE COURT: All right, any objection,

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 Mr.~Kennedy?

2 MR. KENNEDY: Same objection.

3 THE COURT: All right. State's Exhibit 14 is
4 admitted into evidence over objection.

5 (WHEREUPON, State's Exhibit No. 14 was admitted
6 into evidence.)

7 BY MR. GROUNSELL:

8 Q I'm handing you what's been marked as State's
9 Exhibit 15.

10 A Yes, sir, I do recognize this.

11 Q Okay. When did you receive this item?

12 A That same day, October 13th, 2020.

13 Q It was also in a heat sealed bag?

14 A Yes, sir.

15 Q Did it appear to be tampered with?

16 A No, sir, it had not been.

17 Q What sort of test did you run on this?

18 A The same instrumental analysis.

19 Q What did it come back as?

20 A I found this substance to be heroin with a
21 weight of 21.73 grams.

22 MR. GROUNSELL: State moves Exhibit 15 into
23 evidence, Your Honor.

24 THE COURT: All right, Mr.~Kennedy?

25 MR. KENNEDY: Same objection.

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 THE COURT: State's Exhibit 15 is admitted into
2 evidence over objection.

3 (WHEREUPON, State's Exhibit No. 15 was admitted
4 into evidence.)

5 BY MR. GROUNSELL:

6 Q Mr. Collins, you mentioned at the beginning of
7 your testimony, you generate a report for each case?

8 A Yes, sir.

9 Q Is that correct?

10 A That's correct.

11 Q I'm handing you what's been marked State's
12 Exhibit 28, do you recognize this report?

13 A Yes, sir. This is a copy of my report for the
14 items you just had me examine or look at.

15 Q And the report is done for every drug analysis;
16 is that correct?

17 A Yes, sir, that's correct.

18 Q Is this report a fair and accurate depiction of
19 the testing results?

20 A Yes, sir.

21 Q Has it been altered in any way?

22 A No, sir, it has not.

23 Q And is that your signature on the second page?

24 A Yes, it is.

25 MR. GROUNSELL: State moves to introduce State's

SEAN COLLINS-DIRECT BY MR. GROUNSELL

1 Exhibit 28 into evidence and publish to the jury.

2 THE COURT: All right, any objection,
3 Mr.~Kennedy?

4 MR. KENNEDY: Same objection.

5 THE COURT: State's Exhibit 28 is admitted into
6 evidence over objection.

7 (WHEREUPON, State's Exhibit No. 28 was marked
8 for identification and received into evidence.)

9 BY MR. GROUNSELL:

10 Q Mr. Collins, it appears there are other items on
11 this report, were those substances also tested as part of
12 this case?

13 A Yes, sir, they were.

14 Q Does 77.26 grams of methamphetamine sound
15 correct for the items just entered into evidence?

16 A I believe so, yes, sir.

17 Q Does 27.48 grams of heroin sound correct for the
18 items just entered into evidence?

19 A Yes, sir.

20 Q And for the Carfentanil, it was 254.67 grams?

21 A Yes, sir, that's correct.

22 Q Can you explain a little bit about cross
23 contamination of substances, how that could be prevented
24 or your lab prevents that from happening?

25 A In the laboratory, we only open one item at a

SEAN COLLINS-CROSS BY MR. KENNEDY

1 time. We complete the analysis on that one item, seal
2 that up, then go to the next item. That's why everything
3 is in its own package. We will make sure the work area,
4 workstation is clean before we go to the next item. When
5 we actually run the evidence on the instrument, we run a
6 blank between each sample to verify that the instrument is
7 clean before the next sample starts.

8 Q When you were done testing all these substances,
9 what did you do with them?

10 A Once the analysis was complete, I returned it to
11 the property and evidence room for storage.

12 Q Okay.

13 MR. GROUNDSELL: No further questions. Please
14 answer any questions that Mr. Kennedy has for you.

15 THE COURT: All right, cross-examination.

16 CROSS-EXAMINATION

17 BY MR. KENNEDY:

18 Q Are you familiar with those documents that I
19 just handed to you?

20 A This is a copy of my report, I'm familiar with
21 it. This appears to be a supplemental report for this
22 case I've not seen before.

23 Q Okay. Could you give me an example of what a
24 presumption test is?

25 A A presumptive test is an indication to give us

SEAN COLLINS-CROSS BY MR. KENNEDY

1 an idea of what our -- in the laboratory, we do a color
2 test to give an indication of what a drug might be to know
3 which examination to use next. Officers in the field use
4 them as well to get an indication if something may or may
5 not be a controlled substance.

6 Q Okay. Whenever these are used, what is the
7 percentage of accuracy of whether it's a controlled
8 substance or not?

9 A I'm not aware of those statistics. There are a
10 lot of things that can create false positives.

11 Q Okay. So would there be any reason that item
12 TW-10 and item TW-25 were considered to be heroin and
13 Fentanyl mix, but once they came back from the laboratory,
14 they were no control substance detected?

15 A I need to review my data for just a second, sir.
16 I indicated -- I got an indication of a substance called
17 Noscapine in TW-10. I'm not familiar with this result for
18 color test, but it may be the result of that. But it is
19 not a controlled substance.

20 Q Okay.

21 A The other item, TW-25. TW-25 appears to have
22 the substance known as Papaverine. I'm not familiar with
23 it. It is not a controlled substance. It may have caused
24 a false positive in the chemical color test.

25 Q How long have you been a criminal analysis

SEAN COLLINS-CROSS BY MR. KENNEDY

1 specialist?

2 A Thirty-one years, sir.

3 Q Is there any specific way you are supposed to
4 receive drug evidence?

5 A Just sealed and from the property and evidence
6 room.

7 Q Okay. So before this evidence is sealed and
8 placed into the property and evidence room, do you have
9 any type of control or any way to prevent this evidence
10 from being tampered with or altered before it reaches this
11 --

12 A I do not. I do not have any contact with the
13 evidence until I receive it after it's sealed.

14 Q So it is possible that evidence could have been
15 tampered or altered before you received it?

16 A I suppose it's possible, yes, sir.

17 Q All right. Being a forensic chemical analysis
18 specialist, is there any way to break down the actual
19 percentage of the illegal substance inside a chemical
20 compound?

21 A Not with the testing we do. We do not do
22 quantitative analysis. We just simply determine if
23 something is present or not.

24 Q Okay. So, just saying that the chemical
25 compound weighs 28 grams, but comes back to 50 or 40

SEAN COLLINS-CROSS BY MR. KENNEDY

1 percent, would that, you know, eliminate the presence of
2 what is illegal or what is not illegal?

3 A That testing is something that is possible. It
4 is not something our laboratory is set up to do. My
5 results, when I say something was found to contain
6 methamphetamine and has a weight of 55.55 grams, it just
7 means that is the total weight of the substance and
8 methamphetamine is in it. It does not mean that it is
9 pure methamphetamine or anything like that.

10 Q So that does not mean it's the actual amount of
11 illegal substance?

12 A It's the weight of the substance, but not the
13 actual percentage of the substance.

14 Q Was this ever done to the drugs that were given
15 to you related to my case?

16 A No quantitative analysis was performed, sir.

17 Q So it's possible to say that a chemical compound
18 could contain only one gram of an illegal substance mixed
19 with another larger amount of a non-illegal compound,
20 let's say, baby powder or, you know, any type of household
21 powder substance --

22 MR. GROUNSELL: Objection, Your Honor.

23 THE COURT: What's the basis?

24 MR. GROUNSELL: Basis, Your Honor, is that as a
25 matter of law what drug testing is in South Carolina,

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1 this is a misstatement of the law. It doesn't mean
2 the mixture counts as this. We don't do pure
3 testing. The statute doesn't require the purity of
4 the substance. This is confusing and misleading to
5 the jury.

6 THE COURT: Overruled, I allow him to explore on
7 cross.

8 BY MR. KENNEDY:

9 Q Okay. So is it possible that one gram of an
10 illegal substance can be mixed with a significant amount
11 of a larger non-illegal substance would show up as an
12 illegal substance?

13 A Yes, sir, it would be very easy to detect that
14 smaller amount in the sample.

15 Q Okay. So if I took -- if I was an officer and I
16 took one gram of something that was illegal and dumped it
17 inside of a bag of, let's say, 200 grams of something,
18 could that substance be detected inside those 200 grams?

19 A Most likely, yes, sir.

20 MR. KENNEDY: I have no further questions.

21 THE COURT: All right, redirect?

22 MR. GROUNDSELL: No, Your Honor.

23 THE COURT: All right, you may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: All right, next witness.

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1 MR. GROUNSELL: Nothing further from The State,
2 Your Honor. The State rests.

3 THE COURT: All right, ladies and gentlemen,
4 that's The State's case and their evidence. I'm
5 going to excuse you for just a little bit here, I've
6 got to take matters up, then I'll bring you back in.
7 All right, thank you.

8 (WHEREUPON, the jury left open court at
9 approximately 4:08 p.m.)

10 THE COURT: All right, any motions? Anything
11 from The State?

12 MR. GROUNSELL: No, Your Honor.

13 THE COURT: Any motions from The Defendant?

14 MR. KENNEDY: None, Your Honor.

15 THE COURT: All right. You going to call some
16 witnesses in your case?

17 MR. KENNEDY: The only witness I was going to
18 call at this point is Officer Franco and Officer
19 Reyes again.

20 MR. GROUNSELL: Your Honor, The State would
21 request a directed verdict motion be heard on the
22 case from his side of things for the record.

23 THE COURT: Well, he's not making his motion.
24 He has stated that he is not making a motion or any
25 motions.

1 Is that correct, Mr.~Kennedy?

2 MR. KENNEDY: I mean, specifically, directed
3 verdict would be based on finding me guilty for
4 possession of a weapon during the commission of a
5 violent crime and actual amount of the illegal
6 substance that was allegedly found.

7 THE COURT: All right, anything else?

8 MR. KENNEDY: No, Your Honor.

9 THE COURT: Okay. All right, I note your motion
10 and motion is denied at this time.

11 All right, Mr.~Kennedy, at this point, that's
12 The State's case. And I have an obligation to inform
13 you of your right to testify or not testify. So if
14 you would give me your attention, please. I'm going
15 to explain to you certain of your rights. If you
16 don't understand anything that I say, please let me
17 know and if you want me to explain anything in more
18 detail, please let me know.

19 All right. We've reached the stage of the trial
20 where you may present your defense. You have the
21 right to claim the protections given to you by the
22 Fifth Amendment to the Constitution of the United
23 States. This amendment states in part, no person
24 shall be compelled in any criminal case to be a
25 witness against himself. This means that you cannot

1 be required to testify in this case. You have the
2 right to testify on your own behalf. However, no one
3 can make you testify. This is a personal right and
4 no one can waive this right accept you.

5 If you decide to testify, you will be subject to
6 the same rules that govern other witnesses and you
7 may be examined and cross-examined on any relevant
8 issue in this case. And in addition, if you have any
9 convictions involving dishonesty or false statements
10 or for crimes punishable by imprisonment for more
11 than one year and the court determines that probative
12 value of admitting this evidence outweighs its
13 prejudicial effect to you, the solicitor will be able
14 to introduce your record to attack your credibility.

15 Mr. Grounsell, what record, potentially, is out
16 there that you would be able to use to impeach him?

17 MR. GROUNSELL: One second, Your Honor.

18 Your Honor, he does have the financial
19 transaction card fraud from 2017 and one from 2013,
20 which I think goes to that.

21 THE COURT: Those are the only two?

22 MR. GROUNSELL: Yes, Your Honor.

23 THE COURT: Okay. Those potential -- if you did
24 testify, you could be cross-examined, potentially;
25 and if I find that probative value outweighed the

1 prejudicial effect, that would be admitted.

2 If you decide to testify, this decision is on
3 your part. You're the sole one to make that decision
4 or you can ask for any assistance, but it must be
5 freely, voluntarily and intelligently made with the
6 knowledge of the protections that are given to you by
7 the Fifth Amendment and consequences of your decision
8 to testify. If you decide not to testify, you make
9 that decision not to testify, I will instruct the
10 jury that they cannot give the fact that you did not
11 testify any consideration whatsoever. And there's to
12 be absolutely no prejudice to you because you did not
13 testify, it's left entirely up to you whether or not
14 you testify. And you may think about it, talk with
15 any family, friend or attorney here or anyone else,
16 but the final decision will be left entirely up to
17 you.

18 So you understand that if you do not testify, I
19 will instruct the jury that they are not to consider
20 that against you. Do you understand that?

21 (There was no response.)

22 All right, do you need -- I'll be glad to give
23 you some time if you need to talk to anybody or have
24 you already made that decision?

25 MR. KENNEDY: Yeah, I don't want to testify.

1 THE COURT: All right. All right. So we will
2 go -- it's 4:15, we will go ahead and start your
3 case.

4 Let's see, is there any other -- anybody have
5 any objection to go ahead and, at least, getting one
6 witness, maybe two?

7 All right, you ready, Mr. Kennedy?

8 MR. KENNEDY: Yes, Officer Reyes and Officer
9 Franco.

10 THE COURT: Who's here?

11 MR. GROUNSELL: The only we have here is
12 Mr. Collins.

13 THE COURT: Well, looks like Mr. Reyes and who's
14 the other one?

15 MR. KENNEDY: Franco.

16 THE COURT: Franco are not here. Mr. Collins is
17 here. Would you like to start with Mr. Collins?

18 MR. KENNEDY: No, I don't want to use him as a
19 witness anymore. I pretty much feel like I --

20 THE COURT: So the only two you're going to use
21 are Officer Franco and Officer Reyes?

22 MR. KENNEDY: Yes, that's correct.

23 THE COURT: And they're not here.

24 All right. Well, in that case, we'll just -- I
25 think we'll just recess today then. And what we'll

1 do, we'll finish up testimony in the morning with the
2 Defense's case.

3 Mr.~Kennedy, you can call whatever witnesses --
4 you've indicate just Officer Reyes and Officer
5 Franco; is that correct?

6 So, Mr. Grounsell, just want to make sure
7 they're available.

8 Are those the two, Mr.~Kennedy?

9 MR. KENNEDY: Yes, sir.

10 THE COURT: Mr. Grounsell, if would make those
11 two available in the morning.

12 MR. GROUNSELL: I will.

13 THE COURT: All right. We will finish up those
14 witnesses and any reply. Then we will argue and
15 charge probably early in the morning.

16 All right, anything else before we adjourn?

17 MR. GROUNSELL: No, your Honor.

18 THE COURT: Anything, Mr.~Kennedy?

19 MR. KENNEDY: No, sir.

20 THE COURT: All right. We will adjourn and
21 start back tomorrow morning at 9:30.

22 (WHEREUPON, the proceedings were concluded for
23 the day to be reconvened on August 31, 2022.)
24
25

1 August 31, 2022

2 THE COURT: All right, before we bring the jury
3 back in, what we will do is we'll go forward with
4 Mr.~Kennedy, I believe, he intends to call a couple
5 of witnesses..

6 Then once you finish your case and call your
7 witnesses, Mr.~Kennedy, we will talk about the
8 charges. I will give you a copy of the jury
9 instructions and let you take a look at them and
10 review them.

11 Once that's done, then I'll give y'all an
12 opportunity to get ready for closing arguments, then
13 we'll close.

14 So anything from The State before I bring the
15 jury in?

16 MR. GROUNSELL: No, Your Honor.

17 THE COURT: Anything from The Defense?

18 MR. KENNEDY: No, sir.

19 THE COURT: All right.

20 All right, Mrs. Fryer.

21 (WHEREUPON, the jury entered open court at
22 approximately 9:45 a.m.)

23 THE COURT: Good morning, ladies and gentlemen,
24 I hope y'all had a good night. We are ready to
25 continue on. We are starting The Defendant's case.

1 I recognize Mr.~Kennedy. Call your first
2 witness.

3 MR. KENNEDY: Your Honor, at this time, I would
4 like to call Officer Reyes to the stand.

5 THE COURT: All right.

6 THE CLERK: Thank you, sir.

7 MAURICIO REYES, after being duly sworn,
8 testified as follows:

9 THE CLERK: Thank you, please be seated. Once
10 again, if you don't mind, if you could state your
11 full name for the record.

12 THE WITNESS: Mauricio Andres Reyes.

13 THE CLERK: Thank you.

14 MR. KENNEDY: Proceed to questions?

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. KENNEDY:

18 Q Officer Reyes, so you are part of the CRT, Crime
19 Response Team?

20 A Yes, sir.

21 Q Is it also accurate that Officer Lapek, Officer
22 Miller, Officer Franco and Officer Sigmon participated in
23 the execution of a search warrant on my residence and
24 vehicle?

25 A I don't remember if Officer Lapek was there. I

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 do recall the other ones being there.

2 Q Okay. Did you already state on the record that
3 Officer Lapek was one of the officers that participated?

4 A No, sir. I said that on a normal day, a regular
5 day with our unit, that she most likely was there, but I
6 wasn't 100 percent.

7 Q Okay.

8 MR. KENNEDY: At this time, I would like to show
9 a video.

10 THE COURT: All right. Got to lay a foundation
11 for what video is it.

12 MR. KENNEDY: Body cam footage from Officer
13 Miller, 10/2/20.

14 THE COURT: Is this one of the disks that's
15 already been admitted into evidence?

16 MR. KENNEDY: Yes, sir.

17 THE COURT: Okay. All right.

18 MR. GROUNSELL: No, Your Honor.

19 THE COURT: It's not?

20 MR. GROUNSELL: There's not been an Officer
21 Miller disk entered into evidence.

22 THE COURT: All right, Mr.~Kennedy, you lay the
23 foundation to admit this into evidence.

24 MR. KENNEDY: This evidence that I'm admitting
25 is, you know, essential to all the executing officers

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 that participated in the execution of the search
2 warrant that -- I'm sure this officer --

3 THE COURT: You've got to lay the foundation to
4 get it into evidence. You need to ask the
5 appropriate questions to get it into evidence.

6 MR. KENNEDY: The appropriate question would be
7 is that this officer is a member of the Crime
8 Response Team because this evidence will show that
9 this other officer that participated --

10 THE COURT: Hold on before you start talking
11 about what's on there, what are you trying to admit
12 into evidence?

13 MR. KENNEDY: I'm trying to admit into evidence
14 that the same officers that executed the search
15 warrant are the same officers that participated in
16 the traffic violation that occurred a month before,
17 which is essential to my case because this officer
18 that clearly makes a statement is part of Crime
19 Response Team.

20 THE COURT: All right, may be inconsistent
21 statement, Mr. Grounsell?

22 MR. GROUNSELL: Your Honor, I would object.
23 There hasn't been any kind of foundation laid to
24 enter this into evidence. Officer Miller is not here
25 to testify. I don't know how Officer Reyes can

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 authenticate some other officer's body cam.

2 MR. KENNEDY: It's not a testimony from Officer
3 Miller, he didn't state anything. It's just another
4 officer that's part of the Crime Response Team, which
5 this officer -- you know, they are partners and they
6 executed the search warrant together.

7 THE COURT: All right. So ladies and gentlemen,
8 I'm going to need to excuse you for a little bit.

9 (WHEREUPON, the jury left open court at
10 approximately 9:50 a.m.)

11 THE COURT: All right, Mr. Kennedy, tell me what
12 you want to do here?

13 MR. KENNEDY: I want to show that -- you know,
14 basically, that the same officer, you know, and
15 another officer that's part of the Crime Response
16 Team, the CRT, are the same officers that conducted a
17 traffic violation on me a month prior. Not only to
18 do that, it's just to verify, you know, to clear up a
19 question that I asked this officer, did he
20 participate or did he respond to a traffic violation
21 that I was a part of. I mean, you know, that was
22 conducted against me and on me, as a defendant.

23 THE COURT: You're asking if Officer Reyes
24 participated in this traffic stop; is that correct?

25 MR. KENNEDY: It's not specifically that, but

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 it's to prove and verify that the same officers that
2 are on the scene at the execution of the search
3 warrant are the same officers, at least, five or six
4 of them that responded to a traffic violation that
5 occurred with me.

6 THE COURT: Well, what are you getting through
7 this witness? What are you trying to prove?

8 MR. KENNEDY: I really want to verify that, you
9 know, he's familiar with who this officer is, can he
10 -- you know, basically, I have three simple questions
11 to ask him about pertaining to who this officer is,
12 that's it. I'm not going to get into --

13 THE COURT: Can you not just ask them the
14 questions?

15 MR. KENNEDY: Because I don't -- I need him to
16 verify and identify who this officer is, I don't know
17 who this officer is, but he's on camera walking up to
18 me making a statement to me, conversating with me.
19 So -- during the execution of the search warrant. So
20 I feel like it's essential for this -- you know, for
21 this officer, decorated officer, to identify who this
22 officer is. It's just three simple questions I'm
23 going to ask him pertaining to this officer.
24 Everything I'm asking is essential because it
25 pertains to the execution of the search warrant.

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 THE COURT: Mr. Grounsell, these are tapes that

2 --

3 MR. KENNEDY: That was presented to me by The
4 State.

5 THE COURT: That The State has, body cam?

6 MR. GROUNSELL: Your Honor, I don't think
7 there's any foundation laid. I don't think it's the
8 officer who's body cam we're trying to authenticate
9 to use here nor do I know if Officer Reyes was even
10 present at this part of the video, anywhere around to
11 confirm any of that. If he has a question about a
12 specific officer, then he can just ask that question.
13 I don't know what he plans to do by introducing a
14 video. Also, I don't know the relevance of a traffic
15 stop that happened a month prior to this case.

16 THE COURT: Let me ask you this, what is the
17 relevance of what you're trying to put in?

18 MR. KENNEDY: I mean, the relevance is that, you
19 know, officers that have already made contradicting
20 statements, not only have they did that, but the same
21 officer that executed this -- that conducted this
22 traffic violation are responding officers who
23 illegally targeted me and harassed me three weeks
24 prior before the execution of the search warrant.
25 Everything I'm asking to be presented is essential

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 because this is evidence that The State has already
2 had before it was even given to me. This is on the
3 laptop. It's not nothing that I'm bringing a CD --

4 THE COURT: What is the relevance of you being
5 stopped for a traffic violation weeks before this?

6 MR. KENNEDY: To prove and verify that officers
7 gave false testimony previous days --

8 THE COURT: What false testimony are you
9 proffering here? What is the false testimony you're
10 talking about?

11 MR. KENNEDY: Well, I asked did he participate
12 in a traffic violation that occurred with me three
13 weeks prior to the execution of the search warrant.

14 THE COURT: You're asking Officer Reyes here if
15 he participated, you said you asked him; correct?

16 MR. KENNEDY: To which he stated no. Which this
17 documentation -- I mean, well, not documentation, but
18 this video will verify that all of these officers are
19 a part of Crime Response Team not only --

20 THE COURT: Does that video indicate that
21 Officer Reyes was at the traffic stop? Let me just
22 ask you, what I'm trying to understand here is you're
23 trying to impeach a witness on a prior inconsistent
24 statement and Officer Reyes has testified that he was
25 not at this traffic stop that you were stopped for a

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 traffic violation apparently weeks before this.

2 So he has testified that he was not at that
3 stop. So in order to impeach a witness under the
4 rules of evidence, you have to have a statement in
5 some form where Officer Reyes has previously given
6 that he was at the traffic stop. That's how the
7 rules of evidence work. And so --

8 MR. KENNEDY: I mean, I have.

9 THE COURT: So your questions to Officer Reyes
10 are directed to whether he was there. He has
11 testified he was not there. So you are entitled to
12 impeach Officer Reyes, but it's only as to his
13 testimony. If you have a statement or some evidence
14 of a statement that Officer Reyes has previously said
15 he was at the traffic stop weeks before this, then
16 that is legitimate impeachment under
17 cross-examination. But if you don't have that, then
18 it's not under the rules and you're allowed to do
19 that. That's why I'm trying to figure out -- you're
20 trying to show -- if you're trying to show that he
21 has previously said he was there at that traffic
22 stop, then that is certainly impeachment -- you're
23 able to impeach a witness under --

24 MR. KENNEDY: Yeah, I understand that.

25 THE COURT: -- Rule 613.

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 MR. KENNEDY: He was definitely present at that
2 traffic stop. Not only was he present, but Officer
3 Miller was present, who was not present today, which
4 is one of the officers that executed this search
5 warrant, which has a body cam. He should definitely
6 be one of The State's witness. He's not here. I
7 feel like it's a reason why he's not here.

8 THE COURT: All right, you're telling the Court
9 that you have evidence that Officer Reyes was at the
10 traffic stop?

11 MR. KENNEDY: I can prove -- even through
12 documentation, you know --

13 THE COURT: No, sir, I'm asking about this piece
14 of evidence that you're trying to get in, this video,
15 this piece of evidence, do you have evidence on that
16 piece of evidence that you're trying to get in or
17 cross-examine him on, at least -- I mean, you can
18 cross-examine a witness under Rule 613 with a prior
19 inconsistent statement, that's why I'm asking you.
20 Under that disk that you are trying to cross-examine
21 this particular witness with, is that a prior
22 inconsistent statement or evidence that Officer Reyes
23 was at this traffic stop?

24 MR. KENNEDY: Not specifically to indicate that
25 he specifically was at this traffic stop, but that

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 officers that are a part of the Crime Response Team
2 -- which they all, you know, respond together because
3 that's the basis of, you know, this whatever they
4 call it, whatever they got going on, the Crime
5 Response Team, that all of these officers are the
6 same officers who responded to another incident prior
7 to the execution of the search warrant that was --

8 THE COURT: I will allow you to cross-examine
9 him on whether or not he was at that prior traffic
10 stop and I will allow you to impeach him from -- with
11 a prior statement under Rule 613 if it is
12 inconsistent with his testimony today, but absent
13 that, I will not.

14 Also, relevance issue as well. Relevance with
15 this particular witness and whether he was involved
16 in a traffic stop or anybody was involved in a
17 traffic stop --

18 MR. KENNEDY: I mean, the relevancy and the
19 inconsistency comes -- you know, the relevancy is
20 clearly all of these officers respond together. The
21 inconsistency comes from this officer stated that,
22 you know, he was not sure if another Officer Lapek,
23 but he was sure about everybody else. Like -- it's
24 kind of like saying that how are you sure about these
25 other people, but you're not sure about this one

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 individual, who also was part of the Crime Response
2 Team. It's really to draw a plausible connection
3 between these officers to prove and verify, you know,
4 that these officers, you know, effectuate encounters
5 together.

6 THE COURT: All right, Mr. Grounsell.

7 MR. GROUNSELL: Your Honor, I believe a lot of
8 these questions were asked yesterday during
9 cross-examination by Mr.~Kennedy about whether he was
10 at that traffic stop, which he responded that he
11 hadn't been and that he doesn't remember being a part
12 of the traffic stop. So without there being some
13 sort of footage from a body cam that shows that he's
14 on scene at this traffic stop or this search warrant
15 saying that I remember we pulled him over a couple
16 weeks ago or something along those lines or he
17 doesn't have a video from that actual traffic stop
18 that happened a couple weeks before, I don't think
19 that it should be entered into evidence. I think it
20 would be misleading to the jury and confusing to
21 them.

22 THE COURT: All right. My ruling is this,
23 Mr.~Kennedy, I don't find that it is relevant. But
24 even if it is relevant, I don't believe it's proper
25 cross-examination under Rule 613 because you have

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 indicated to The Court there's no prior inconsistent
2 statement, which is the requirement under Rule 613 in
3 order to cross-examine and/or impeach a witness. So
4 based on those -- based on that, I will not allow the
5 admission of that or allow you to cross-examine him
6 with that videotape.

7 All right, anything else before we bring the
8 jury back?

9 MR. KENNEDY: Can I say this for the record as
10 well?

11 THE COURT: Yes, sir, for the record, you can
12 say whatever you need to say on the record.

13 MR. KENNEDY: There's an unidentified officer
14 inside of this body cam footage that nobody stated
15 who this person is. I need this officer to identify
16 who this officer is. Not necessarily that he
17 participated -- it's not to incriminate necessarily
18 just him specifically, it's just to verify that he --
19 he needs to identify who this officer is. Because if
20 you came in contact with me during the execution of a
21 search warrant to the degree where you even patted me
22 on my arm, it needs to be some type of explanation as
23 to who you are, why you were there. There's no
24 record that indicates who this officer is. He patted
25 me on my arm, you know, made a statement about coming

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1 in contact with me previously and just say, oh, well,
2 it's time for me to go.

3 So, you know, all of this is relevant. It's not
4 necessarily to attack him specifically, but since The
5 State and nobody else has gave any type of police
6 report, incident report of all, you know, officers
7 that participated in the execution of this search
8 warrant, somebody needs to verify who this officer is
9 and identify who this officer is because The State
10 don't do it. And I feel like, you know, for the
11 record, there's a reason why specifically they didn't
12 do it or why they left out certain things or why they
13 don't want me to show certain videos, which it's
14 evidence they've given to me. I don't feel like it's
15 a problem for me to present something that was
16 already given to me. You don't want me to use the
17 evidence that The State has --

18 THE COURT: A couple things, you have to comply
19 with the rules of evidence. That's why in the
20 warnings that Judge Kinlaw gave you, the warnings
21 that I gave you as far as in Faretta vs. California
22 case in representing yourself, you still have to
23 comply with the rules of evidence. That's why it's a
24 difficult thing in order to try a case to comply with
25 the rules of evidence. And so --

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1 MR. KENNEDY: Yes, sir.

2 THE COURT: -- that's why those instructions and
3 warnings are given to you. They were given to you by
4 Judge Kinlaw, previously, is what I understand. Then
5 I was required to give you those warnings as well.

6 MR. KENNEDY: Can I say this?

7 THE COURT: As far as this issue.

8 MR. KENNEDY: All right. If, you know, the
9 rules of criminal evidence, I'm not specifically, you
10 know, familiar verbatim with what they state, but if
11 somebody comes in contact with me during an encounter
12 or any type of arrest, don't I have the right as a
13 Defendant to know who this person is? Because he
14 could have -- you know, anything could have went
15 wrong. He could have did anything. He could have
16 assaulted me, he could have verbally, you know, said
17 anything, you know, harass me. He could have did
18 anything.

19 Don't you feel like it's essential because this
20 evidence that's presented to me from The State to
21 know who this person is that, you know, came in
22 contact with me to the point where they physically,
23 you know, put their hands on me? Touched me? I
24 mean, that's essential. I'm not using something that
25 comes from somebody from the streets, from the free

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1 world or just somebody, just a random person, I'm
2 using video body cam footage of what The State has
3 furnished me with. I'm not using anything, you know,
4 foreign or that The State doesn't have knowledge of.
5 The State viewed these videos before I got a chance
6 to view them.

7 THE COURT: Yes, sir.

8 MR. GROUNSELL: Your Honor, in two years this
9 case has been pending, I've never once had a request
10 to identify every single officer within this video.
11 Now, today, he's asking this and he's making some
12 sort of allegation of some sort of thing. We have
13 Officer Franco's body camera, which is in evidence,
14 he can certainly pull that up if that what he wants
15 to show that there was some sort of harassment or
16 that he was taken some sort of --

17 THE COURT: All right, that is my ruling.
18 You're protected. You have to put your arguments on
19 the record. I've allowed you to do that. You're
20 protected on the record. So that is my ruling on
21 this.

22 All right, Mr. Fryer, please bring the jury
23 back.

24 MR. KENNEDY: So I can show this video?

25 THE COURT: No, I'm not allowing you to show the

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 video. That's what I just went through with you
2 under Rule 613 and under the rules of evidence. So
3 you're not allowed to show that, that video. You can
4 impeach this witness on a prior inconsistent
5 statement under Rule 613 or any other evidentiary
6 rule of evidence. You have to comply with the rules
7 of evidence in examination of witnesses.

8 And as I have said and I've now ruled that that
9 -- you cannot cross-examine him on that particular
10 video unless there is a statement on that video where
11 Officer Reyes has stated inconsistently with what his
12 testimony is today. Then you would be allowed to. I
13 I would allow you to cross-examine him and impeach
14 him on a prior statement that he has made, again,
15 under Rule 613. But that is not what has occurred
16 here. That's not what's happened so that's my
17 ruling.

18 All right, Ms. Fryer.

19 (WHEREUPON, the jury came into open court at
20 approximately 10:05 a.m.)

21 THE COURT: All right, Mr.~Kennedy, proceed.

22 BY MR. KENNEDY:

23 Q Going to ask you a similar question pertaining
24 to what I asked you yesterday. Once again, did your body
25 cam show exactly where the drugs were located and where

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 they were removed from?

2 A Just like I stated yesterday, it described the
3 items that were in the bag. When I did remove the clear
4 crystal-like substance and put it on the roof, that was so
5 my body camera would capture that.

6 Q Okay. Were any firearms found inside the
7 vehicle?

8 A Not to my knowledge.

9 Q Did you participate in any controlled purchase
10 involving Investigator Jonathan McWhite or the informant?

11 A No.

12 Q Did you have any knowledge of what occurred
13 relating to Investigator Jonathan McWhite and his
14 investigation?

15 A Yes, we were told that we were there for a
16 search warrant for Mr.~Kennedy's apartment and his
17 vehicle.

18 Q That's all?

19 A Yes, sir.

20 Q But you did state that you muted your body cam
21 to discuss the informant or confidential information?

22 A Just information in regards to the case, yes,
23 sir.

24 Q If you had no knowledge about the investigation
25 and only the execution of the search warrant, why would

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 you feel the need to mute your body cam?

2 A Just simple discussion that takes place during
3 the search warrant as far as the logistics and everything
4 else. So because of that, I muted my body camera.

5 Q So between the CRT and work history between you
6 and all the officers that you say participated in the
7 arrest, how many, you know, arrests would you say the CRT
8 -- or, you know, responses have you made with the CRT?

9 A With the unit that I'm working with?

10 Q Correct.

11 A How many arrests have we made?

12 Q Just responses, you know, just a guess, you
13 know, anything?

14 A In regards to?

15 Q Just any -- just any arrests, any type of
16 responses, just --

17 A I mean, we've made several arrests and we've
18 responded to several calls throughout the year.

19 Q Okay. Since you're a decorated officer and
20 sworn under oath to protect these individuals, would you
21 risk your life for them?

22 A We've had to do that in the past, so, yes, sir.

23 Q Would you lie in order to protect them?

24 A No, sir.

25 Q This question may be a little personal. So it

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 would be easier for you to risk your life for them before
2 you lie for them?

3 A Excuse me?

4 Q This question may be a little personal.

5 A Are we talking about risking my life for the
6 people I work with or citizens?

7 Q Risk your life for the people that you work with
8 --

9 A Okay, I thought we were talking about citizens,
10 I'm sorry.

11 Q I mean, you know, it's your duty to protect and
12 serve.

13 A Correct.

14 Q Supposed to do it for both individuals. But I'm
15 asking you would you risk your life for these individuals
16 that you work with?

17 A Correct, yes.

18 Q Would you lie in order to protect these
19 individuals that you work with?

20 A I would not.

21 Q So it would be easier for you to risk your life
22 and everything you have going on in life before you would
23 lie for them to protect them?

24 A I think that's two different scenarios. I think
25 that in the heat of the moment when a situation takes

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 place where I would have to risk my life, I'm sure that it
2 would just be a situation, traffic stop, search warrant,
3 stuff like that that are in play.

4 Q Have you ever made any complaints or reports
5 about bad acts of any of these officers that are part of
6 the Crime Response Team?

7 A No, sir, I haven't had to.

8 Q So you did state that you did respond to a
9 traffic violation where I was pulled over and my vehicle
10 was searched?

11 A No, sir, I said that I did not have any
12 knowledge of that.

13 Q You stated that, you know, your body cam footage
14 didn't capture exactly where the alleged illegal items
15 were located or removed from. Once again, is it routine
16 for law enforcement around the country to be equipped with
17 an activated body cam during arrests, searches, police
18 raids, traffic stops or anything of that nature?

19 A Yes, typically, nowadays, we do have body
20 cameras.

21 Q Could you give me a timeframe of around when
22 this, you know, particular expectation began?

23 A I believe with the Greenville Police Department,
24 it took place in 2017 or thereabouts.

25 Q So when was this search warrant executed again?

MAURICIO REYES-DIRECT BY MR. KENNEDY

1 A Two years ago, I believe.

2 Q Which would be 2020, right?

3 A Yes, sir.

4 Q Would some of these reasons for body cam footage
5 be to protect officers or to justify acts of officers to
6 validate encounters with citizens or to prevent misplaced
7 evidence or tampering of a crime scene?

8 A In a sense, yes. I believe that it holds us
9 accountable as well as citizens, so they're good assets to
10 have.

11 Q Are you familiar with high profile cases like
12 Briana Taylor, Alfred Scott, George Floyd?

13 A I'm familiar with them as far as --

14 MR. GROUNSELL: Objection, Your Honor, I don't
15 know how that's relevant?

16 THE COURT: Sustained.

17 BY MR. KENNEDY:

18 Q Okay. Just off the sense, you know, to prevent,
19 -- you know, protection of officers and justify acts and
20 misplace evidence, would it be fair to have a body cam
21 activated during all police and citizen encounters?

22 A Yes, sir.

23 Q So in a situation, not saying specifically that
24 you did, where a search was conducted and body cam footage
25 does not capture exactly where the seized items were

MAURICIO REYES-CROSS BY MR. GROUNSELL

1 located or taken from, could those items may have been or
2 possibly been placed there by an officer?

3 MR. GROUNSELL: Objection, Your Honor, that
4 calls for speculation.

5 THE COURT: Sustained.

6 MR. KENNEDY: I have no further questions for
7 Officer Reyes.

8 THE COURT: All right, cross?

9 CROSS-EXAMINATION

10 BY MR. GROUNSELL:

11 Q Officer Reyes, how many members are on the CRT?

12 A It varies between eight and ten.

13 Q Do you all respond together to every single
14 traffic stop?

15 A Not every single traffic stop.

16 Q In this case, the search warrant case, wasn't a
17 CRT case; was it?

18 A Correct, it was not.

19 Q Is DEU part of the Greenville Police Department?

20 A They are members from several agencies around
21 The State, but we do have people with the Greenville
22 Police Department that work with DEU.

23 Q Okay. But DEU would be responsible for
24 furnishing body cameras --

25 A Yes.

MAURICIO REYES-REDIRECT BY MR. KENNEDY

1 Q -- not the Greenville Police Department?

2 A Correct.

3 Q And you don't know anything about what DEU's
4 policy is about body cams or when they have funding or
5 when they started wearing body cams; do you?

6 A I do not.

7 Q Okay. Is it commonplace to mute body cams
8 during a stop or an encounter?

9 A Typically, yes, sir, if we're discussing within
10 ourselves about the case.

11 MR. GROUNSELL: All right, nothing further.

12 THE COURT: Any redirect, Mr.~Kennedy?

13 MR. KENNEDY: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. KENNEDY:

16 Q Is the Drug Enforcement Unit considered to be a
17 law enforcement agency?

18 A Yes, sir.

19 Q Do you know how long this Drug Enforcement Unit
20 has been established?

21 A I do not.

22 MR. KENNEDY: No further questions, Your Honor.

23 THE COURT: All right. Thank you, Officer
24 Reyes, you may step down.

25 Mr.~Kennedy, next witness.

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 MR. KENNEDY: I would like to call Officer
2 Franco to the stand.

3 THE CLERK: Officer Franco.

4 GILBERTO FRANCO, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you. Please be seated. If
7 you would please state your name for the record one
8 more time.

9 THE WITNESS: Gilberto Franco.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. KENNEDY:

13 Q Officer Franco, are you part of the CRT?

14 A Yes, sir.

15 Q Crime Response Team?

16 A I am.

17 Q Is it accurate that you stated Officer Lapek,
18 Officer Miller, Officer Franco, Officer Sigmon, which is
19 also officers from the CRT, participated in the execution
20 of a search of my residence and vehicle?

21 A I believe so, yes, sir. I'm Officer Franco.

22 Q Oh, okay. Okay. If I showed you a body cam
23 footage of another officer who isn't here, could you
24 identify another officer and tell me whether or not that
25 person was part the Crime Response Team?

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 A Yes, sir.

2 MR. KENNEDY: Is it okay if I submit this video
3 just for that purpose?

4 THE COURT: Mr. Grounsell?

5 MR. GROUNSELL: Your Honor, I don't know what
6 video we're talking here. I don't know what the
7 relevant objection would be until we know whose video
8 it is.

9 THE COURT: Ladies and gentlemen, I'm going to
10 need to excuse you.

11 (WHEREUPON, the jury left open court at
12 approximately 10:17 a.m.)

13 THE COURT: All right. Yes, sir, Mr. Kennedy,
14 what response to Mr. Grounsell's inquire as to what
15 video?

16 MR. KENNEDY: I mean, you know, the video that
17 I'm trying to present, Your Honor, is a video that
18 was given to me and furnished to me by The State.
19 You know, pursuant to Brady vs. Maryland, you know,
20 I'm entitled to view any evidence that The State may
21 plan to introduce as well as use the same evidence,
22 you know, for my defense.

23 I just asked a simple question for this officer,
24 could he identify an officer on body cam that
25 responded to the execution of the search warrant. He

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 stated yes. So I just ask to present this video
2 because he answered the question and said he could in
3 this body cam footage. And, you know, everything
4 relating to the evidence that's been furnished to me
5 by The State, it's essential to my case and my
6 argument.

7 THE COURT: Well, to get in the evidence, you
8 have to authenticate the evidence, do you know what
9 that means? You have to -- and, again, this is under
10 the rules of evidence, you have to comply with the
11 rules of evidence to get the evidence in. You can
12 certainly do that if it's relevant. Relevant and
13 admissible, you can certainly do that.

14 MR. KENNEDY: I mean, this evidence is rarely --
15 I mean, it's clear it's essential to the question I
16 just asked the officer.

17 THE COURT: Let me, again -- I think this sounds
18 like what you were talking about a little while ago.
19 You're trying to get these witnesses to identify
20 another officer on the video that was there at the
21 search; is that correct?

22 MR. KENNEDY: Not only that, you know, I just
23 want to verify, you know, through this officer who
24 all the officers that are part of the Crime Response
25 Team. It's not -- it's not nothing that The State

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 doesn't already have. I feel like, you know, The
2 State doesn't have a relevant objection as to why and
3 the question that I asked this officer and why this
4 video shouldn't be shown to verify who this officer
5 is. I mean, it's clear --

6 THE COURT: All right, let's do this. Let me
7 see what this video is because I don't know what
8 you're talking about, let me see what it is. For the
9 record, Mr.~Kennedy, what video, what is it, what
10 number, it is labeled?

11 MR. KENNEDY: Officer Miller body worn camera
12 10/2/20, which was given to me and furnished to me by
13 The State.

14 THE COURT: All right. Can you play it or can
15 somebody play it?

16 MR. KENNEDY: I'm trying to get exactly what
17 time. Because I think it's...

18 (WHEREUPON, a video was published.)

19 MR. KENNEDY: At that point in time, you know,
20 this same officer, which is one of the responding
21 officers from the execution of a search warrant,
22 which is part of the, you know, CRT, the same, you
23 know, thing that Officer Reyes -- Officer Franco has
24 going on. I need him to identify this person. Not
25 only that -- let me see, hold on. It's the actual

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 part where he actually tap me. And not only did he
2 tap me, you now, as you can see plain as day on
3 video, he asked if I remembered him from the other
4 night. I mean, it's all essential to, you know, my
5 arguments and my case that I plan to use as far as my
6 case.

7 This officer -- you know, all of these officers
8 just randomly -- it's not a coincidence that these
9 officers are the same officers that executed -- that
10 conducted a traffic violation on me three weeks
11 prior, around the same time this investigator is
12 saying that his investigation began about me for a
13 search warrant for my residence. It's not a
14 coincidence that these are the same officers that I
15 have the police reports to verify from Officer Lapek,
16 which this officer testified and said was a part of
17 this execution of the search warrant, which she's on
18 nobody's body cam. I'm trying to figure out why he
19 would even mention her name.

20 I mean, it is common to think and yeah, we
21 normally respond to everything together, we're a
22 team, this is what's going on, but this officer is
23 not nowhere in the body cam. Not only is this
24 officer nowhere in the body cam, I have documentation
25 that, you know, I've had my girlfriend go get from

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 the law enforcement center, which I have receipts for
2 it. I have blue tickets from this traffic violation.
3 Not only do I have the blue tickets from this traffic
4 violation, I sent her to get the incident reports and
5 the call log from the response -- the incident
6 reports and the incident call log, which is the same
7 call log that would show every officer that responded
8 to this traffic violation. I have the documentation,
9 incident reports where she stated, you know, that she
10 conducted a traffic violation. You know, I had a
11 large amount of money on me, you know, that she
12 smelled marijuana. They searched my vehicle for over
13 an hour and a half, which, you know, clearly,
14 harassment, it's a prolonged stop.

15 THE COURT: All right.

16 Mr. Grounsell.

17 MR. GROUNSELL: Your Honor, I, obviously, can't
18 object to Franco's video coming in evidence because
19 it's already in evidence, so he's certainly welcome
20 to play that. But if he starts talking about handing
21 him blue tickets and things that are related to
22 another officer that is not Officer Franco, I don't
23 see how any of that gets into evidence.

24 THE COURT: I'm not going to allow you to talk
25 about any officer. I will allow you to play whatever

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 video --

2 Is this Officer Franco's video here?

3 MR. GROUNDSELL: It is, yes, sir.

4 THE COURT: I will allow you to play that video
5 and question Officer Franco anything related to that
6 video. I will allow you to do that. That is in
7 evidence, so I will allow you to do that. Now, when
8 you start bringing up other stuff, you have to comply
9 with the rules of evidence.

10 MR. KENNEDY: Oh, yes, sir.

11 THE COURT: And we might as well talk about that
12 now. You can't just talk about it. You can't just
13 bring up stuff. You have to comply with the rules of
14 evidence and that's what has to be done. And you
15 just can't get documents and start questioning
16 witnesses about things without complying with the
17 rules. Do you understand that?

18 MR. KENNEDY: The rules of evidence, you know,
19 these documentations come from government officials
20 and, you know, was mailed to me U.S. Postal, so it's
21 nothing fraudulent about this documentation.

22 THE COURT: Well, under the rules of evidence,
23 you have to prepare for your case. You have to know
24 the legal rules. You have to know the case. You
25 have to investigate your case like a lawyer in

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 representing clients, but you are representing
2 yourself. You have made that choice. You are
3 certainly entitled to do that under the Constitution
4 and I, of course, have allowed you to do that. But
5 you still -- as a person representing yourself, you
6 still have to comply with the rules of evidence. And
7 part of that is getting documents and other testimony
8 into evidence. So you have to comply with those
9 rules.

10 MR. KENNEDY: Yes, sir. Comply with those
11 rules, getting it into evidence, I just received this
12 documentation. You know, Greenville County has been
13 holding my mail. I have letters from the Supreme
14 Court as well. I haven't received mail in over two
15 months. I have a 1983 lawsuit going active right now
16 with Greenville County. I responded to most they
17 have sent. Greenville County has been holding all my
18 mail. My girlfriend has wrote me three letters with
19 this same documentation that Greenville County has
20 failed to give me. I don't know why. I don't know
21 if somebody made a call and said hey, look, man,
22 whatever he getting, hold everything he's got going
23 on. I don't know what's going on, which is, you
24 know, a federal offense.

25 THE COURT: Here's what we're going to do. On

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 this issue, I'm going to allow you to cross-examine
2 him on the video that has been admitted into
3 evidence. You can cross-examine him because that has
4 been admitted into evidence.

5 MR. KENNEDY: Okay. Can I say this --

6 THE COURT: And anything else that comes up,
7 we'll handle. I'm just telling you, I'm giving you a
8 heads up that you have to comply with the rules of
9 evidence. You just can't come at --- this is not
10 like on TV where -- everything on TV in a trial is
11 admitted into evidence. We lawyers and Judges look
12 at that and we all look and say wow, that would never
13 be allowed in a real courtroom. So this is a real
14 courtroom and that's why it is important when you are
15 representing yourself that you still have to comply
16 with the rules of evidence. And so I've given you
17 leeway and I've allowed you to argue your case as --
18 I've given you every opportunity to argue your case,
19 but at the same time, you still have to comply with
20 the rules.

21 So here's the deal on this ruling, I will allow
22 you to cross-examine him on the video. It is in
23 evidence. Anything else, it comes up, I'm going to
24 just have to handle it based on any kind of
25 objections that may come up, but I'm just giving you

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 a heads up that you have to comply with the rules of
2 evidence. Does that -- do you understand that?

3 MR. KENNEDY: Comply with the rules of evidence
4 for me to take documentation that comes from
5 government officials and once I turn this over to The
6 State, which my standby counsel, Morgan Shankle, you
7 know, I've asked for her to do -- the first day of
8 this trial was initially --

9 THE COURT: Mr.~Kennedy, you have decided to
10 represent yourself. You have made that decision.
11 And as I have said, that is a constitutional right
12 that you have. However, you have been told by Judge
13 Kinlaw and given the warnings and the dangers of
14 representing yourself and I have also given you the
15 dangers of representing yourself. You've had
16 opportunities to get counsel, but you decided to
17 represent yourself and that is fine. That is
18 certainly your rights, again, under our Constitution.
19 But at the same time, if you do decide to represent
20 yourself, you still have to comply with the rules of
21 evidence. And so that's what -- whatever -- you say
22 your girlfriend's brought this, your girlfriend's
23 done that, you've gotten this, that's fine. But to
24 bring that into evidence, you still -- again, I'm
25 getting like a broken record, you have to comply with

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 the rules of evidence. You just can't admit things.
2 It doesn't work that way.

3 MR. KENNEDY: Can I say this for the record?

4 THE COURT: Yes, sir.

5 MR. KENNEDY: I observed these documents get
6 placed in the hands of Mr. Clark Grounsell. And when
7 I came back in, these documents were on the table.
8 You feel me? That's what I'm saying, like, if days
9 previous, I furnished The State with this evidence
10 that I plan on introducing for my defense, giving him
11 time to prepare for, you know, any argument that I
12 may make pertaining to these documents, if he gives
13 them back to me, that's not -- I did what I was
14 supposed to do. I don't have any other means. I
15 just received this documentation. I never received
16 some of it 2021, but specific documentation, I was
17 told that -- you know, when she went to the law
18 enforcement, they were holding call logs. They were
19 holding other officers' incident reports, would be
20 the same officer --

21 THE COURT: Mr. Grounsell.

22 MR. GROUNSELL: Your Honor, it's fine that he's
23 handed me these documents, but he doesn't have the
24 people here to authenticate what those documents are.
25 And what they are, the contents of them, I'm going to

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 have to object to those coming into evidence.

2 MR. KENNEDY: I mean, the signature, this is
3 all, you know, U.S. Postal mail, you know, stamped,
4 signed by captain of county records, management. I
5 mean, I don't have the means to --

6 THE COURT: For the record, for appellate court,
7 what documents are you talking about? What are these
8 documents?

9 MR. KENNEDY: I have a Department of Public
10 Safety records management service division
11 documentation of, you know, listing that they have
12 four incident reports, five pages of call logs of
13 responding officers. I even have the receipt of
14 where she paid for these documentation. Because when
15 they wrote and responded to my letter that I wrote to
16 the county records, they responded and told me that I
17 had to pay for these. By me being incarcerated, I
18 don't have the ability to pay for -- just go
19 somewhere and pay for. The county operates on its
20 own time. So for me to even attempt to try to cut a
21 check and get anything done, I can't do it. So what
22 I have to do is send people because I was denied my
23 right to a reasonable bail to actually prepare for my
24 trial, which deprived me of -- you know, it
25 prejudiced me in a way. I wasn't able to receive

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 certain things in a time that I maybe could have been
2 receiving them.

3 THE COURT: What is the relevance of the
4 document?

5 MR. KENNEDY: The relevance of the documents is
6 that -- you know, all these are legitimate documents.
7 There's nothing fraudulent about these documents --

8 THE COURT: What is the relevance of the
9 documents to the facts of this case?

10 MR. KENNEDY: These documents will be essential
11 to my argument.

12 THE COURT: What is the argument? What is the
13 relevance to the argument of your case?

14 MR. KENNEDY: My argument is specific and it's
15 plain that, you know, I have proof to verify that the
16 same officers that participated in a traffic
17 violation only three weeks prior, around the same
18 time that this officer alleged that a controlled buy
19 was conducted that he has no evidence or nothing to
20 support is on body cam, you know -- you know,
21 basically, clarifying my argument and what I'm
22 saying.

23 So that's why everything that I'm saying and
24 everything I've presented inside this courtroom is
25 essential. I'm not saying anything outside of --

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 only thing I'm presenting outside of what he may have
2 had before me is these documents right here, which
3 are, you know, official documents that come from, you
4 know, public officials, Greenville County Public
5 Safety, the law enforcement center.

6 So for these documents to come directly from the
7 law enforcement center and we're dealing with a
8 situation regarding law enforcement, everything about
9 these documents is essential to my argument and to my
10 case.

11 THE COURT: All right, Mr. Grounsell.

12 MR. GROUNSELL: Your Honor, what I was handed
13 yesterday was a receipt, requested certain
14 information. He handed me a incident report from a
15 traffic stop that happened weeks before with an
16 Officer Jamie Lapek, I believe it was. But she's not
17 here to testify to anything about that. There's no
18 other names of officers within that report that
19 suggest that Officer Franco or Officer Reyes has
20 anything to do with that stop. So we're just going
21 down this route --

22 MR. KENNEDY: It did state that --

23 THE COURT: Here's what we're going to do. Hold
24 on, Mr.~Kennedy. You can cross-examine this witness
25 regarding the video. I'm allowing you to do that

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 because that is in evidence. And anything else that
2 comes up, we're going to have to handle it. But I'm
3 just giving you a heads up that it's not admissible
4 unless you comply with the rules of evidence. Are we
5 clear? Do you understand that? Do you understand
6 that you have to comply with rules of evidence? Do
7 you understand that?

8 MR. KENNEDY: I mean, I understand that, but I
9 don't understand based off what I presented, what
10 I've stated on the record, how these documents are
11 not --

12 THE COURT: That's my ruling, so that's where we
13 are.

14 Let's bring the jury back.

15 (WHEREUPON, the jury entered open court at
16 approximately 10:40 a.m.)

17 THE COURT: All right, you may proceed,
18 Mr.~Kennedy.

19 BY MR. KENNEDY:

20 Q All right, at this time, Officer Franco, I'm
21 going to play the video and ask you only questions
22 pertaining to this video.

23 (WHEREUPON, a video was published.)

24 BY MR. KENNEDY:

25 Q Officer Franco, can you identify who that

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 officer is?

2 A Yes, sir, that's Officer Cam Hunter.

3 Q Officer Cam Hunter. Is he part of the Crime
4 Response Team?

5 A Yes, he's CRT and FBI task force officer.

6 Q Okay. How many arrests do you think you have
7 made with this officer? How many time have you responded
8 to a crime scene with this officer?

9 A It varies. He's FBI task force officer, so he
10 kind of does more the FBI side of things. He's more to
11 helps us out with surveillance, things like that.

12 Q Okay.

13 (WHEREUPON, a video was published.)

14 BY MR. KENNEDY:

15 Q At that time, could you make out what he said to
16 me?

17 A Do you remember me from the other night?

18 Q When you make a comment, you know, saying like
19 anything referring to the other night, what type of time
20 range would you say that would be?

21 A The other night, I don't know.

22 Q Two, three days, a week?

23 A Sure.

24 Q All right. Do you have any idea what he was
25 talking about when he asked me that?

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 A No.

2 Q Do you have any idea why he isn't present today
3 as a witness?

4 A I don't know. I was subpoenaed. I don't know
5 if he was.

6 Q Okay.

7 (WHEREUPON, a video was published.)

8 BY MR. KENNEDY:

9 Q So he is one of the officers that executed the
10 search warrant on my residence?

11 A Yes.

12 Q All right.

13 (WHEREUPON, a video was published.)

14 BY MR. KENNEDY:

15 Q Officer Franco, what about Officer Lapek that
16 you mentioned participated in the execution of the search
17 warrant, is there any reason why she isn't present as a
18 witness for -- in the courtroom today?

19 MR. GROUNSELL: Objection, Your Honor. I don't
20 know how he's going to answer that, speculation.

21 THE COURT: I'll allow it, overruled.

22 THE WITNESS: I was subpoenaed, I don't know if
23 she was.

24 BY MR. KENNEDY:

25 Q But you did state initially that she

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 participated in the execution of the search warrant?

2 A I believe so.

3 Q So you did state that you didn't respond or
4 participate in the traffic violation that occurred while I
5 was pulled over and my vehicle was searched days before
6 the execution of the search warrant?

7 A No.

8 Q At any time, did your body cam footage capture
9 or did you see visually any items being removed
10 specifically from specific spots?

11 A During the execution of the search warrant?

12 Q During the execution of the search warrant on my
13 home or my vehicle? At any time, did your body cam
14 footage capture or did you visually see items being
15 removed exactly from a place they were stated to be
16 located?

17 A No, I was with you the whole time.

18 Q So between the CRT and work history between, you
19 know, everybody that was participating in the search
20 warrant, is it routine for officers to -- you know, all
21 officers to be equipped with body cam footage when they
22 execute police raids, arrests or anything of that nature?

23 A My unit, we do have body cameras issued to us.

24 Q But you're not sure of the Drug Enforcement
25 Unit, which is another law enforcement agency that works

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 hand to hand with, you know, your team, they don't wear
2 body cam footage?

3 A I don't believe so.

4 Q Is there a reason why they don't wear body cam
5 footage when they're the ones who is initially entering
6 people's, you know, dwellings or effectuate encounters
7 with citizens?

8 MR. GROUNDSELL: Objection, Your Honor, calls for
9 speculation. He's not a member of the DEU. He
10 wouldn't know the answer to that.

11 THE COURT: Lay the foundation -- I'm going to
12 sustain it. You lay the foundation, I'll let you ask
13 it, but I'm going to sustain it.

14 BY MR. KENNEDY:

15 Q I mean, you know, clearly, all of these officers
16 are law enforcement. They go through the same type --

17 THE COURT: You need to ask him the proper
18 question, ask him the proper question.

19 BY MR. KENNEDY:

20 Q Okay. Do you DEU officers go through any of
21 the, you know, same type of training as law enforcement,
22 you know, officers of the law?

23 A Law enforcement training, yes.

24 Q Have you ever been a part of any other execution
25 of a search warrant or any other type of response with the

GILBERTO FRANCO-DIRECT BY MR. KENNEDY

1 Drug Enforcement Unit?

2 A Yes.

3 Q So the Drug Enforcement Unit never wears body
4 cam footage?

5 A That's my understanding, yes.

6 Q Since you're a decorated officer and sworn under
7 oath to protect these individual officers, would you risk
8 your life for them?

9 A I would risk my life for anybody.

10 Q Would you lie in order to protect these
11 officers?

12 A No.

13 Q This question may be a little personal, would it
14 be easier for you to risk your life to save a person, one
15 of these officers specifically, or would it be easier for
16 you to lie for them to save them?

17 A Repeat that question one more time.

18 Q Would it be easier for you to risk your life to
19 save these officers' life and career, than it would be for
20 you to lie for them?

21 A No, I would risk my life for everybody, public
22 person, any person, to include the public.

23 Q So in other words, you would die for them before
24 you lie for them?

25 A Correct.

GILBERTO FRANCO-REDIRECT BY MR. KENNEDY

1 Q I mean, initially, you stated that Officer Lapek
2 was one of the officers that executed the search warrant.
3 She was actually the first one that you stated. If or if
4 not, do you remember her role in the execution of the
5 search?

6 A I don't remember. I don't know.

7 MR. KENNEDY: No further questions.

8 THE COURT: All right, cross-examination?

9 MR. GROUNSELL: Just briefly.

10 CROSS-EXAMINATION

11 BY MR. GROUNSELL:

12 Q Again, the Greenville Police Department and DEU
13 are two separate agencies, right?

14 A Correct, yes, sir.

15 Q You have no real understanding of work as part
16 of DEU and what their policy is on body cameras?

17 A No, sir.

18 MR. GROUNSELL: No further questions.

19 THE COURT: All right, any redirect,
20 Mr.~Kennedy?

21 MR. KENNEDY: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. KENNEDY:

24 Q The other day, every officer that came and, you
25 know, approached the stand testified that some of them

GILBERTO FRANCO-REDIRECT BY MR. KENNEDY

1 started from Greenville County officers and they work
2 hand-in-hand with Greenville County and other agencies.
3 So to say that they're a different agency like they don't,
4 you know, go to the same law enforcement center and have
5 breaks together is -- basically, sound like they don't
6 communicate, so anything that one of them does, the other
7 one is not responsible for?

8 A Was that a question for me?

9 THE COURT: Was that a question, Mr.~Kennedy?

10 MR. KENNEDY: No, it's not necessarily a
11 question.

12 THE COURT: Well, you have to ask a question.

13 MR. KENNEDY: Okay, correct.

14 BY MR. KENNEDY:

15 Q Have you ever reported to law enforcement center
16 and DEU officers were present?

17 A Yes, sir.

18 Q Do Greenville Police Department, Crime Response
19 Team and DEU officers share the same law enforcement
20 center?

21 A We work in and out of the buildings, yes.

22 Q So whenever you go to the law enforcement center
23 to clock in, do you run into these officers?

24 A Well, I work out of 426 on Main Street, which is
25 the courthouse downtown. So I work at a different

GILBERTO FRANCO-REDIRECT BY MR. KENNEDY

1 building. I don't actually go to the law enforcement
2 center on a day-to-day basis.

3 Q But Crime Response Team, Greenville Police
4 Department share the same law enforcement center with DEU?

5 A DEU is in a different building. The law
6 enforcement center is downtown. So there's different
7 buildings, but we don't actually work in the same
8 building.

9 Q I mean, have you ever sat down and ate lunch
10 with any one of these officers inside a law enforcement
11 building, had a snack, vending machine or conversation?

12 A Yes, sir.

13 Q So it's fair to say that it's normal for
14 Greenville Police Department to encounter these officers
15 on a day-to-day basis?

16 A Yes.

17 MR. KENNEDY: No further questions.

18 THE COURT: All right, thank you, Officer. You
19 may step down.

20 All right, Mr.~Kennedy, do you have any
21 additional witnesses?

22 MR. KENNEDY: Yeah, I would like to call
23 Investigator McWhite to the stand again.

24 THE COURT: All right, Investigator McWhite.

25 JONATHAN MCWHITE, after being duly sworn,

JONATHAN MCWHITE-DIRECT BY MR. KENNEDY

1 testified as follows:

2 THE CLERK: Thank you. Please be seated. One
3 last time, if you could please state your name for
4 the record.

5 THE WITNESS: Jonathan McWhite.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. KENNEDY:

9 Q Agent McWhite, do you know and are familiar with
10 Officer Jamie Lapek?

11 A I am familiar with her, yes, sir.

12 Q Do you know whether or not she was present
13 during the execution of the search?

14 A I don't. Like he said earlier, there's eight to
15 ten fluid members of that unit. Honestly, you know, I
16 didn't even know -- Franco and Reyes, I didn't even know
17 their first name. We don't work in the same office. We
18 call on them for supplement. She's now in a different
19 unit. I don't see her on body camera. It's been a couple
20 of years. I don't remember her being there specifically
21 or assigning her any specific roles.

22 Q I'm going to ask you some of the same questions
23 that I asked you yesterday just for clarity.

24 A Sure.

25 Q At any time where I claimed anything illegal,

JONATHAN MCWHITE-DIRECT BY MR. KENNEDY

1 did I specify to what those items were?

2 A Not verbally. You never used the words heroin
3 or methamphetamine.

4 Q Did I claim to be in possession of heroin,
5 methamphetamine or Carfentanil?

6 A Not specifically.

7 Q Did I acknowledge those drugs?

8 A Just generally that you claimed anything illegal
9 and everything in your behalf.

10 Q Was marijuana found during the search of my
11 vehicle and inside my residence?

12 A I believe so, yes, sir.

13 Q Is it possible that when I claimed whatever
14 illegal, could I have only been referring to marijuana and
15 firearms?

16 A It's my understanding when you used the word
17 everything, you were claiming everything, not just the
18 marijuana, which you had already claimed.

19 Q Anything outside of that had to be proven that I
20 had knowledge of, correct?

21 A That was what our investigation showed, yes,
22 sir.

23 Q Okay. Normally, when, you know, searches are
24 issued, you claim that a person distributed an illegal
25 substance to somebody, do you charge them with that?

JONATHAN MCWHITE-DIRECT BY MR. KENNEDY

1 A It just depends on the situation. Not always.

2 Q Could you remember where I was detained at?

3 A On this date?

4 Q Yeah.

5 A In the parking lot of your apartment.

6 Q All right. Could you explain where the firearms
7 were found or located?

8 A According to the testimony and the evidence,
9 they were -- there was a pistol on your window sill next
10 to the wax substance that you claimed ownership, and then
11 there was a rifle and a handgun that were found in or
12 around your master bedroom closet.

13 Q So is there body cam footage to show exactly
14 where these items were located?

15 A No, sir.

16 Q Could you explain the distance between where I
17 was detained and where the firearms were located?

18 A As I said yesterday, you were downstairs in the
19 parking lot, the firearms were in your apartment.

20 Q So it is safe to say that the firearms were not
21 in arms reach or immediately or easily assessable?

22 A No, sir.

23 Q Whenever I pulled into the parking spot and, you
24 know, the encounter effectuated, was I found to be in
25 possession of illegal substances?

JONATHAN MCWHITE-DIRECT BY MR. KENNEDY

1 A Yes, sir.

2 Q What constituted trafficking offense, correct?

3 A That's correct.

4 Q So me coming from another location, allegedly
5 traveling with trafficking amounts of drugs, with no
6 firearms present inside the vehicle, could you prove that
7 those firearms were used to protect drugs if I was coming
8 from another location, which would be seemingly
9 trafficking if I possessed illegal substance without the
10 presence of firearms? What other basis do you have to
11 infer that the guns that were seized and those drugs were
12 used to traffick if I was coming from another location at
13 that time?

14 A Well, we never claimed you had all your
15 belongings on you at all times in your car. In your
16 residence you're in control of, which you claimed
17 everything inside of, that's where we found the drugs and
18 the guns. And just as anyone with their valuables at
19 their home, we find that drug dealers often keep their
20 guns close by to protect those drugs. We found you're in
21 constructive possession of all of those items.

22 Q So once again, when I returned from wherever I
23 was traveling from, were the guns located inside the
24 vehicle?

25 A Again, no, they were in your apartment.

JONATHAN MCWHITE-DIRECT BY MR. KENNEDY

1 Q Again, any body cam footage show exactly where
2 illegal items were found and located?

3 A Again, it shows the bag they were pulled out of,
4 it shows the vehicle that you were driving.

5 Q Can you see any officers hand go exactly to
6 where these drugs were located to remove them from exactly
7 where you say they were?

8 A No.

9 Q Is it logical to say or infer that those
10 firearms were only present to live within the
11 constitutional Second Amendment right?

12 A Not under these circumstances, no, they were
13 illegally possessed.

14 Q So because I was -- did not -- wasn't supposed
15 to possess these firearms, you can automatically say those
16 firearms were used to further or advance a violent
17 offense?

18 A Because they were found in close proximity to
19 illegal drugs, traffick weight drugs, then, yes, they were
20 seized as evidence of regarding illegal drugs and
21 trafficking, possession of a weapon during the commission
22 of a violent crime.

23 Q What basis do you have besides, you know, your
24 belief or what you think, how could you connect a firearm
25 to a violent crime?

JONATHAN MCWHITE-CROSS BY MR. GROUNSELL

1 A Well, the statute, as I believe it's been read,
2 clearly indicates that trafficking drugs is a violent
3 crime and possession of a weapon during the commission of
4 a violent crime, trafficking drugs, is, in fact,
5 possession of a weapon during a violent crime.

6 Q Even if I'm nowhere near the guns or the drugs
7 that claim to be in close proximity? If I'm not there --
8 if I'm not in arms reach or they're not accessible to me,
9 just because guns and drugs are allegedly in the same
10 proximity and I'm not there at that particular place or
11 they're accessible to me at that time in arms reach, could
12 you say that I was in possession of a weapon during the
13 commission of a violent crime?

14 A In the same way all of us are in possession of
15 our items at our homes right now, you were in possession
16 of the items found at your home. I know you weren't in
17 the home, you can still possess something. It's called
18 constructive possession. And you were in possession of
19 those items in your home. Same way all of us are.

20 MR. KENNEDY: I have no further questions.

21 THE COURT: All right, cross?

22 CROSS-EXAMINATION

23 BY MR. GROUNSELL:

24 Q Investigator McWhite, Mr. Kennedy leased that
25 apartment, right?

JONATHAN MCWHITE-CROSS BY MR. GROUNSELL

1 A Yes, sir.

2 Q And y'all went and checked and reviewed that;
3 correct?

4 A Correct.

5 Q And you were in here yesterday when we actually
6 showed a picture of the move-in statement; is that
7 correct?

8 A Yes, sir.

9 Q So it was his apartment. Did anyone else inside
10 claim the drugs or guns?

11 A No, sir.

12 Q When y'all went into the apartment, there was --
13 Ms. Shameka Johnson was in there with her kids; is that
14 correct?

15 A Yes, sir.

16 Q And Mr.~Kennedy emphatically said that she had
17 nothing to do with anything illegal in the apartment;
18 correct?

19 A That's correct.

20 Q Was there anyone else around that could possibly
21 have been responsible for what was inside the residence?

22 A No, sir.

23 Q Through your training and experience, can you
24 again, for the jury, explain to them what the importance
25 of for guns to be around trafficking weight drugs, how

JONATHAN MCWHITE-REDIRECT BY MR. KENNEDY

1 they are related to each other?

2 A They're related as means of security for
3 protecting one's product, one's illegal drugs. Which, you
4 know, we have a lot of incidents where drug dealers are
5 robbed and they don't want to report that to the police
6 because they won't admit that they were selling drugs. So
7 it's a very common occurrence for drug dealers to be
8 robbed because -- it's because of the nature of the
9 business. So we find that it's very common for drug
10 dealers to possess those weapons to protect those drugs
11 because they can't do so by legal means.

12 MR. GROUNSELL: I have nothing further.

13 THE COURT: Any redirect, Mr.~Kennedy?

14 MR. KENNEDY: Yes.

15 REDIRECT EXAMINATION

16 BY MR. KENNEDY:

17 Q In a Supreme Court case, it was held that
18 possession of a weapon may be actual or constructive, but,
19 however, The State still has the burden to prove a
20 connection between the weapon and the violent crime.
21 United States vs. Manigan, 592 F.3d 621, fourth circuit,
22 which is the circuit, district involved of South Carolina,
23 held that the location and proximity of the seized
24 firearms is also relevant to The Court's analysis as to
25 whether it was possessed in connection with drug activity

JONATHAN MCWHITE-REDIRECT BY MR. KENNEDY

1 or a violent crime.

2 At any time, did any -- through your
3 investigation, did anybody -- did you observe or did
4 anybody that claimed to have purchased or witnessed me
5 engage in drug activity ever state that I possessed a
6 firearm?

7 A I don't believe so.

8 Q According to State vs. Thompson, correct me if
9 I'm wrong, 413 S.C. 590, 776 S.E.2d 413 stated that --

10 MR. GROUNSELL: Objection, Your Honor, there's
11 no way for us to know whether these cases are good
12 law or bad law. They haven't been presented to The
13 State about what cases he's putting forth. And, Your
14 Honor, you're the sole arbiter of the law here.

15 THE COURT: Sustained.

16 BY MR. KENNEDY:

17 Q There's numerous cases that held that a
18 connection between firearms and drug activity has to be
19 drawn in order to connect or find a defendant guilty of
20 possession of a weapon during the commission of a violent
21 crime. Do you have any other basis outside of training
22 and experience or what you merely believe that those
23 firearms were used to further or advance drug trafficking
24 activity?

25 A Absolutely. Since the firearms, one of them was

JONATHAN MCWHITE-REDIRECT BY MR. KENNEDY

1 found on the same window sill as the trafficking drugs in
2 question, I have every reason to believe that those two
3 items are linked.

4 Q But during the execution of the search warrant,
5 you also stated that no officer's body cam footage could
6 show exactly where those items were removed or where they
7 were located?

8 A That's right. DEU did not issue body cams at
9 the time of the search warrant.

10 Q So it's probable that officers that are not
11 equipped with body cam footage could enter into a
12 dwelling, find something in this room, find something in
13 another room and maybe place those items together and take
14 a picture of it?

15 A No, I don't think that's probable based on my
16 experience working with these officers.

17 Q That's not exactly what I asked you, I'm asking
18 you is it probable that an officer can take an item from
19 one room to another room, place those items together and
20 take a picture of those items?

21 A You're asking me if that's probable. Do I think
22 that probably happened, absolutely not.

23 Q Were you present when officers initially entered
24 inside the dwelling?

25 A No, sir, I was with you.

JONATHAN MCWHITE-REDIRECT BY MR. KENNEDY

1 Q So you don't really have knowledge of whether
2 the officers may have or could have took these items and
3 placed these items together to make it seem like they were
4 together?

5 A I heard the testimony under oath yesterday that
6 the officers who located these drugs found them the way
7 they were located and photographed them.

8 Q You also heard the testimony that officers was
9 present during the execution of a search warrant and none
10 of these officers are sure if this officer was present;
11 correct?

12 A Not the way you phrased it.

13 Q If I can pull up the case law and actually show
14 you what the law states according to conclusions of case
15 law --

16 THE COURT: Mr.~Kennedy --

17 Q -- I will be able to --

18 THE COURT: -- that's a legal matter. I'm not
19 going to allow you talk about any kind of case law.

20 MR. KENNEDY: I have no further questions.

21 THE COURT: All right, you may step down.

22 All right, do you have any additional witnesses,
23 Mr.~Kennedy?

24 MR. KENNEDY: No, sir, not at this time.

25 THE COURT: Any reply from The State?

JONATHAN MCWHITE-REDIRECT BY MR. KENNEDY

1 MR. GROUNDSELL: No, your Honor.

2 THE COURT: All right. Ladies and gentlemen, we
3 have concluded the evidence in the case. So I'm
4 going to -- it's a good time to take our break
5 anyway. I have some matters that I have to take with
6 the parties and then I'm going to give them a little
7 bit of time to get ready for their closing arguments.
8 Then you will have the closing arguments and I will
9 give you the case here shortly.

10 So let's take a break. Again, I just want to
11 remind you, please don't discuss the case until I
12 tell you. Enjoy your break.

13 (WHEREUPON, the jury left open court at
14 approximately 11:13 a.m.)

15 THE COURT: All right, any motions from The
16 State?

17 MR. GROUNDSELL: No, Your Honor.

18 THE COURT: Any motions from The Defense?

19 MR. KENNEDY: Not at this time.

20 THE COURT: All right. Mr.~Kennedy, I have the
21 proposed requests to charge. These are my
22 instructions that I will be giving the jury. I'm
23 going to give you an opportunity to take a look at
24 them. Here is my copy.

25 So we're going to take a break. I'm going to

1 give you plenty of time to take a look at them. I'll
2 also give y'all time to get ready for closing
3 arguments.

4 Now, closing arguments, Mr.~Kennedy, will be
5 this. The State goes first, they will give their
6 closing argument, then you will be entitled to give a
7 closing argument after that. Then because you have
8 put into evidence, The State will be entitled to give
9 the final argument. So that's the procedure and
10 that's the logistics. The State, then you, then the
11 State; do you understand that?

12 MR. KENNEDY: Yes, sir, I understand. When is
13 it, you know, right for me to, you know, state the
14 law and use the law inside of my arguments?

15 THE COURT: This is it. Closing arguments, you
16 can argue the facts of your case and the law. That
17 is what closing arguments is. So again, State goes
18 first, then you go, then The State replies in
19 closing; do you understand?

20 MR. KENNEDY: Yes, sir.

21 THE COURT: All right. Again, I'm giving you
22 the opportunity to look at the requests to charge.
23 We're going to take a break. I'm also going to give
24 you an opportunity to get ready for your closing
25 arguments.

1 I'll just do this, let me know when y'all are
2 ready for your closing arguments and I'll come back.

3 MR. GROUNDSELL: Your Honor, just one more thing
4 briefly, just because this came up in openings, can
5 he be warned one more time about excluding sentencing
6 ranges, offers, time incarcerated as well as
7 attacking the probable cause of the search warrant?

8 THE COURT: Yes, sir.

9 Mr.~Kennedy, you know the rules. Prior, you
10 made that statement in opening argument and that was
11 against my ruling. I don't want to have you do that
12 again, okay?

13 MR. KENNEDY: Yes, sir.

14 THE COURT: So do you understand?

15 MR. KENNEDY: Yes, sir.

16 THE COURT: All right. We're in recess. Let me
17 know when y'all are ready to close.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Mr.~Kennedy, you've had an
20 opportunity to look at the proposed charges?

21 MR. KENNEDY: Yeah, for the most part.

22 THE COURT: All right, both parties have looked
23 at the charges.

24 Any objections from The State?

25 MR. GROUNDSELL: No, Your Honor.

1 THE COURT: All right, any objection from The
2 Defense?

3 MR. KENNEDY: No, sir.

4 THE COURT: All right, if you would hand them
5 back up, that's my copy. And also, the verdict form
6 was on there as well. Both of you look at the
7 verdict form.

8 State okay with the verdict form?

9 MR. GROUNSELL: I'm sure it's all right, Your
10 Honor.

11 THE COURT: All right.

12 MR. KENNEDY: I didn't have a chance to --

13 THE COURT: Verdict form was the last thing on
14 the -- here, take a look at it.

15 All right, both of you, if neither one of you
16 have looked at it, it was attached to the charges.

17 MR. GROUNSELL: Looks good by me, Your Honor.

18 THE COURT: That good by you, Mr.~Kennedy?

19 MR. KENNEDY: Yes, sir.

20 THE COURT: All right. All right. I do not
21 give any restrictions on closings. I don't give
22 anybody a certain time limit. You can go long as you
23 want, that's just the way I am. So you are certainly
24 free to give as long a closing or as short a closing
25 argument as you want.

1 So again, Mr.~Kennedy, The State goes first, you
2 go, then they follow up, okay?

3 All right, Mrs. Fryer, bring them on in.

4 (WHEREUPON, the jury entered open court at
5 approximately 11:33 a.m.)

6 THE COURT: All right, ladies and gentlemen, as
7 I told you before I gave you a break, the evidence
8 has been completed and we are now at the stage for
9 the parties to give their closing arguments. And
10 after that, I'll charge you on the law.

11 The State is recognized.

12 CLOSING STATEMENT

13 MR. GROUNSELL: Mr.~Kennedy was in a drug gang.
14 Mr.~Kennedy did have trafficking weight drugs in his
15 car and he did have trafficking weight drugs in his
16 apartment. Mr.~Kennedy also has failed to accept
17 responsibility for that. As I told you at the
18 beginning of this case, that was what The State was
19 here for, to hold him accountable. Well, The State
20 has done everything that we can do. We have provided
21 testimony. We have provided you evidence. Now, the
22 choice is for you. The choice is longer
23 Mr.~Kennedy's, the choice is for you and for you to
24 hold him accountable for what he did.

25 Now, you have had the opportunity to hear from

1 seven different officers. All seven of them with
2 extensive narcotics training, five with even more
3 training on the Greenville County
4 Multi-jurisdictional Drug Enforcement Unit Task
5 Force. These are some of the best narcotics officers
6 in the state. They handled themselves with complete
7 professionalism while on scene at the execution of
8 this search warrant and they handled themselves with
9 complete professionalism in this courtroom, despite
10 the allegations of Mr.~Kennedy saying that someone
11 tampered or planted evidence. And that is what he is
12 trying to get at.

13 Now, Mr.~Kennedy has also made some sort of
14 vagueness towards the search warrant, there's an
15 issue with that. Your Honor has already said that
16 there was probable cause for that search warrant,
17 that is the threshold of that search warrant,
18 probable cause. Also, on September 24th, 2020, the
19 issuing magistrate judge found probable cause issuing
20 that search warrant. So the search warrant is valid.

21 So I want to get into today a little bit about
22 the actual indictments that you would have been read.
23 That is for the trafficking methamphetamine,
24 trafficking heroin, possession of controlled
25 substance with intent to distribute Carfentanil and

1 three counts of possession of a weapon during the
2 commission of a violent crime. I told you at the
3 beginning of this case, constructive possession is
4 the vein that runs through all of those. It is,
5 essentially, what we're here arguing about. Did he
6 constructively possess these drugs?

7 And what does constructive possession mean?
8 Constructive possession means that -- I read this
9 once to you, I'll read it again, The right or power
10 to exercise control over the drugs or the right or
11 power to exercise control over the guns and must have
12 knowledge of the drugs and the intent to control
13 their disposition or use or must have knowledge of
14 the guns and the intent to control their disposition
15 or use.

16 Now, for the two trafficking charges, there's
17 not much in dispute outside of that factor. We know
18 that this happened. In this case, what The State has
19 to prove to you beyond a reasonable doubt is that
20 Michael Justin Kennedy did in Greenville County on
21 October 2nd, 2020, was knowingly in actual or
22 constructive possession of 28 grams or more, but less
23 than 100 grams of methamphetamine.

24 For trafficking heroin, that Michael Justin
25 Kennedy in Greenville County, on or about the 2nd day

1 of October, 2020, was knowingly in actual or
2 constructive possession of 14 grams or more, but less
3 than 28 grams or more of heroin.

4 Now, we know that this happened in Greenville
5 County. We know this is Michael Justin Kennedy. We
6 know that's that this happened. We've heard that
7 from the testimony of our officers. So all that's
8 left for those two charges is really the argument
9 about did he constructively possess them.

10 Now, the best way to probably go about that is
11 to break the search warrant down into two things, the
12 car and the apartment. We know the car that he was
13 -- it was his car through the testimony. It was
14 registered to him. He was the sole occupant of the
15 car. There was no one else in there with him. There
16 was no one else around the car when he was pulled
17 over. And the bag was found in the passenger seat
18 next to him.

19 Now, he certainly has the right or power to
20 exercise control over anything that's in his car and
21 in his property. If this bag was found in that car
22 with no drugs or anything in it, nobody would be
23 sitting here arguing about whether he actually
24 possessed this bag or was this his bag. But because
25 there are drugs in the bag is what brought forth this

1 argument. So it's a little disingenuous that we're
2 even having to have this constructive possession
3 argument, but I want to put forth everything to you.
4 I'm going to play a clip from Officer Franco's body
5 cam where Investigator McWhite is talking with
6 Mr.~Kennedy.

7 Your Honor, can we?

8 THE COURT: My law clerk just left.

9 MR. GROUNSELL: Sorry, Your Honor, I probably
10 should have given you some fair warning.

11 THE COURT: As y'all can see, I'm not
12 technological. All right, I need Robert.

13 (WHEREUPON, a video was published.)

14 MR. GROUNSELL: So when you [indiscernible] in
15 that car where that bag was located and his own
16 admission that he put everything into that bag, that
17 is constructive possession. So he constructively
18 possessed 55.55 grams of methamphetamine in that car
19 and he constructively possessed the 5.75 grams of
20 heroin in the car.

21 So moving on to the apartment. The apartment is
22 sort of the same thing. The apartment is leased by
23 Mr.~Kennedy. You saw evidence of that. You saw the
24 picture entered in of the move-in statement that was,
25 indeed, his apartment. I don't think there's really

1 been any objection to the fact that is his apartment.
2 Mr.~Kennedy certainly has the right or power to
3 exercise control over everything in his apartment.
4 It's his personal property.

5 The only thing we have left to do is establish
6 knowledge. Did he have knowledge of these drugs in
7 his apartment? I'm going to play another clip for
8 you from this same interview, a minute before that.

9 (WHEREUPON, a video was published.)

10 MR. GROUNSELL: Investigator McWhite asked him
11 about this glove, this particular glove with this
12 substance inside of it. It's a pretty unique item.
13 I tried to get across this through my questioning of
14 witnesses, but this glove was found in that bag that
15 you saw on the window sill, the bag right there,
16 tightly wrapped bag. And inside that bag, alongside
17 of this glove was 21.71 grams of methamphetamine,
18 21.73 grams of heroin, 254.67 grams of Carfentanil.
19 It was clear that Mr.~Kennedy knew exactly what that
20 glove was and that glove was right along those
21 substances. Between all those, that shows that
22 Mr.~Kennedy was in constructive possession of those
23 items within his apartment.

24 Now, you factor in a kilo press, the blenders,
25 the scales, cutting agents, guns and the drugs to top

1 it off, it's pretty clear what Mr.~Kennedy was doing.
2 Mr.~Kennedy is a drug trafficker. So if we have
3 established constructive possession, that satisfies
4 trafficking methamphetamine 28 to 100 grams and
5 trafficking heroin 14 to 28 grams.

6 So we move on to the possession of a controlled
7 substance with intent to distribute. Again, we've
8 already gone through the possession analysis, so all
9 that's really left is that he intended to distribute.
10 By the very same items that I just mentioned, that
11 all goes to the intent that he intended to distribute
12 those drugs. Not only that, Carfentanil,
13 specifically, 254.67 grams, Carfentanil is 100 times
14 more potent than Fentanyl. Everyone knows how potent
15 Fentanyl is and how dangerous it is to our community.

16 Now, the other three things are the possession
17 of a weapon during the commission of a violent crime.
18 I went through the constructive possession analysis.
19 He possessed them. You see the three firearms in
20 front of you. At least, one of them being within a
21 couple feet of this bag of drugs. And every one of
22 the DEU officers with extensive narcotics training
23 linked those guns to trafficking. That is all that's
24 required to be able to prove this case beyond a
25 reasonable doubt.

1 Finally, I want to get into some of the
2 arguments Mr.~Kennedy has sort of put forth through
3 his questions. And that is, he keeps referring to
4 the illegal items only being the marijuana. The
5 marijuana in the car was found in the bag, alongside
6 thousand of dollars, along with, at least, two sets
7 of these drugs, 55.55 grams of methamphetamine and
8 the 5.75 grams of heroin. That's where the marijuana
9 was located, right next to all this other stuff.
10 You've got to parse the marijuana away from the other
11 drugs is a little bit of a ridiculous argument.
12 Also, the marijuana that was found in the apartment
13 was found in a dresser drawer that was placed up
14 against the window, right next to the window sill
15 where the rest of these drugs were found, also, in
16 close proximity. So again, it's a disingenuous
17 argument.

18 Now, you just heard The Defendant's statements
19 that we just played for you. You can also go back
20 and listen to some of the things he says on the body
21 cam because you have the whole body cam. You can
22 review the whole thing, it's an hour long. We played
23 clips just for judicial expediency, but if you want
24 to sit back there for the next hour and watch the
25 body cam, you're free to have it. It's there for you

1 to watch. You can hear this whole police
2 interaction. Had something in that bag. She don't
3 know my business. The rest of that, I'll take that.
4 I'm a man, I will take mine. Over and over again, he
5 makes these types of admissions.

6 Finally, the thing we heard yesterday afternoon
7 with the crime lab, Sean Collins, our expert, on what
8 those drugs are. Mr.~Kennedy started asking
9 questions about purity and whether that mattered as
10 far as the analysis. And it simply does not matter.
11 Our lab does not do it because it's not necessary
12 under the law.

13 And I'm going to read the law to you.
14 Methamphetamine includes any salt, isomer or salt of
15 an isomer or any mixture or compound containing
16 amphetamine or methamphetamine. So any mixture, any
17 mixture, doesn't matter if it's just a little bit of
18 meth in the mixture or a lot bit of meth in the
19 mixture, it just does not matter.

20 Also, Section 44-53-370, four grams or more of
21 any morphine, opium, salt, isomer or salt with an
22 isomer thereof, including heroin as described in
23 Section 44-53-190 or 44-53-210 or four grams or more
24 of any mixture and contain any of these substances.
25 That is heroin.

1 As to the Carfentanil, 44-53-392, weight of
2 controlled substance notwithstanding any other
3 provision of this article, the weight of any
4 controlled substance referenced in this article is
5 the weight of that substance in pure form or any
6 compound or mixture thereof. So our lab doesn't do a
7 pure analysis because it's not required. Any mixture
8 is a violation of the law.

9 And the reason why that is, the reason why the
10 legislature did that is because of this, to prevent
11 people just like Michael Kennedy from taking five
12 grams of heroin, putting cutting agents into it,
13 making it into 25 grams of heroin and then relying
14 back on an argument and saying oh, well, I only had
15 five grams of pure heroin, but turned it into 25
16 grams that I intended to distribute throughout the
17 community. It's a bogus argument.

18 Now, I told you at the beginning of the trial
19 what I was going to come do, that I was going to come
20 back here and ask you return a verdict of guilty and
21 I'm doing that now. So I appreciate your time and
22 attentiveness through all these witnesses, through
23 all this testimony and all this evidence. So thank
24 you again for being here. I ask you return a verdict
25 of guilty. Thank you.

1 THE COURT: All right, Mr.~Kennedy.

2 CLOSING STATEMENT

3 MR. KENNEDY: So today, I stand before the Court
4 and all of you as jurors of my peers, not as a
5 perfect individual, but as a tax paying citizen as
6 well or, at least, classify a person according to the
7 14th Amendment in which all abiding law should apply.
8 I have been restricted and prohibited, as you all
9 have witnessed in previous days, to bring up certain
10 and specific factors and circumstances of my case,
11 which I only intended to use and prove that I am
12 victim here.

13 I'm a victim of police brutality and treatment
14 from my government. I've been prohibited to live
15 within the constitutional -- the constitutional
16 grounds as a citizen to exercise my First Amendment
17 right, which it's my right to freedom of speech where
18 I'm able to say anything that I want to say,
19 especially in my own defense to protect myself from
20 being done wrong by government officials.

21 The only reason I wrote this down is because I
22 don't want to leave out anything. The violation of
23 my First Amendment right, my freedom of speech, is
24 clearly indicated and proof to validate what's really
25 occurring and what really has already occurred.

1 There are numerous, you know, constitutional
2 violations in my situation that I have not been able
3 to present and had the right to exercise that have
4 been violated.

5 I've been told that I cannot speak on certain
6 aspects about my case in trial regarding my life,
7 freedom and liberty, which is on the line. These
8 court officials, individuals in this courtroom, law
9 enforcement go home every night to their families and
10 homes. Depriving me of the right, not only as a
11 citizen, but depriving me of my Constitutional rights
12 within itself is the sole foundation of my arguments
13 that will prove to you all, the jury of my peers, my
14 innocence have been stripped from me. I'm not able
15 to present certain aspects about circumstances of my
16 case.

17 The only witnesses that I've used come directly
18 from The State. I don't have anybody here on my
19 behalf. There's nobody to really justify anything
20 that has taken place. But I've used these officers
21 to point out specific circumstances where they made
22 up things, where they, you know, are not sure about
23 certain aspects. These officers, also, as well as
24 entered inside my dwelling. They didn't have body
25 cam footage. They didn't have any means to

1 necessarily prove exactly what they say occurred.

2 Since 2015, due to, you know, police brutality and a
3 lot of facts that have occurred around the country,
4 officers are noted to -- whenever they conduct police
5 raids or anything of that nature to activate body cam
6 footage to prevent misplaced evidence, you know,
7 police brutality, anything of that nature. These are
8 the same individuals who conducted acts of racial
9 profiling, illegal targeting, commit acts of perjury
10 and also lied under oath. I'm a victim of police
11 brutality and systematic oppression. My innocence
12 along with frustration is the reason why I'm here
13 today.

14 Once again, like they play on video and they
15 have shown to The Court, I wanted to accept whatever
16 comes with whatever my actions. I'm willing to
17 accept my actions. I'm willing to accept whatever
18 comes with my actions, but whenever I'm done wrong,
19 it forces me to challenge, you know, the wrong acts
20 of these individuals who are not perfect. They're
21 only just officers that are paid to protect and serve
22 the country, which history and the news will prove
23 that these individuals aren't perfect as well.

24 My situation, The State hasn't presented any
25 factors beyond a reasonable doubt besides what they

1 confer or what they believe to be grounds to find me
2 guilty for these offenses.

3 I'm here today, I'm charged with trafficking
4 methamphetamine and trafficking heroin, which
5 everything that The State has offered and presented
6 about -- specifically pertaining to the law about
7 these circumstances is correct. It says that on this
8 day, Michael Justin Kennedy did in Greenville County
9 on or about the 2nd day of October, 2020, knowingly
10 sell, manufacture, deliver or bring into the State of
11 South Carolina or did knowingly provide financial
12 assistance or otherwise aid, abet or attempt to sell,
13 manufacture, deliver or bring into The State or was
14 knowingly in actual or constructive possession.

15 The necessary elements it takes to convict me or
16 find me guilty for a trafficking offense, it is a
17 two-element offense. The first element is knowingly
18 possessing. Knowledge. As you have all seen today,
19 there's no way to prove that I had knowledge of
20 specific things that I never claimed ownership to. I
21 claim anything illegal, yeah, to my knowledge of what
22 I knew I had, firearms and marijuana. I don't see
23 any marijuana. But firearms and marijuana. I
24 claimed -- you know, I didn't specifically claim
25 those items. I'm just like I know what's in my

1 house, so I know what I'm going to claim. This is
2 what I'm going to claim. This is what's mine.

3 As you've seen and as I, you know, asked
4 witnesses that approached the stand, their body cam
5 footage doesn't capture exactly where any of these
6 items are located or if any of these items could have
7 been moved or tampered with whatsoever. There is no
8 proof to verify any of this, which is -- it's kind of
9 not fair on my behalf because anybody could go into a
10 specific area and say hey, look, I found this right
11 here exactly like this. This is where I found it and
12 take a picture of it. This is still images. They
13 are actual motion of how -- the movements and
14 everything that occurred inside this residence. The
15 other element is intention to sell, distribute,
16 manufacture, deliver and any aspect connected to me,
17 basically, distributing drugs to the community.

18 Normally, when, you know, searches are executed,
19 they are based on an event that has already occurred.
20 Sole purpose of the Fourth Amendment states that
21 searches and seizures are supposed to be based upon
22 probable cause, that is correct. But when you state
23 that, you know, something was distributed to a person
24 and you're not charging me with that offense, not
25 only proves that this may have never happened, which

1 it never happened, but also cannot prove that I had
2 intentions on distributing, manufacturing or selling
3 illegal substances. Without charging me with that
4 offense of distribution, that is what The State
5 normally uses and the states around the country use
6 to convict people of trafficking or distribution of
7 narcotics.

8 Dealing with inferences drawn from knowledge or
9 possession. State vs. Stewart, which is a Supreme
10 Court case, which is a case of appeals where an
11 individual was, you know, wrongfully incarcerated due
12 to The State's inferences. Inference is, basically,
13 belief or trying to connect something to something
14 that they don't have legitimate reason to -- or
15 evidence to support what they're saying, you know,
16 constitutes that offense.

17 State vs. Stewart held that changes of the law
18 are inferences and states that just because a person
19 has control over a particular area or property, The
20 State's burden to prove the first element of
21 trafficking, which is knowingly possessing the
22 knowledge factor of the element cannot be proven. To
23 convict a person of trafficking, that element must be
24 proven.

25 If I'm the owner of a vehicle and I'm driving, I

1 have an occupant in the vehicle with me as well,
2 which my situation, I didn't have, I'm just using
3 this for an example. If a person found something up
4 under the seat or if something was ever put there
5 beforehand that I didn't have knowledge of, how can
6 you say that I knowingly possessed it? How can you
7 prove that I knew this was here?

8 Not only that, like I said, distribution charges
9 are normally -- they follow -- the search warrant is
10 followed behind a distribution case. The State did
11 not charge me with distribution. They have no
12 factors besides the presence of what they consider to
13 be, you know, illegal substances to say that oh, just
14 the mere presence of something means that you had
15 intentions on -- you know, you knew about it or you
16 had intentions on doing something with it.

17 Another example, if I'm in a car or I'm an
18 occupant of a residence with another occupant and
19 that person has drugs inside the house, it's not
20 illegal for me to know that that person has drugs
21 inside that house. What makes it illegal is if I
22 knew about those drugs and conspired or aided and
23 abetted to help this person distribute or get rid of
24 those drugs. I'm, basically, saying here, The State
25 had not met its burden to prove that I knew about

1 those drugs beside the mere presence or they said
2 that they alleged found them inside my residence.
3 Also, as well, you know, there's no body cam footage
4 to prove that these items weren't placed there,
5 weren't put there. Each one of these items that I
6 see located on this table can be put inside an
7 individual's pocket.

8 Just like, as well, yesterday, when the
9 criminalist, forensic specialist stated that if --
10 well, he agreed that if one gram of an illegal
11 substance is placed inside of, let's say, 200 grams
12 of another substance, which could be a household
13 product or anything, Metamucil, anything of that
14 nature, is what makes that substance show up as an
15 illegal substance. So one gram of something could
16 make 200 grams of something that's completely nothing
17 show up as an illegal substance. It's evident, man,
18 you know, like just viewing and how I cross-examined
19 these witnesses that nobody has body cam footage to
20 prove that hey, me pulling this outside this bag.
21 Even if it's on my shoulder, I can easily, you know,
22 hold it up to a position -- with me having knowledge
23 of this being on my shoulder, I can hold it in a
24 position. Me actually putting my arm inside of the
25 bag.

1 At this time, I would like to show y'all the
2 clip of Officer Reyes, you know, pulling -- going
3 inside my vehicle.

4 (WHEREUPON, a video was published.)

5 MR. KENNEDY: As you can see, the first thing
6 that this officer pulled up was a bag of weed. I
7 don't know specifically if I could -- for some
8 reason, I can't catch it. I don't know if y'all can
9 see that or not, but there was a clear plastic bag
10 with green substance, which is marijuana, which I
11 claimed initially when they encountered me.

12 (WHEREUPON, a video was published.)

13 MR. KENNEDY: It's clear he stated that the
14 first thing he found was weed in the bag. He didn't
15 state that he found anything else. He stated that he
16 found weed inside of this bag.

17 (WHEREUPON, a video was published.)

18 MR. KENNEDY: At that time, when he placed
19 whatever item that was on top of the hood, you cannot
20 see this officer's hand go inside of this bag. This
21 officer has been equipped with body cam footage for,
22 I'm sure, years. There should be a reason -- I mean,
23 he should know that the position of the body cam. He
24 needs to show exactly where these items were removed
25 from or located.

1 (WHEREUPON, a video was published.)

2 MR. KENNEDY: The bag is located on the floor.
3 At no point in time did he have to bend down to grab
4 this bag. As he was doing whatever he was doing with
5 his hands, at no point in time can you see this
6 officer's hands. You cannot see where hands were,
7 anything of that nature. You cannot see where his
8 hands were. You cannot see exactly where he located
9 these items from.

10 (WHEREUPON, a video was published.)

11 MR. KENNEDY: Also, as well, you know, just me
12 examining the witnesses and speaking to the
13 witnesses, asking them questions, nobody has body cam
14 footage of them directly going specifically to a bag.
15 Like, if I was a officer, I could grab this bag right
16 here. Me knowing that this body cam footage is, you
17 know, directly centered right here or on my chest,
18 it's nothing for me to, at least, angle myself or
19 position myself or, at least, hold the bag up to the
20 extent where I can show exactly where these items
21 came from. Like I said, when they initially
22 approached me, I accepted the marijuana. I claim
23 that. Anything else had to be placed there by these
24 officers.

25 Now, getting into, you know, who these officers

1 actually are. You know, two of these officers are
2 present right now are Greenville Police Department
3 CRT response officers, which is about five or six of
4 them that were actually present, as you can see, on
5 video and audio were the same officers. These same
6 officers responded to a traffic violation. And as
7 you see on the stand, they're not sure or they can't
8 remember whether or not they conducted a traffic
9 violation where they, you know, encountered me and
10 searched my vehicle and harassed me. Some of these
11 officers say, oh, yeah, we know you a drug dealer.
12 You got too much money on you right now. What kind
13 of shoes are those? Oh, what type of car is that?

14 Not only did these officers, you know, prolong
15 and harass me during the traffic violation, they tore
16 up my vehicle. They flattened my tire. Once they
17 towed it, they stripped the speakers out of my car.
18 These officers -- I'm a victim. I'm a victim of
19 police brutality. These officers are the same
20 officers as you can see -- I'll play it again for
21 you.

22 MR. GROUNSELL: Your Honor, just briefly before
23 he starts playing this, I don't know what part he's
24 playing, but that -- we went through this argument
25 yesterday about the actual disk that's in evidence.

1 He's playing it from a different file.

2 THE COURT: Mr.~Kennedy, you've got to make sure
3 whatever you play in front of the jury has been
4 admitted into evidence.

5 MR. GROUNSELL: We certainly can get the --

6 THE COURT: The disk is up here, you can
7 certainly play that.

8 MR. KENNEDY: Okay.

9 (WHEREUPON, a video was published.)

10 MR. KENNEDY: Once again, like I have already
11 probably stated earlier, certain aspects of my case
12 that I'm not willing to bring up because The State
13 said it would burden them -- I mean, it would not
14 burden them, but it would prejudice them. There's
15 certain arguments that I have that they didn't want,
16 you know, the jurors to see, I don't know, maybe it
17 would be more making you believe -- you know, being
18 able to prove that the things that -- the events that
19 happened are accurate -- that I claimed happened,
20 that these officers did where they, you know,
21 illegally targeted me.

22 As you can see on camera, the same officer,
23 which is an officer of the Crime Response Team,
24 clearly stated on record and on video that hey, do
25 you remember me from the other night? Now, the

1 things that happened on the other night, which I
2 asked this officer was he familiar or did he know why
3 this officer made these statements, which is his
4 partner, which is somebody that, you know, he's
5 probably made numerous arrests with, probably does
6 everything with, why he would make this type of
7 statement and he had no idea why he would make that
8 statement.

9 That officer made that statement, do you
10 remember me from the other night, was because on
11 September the 7th, I was, you know, traveling in my
12 vehicle, which I was only moving my vehicle from
13 point A to point B because I was in the process of
14 moving. Officer Lapek, I have the documentation here
15 to show, but I don't know if The State would allow me
16 to admit this, but it's legitimate documentation.
17 You know, this is --

18 MR. GROUNSELL: Your Honor, I object to this --

19 MR. KENNEDY: -- [indiscernible] --

20 MR. GROUNSELL: -- part of the evidence.

21 THE COURT: Mr.~Kennedy, you can only talk about
22 what's in evidence.

23 MR. KENNEDY: Okay. Well, this is clearly, you
24 know, a portion of the evidence.

25 This officer -- these officers conducted a

1 traffic violation. And in this traffic violation,
2 you know, I was harassed by these officers. I was,
3 also -- you know, they said I had a large amount of
4 cash on me and they also stated that I didn't have
5 anything illegal on me at the time, so they had to
6 let me go.

7 All this in this situation stems from these
8 officers pulling me over days prior, which was never
9 mentioned inside any police report. Actually, the
10 officer part of the Crime Response Team never made a
11 report on anything or what they did. And the first
12 officer that claimed he found anything illegal was
13 this Officer Reyes inside of my motion to discovery,
14 which is the evidence that The State plans to use
15 against me and the evidence that I have to use to
16 protect myself. This officer never gave any
17 statement or anything about what happened, but you're
18 the first officer to allegedly, you know, find drugs
19 inside of a bag.

20 I'm just trying to, you know, help y'all
21 understand what really occurred in my situation and
22 how -- what makes me a victim. I am a victim because
23 these same officers, once again, that conducted this
24 traffic violation, pulled me over -- you know, I'm a
25 young, you know, black man, you know, I have clean

1 tires, nice vehicle, a large amount of money,
2 automatically, I mean, just he got something going
3 on, what do you have going on. They asked me, What
4 do you have going on? I told them. I do graphic
5 designs and I have a job. Which, you know, I have
6 documentation to prove that I have a job. I'm a
7 taxpayer. So they had to let me go and let me ride
8 off with a large amount of money, which they towed my
9 vehicle, so I had to call somebody to come pick me up
10 or whatever. It bothered them. Because even
11 inside -- you know, this officer stated they smelled
12 marijuana. It bothered them to have to let me go and
13 not find me with anything illegal after they harassed
14 me for an hour and maybe 10, 20 minutes.

15 Is the motive to why maybe they would be like,
16 you know what, we got something for him. We'll go
17 inside his house -- we're going to find out where he
18 lives. Because it's clear on record there's no way
19 of how they found out where I lived. I mean, I know
20 because I have bills in my name. You know what I'm
21 saying, technology is easy. They used my social to
22 track my residence.

23 They came into my residence illegally without a
24 warrant. I'm not going to get into the probable
25 cause of the warrant because I was told not to get

1 into that and that I couldn't get into that. But as
2 you can see, even clear on record during this whole
3 encounter, I was never shown or given a search
4 warrant at any time. I know we all watch movies and
5 we have see where the police knock on people's door
6 and the first thing they do is like, here you go,
7 this is for you. They never did any of this, which
8 proves that these officers illegally intruded my
9 residence and illegally detained me. To effectuate
10 an encounter with a person that is not suspected to
11 be participating in a crime at that particular time
12 or under arrest, to illegally block my vehicle once I
13 pulled inside a parking spot and draw guns on me
14 shows that they forced this encounter. Everything
15 about this encounter was forced.

16 I mean, it's so many factors and so many, you
17 know, ways to prove that these officers used a badge
18 to manipulate the system, to violate me as a person,
19 to violate my rights as a citizen. I mean, like, I'm
20 only given limited amount of what I can show y'all
21 and what, you know, I can use to prove to y'all that,
22 you know, I've been violated, you know, as a citizen.

23 I mean, getting into -- you know, I'm also
24 charged with the offense of possession of a weapon
25 during the commission of a violent crime, which says

1 that the county [indiscernible] that Michael Justin
2 Kennedy did in Greenville County on or about the 2nd
3 day of October, 2020, possess and visibly display a
4 firearm during the commission or attempted commission
5 of a violent crime. They say this violation and this
6 violent crime was classified as trafficking heroin.

7 It's clear, you know, that -- let's say if I was
8 to have anything illegal on me that I wasn't supposed
9 to have or, let's say, I did have, which I didn't
10 have possession of whatever items they said that I
11 had in the car, which they say was illegal substance.
12 If I didn't have a firearm on me that's accessible to
13 me inside this vehicle, if I'm a drug trafficker and
14 I'm using firearms to protect my drugs or to further
15 this crime and make sure this crime happens and
16 occurs, I would have that firearm on me.

17 I'm traveling in my vehicle coming back from --
18 I don't even know where I was coming back from to be
19 honest with you. But I was traveling -- this is two
20 years ago. I'm traveling in my vehicle coming back
21 from -- while I was coming from minding my business
22 and these officers pulled me over, you know.
23 Officers put drugs there that I didn't possess or
24 didn't have. I believe that me claiming and say that
25 yeah, man, you know what, I'm a man because I'm --

1 knowing my situation, I know what I got, I know
2 what's going on around me. Me saying yeah, man,
3 whatever you find, that's mine. I take that, it is
4 what it is. I know that firearms are in my house, I
5 know this. I'm not denying this. I know that I have
6 marijuana. Initially, when he pulled up -- show
7 y'all on the video this.

8 (WHEREUPON, a video was published.)

9 MR. KENNEDY: At that time, according to, you
10 know, the Constitution and the Fourth Amendment, an
11 illegal seizure aspect of the Fourth Amendment, we
12 have the legal search and the legal seizure. The
13 legal search deals with probable cause. The legal
14 seizure aspect deals with how they effectuated the
15 encounter, how they approached me.

16 For me to not be under immediate suspicion of
17 committing a crime, at that time, for something that
18 allegedly occurred two weeks beforehand, the only
19 things the officers were supposed to do was, you
20 know, effectuate that encounter by, you know, merely
21 approaching me, like, hey, Mr.~Kennedy, look, we're
22 officers from this task force, DEU, at this time,
23 sir, we have warrants to search your vehicle and your
24 home. That's how it was supposed to go. They were
25 supposed to present me with this and show it to me.

1 They were not supposed to illegally block my car,
2 which is a violation of, you know, the legal seizure
3 aspect, and initiate blue lights by show of authority
4 forcing me to -- because I had -- me, as a citizen, I
5 have a right to decline that encounter. If you say
6 hey, look, man, I got a search warrant. No, you
7 don't, I don't know what you talking about, what you
8 got going on. I have the right to decline an
9 encounter. Now, they can proceed and go through, you
10 know, whatever they need to go through, but,
11 initially, they were not supposed to push up on me,
12 draw firearms with 20 officers and all of that.

13 (WHEREUPON, a video was published.)

14 MR. KENNEDY: At this time, you can see the
15 officers saying that I was not under arrest at that
16 time. So the only thing he really was supposed to do
17 was approach me as a normal citizen. The same way a
18 citizen would approach a normal citizen on the street
19 and just ask questions or, you know, initiate that
20 encounter.

21 (WHEREUPON, a video was published.)

22 MR. KENNEDY: I mean, at that time, you can see
23 my confidence. I wasn't really necessarily worried
24 about anything. I wasn't expecting -- I'm like, the
25 only thing I got in my car is some weed. You can get

1 that. What is it, a blue ticket? Those -- and those
2 illegal substances are most definitely, you know,
3 carry a lot more time than marijuana. A lot more
4 time than marijuana.

5 (WHEREUPON, a video was published.)

6 MR. KENNEDY: I'm not necessarily sure or
7 exactly sure what this officer stated, but he said
8 something illegal. I don't know exactly what he
9 stated. Only thing I had knowledge of being in my
10 car was marijuana. It's clear that, you know, I have
11 examined and I've called different officers to be
12 witnesses on this offense and what's going on in my
13 situation. And at no time did I ever specifically
14 claim and say that I have heroin, ice or Carfentanil
15 in my possession or had knowledge of these substances
16 being in my possession.

17 Also, during, you know, the execution of, you
18 know, the search warrant and along with officers
19 testimony, clearly, you know, prove that there was no
20 guns ever found on me at that time. Specifically, as
21 in control, like, I have dominion, I can reach and
22 grab this and be like hey, look, you're not going to
23 rob me, shoot you, as if I was trafficking. So, at
24 that time, I was not in possession of a weapon. I'm
25 not in possession of a weapon during the commission

1 of a violent crime if I don't have control or these
2 weapon are not accessible to me. Accessibility comes
3 from, you know, being able to be like hey, look, I
4 got this on me right now, I'm fixing to grab that and
5 you're not going to take that. This is -- well, it's
6 a normal citizen walking down the street that's
7 fixing to be robbed or deprived of his property who
8 has a license to carry. You know, that
9 accessibility.

10 Dealing with accessibility and, you know, the
11 connection between firearms and weapons. United
12 States vs. Manigan, 592 F.3d 621, which is also
13 Fourth Circuit case, which South Carolina Fourth
14 Circuit District. You know, The State can correct me
15 if I'm wrong, held, The location and proximity of the
16 seized firearm is also relevant to the courts
17 analysis as to whether it was possessed in connection
18 with drug activity or the violent crime.

19 Which is clearly saying that the location and
20 the proximity of this firearm is necessary to say
21 that this gun was used with drug activity. Like
22 Officer -- Investigator McWhite was the lead
23 investigator that already testified and stated that
24 nobody had ever told him that they had witnessed me
25 possess a firearm and sell drugs at the same time.

1 Which, you know, would be verbatim to think that
2 okay, yeah, he got his gun on him to protect him from
3 being robbed by drug buyers or other drug users or
4 whatever they can say what was going on.

5 This same argument was also held in United
6 States vs. Corral F.3d 866 and United States vs.
7 Lomax, 293 F.3d 701, which are Supreme Court cases,
8 which the Supreme Court is a higher court than this
9 court that we're in right here today. This is a
10 circuit court. A Supreme Court has the last and
11 final say-so of what is used or what is what or the
12 legislature, the statute or legislature. Nobody in
13 this courtroom has the authority to change the
14 statute or legislature, but people that are, you
15 know, in that branch, which is the Supreme Court.

16 State vs. Nance, which is a South Carolina
17 Appeal Court case, which the appeal was put in 2013,
18 held in 2012 the Supreme Court renewed Section
19 16-23-490, which is the same alleged violation on
20 these indictment numbers for possession of a weapon
21 during the commission of a violent crime. It says
22 that The possession of a weapon may be actual or
23 constructive, which means that -- constructive means
24 like okay, it can maybe be in the trunk or it can
25 maybe be, you know, somewhere that's accessible.

1 Constructive is feeling like, you know, this is there
2 for a reason, you know, and both of these are here
3 together.

4 However, The State still has the burden to prove
5 a nexus between the weapon and the violent crime,
6 which is also cited in State vs. Whiteside. State
7 vs. Whiteside, 397 S.C. 313, 725 S.E.2d 487, which is
8 South Carolina case and the case where an individual
9 was, I guess, you know, arrested. It says, However
10 the fact that the general assembly sought to defer
11 even the possession of a weapon in connection with a
12 violent crime does not suggest that it intended to
13 criminalize any possession of a firearm, no other
14 however unrelated during the commission of a violent
15 crime.

16 So, basically, saying if I got a gun in the
17 trunk of my car and, you know, me and somebody get
18 into an altercation at the gas station, you know,
19 somebody get -- somebody gets assaulted, whether that
20 be me or another person, just because the assault
21 would be a violent crime, classified, you know, with
22 the state laws that assaults are violent offenses, if
23 the police come to the scene and, you know, get to
24 the bottom of it and just decide hey, you got
25 anything on you or hey, can we search the car while

1 we're here and they find a gun in the car and can't
2 prove that this gun is related to this offense, which
3 is a violent offense, they cannot -- they do not meet
4 the burden of proof to connect possession of a weapon
5 during the commission of a violent crime, which is
6 alleged on the indictment. They have to have a
7 plausible connection.

8 It also says that the general assembly, which is
9 a group of, you know, legislators and other people
10 who create laws, the evident purpose was to increase
11 the penalty for more dangerous conduct, whether the
12 conduct of displaying the weapon is furtherance of a
13 violent offense. The general assembly's purpose was
14 not be further by penalizing possession of a firearm
15 that is entirely unrelated to the violent offense.

16 Once again, I was pulled over in my vehicle.
17 They said that I had illegal substances on me. Guns
18 located somewhere else that are not in close
19 proximity or not in arms reach or not easily
20 accessible. It's, basically, saying that it
21 shouldn't be used as a reason to say oh, yeah, you
22 had a gun for this specific reason. He also
23 testified and stated that, you know, nobody came
24 forward to show, you know, where these items were
25 located.

1 It's easy for an officer to be okay, look, put
2 that gun right here beside these whatever we say we
3 found here. And let's say that he was using this to
4 protect drugs or traffick drugs. I was outside. I
5 was pulling into the parking spot. I wasn't even at
6 the residence at that time.

7 The general assembly also held that, you know,
8 [indiscernible] no nexus is required may raise
9 constitutional questions in some cases. The
10 Constitution, Second Amendment, gives our citizens
11 the right to bear arms. So saying that, you know,
12 oh, you did something illegal and you had a gun
13 around you, basically, like saying okay, if anything
14 is done at a certain time, your rights to bear arms
15 is automatically eliminated.

16 The State has presented no evidence of criminal
17 activity from the residence besides, you know, that
18 this officer claimed that somebody gave him a tip
19 about my residence and they witnessed me selling
20 drugs from and around my apartment. The apartment I
21 stay in is not the type of area even if somebody was
22 to sell drugs from or around. It says no evidence of
23 criminal activity from the residence where guns were
24 located, cannot prove a nexus that the guns were used
25 to further or advance drug trafficking. It also

1 shows The Defendant was never stated to possess
2 visibly or not by witnesses' testimony. Only being
3 at the residence where nothing occurred or took place
4 shows no bases to connect the firearms and drug
5 dealing activity.

6 The conclusion that was held in Whiteside, State
7 vs. Whiteside is a nexus between a firearm and
8 underlying, which is -- underlying is, basically, you
9 know, something that you can't refuse or just
10 refutable. An underlying violent crime must be
11 established. It says a nexus, which is a connection
12 between, you know, these firearms and these drugs
13 must be established in order for The Defendant to be
14 convicted of possession of a firearm during the
15 commission of a violent crime. Mere presence at an
16 unrelated location does not show a nexus. This is
17 the conclusion that was held inside of the state case
18 to where the trial judge found that, you know,
19 there's not a connection between these firearms and
20 drugs.

21 Now, in regards to me saying that when he asked
22 me, he was like what is that rock-like substance that
23 was inside of a glove -- I mean, like, looking at
24 pictures inside of my house, everything in my house
25 is pretty much organic and natural. I don't use

1 toothpaste with fluoride in it. I have a lot of
2 other chemicals, like zinc oxide that are used, you
3 know, to help breathe and purify a body, alkaline
4 water, almond milk. That is zinc oxide. That is
5 used -- and it's melted and used as something that
6 you rub on the body. You know, it's natural. It
7 comes from tree sap. It comes from a specific type
8 of tree, tree sap, which was located in the bathroom.
9 As you can see, that item was located inside of a
10 glove.

11 None of these other items, heroin, ice,
12 Carfentanil was located inside of the glove. That
13 was located inside the bathroom. I can't remember
14 exactly which one, but I'm sure it was my bathroom
15 that I use in the master bedroom. This is what I'm
16 saying about misplaced evidence and body cam, it's
17 essential for officers to have an activated body cam
18 whenever they enter or whenever they effectuate any
19 type of raid or police encounters with citizens
20 because this prevents misplaced evidence or anything
21 being tainted or fixing up a crime scene. It's easy
22 for officers -- when you enter a residence with 12
23 officers and nobody has on body cam footage and
24 nobody can verify exactly where things was or have no
25 proof with motion that okay, listen, I took this from

1 here. This is what I grabbed. This is from the body
2 cam, you know, to show what's going on, you know,
3 what's actually taking place, eliminating me, you
4 know, the right to disprove what these officers are
5 saying.

6 These officers say that a blender could be used
7 to, you know, manufacture, do whatever that they say
8 that you can do with drugs with a blender. That
9 wasn't the only blender that was located inside my
10 residence. Once again, everything inside of my house
11 is organic. I got a picture to show what I have. It
12 was pineapples on the counter. I do a lot of natural
13 things. I engage in things like that. To say that
14 this powder residue is illegal substance is -- the
15 officer testified and stated that he never tested to
16 see what that substance was, so how could you say
17 that oh, I found a blender inside your house. It's
18 not illegal to own a blender. I'm sure everybody in
19 this courtroom probably has a blender. Like I say, I
20 indulge in natural organic things. Powdered milk is
21 definitely one of them. Blended almonds is
22 definitely one of them.

23 You know, like hydraulic press, for instance, to
24 say that, you know, however people can take things
25 and make them seem like they can be used for

1 anything. Anything around you can be used. A tee
2 shirt can be used to smuggle drugs. Anything can be
3 used. You can use anything. You see on the news,
4 people traffick drugs -- traffick drugs in legal
5 form, so that could be a drug right there. You can
6 say anything can be used. Oh, this is a bottle right
7 here that drug traffickers use to make a drug, a
8 liquid to use to manufacture or sell or move
9 somewhere.

10 This is a hydraulic press. As you can see in
11 the video, my vehicle -- which this hydraulic press
12 belongs to my mechanic. I have a lot of things done
13 on my car. This belongs to my mechanic. Now,
14 specifically, the process of what it is used for,
15 like hydraulics, you know, air shocks on the rims on
16 my car and shocks and things of that nature. I can't
17 say specifically how it's used. I can't show you
18 right now, like, this is used like this. I don't
19 really know how to work on cars that much. I know
20 how to do specific things, but not nothing of that
21 nature, like change a motor or anything of that
22 nature. I can change the oil, put gas in it, change
23 the tire, probably change the sparkplugs, that's
24 about it.

25 But everything The State is using is not based

1 on anything factual. They are only stating that oh,
2 this is used for this, this is used for that.
3 There's nothing illegal about that or about that. I
4 mean, not only, you know, just dealing with every
5 element to fit the nature of the offense or to
6 constitute, you know, the grounds to find me guilty
7 of specific offense, like I said, The State has no
8 way to prove without the distribution.

9 Now, The State presented to you, the jury, like
10 oh, here's a day where Mr.~Kennedy distributed
11 narcotics to a confidential informant. You can say
12 that okay, yeah, whatever we find or if we find
13 anything inside that house, you possessed those items
14 to sell those items. Without that type of
15 circumstance, which is normally used in cases,
16 specifically not in mine, I was never charged with
17 distribution because the State has no evidence to
18 prove that I ever distributed anything to anybody.
19 Which was the basis for why they say they came to my
20 house because I sold something to somebody. We're
21 not going to charge you, no, we're just going to come
22 to your house. From the same officers that pulled me
23 over two or three weeks -- I got pulled over on
24 September 7th. I got a blue ticket. They don't want
25 me to admit the evidence or incident reports what

1 these officers stated during this event, so I'm not
2 going to present that to y'all, but I do have it
3 present.

4 These same officers are the ones who pulled me
5 over and the same ones who executed the search on my
6 residence. Of course, you may -- like the criminal
7 analysis said that you can take one gram of something
8 and put it inside 200 grams of another household
9 chemical and, you know, once they test it, it comes
10 back as something.

11 Now, the same officer who testified about, you
12 know, how these drug are used -- I mean, how these
13 items right here are used, has the police report.
14 His name was Tyler Workman. Inside his police
15 report, it clearly states that I left a copy of the
16 search warrant inside the apartment. Once the search
17 was complete, Investigator McWhite transported the
18 U.S. currency to the bank. I then transported the
19 evidence to property and evidence where it was
20 entered. A lab analysis request was completed for
21 the substances that were on scene. I transported the
22 phones to Investigator Cunningham's office where they
23 would be left for data extraction. I went to the
24 crime lab and met with criminologist.

25 MR. GROUNSELL: Your Honor, I'm going to object,

1 this document, this police report is not in evidence.
2 He had a chance to cross-examine the witnesses --

3 THE COURT: You cannot refer to anything that's
4 not in evidence, Mr.~Kennedy. You cannot -- I have
5 instructed you that you're not to bring up anything
6 that is not evidence.

7 MR. KENNEDY: I mean, this officer getting on
8 the stand and testifying on the same document is not
9 evidence?

10 THE COURT: Mr.~Kennedy, you can give a closing
11 argument to the jury based on what's in evidence.

12 MR. KENNEDY: Well, would this drug analysis
13 report be considered evidence that was furnished to
14 me in my Rule 5 Brady vs. Maryland? I can't --

15 THE COURT: Mr.~Kennedy, whatever has been
16 admitted into evidence, you're allowed to talk all
17 about.

18 MR. KENNEDY: Okay.

19 These items were admitted to evidence. Okay,
20 okay, specifically, TW-25 and TW-10 were not, but
21 they were stated on the police report to be drugs,
22 but when they came back, there was no controlled
23 substance detected, which I had already
24 cross-examined investigator Tyler Workman on. So
25 it's miraculous how things -- I mean, you know, these

1 are drugs and when they get to the lab, they're not
2 drugs. TW-8, which is a bag containing powder
3 substance, Carfentanil, 254.67 grams. Inside of
4 Tyler Workman's police report, it states that --

5 MR. GROUNDSELL: Objection, Your Honor. He can
6 talk about the testimony of Tyler Workman, but he
7 can't refer to the police report itself.

8 THE COURT: That's right, Mr. Kennedy, you--

9 MR. KENNEDY: Okay.

10 Well, inside -- well, based on Tyler Workman's
11 testimony, item TW-8 was considered inconclusive.
12 Inconclusive means there was no controlled substances
13 detected. That's what inconclusive means according
14 to the scientist, criminalist that's been, you know,
15 in that profession for 31 years, according to his
16 testimony.

17 But this item right here, which is just a white
18 powder substance, looks like flour, I don't know what
19 it is. I don't even know what Carfentanil is. But
20 this investigator stated in his testimony that item
21 TW-8, when he tested it on the presumptive test --
22 like he stated, again, during his testimony, a
23 presumption test is, basically, like they take a
24 field test kit or any other device or equipment they
25 use to test drugs at that moment that it was not a

1 drug inside of this substance right here. But once
2 it reached the lab, which is -- this is a drug
3 analysis report that was made by Sean Collins, the
4 criminalist who testified yesterday and stated that
5 if you take one gram -- and agreed and said that if
6 you take one gram of something and put it inside of
7 any other substance, it can show up as narcotics or
8 illegal substance. Miraculously, once it reached the
9 lab now, it's showing up as 254 grams of Carfentanil.

10 I mean, like, I don't really have too many
11 means, as you can see. Like, I can only bring up
12 certain aspects and scenarios in my situation, which,
13 you know, I feel is unfair to me as a fair trial.
14 Because if my life is on the line, and everything
15 that I'm bringing up refers to everything that I
16 encountered or I've dealt with from officers that are
17 here, I should be able to speak on. But because The
18 State feels like the jury shouldn't hear that, I'm
19 not allowed to speak on that.

20 But it's simple, these officer illegally
21 targeted me, pulled me over -- not all of them, not
22 Investigator McWhite, specifically, not even the DEU,
23 but they could have been hey, look, man, we got the
24 guy. He's riding around here with large amounts of
25 money on him. We believed we smelled weed on him.

1 We didn't find anything on him, we had to let him go,
2 but we know he's a drug dealer. He was dressed nice,
3 had a nice car, had a large amount money on him.

4 These officers were so mad, they were mad at me
5 when they had to let me go, I know, because they made
6 all kinds of comments and statements. I don't have
7 the proof here today to, you know, show forth what
8 they did, specifically, what they said from their
9 body cam footage because, once again, The Court won't
10 allow me, you know, to admit certain things when they
11 say certain things that are not related to this case.

12 But as you can see, I can prove that one of
13 those same officers that executed the search warrant
14 came up to me was like, hey, do you remember me from
15 the other night? And then what he did after that, he
16 patted me on my shoulder and left. I would leave,
17 too, if I know, like, I'll just get him
18 [indiscernible] before I really put the pieces
19 together and figure out, like, okay, y'all at my
20 house so -- the other night, this is what happened.
21 This is what makes me a victim of police brutality.
22 I can't get into the search warrant because they said
23 I can't. Because this Judge, you know, Judge Morgan,
24 said that he feels it was already--

25 THE COURT: Mr.~Kennedy, you're crossing the

1 line. You cannot speak like that. You cannot
2 talk -- you can only talk about what the evidence is
3 in the case. Do you understand? I have talked to
4 you a number of times in this trial, do you
5 understand?

6 MR. KENNEDY: I understand.

7 As you can see, you know, I don't have, you
8 know, I can only present what they give me. Then
9 when I want to show a video of anything, they got to
10 -- we need to see it, too. But I don't have a
11 laptop. I haven't had access to technology in a
12 while. So, you know, whatever's on that laptop is
13 something that, you know, was given to me by The
14 State. So whenever I feel like I need to show
15 something to the jury about my situation regarding
16 what's going on, I should be able to do that at any
17 time because you already know it's there. Once
18 again, I'm limited to what I can show or before I
19 show you something, I have to -- you know, it has to
20 be agreed upon. I have to give extensive amount of,
21 you know, reasons of why I want to show you what I'm
22 trying to show you. You know, that explains why, you
23 know, y'all got to leave the room every time I get
24 ready to present something or say something.

25 Everything that I have is what I have. You

1 know, like, I don't really have too much of nothing.
2 I owned up to the firearms. I believe -- you know,
3 I'm not perfect a person. I've been convicted of
4 possession of a firearm before. I've been to federal
5 prison for possession of a firearm because I believe
6 that's the way the world is set up. What's going on
7 in the world, I'm a conscious person, I know what
8 goes on. So I believe that, regardless, I'm going to
9 protect myself. I'm going to always do that. So,
10 you know, whatever comes with that, it is what it is.
11 But the Constitution states I have the right to bear
12 arms.

13 But to say that everything -- when I said that
14 oh, yeah, whatever you find is mine, I was confident.
15 I'm like, yeah, I know what you fixing to find. You
16 fixing to find, I don't know exactly the amount 36,
17 38 grams of -- hold on. 32, 33 grams of marijuana, I
18 know what you fixing to find. I know when you go in
19 my house, you're going to find firearms. Those
20 firearms are in my house for a reason. I'm not
21 driving around with them. As you can see when I was
22 pulled over, when they just, you know, bombarded me,
23 I do not have any firearm on me at that time. These
24 firearms were there for a specific reason, to protect
25 me.

1 You know, I understand that I'm really
2 prohibited from possessing those, so I don't ride
3 around with them, but I am going to keep them in my
4 residence because I believe, you know, anything could
5 happen. It's not specifically about drugs. When I
6 caught my last charge for possession of a firearm,
7 you know, it wasn't to protect drugs. I didn't have
8 a distribution amount of drugs on me to say oh, yeah,
9 I just had a firearm. Just nothing else going on,
10 just a random day. I had a pistol on me, that's what
11 happened.

12 I mean, like, the only thing I can do is just
13 present what they have given me and what, you know,
14 I'm allowed to present. Like I said, I'm not a
15 perfect person, but as far as illegal drug trafficker
16 or somebody that just -- I'm 29 years old. I'm 29.
17 I've been a resident of Greenville since I was three.
18 I've never had a drug offense whatsoever. I never
19 had a drug charge. Why would I wait until 29 to
20 start being a hardcore serious drug trafficker with
21 substances that I really didn't even know how to
22 pronounce until I heard them in the courtroom. I
23 don't know what Carfentanil is. He testified and
24 said that it's an elephant tranquilizer. I don't
25 have access -- I'm not a zookeeper, I don't have

1 access -- how do I obtain Carfentanil? I mean, like,
2 you know, it's just -- I don't know, like, everything
3 I have is what I presented. I don't really have
4 anything else. But, you know, me as a person ask you
5 as my peers, to exercise fundamental fairness and
6 probability of what's going on in my situation and my
7 circumstances.

8 I'm not just saying I'm just completely
9 innocent. But to own those firearms, that's
10 possession of a firearm, illegal possession of a
11 firearm, unlawful carry of a firearm. But to charge
12 me with possession of a firearm during the commission
13 of a violent crime is way overboard. Like, I was --
14 if I was possessing a firearm to further a drug
15 offense, when I got pulled over and they allegedly
16 claim that they found me to be in possession of these
17 illegal substances, I would have had a firearm on me
18 at that time. If I'm coming back from somewhere with
19 illegal substances on me, just for example, say if it
20 was that, if I'm coming back from somewhere with
21 illegal substances on me, which would be trafficking,
22 which would be -- they inferred that I had these
23 drugs on me to distribute, to sell them, manufacture
24 them or, you know, get rid of them, I'm going to have
25 a gun on me at that time. That gun would have been

1 on me.

2 If I'm a drug trafficker and I'm riding around
3 and I got drugs on me, why I ain't got my gun? If
4 you're referring that oh, yeah, just simply because,
5 you know, these guns were located here and whatever
6 else placed there was put in a vicinity to make it
7 seem like the still picture to make it seem like
8 yeah, we can, you know, just make my situation worse
9 than what it is. I mean, like, when I did claim that
10 rock-like substance and say yeah, rock-like substance
11 I found, he didn't say oh, I found these rock-like
12 substances in the bag with other material. What is
13 that rock-like substance? He said oh, I found a
14 rock-like substance inside your home in a rubber
15 glove.

16 In no other piece of this evidence do you see a
17 glove anywhere. Everything else is a put in a
18 ziplock bag, ziplock bag and another piece of
19 plastic. To say that that was located with these
20 items is -- it's not right. It's fabricated. They
21 already don't have the proof to verify, okay, look,
22 it's 12 hours in this house, nobody has a body cam
23 footage. What if somebody was behind the door and
24 planned on having a shootout with law enforcement,
25 how could you justify that? How could you justify

1 walking into somebody's home and shooting them and
2 you ain't got your body cam on? Because when you
3 came inside this residence, you already had
4 intentions on doing something you were not supposed
5 to be doing because you were not supposed to be
6 there.

7 Once again, investigator stated somebody told
8 him I was selling drugs from around my apartment.
9 Clearly, you can see that there's kids there. It's a
10 fairly, you know, like, decent neighborhood, you know
11 what I'm saying? I ain't seen nobody play loud music
12 there. So to say this is like, you know, some type
13 of drug operation, conspire or anything like that.
14 It's fabricated. And all of this stems from this.

15 Not only does it stem from that, but it stems
16 from these officers illegally targeting me from a
17 traffic violation that occurred with the same Officer
18 Lapek, which two decorated officers testified and
19 said the first -- the first name that they said was
20 Officer Lapek. The first name because they know that
21 all of this, this whole situation, why I'm here
22 today, stems from Officer Lapek conducting the
23 traffic violation, pulling me over. Sixteen, 20
24 officers searched my vehicle, canine dogs came out
25 for an hour and some change, didn't find anything.

1 So it bothered them. And I had, you know, a large
2 amount of money on me. It is what it is, I do
3 graphic design, I do a lot of things. I have a job.
4 It's not illegal to possess \$8,000. It's not illegal
5 to possess \$10,000 if you can verify where it came
6 from. When this officer asked me, do you have a job?
7 I did state, yeah, I got a job and I work, man. What
8 do you do? I do graphic designs, make T-shirts, all
9 that.

10 I mean, it's just, you know, like -- it seems --
11 you know, they -- The State can't paint a picture,
12 that's his job. I'm not a professional. That's why
13 I'm here today representing myself as a pro se party
14 because I don't feel like nobody can speak for me and
15 justify my situation better than I can because I know
16 what happened. I'm a victim. I'm not going to let
17 somebody else speak for me if I know every
18 circumstance of my case that can prove that, you
19 know, I have been manipulated and I have been
20 illegally targeted by these officers or anything
21 wrong has been done to me. I'm not going to have
22 anybody speak for me because they don't know the ins
23 and outs of my circumstances. They don't know what
24 happened days before when that officer stated on
25 camera, Remember me from the other night? Nobody

1 knows what happened besides me. These officers
2 weren't going to bring it up and they participated in
3 it.

4 These same officers that you're looking at that
5 testified that stated that -- you know, they stated a
6 lot of different things, but executed this search
7 warrant on me all together. They -- nobody ever
8 mentioned that. And these are the same officers. I
9 remember their faces. The whole time I'm with them,
10 like --

11 (WHEREUPON, The Defendant made a swoosh sound.)

12 MR. KENNEDY: And, you know, why I'm thinking is
13 because it's the same vicinity I got pulled over not
14 too far from the location. Because I was only moving
15 my car. So I'm thinking it's the same vicinity. But
16 when they got to stating difference things -- I'm not
17 sure, I think even on body cam when they went inside
18 the residence, they were saying something about he
19 said he doesn't smoke weed, but he doesn't smoke
20 weed. That comes from when they searched my vehicle
21 nights before and stated that -- when I stated that I
22 don't smoke weed. Because I don't feel necessary --
23 just because you pull me over and say you smell
24 marijuana, I don't have to tell you I smoke weed.
25 I'm on probation. I mean, it's just one of those

1 things, man.

2 Like I said, I'm not perfect. I'm not a saint,
3 you know what I'm saying? But there's nobody here
4 today in this courtroom that can say -- a citizen,
5 besides law enforcement to say they that witnessed me
6 sell drugs or engage in drug activity. I'm not
7 charged with an offense for selling anything to
8 anybody else. Nobody here to say I'm a drug user and
9 Mr.~Kennedy is a drug trafficker. Which I don't feel
10 like -- I mean, like, on the news, you see people
11 with a lot of drugs, like piles and stacks of it. I
12 don't feel like this is -- and all of these items
13 could fit in your pocket. Each and every one of
14 these items could fit in somebody's pocket. Now,
15 whatever that is and whatever was added to that could
16 also be the smallest pack could have been placed
17 there. The same color, content or anything of that
18 nature.

19 I'm just -- you know, like, the only thing I'm
20 presenting to y'all is what I have. I don't have
21 anything else. I don't have any type of way to, you
22 know, click my heels and make anything appear.
23 Everything that I do and wanted to present to y'all,
24 I'm not able to, so only thing I'm doing is asking
25 y'all as jury of my peers, at least, just think about